



Office of the Regulator-General, Victoria

**ACCESS ARRANGEMENT FOR
EASTCOAST GAS PTY LTD**

**IN RESPECT OF THE PROPOSED
EAST GIPPSLAND
NATURAL GAS DISTRIBUTION SYSTEM**

FINAL DECISION

MAY 1999

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PREFACE

In June 1998 EastCoast Gas Pty Ltd ACN 071 314 184 submitted to the Office an Access Arrangement in respect of the proposed East Gippsland natural gas distribution system for approval under the *Victorian Third Party Access Code for Natural Gas Pipeline Systems* (the "Code").

The Access Arrangement describes the terms and conditions under which EastCoast Gas will make access to their pipelines available to third parties.

The Office invited submissions on the Access Arrangement from interested parties in July 1998. Three submissions were received, one of which identified relevant issues for consideration by the Office.

The Office assessed the proposed Access Arrangement against the principles in the Code and the objectives of the Office as specified in the *Office of the Regulator-General Act 1994* and the *Gas Industry Act 1994*.

A Draft Decision was issued in November 1998 which analysed all relevant issues in accordance with the requirements of the Code and stated the amendments (or the nature of the amendments) which have to be made to the Access Arrangements before the Office will approve it, and the reasons for requiring the amendments.

Some submissions were made to the Office supporting the provision of gas to East Gippsland. However no submission was received that went to the substance of either the Access Arrangements or of the Office's decision.

Discussions were subsequently held with the proposers of the Access Arrangements who submitted a revised Access Arrangement that sought to meet the requirements of the Office. This Final Decision evaluates the revisions against the requirements of the Office as stated in the Draft Decision.

John C. Tamblyn
Regulator-General

Dated: 6 May 1999

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EXECUTIVE SUMMARY

In 1997 the East Gippsland Shire Council carried out a tender to determine the preferred gas supplier and retailer to the region of East Gippsland including the urban centres of Bairnsdale, Lakes Entrance, Paynesville and Orbost. The tender covered the provision of distribution and retail services. EastCoast Gas (a joint venture between Eastern Energy, the Victorian electricity distribution and retail company, and Westcoast Energy Australia, a subsidiary of a major North American gas company) was selected by the Council as preferred tenderer in October 1997. The EastCoast Gas proposal involves the supply of natural gas to towns in East Gippsland from the proposed Eastern Gas Pipeline.

In June 1998 EastCoast Gas submitted to the Office an Access Arrangement in respect of the proposed gas distribution system for approval under the *Victorian Third Party Access Code for Natural Gas Pipeline Systems* (the "Code"). In accordance with the Code, the Office invited comments on the Access Arrangement in July 1998. Three submissions were received - from AGL, BHP and the South Australian Department of Treasury and Finance.

This Access Arrangement incorporates certain elements which, in accordance with sections 3.39 and 3.40 of the Code, have been determined by the tender. The items that are tender outcomes relate primarily to the Reference Tariffs to apply for the initial Access Arrangement Period and many elements of the Reference Tariff Policy. These items have been set by the tender process and cannot be reviewed or altered by the Office at this time. The Office has however commented on them, in the interest of providing some guidance as to its approach when reviewing the EastCoast Gas' next Access Arrangement.

A key issue is the under-recovery of revenue in the initial Access Arrangement Period. EastCoast Gas argues that in the initial period of any new gas distribution system returns will be less than those sought as an average over the life of the project. There will thus be a need for an over-recovery of revenue in subsequent years to compensate for this initial under-recovery. EastCoast Gas was concerned to ensure that the regulatory arrangements expressly recognised this principle.

EastCoast Gas has proposed to capitalise the 'under-recovery' of revenue in the early years of the project. (This is just one solution to the problem. Other approaches, which are perhaps more explicitly contemplated by the Code, could not be considered because they were not contemplated in the tender).

A key issue is how the 'under-recovery' is to be calculated and in particular whether the under-recovery should be determined by reference to forecast, or actual, costs and revenues. This matter was not covered in the tender and the Office thus required it to be submitted for review through the Access Arrangement.

EastCoast Gas has proposed that the under-recovery be calculated in relation to the difference between actual revenues and actual costs. The Draft Decision supported this

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proposal, because although this approach has the disadvantage of muting efficiency incentives:

- the regulator cannot protect EastCoast Gas from the market risks that it faces due to the immaturity of the East Gippsland market. While EastCoast Gas will be allowed to carrying forward any under recovery, this will only protect EastCoast Gas from risk to the extent that higher prices can be passed on to customers. Where customers' willingness to pay is less than the price (either because prices are too high in absolute terms or because alternatives such as LPG are competitively priced) carrying forward any under-recovery of revenue will not be able to protect EastCoast Gas from stranded asset risk. This provides EastCoast Gas with a strong incentive to minimise costs.
- an alternative approach based on the difference between forecast and actual revenue would rely on accurate forecasts. This is unlikely to exist given the greenfields nature of the site where there is currently no established market for natural gas and consequently no historical experience or available information; and
- the Office can always apply prudence tests to expenditure to ensure that actual investment expenditure is appropriate. Inappropriate investments will then not be rewarded but rather optimised out of the asset base to determine EastCoast Gas' approved revenue. This will thus discourage the company from seeking to over-invest and risk the Office disallowing any return on such investments.
- The proposed Access Arrangement was assessed against the principles in the Code and the objectives of the Office as specified in the *Office of the Regulator-General Act 1994* and the *Gas Industry Act 1994*. The Office also considered issues raised in the submissions. The Draft Decision proposed that in order for the Office to approve the Access Arrangement submitted by EastCoast Gas it would require certain amendments to be made to the Access Arrangement.
- In March 1999, EastCoast Gas submitted a revised Access Arrangement that took into account the Office's Draft Decision.

PART A

**BACKGROUND, DRAFT DECISION, REQUIRED AMENDMENTS
AND FINAL DECISION**

1.1 ACCESS ARRANGEMENTS

The Office of the Regulator-General (Office) received an Access Arrangement on behalf of EastCoast Gas Pty Ltd ACN 071 314 184 (EastCoast Gas) for approval by the Office under the *Victorian Third Party Access Code for Natural Gas Pipeline Systems* (the “Code”). The Office’s Final Decision in relation to this proposed Access Arrangement is at section 1.5 of Part A of this document. The remainder of the document is the Office’s Statement of Reasons.

The Access Arrangement describes the terms and conditions under which EastCoast will provide third parties with access to its pipelines. Access Arrangements are designed to enhance competition in gas retailing by lowering the barriers to entry for retailers and by permitting end-users to deal directly with energy and transportation providers. In addition, competitive pressure on the upstream producers will also be enhanced as the barriers to entry into production fall and gas buyers have the option of purchasing unbundled gas at the production plant gate.

Access Arrangements are part of a wider gas industry reform agenda being implemented by both Federal and State Governments following a 1994 agreement to develop a uniform national framework for access to gas pipeline systems. The Victorian Code is an interim instrument that will apply in Victoria until a National Access Code comes into effect.

In Victoria the Government has restructured the former Gas and Fuel Corporation into three gas retailers, three gas distributors, one gas transmission business and an independent system operator. The Office has made a decision on the Access Arrangements for the three distributors with final approval given in December 1998. The reforms also propose the privatization of the newly restructured businesses (but not the system operator) and the progressive introduction of full retail competition into the gas retail market.

In addition, Access Arrangements associated with a number of “greenfields” proposals to bring natural gas to towns in country Victoria are under consideration by the Office. The East Gippsland Natural Gas Distribution System is one of these proposals.

The Code requires Access Arrangements to meet a number of minimum requirements and to satisfy certain principles. Section 2.24 of the Code lists the matters that the Office is required to take into account in assessing a proposed Access Arrangement. These matters are outlined in section 1.3 of this Final Decision.

In assessing a proposed Access Arrangement the Office will also have regard to its general and gas industry-specific objectives under relevant Victorian legislation.

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After assessing an Access Arrangement against the relevant provisions and principles of the Code and considering submissions from interested parties, the Office is required by the Code (section 2.16) to publish a Final Decision which either:

- (a) approves the Access Arrangement; or
- (b) does not to approve it and states the amendments which would have to be made in order for the Office to approve it; or
- (c) approves a revised Access Arrangement that in the Office's opinion incorporates the amendments specified in the Office's Draft Decision.

Based on its assessment of the revised Access Arrangement against the requirements of the Code, this Final Decision explains the Office's approval of EastCoast Gas' Access Arrangement for the East Gippsland Natural Gas Distribution System.

1.2 BACKGROUND TO EASTCOAST GAS' APPLICATION

In 1997 the East Gippsland Shire Council carried out a tender to determine the preferred gas supplier and retailer to the region of East Gippsland including the urban centres of Bairnsdale, Lakes Entrance, Paynesville and Orbost. The tender covered the provision of distribution and retail services. EastCoast Gas (a joint venture between Eastern Energy, the Victorian electricity distribution and retail company, and Westcoast Energy Australia, a subsidiary of a major North American gas company) was selected by the Council as preferred tenderer in October 1997.

The EastCoast Gas proposal involves the supply of natural gas to towns in East Gippsland from the proposed Eastern Gas Pipeline, designed to run from Longford in Victoria to Winton in New South Wales. In the event that the Eastern Gas Pipeline does not proceed, EastCoast Gas intends to build a dedicated pipeline to transport gas from Longford to Bairnsdale to service their distribution system.

The Code provides for certain principles and a defined process to be followed when conducting a tender. However, Council's tender was not carried out in accordance with the Code because the tender pre-dated the Code's existence. Instead, the tender was carried out in accordance with *Interim Guidelines for Natural Gas Extensions Projects* (the Guidelines) issued by the Department of Treasury and Finance in May 1997.

Nevertheless, Section 3.39 of the Code requires the Office to recognise tenders undertaken prior to the existence of the Code:

- 3.39 Where before 11 December 1997 a person conducted a tender in accordance with guidelines for the purposes of section 40 of the Gas Industry Act 1994 in relation to a Pipeline that had not been built, the Relevant Regulator must approve the tender process for the purpose of this section 3.39 and then the proposed pipeline shall be a covered pipeline from the time of that decision. In any Access Arrangement for that covered pipeline:
- (a) for each Reference Service for which a Reference Tariff was determined by the tender process, the Reference Tariff shall be the Reference Tariff that was determined in accordance with the tender process; and

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- (b) each other item required to be included in an Access Arrangement which the tender documents specified would be determined by the tender process shall be as determined by the tender process.

Nothing in this section limits the Reference Services for which the Relevant Regulator can require a Reference Tariff to be established.

Section 3.37 applies to a decision under this section 3.39 approving a tender process and section 3.38 applies to this section 3.39 as if the reference to section 3.36 in section 3.38 were a reference to this section 3.39.

- 3.40 The Relevant Regulator may permit the person who conducted the tender process and the successful tenderer to agree to changes to the terms of the tender which result in minor changes to the Reference Tariffs or other items determined by the tender process. The amended Reference Tariffs and other items shall be considered to be determined in accordance with the tender process for the purposes of clause 3.39.

On 26 June 1998, EastCoast Gas wrote to the Office seeking its approval:

- (i) that the tender process was conducted in accordance with the guidelines;
and
- (ii) of the tender outcomes, including minor changes to the terms of the tender agreed to between the East Gippsland Shire Council and EastCoast Gas.

Following discussions with EastCoast Gas, East Gippsland Shire Council, the Energy Projects Division of the Department of Treasury and Finance and other parties, the Office agreed on 26 June 1998 that the tender was conducted in accordance with the guidelines and that it approved the tender outcomes as proposed by EastCoast Gas.

Because the tender was conducted in accordance with the Guidelines and not the tender process in the Code, establishing the items that were 'tender outcomes' was not a trivial task. Following legal advice the Office adopted the view that where an item was sought by the Council's tender documentation, and where EastCoast Gas' tender bid contained an express statement or principle, or undertaking or obligation, or where anything in the tender documentation created a strong inference of a statement, principle, undertaking or obligation, the Office would consider these items to be 'tender outcomes'. Where this was not the case, EastCoast Gas was required to submit the item for assessment by the Office.

The Office believes this approach is consistent with the Code. However a consequence is that the Access Arrangement contains both tender outcomes (which cannot be reviewed by the Office until the subsequent Access Arrangement period) as well as items that are not tender outcomes (which can be reviewed by the Office).

The items that are tender outcomes relate primarily to the Reference Tariffs to apply for the initial Access Arrangement Period and many elements of the Reference Tariff Policy. While they have been set by the tender process and cannot be reviewed or altered by the Office at this time, the Office has, in the interests of providing some guidance as to its approach when reviewing the EastCoast Gas' next Access Arrangement, provided comment on these items in Part C of this report.

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In order to operate the proposed East Gippsland natural gas distribution system, section 48B of the *Gas Industry Act 1994* requires that EastCoast Gas hold a licence to distribute gas. The licensing process requires an application to be lodged with the Office and publicly advertised.

EastCoast Gas has indicated that, at this stage, it may not be seeking a new areas retail licence. A new areas retail licence grants the holder an exclusive retail franchise over customers until the contestability dates in the *Gas Industry Act 1994* are reached. The company will however apply for a retail licence that will allow it to retail gas to non-franchise customers. Where a retail licence is sought, the Code provides for ring-fencing arrangements between the distribution and retail businesses. EastCoast Gas has however indicated that it will be seeking a waiver from the ring-fencing obligations imposed by the Code at a later date. Clause 4.15 of the Code provides for the Office to grant a waiver under certain conditions and clauses 4.16 to 4.24 provides the procedure that the Office will follow in deciding whether to grant the waiver in the event of an application.

1.3 CONTEXT OF THE OFFICE'S DECISION

Access Arrangements and Competition

Access Arrangements describe the terms and conditions under which pipeline owners (Service Providers) will make access to their pipelines available to third parties. The aim of providing third parties with rights of access to the distribution pipeline natural monopoly is to generate efficiency in the supply of pipeline transportation services and to promote effective competition in both downstream (retail/direct customers) and upstream (potential new entrants to production industries).

An effective Access Arrangement will allow new retailers and large customers to lower their costs of delivered gas by unbundling their gas and transportation purchases. Low barriers to entry for new retailers will further enhance competition and generate benefits to end-use customers.

An effective Access Arrangement will also impose competitive pressure on the upstream producers. Access to gas transmission and distribution services at efficient prices will provide market opportunities for new entrants into upstream gas production thereby increasing upstream competition.

Criteria for Assessment

The Office may approve an Access Arrangement only if it satisfies the minimum requirements set out in section 3.1 to 3.22 of the Code.

In deciding whether to approve an Access Arrangement, section 2.24 of the Code requires the Office to take into account the following matters:

- the legitimate business interests of the Service Provider;

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- firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- the economically efficient operation of the Covered Pipeline;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of Users and Prospective Users; and
- any other matters that the Office thinks are relevant.

The Office will also have regard to its general and industry-specific objectives under relevant Victorian legislation when assessing the Access Arrangements. The general objectives of the Office as specified in the *Office of the Regulator-General Act 1994* are:

- to promote competitive market conduct;
- to prevent misuse of monopoly or market power;
- to facilitate entry into the relevant market;
- to facilitate efficiency in regulated industries; and
- to ensure that users and consumers benefit from competition and efficiency.

The Office's industry-specific objectives as specified in the *Gas Industry Act 1994* are:

- to facilitate and promote open, efficient and competitive markets for and in relation to gas and to safeguard against misuse of monopoly power;
- to administer an Access code providing a right of access to services provided by means of distribution pipelines on fair and reasonable terms and conditions;
- to protect the interests of consumers with respect to gas prices and the quality of gas supply; and
- to facilitate the maintenance of a financially viable gas supply industry.

The principles of the Code together with the objectives of the Office are broadly directed to preventing the abuse of monopoly power by Service Providers, to promoting efficiency in the pricing and delivery of pipeline transportation services, ensuring competition in upstream and downstream markets, and encouraging efficiency and competition in gas production. These outcomes are to be sought in a way that seeks to maintain an appropriate balance between:

- the legitimate business interest of the Service Provider;
- the rights of third parties to access to gas haulage services at reasonable prices, terms and conditions;
- the interests of final use customers; and

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- the interests of the community as a whole (in having effective competition and efficient regulation of monopoly facilities).

The Code can be interpreted as requiring that the legitimate business interests of Service Providers be met by allowing them to recover the efficient cost incurred in providing services over the expected lives of the assets they employ and to earn an appropriate commercial (risk adjusted, but not monopoly) rate of return on the value of those assets.

The Code also addresses the interests of Service Providers by providing for market-based incentives to improve efficiency by allowing them to retain during the current price review period any returns that exceed the target level of productivity gains expected at the beginning of the Access Arrangement period. It also provides for sharing the benefits of past efficiency improvements between Service Providers and Users in subsequent periods.

The interest of access seekers is likely to be served by measures in the Code which prevent the abuse of monopoly power (including the Reference Tariff, ring fencing and hindering provisions) and encourage the use of cost-based and economically efficient pricing structures for Reference Services.

In addition, access seekers should benefit from the Code measures providing for disclosure of relevant information to participants about the basis for determining Reference Tariffs and establishing a dispute resolution process to resolve disputes when they arise.

Adverse implications for competition and economic efficiency are likely to result from Access Arrangements being either too restrictive or too liberal. The objective is to strike the balance in this regard between the interests of Service Providers, Users and the broader community.

If an Access Arrangement is too liberal from the viewpoint of the Service Provider (ie if the price of access sought by the Service Provider is too high) it may:

- provide a revenue stream to the Service Provider that is higher than necessary to provide an acceptable rate of return and encourage it to provide an appropriate quality service;
- impose higher charges than necessary on customers;
- restrict upstream and downstream uses of gas; and

as a consequence, result in lower employment and growth opportunities for Victorian industry generally.

If an Access Arrangement is too restrictive from the viewpoint of the Service Provider (ie if the price of access sought by Service Provider is too low), it may:

- undermine the capacity to sustain quality services, with cash flows being insufficient to finance needed capital expenditure and maintenance;

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- deter future investment in and entry to the Victorian gas distribution sector; and
- deter future investment in both upstream and downstream industries to the extent that both customers and producers are exposed to distribution pipeline networks that provide costly or substandard transportation services;

and as a consequence, impair employment and development opportunities in downstream industries.

Role of the Office in Gas Transmission

The Office has the formal responsibility for approving Access Arrangements for the Victorian gas distribution industry and the Australian Competition and Consumer Commission (ACCC) has that responsibility in relation to gas transmission Access Arrangements.

Accordingly the Access Arrangement being considered by the Office does not cover the proposed East Coast Pipeline itself

Nevertheless, the Code requires the regulators to have regard to competition and efficiency in upstream and downstream markets in performing its role. The Office has therefore considered the effect on upstream activities of gas production, transmission and gas wholesale and retail market operations when assessing the Access Arrangement.

The Public Consultation Process

The Office placed an advertisement in *The Age*, the *Australian Financial Review* and the *Bairnsdale Advertiser* of 1 July 1998 inviting public submissions on the Access Arrangement by 29 July 1998.

The Office also wrote directly to interested parties requesting submissions on the Access Arrangement.

Three submissions were received. Only one, from AGL, raised substantive issues with respect to the Access Arrangement.

After considering all submissions, the Office was required under the Code to issue a Draft Decision which either:

- proposes to approve the Access Arrangement; or
- proposes not to approve the Access Arrangement and states the amendments (or nature of the amendments) which have to be made to the Access Arrangement in order for the Office to approve it.

The Draft Decision was handed down in November 1998. This was advertised in the *Melbourne Age*, the *Australian Financial Review*, the *Bairnsdale-East Gippsland News*,

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the La Trobe Valley Express, the Snowy River Mail and The Lakes Post. Submissions from interested parties and members of the public were invited.

In response to the Draft Decision, submissions were received from the following organisations:

- Lakes & Wilderness Tourism
- Bairnsdale & District Business & Tourism Association Inc.
- Bruthen & District Citizens Association Inc.
- East Gippsland Shire Council

All submissions received supported the provision of natural gas to East Gippsland. However, no comments were made on the substance of either the Access Arrangements or the Office's Draft Decision.

After reviewing the Office's Draft Decision, EastCoast Gas submitted a revised Access Arrangement in March 1999.

1.4 RELATIONSHIP TO OTHER ACCESS ARRANGEMENTS

Contemporaneously, the Office is releasing its Final Decision on an Access Arrangement submitted by Envestra in respect of the proposed Mildura gas distribution system. Envestra's Access Arrangement has much in common with the Access Arrangement being considered here, including:

- both have been submitted following a competitive tender carried out under the Guidelines;
- in both cases, key elements of the Access Arrangement, including Reference Tariffs, were determined by the tender process; and
- both relate to 'greenfields' sites and both applicants want the regulatory approach to explicitly recognise an 'under-recovery' of revenue in the initial years of the project, via the capitalisation of losses.

Because of these commonalities, this Final Decision is similar in many respects, and identical in some places, to the Mildura Final Decision. Nevertheless, it is worthwhile to note that there are a number of differences in the approaches put forward by Envestra and EastCoast Gas. For example:

- EastCoast Gas wants its Access Arrangement to commence when gas is ready to flow to consumers. Envestra has proposed that its Access Arrangement come into effect shortly after it is approved;
- EastCoast Gas has indicated that at this stage it will not be seeking a retail franchise over customers. Since contestability will extend to all customers by the middle of 2001, EastCoast Gas views that there is little to gain by obtaining a new areas franchise retail licence since it is likely that the distribution network will only be ready towards the middle of 2000. All customers will thus be contestable when the network is available. EastCoast

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Gas is however still considering this issue. Boral, who has a controlling interest in Envestra, has proposed that it will seek such a franchise in the case of Mildura; and

The Office's Final Approval on the Access Arrangements submitted by the Victorian Government on behalf of Multinet, Westar and Stratus was issued in December 1998. These three distribution businesses provide gas distribution services to Melbourne and other parts of Victoria.

The key point to note when comparing the Office's Final Decisions for EastCoast Gas and Mildura with its Final Decision on the Multinet, Westar and Stratus distribution systems is that the decisions reflect important differences in the operating environment between the proposed East Gippsland and Mildura systems, and the established gas distributors. These differences, which have influenced the way in which the respective Access Arrangements have been assessed, include:

- EastCoast Gas' proposed Access Arrangement and that of Mildura followed from tender processes such that many of the items which in the case of Multinet, Westar and Stratus were the subject of detailed review, were fixed by the tender processes and have not been assessed by the Office;
- the Multinet, Westar and Stratus systems are established systems with a known operational history and a deep and diversified customer base. The Mildura and East Gippsland systems have not yet been constructed. There is thus currently no established market for natural gas in these areas and no historical experience or information on demand, tariffs or costs; and
- the size, scope, number of customers served and technical complexity of the Multinet, Westar and Stratus systems is far in excess of that envisaged for East Gippsland and Mildura.

Finally, because the East Gippsland and Mildura Access Arrangements developed from tenders conducted prior to the existence of the Code, care should be taken when comparing the Office's Draft Decisions on those proposals with Access Arrangements submitted under other circumstances.

1.5 DRAFT DECISION

In its Draft Decision, the Office proposed not to approve the Access Arrangement submitted by EastCoast Gas on the basis that it was not satisfied that the proposed Access Arrangements contained all of the elements and satisfied all of the principles set out in the Code and complied with the Code generally. The Office, however, provided a list of amendments that, if made by the applicant, would be sufficient to justify approval of the Access Arrangements.

In reaching this preliminary conclusion the Office had regard to the matters set out in section 2.24(a) and (b) of the Code, including, under section 2.24(b)(vii), the general

and industry-specific objectives set out in the *Office of the Regulator General Act 1994* and the *Gas Industry Act 1994*.

1.6 REQUIRED AMENDMENTS

In its Draft Decision, the Office indicated that in order for the Office to approve the Access Arrangement submitted by EastCoast Gas in respect of the proposed East Gippsland natural gas distribution system, it required amendments in the nature of those set out below:

Services Policy

1. The Services Policy needs to be amended to:

- remove the distinction between single supply point and multiple supply point Services by removing these terms from section 2.3;
- remove the reference to an 'economic threshold test' in section 2.5.8;
- explicitly state that the Tariffed Distribution Service is a Reference Service.

Terms and Conditions

2. The Terms and Conditions need to be amended to:

- include clear and objectively measurable definitions of the level of reliability for the Reference Service, including as a minimum a definition of the minimum pressure at which gas will be transported to customers and maximum allowable error limits for metering;
- provide an outline of the contents of the service agreement;
- include a definition of 'curtailable load' and 'notice of curtailment';
- provide that EastCoast Gas will give Users a reasonable period of notice of planned maintenance where it will result in supply being curtailed;
- provide that the Terms and Conditions state that
 - ⇒ the tariff is the Reference Tariff as it exists from time to time; and
 - ⇒ the Terms and Conditions are those that exist from time to time.

Reference Tariffs

3. The Reference Tariffs to be altered to:

- state that where a new customer takes possession of a supply point in the same month as the previous customer ceases taking supply from that supply point, the new customer will not be charged the monthly charge for that month;
- state that where a customer changes retailers during a month, the former retailer will not be liable for the monthly supply charge; and
- state that the tariffs for the Tariffed Distribution Services is a Reference Tariff.

Reference Tariff Policy

4. The Reference Tariff Policy needs to be amended to:
- state that actual revenue will be calculated by reference to the volume of gas sold, multiplied by the Reference Tariff;
 - remove reference to industrial action in its definition of force majeure event and to state that EastCoast Gas will not seek to pass through any losses resulting from a force majeure event that may be insurable or where it may have a right of compensation through other means;
 - change the definition of the CPI to refer to the All Groups CPI - Average of Eight State Capitals rather than the All Groups CPI for Melbourne;
 - remove the Additional Revenue Policy;
 - remove the second paragraph in section 5 of schedule 1 and replace it with a statement that any pass through of the effects of a force majeure event will occur via a surcharge to remain in place until the next Access Arrangement review at which time the pass-through will occur as part of 'normal' price-setting arrangements;

Queuing Policy

5. The Trading Policy needs to be amended to:
- enable prospective Users at the top of the queue to take up remaining pipeline capacity before lower-place requests are considered;
 - clarify whether a request for a Negotiated Service to an existing supply point takes preference over a request for Tariffed Distribution services to a new supply point;
 - delete the part of the policy that gives existing Users priority over Prospective Users;
 - state that Prospective Users of Tariffed Distribution Services have priority over Prospective Users of a Negotiated Service only where the Prospective User of the Negotiated Service is proposing to pay a price less than the price of the Tariffed Distribution Service.
 - state that EastCoast Gas may seek confirmation from Prospective Users on the status of their requests no more frequently than once every six months.

Extensions/Expansions Policy

6. The Extensions/Expansions Policy needs to be amended to:
- carefully define the outer boundary and the customers to be potentially served by the initial system (the service envelope) using detailed maps;
 - address the matters of coverage and the effect on Reference Tariffs in respect of extensions outside the planned service envelope, and expansions both within and outside the planned service envelope, bearing in mind Office's comments on the ambiguity of the current Extensions/Expansions Policy and the advantages of automatic coverage; and
 - describe obligations to fund New Facilities Investment.

1.7 FINAL DECISION

On the basis that EastCoast Gas has satisfied the Office that all required amendments have been made to its proposed Access Arrangements, the Office has decided to approve the revised Access Arrangement submitted by EastCoast Gas. It is satisfied that the proposed revised Access Arrangement contains all of the elements and satisfies all of the principles set out in the Code and comply with the Code generally.

In reaching this conclusion the Office has had regard to the matters set out in section 2.24(a) and (b) of the Code, including, under section 2.24(b)(vii), the general and industry-specific objectives set out in the *Office of the Regulator General Act 1994* and the *Gas Industry Act 1994*.

The Office is required, by section 7.7 of the Code, to state its reasons for its Final Decision. These reasons are set out in Part B of this document.

PART B

STATEMENT OF REASONS

2.1 CONTENT OF AN ACCESS ARRANGEMENT

The Code provides that, at a minimum, an Access Arrangement must contain the following:

- a) A Services Policy - a policy on the service or services to be offered (sections 3.3 to 3.4 of the Code);
- b) One or more Reference Tariffs (sections 3.5 to 3.6);
- c) A Reference Tariff Policy - a policy describing the principles that are to be used to determine a Reference Tariff (section 3.7);
- d) Terms and Conditions - the terms and conditions on which the Service Provider will supply each Reference Tariff (sections 3.8 and 3.9);
- e) A Capacity Management Policy - a statement of whether the pipelines are either Contract Carriage or Market Carriage pipelines (section 3.10);
- f) A Trading Policy (in the case of Contract Carriage Pipelines) - a policy that explains the rights of a User to trade its right to obtain a service to another person (sections 3.11 to 3.13);
- g) A Queuing Policy - a policy for determining the priority that a Prospective User has to obtain access to a Service and the Developable Capacity of a Covered Pipeline (sections 3.14 to 3.17);
- h) An Extensions/Expansions Policy - a policy that sets out the method used to determine whether any system extension or expansion should be treated as part of the Covered Pipeline, and how Reference Tariffs will be affected (section 3.18)
- i) A Revisions Submission Date - a date upon which the Service Provider must submit revisions to the Access Arrangement (section 3.19); and
- j) A Revisions Commencement Date - a date upon which the revisions to the Access Arrangement must commence (section 3.19).

An Access Arrangement must be accompanied by Access Arrangement Information - information that will enable Users and Prospective Users to understand the derivation of elements in proposed Access Arrangements (sections 2.2 and 2.6 to 2.8). Where a competitive tender has been undertaken that Access Arrangement Information need not be provided in respect of the elements determined by the tender. Importantly, in the case of EastCoast Gas this means that information is not required in relation to Reference Tariffs. However, Access Arrangement Information covering all of the elements of the Access Arrangement will be required when the Access Arrangement is reviewed.

The Code also describes the principles with which the above must comply.

There are three ways in which items (a) to (j) above may be determined. The first is by the Office's approval under section 2.24 of the Code, the second is via the competitive

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tender provisions under sections 3.23 to 3.27 of the Code, and the third is via the competitive tender conducted in accordance with section 3.39 of the Code.

As outlined in section 1.2 above, a tender has been carried out and the tender process has determined certain of the above elements. These include the Reference Tariffs and many elements of the Reference Tariff Policy.

These items cannot be reviewed or altered by the Office until the next Access Arrangement period. Nevertheless, to the extent that they are relevant in assessing those elements of the Access Arrangement that are reviewable by the Office, and in the interests of providing some guidance as to the Office's approach when reviewing the Access Arrangement for the next review period, these items are discussed in Part C of this document.

Each of the elements of the Access Arrangement that are subject to review by the Office are discussed below.

2.2 SERVICES POLICY AND TERMS AND CONDITIONS

These two elements of an Access Arrangement are integrally linked, and hence are described in this one section.

CODE REQUIREMENTS

Section 3.3 of the Code requires that an Access Arrangement must include a policy on the Services to be offered. Section 3.4 outlines the requirements of the policy:

3.4 The Services Policy must comply with the following principles:

(a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:

(i) one or more Services that are likely to be sought by a significant part of the market; and

(ii) any Service or Services which, in the Relevant Regulator's opinion should be included in the Services Policy.

(b) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in the Service.

(c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

Section 3.8 of the Code requires that the Access Arrangement define the Terms and Conditions under which Services will be provided:

3.8 An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Services. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.

THE APPLICANT'S PROPOSAL

EastCoast Gas has described two separate services that it proposes to offer:

- Tariffed Distribution Services; and
- Negotiated Services

The Tariffed Distribution Service is described as:

- (1) receiving gas into the distribution system at injection points;
- (2) allowing withdrawal of gas at supply points;
- (3) providing up to 20m of distribution mains for servicing a new supply point of <10,000GJ pa within the licensed area;
- (4) providing a distribution connection for a supply point of <10,000GJ pa within a customer's premises and less than 10m from the service entry point on the boundary of the customer's premises;
- (5) providing a standard metering installation (least cost technically acceptable) at a supply point of <10,000GJ pa; and
- (6) reading the supply point meters and the provision of metering data to Users.

Clauses 2.5.8 and 2.5.9 of the Access Arrangement provide further definition of the metering installation, reading and data provision elements of the Tariffed Distribution Service.

A definition of 'Negotiated Services' was not provided, however section 2.6 of the Access Arrangement suggests that a Negotiated Service is one that incorporates services or terms and conditions which are different to the Tariffed Distribution Services and the terms and conditions of the Access Arrangement which (presumably) has been agreed between the supplier and the user.

Some Terms and Conditions of providing services are described throughout the Access Arrangement. Other Terms and Conditions will also be described in the EastCoast Gas Distribution System Code, which is yet to be submitted to the Office.

OFFICE'S DRAFT DECISION

In the Office's Draft Decision, the Office raised a number of concerns regarding the Terms and Conditions and the Services Policy, which must be read in conjunction with each other. The Office's analysis and concerns are restated below.

Sufficiency of the Service

Section 3.4(a) of the Code requires that the Access Arrangement must describe Services that the Service Provider will make available to Prospective Users, including Services

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likely to be sought by a significant part of the market. It must also describe any Services that in the Office's opinion should be included in the Services Policy.

Where a potential service is not listed in the Access Arrangement, the Service Provider and Prospective User are free to negotiate the provision of this service. This is an appropriate treatment for services that are likely to be sought infrequently, or which are not integrally related to the monopoly network. Under section 6 of the Code binding arbitration is available over access to any service that falls within the definition of 'Service' in the Code, regardless of whether it is described in the Access Arrangement or not.

EastCoast Gas had explicitly canvassed the possibility of a Service being sought that is different from the Tariffed Distribution Services by defining a Service referred to as 'Negotiated Services'. This term covers all Services that are not Tariffed Distribution Services.

Neither the Services Policy (section 2.3), the Definition of Tariffed Distribution Services (section 2.5.1), nor Schedule 1 to the Access Arrangement provided any indication of whether Tariffed Distribution Services were in fact Reference Services, or whether the tariffs applying to them were Reference Tariffs. However, it was clear from discussions with the applicant and the introduction to the Access Arrangement that this was in fact the case. In order to eliminate any confusion, the Office required that the Services Policy made clear that Tariffed Distribution Services were Reference Services and where tariffs apply to them, these will be Reference Tariffs.

The Office's interpretation of the Services Policy was that the provision of Tariffed Distribution Services to a single supply point involved identical tariffs (on a per supply point basis) and terms and conditions as the provision of Tariffed Distribution Services to multiple supply points. On this basis it was unclear to the Office as to why there was a need to distinguish between the two. Making such a distinction may confuse Users, and therefore the Office required that this distinction be eliminated.

The Office noted that the provision of an interconnection service would qualify as a 'Negotiated Service' and that the Reference Tariff would not apply to this Service.

Definition of the Service

Section 3.4(a) of the Code requires the Access Arrangement to include a description of certain services.

One of the important elements of any description of the Service (and of its terms and conditions) is the minimum level of quality or reliability with which the service will be offered.

The Office expressed a view that that the Terms and Conditions needed to be sufficiently well defined so that it was credible to define a Reference Tariff for that service and thereby minimising the likelihood of a dispute over the Terms and Conditions of Access. It also believed that to the extent that the Terms and Conditions

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impose costs on Users that the benefits (for the market as a whole) should exceed the costs imposed on Users.

The definition of the service, and particularly the service standards to be provided, was held to be vague. Few elements of the Terms and Conditions or Service description established minimum service standards or guarantees.

EastCoast Gas has undertaken to fulfil other requirements. These include obligations imposed under the East Gippsland Customer Service Code and the East Gippsland Distribution System Code. EastCoast Gas advised the Office that these documents would be based on the Victorian Gas Customer Service Code and the Distribution Code for the established Victorian gas distributors, respectively. These documents have not yet been submitted to the Office for review.

EastCoast Gas also has obligations under the provisions of the *Gas Safety Act 1994*.

Nevertheless, other than those provisions relating to safety, many of EastCoast Gas' service standard obligations were unclear at this stage and there was no undertaking to deliver a certain quality of service.

The Office's preferred position was that where possible, minimum service quality levels be established through the Access Arrangement process. However, the Office also recognised that Access Arrangements were designed to act simply as benchmark terms and conditions under which Service Providers will provide access to Prospective Users. They were not designed, nor does the Code cater for, system-wide performance benchmarks or indicators to be established or monitored and reviewed. These benchmarks or indicators are best administered through the Office's licensing process.

Accordingly, the Office believed that the best approach was for EastCoast Gas' Access Arrangement to include a clear and objectively measurable definition of the quality of the Reference Service to be delivered to individual customers, and should as a minimum include:

- a definition of the minimum pressure at which gas will be transported to customers; and
- maximum allowable error limits for metering;

The Office also required EastCoast Gas to establish system wide performance standards and indicators. These will address items including the overall level of service reliability to be provided. The Office is currently working with the Office of Gas Safety and the Department of Treasury and Finance to define key performance indicators and it is proposed that these indicators also apply in the case of the East Gippsland system. These standards and indicators will be given effect via EastCoast Gas' distribution licence, if and when issued.

Access to Services and the Service Agreement

Section 3.1 of the Access Arrangement proposed that Prospective Users be required to lodge an application for access in a form specified by EastCoast Gas. This was

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contemplated by section 5.1 of the Code which requires that a Service Provider must maintain an Information Package which includes a detailed description of the information the Service Provider requires in order to consider an access request.

While the Office had no objection to the information proposed to be sought, the requirement to provide credit reference details implied that EastCoast Gas may use the information to decide whether to permit Prospective Users to become Users (or to join a queue). If this was the case, EastCoast Gas should establish and make public as part of the Access Arrangement well-founded and commercially reasonable hurdles that Prospective Users must meet. This would eliminate uncertainty amongst prospective Users and eliminate the potential for EastCoast Gas to make ad-hoc decisions about accepting Users that may be anti-competitive in effect.

Section 2.4 of the Access Arrangement required all Users to sign an individual service agreement with EastCoast Gas. The Access Arrangement provided no indication of what such an agreement might cover, or indeed the need for such a document, particularly where Users are simply obtaining the Reference Service. In order for the Office to be able to judge whether such a requirement for an Agreement to be entered into is a 'reasonable' Term and Condition, the applicant needed to provide more information to the Office about its purpose and content.

Unbundling

The Office considers that the requirement of section 3.4(c) of the Code to split off elements of a Service (or to 'unbundle' the Services) refers to situations where a User can provide part of its service requirements itself. The objective of unbundling is to increase the scope for competition by limiting what it included within the (regulated) monopoly services. The requirement for unbundling applies to Reference Services and non Reference Services alike.

The Code requires as a minimum that the gas commodity be separated from gas transportation (this is achieved by the definition of Service in section 9.9 of the Code). Section 3.4 of the Code can then be interpreted as requiring the Regulator to assess whether it is feasible to split off additional parts of the natural monopoly service to make those elements contestable.

The major unbundling issue for distribution is whether metering and connection services should be unbundled from the standard transportation service. This is a matter of some magnitude as these assets often form a significant part of a regulatory asset base. In this case EastCoast Gas had proposed that all these elements be part of the Reference Service.

The Office believed that in the longer term the unbundling of these Services was desirable. However, during the initial Access Arrangement Period when the network was being constructed and connection and metering services provided to all potential customers, there may be scale benefits from the bundling of all these elements.

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Furthermore, it could be problematic for the Office to require further unbundling in the initial Access Arrangement Period because do so would require changing the Reference Tariffs (which cannot be done as they are tender outcomes).

Accordingly the Office accepted that this bundling was acceptable for the first Access Arrangement Period, but will review this decision at the next review of the Access Arrangement.

Provision of Meters

The definition of the Tariffed Distribution Service includes providing ‘a standard metering installation (least cost technically acceptable)’. However, clause 2.5.8 suggests that the provision of a standard metering installation be subject to an economic threshold test. There is no suggestion in the Code of what this test might involve.

The provision of meters is part of the Reference Service for which Reference Tariffs apply. It would not be justified to subsequently apply an economic threshold test for the provision of meters that if not crossed would in effect reduce the level of service while still subject to the Reference Tariffs. Should meters not be provided, a lower level of service would result. Reference Tariffs should thus also not apply but rather a lower tariff.

In order to ensure consistency with the definition of the Reference Service and the Reference Tariff, the Office required that this requirement that the provision of meters be subject to an economic threshold test be removed, but acknowledge that where it is not economic to provide meters, users and the applicant may negotiate a separate level of service and a separate tariff.

Terms and Conditions

The requirement in section 3.8 of the Code that the Terms and Conditions be ‘reasonable’ raised the following issues:

- level of detail - the terms needed to be sufficiently well defined so that it was credible to define a Reference Tariff for that Service, and so that the likelihood of a dispute over the terms and conditions of access to the Reference Service be minimised; and
- benefits outweigh the costs - to the extent that the terms and conditions impose costs on Users, the benefits obtained (for the market as a whole) must exceed the costs imposed on Users:
 - ⇒ this implied that the terms and conditions must not impose excessive barriers to entry (which may dampen the level of competition in related markets); and
 - ⇒ that where technical standards are imposed on the distribution system users, those standards pass a cost/benefit test (from the perspective of the market as a whole)

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- reflect normal commercial arrangements - the terms should generally reflect those that one would expect to see in normal commercial instruments.

Aside from those already mentioned, the following sections of the Access Arrangement appear to fall under the heading of Terms and Conditions:

- section 2.5.5 requiring Users to provide usage forecasts;
- section 2.5.6 indicating that Users are not required to inject gas to cover Unaccounted for Gas;
- section 2.5.7 providing that EastCoast Gas will undertake gas balancing but require Users to be in balance on the transmission system;
- sections 2.5.8 and 2.5.9 regarding metering arrangements and access to metering data;
- section 5.7.1 outlining general Terms and Conditions; and
- section 5.7.2 establishing curtailment procedures;

The Office also noted that the terms “curtailable load” and “notice of curtailment” are undefined and that it would be useful if such terms were adequately defined.

By the Office approving the Terms and Conditions in the Access Arrangement, EastCoast Gas would be entitled to insist that the Reference Service be sold on those approved Terms and Conditions. The Office would be precluded from questioning the Terms and Conditions that accompany a Reference Service even if a matter became the subject of an access dispute and the Office was required to arbitrate.

The Office, however, has not received any submissions from the public expressing views as to whether other elements of the Terms and Conditions can be considered to be the type of Terms and Conditions that one would expect to see in normal commercial instruments. With this in mind, the Office had no basis upon which to reject the remainder of the Terms and Conditions as proposed.

The Office noted that it might impose requirements on EastCoast Gas, through any licence that may be issued that are additional to those outlined in the Terms and Conditions in the Access Arrangement.

Consistency of the Terms and Conditions and the Reference Tariffs

An important principle that the Terms and Conditions should adhere to is that they be consistent with the assumptions that underpin the Reference Tariffs. There are a number of key areas where a direct linkage between the Reference Tariffs and the Terms and Conditions would be expected:

- **service levels** - the level of the service that was promised will influence the projected New Facilities Investment and Non Capital Costs, and therefore have a direct effect on Reference Tariffs; and
- **liability for events** - the extent to which the Service Provider accepted (or exempted) itself from liability for events will effect the extent to which there may be asymmetric risks attaching to the projected regulated revenues, which

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in turn would effect the level of required revenue and hence Reference Tariffs.

Another relevant assumption in the calculation of Reference Tariffs was that all Users are charged at the Reference Tariff as it exists from time to time. A different assumption - for example, that Users are charged at a long term average price - would change the risk sharing relationship between the Service Provider and Users, and hence the Reference Tariff.

In addition, the calculation of Reference Tariffs for any Access Arrangement Period would also assume that the Terms and Conditions that apply for Users were those that apply in that Access Arrangement period. For example, if the Office accepted a different service standard in the next Access Arrangement period and set Reference Tariffs to be consistent with this, the implicit assumption made would be that all Users are subject to those Terms and Conditions.

Both of these assumptions should be reflected in the Terms and Conditions as approved in the Access Arrangement. This would require the Terms and Conditions themselves to provide that:

- the tariff is the Reference Tariff as it exists from time to time; and
- the Terms and Conditions are those that exist from time to time.

It was noted that the Service Provider and Users could agree to whatever tariff and terms and conditions on commercially negotiated basis.

REQUIRED AMENDMENTS

Accordingly in its Draft Decision, the Office required the following amendments to the Services Policy -

- remove the distinction between single supply point and multiple supply point Services by removing these terms from section 2.3;
- remove the reference to an 'economic threshold test' in section 2.5.8;
- explicitly state that the Tariffed Distribution Service is a Reference Service.

The Office also required the Terms and Conditions to be amended to:

- include clear and objectively measurable definitions of the level of reliability for the Reference Service, including as a minimum a definition of the minimum pressure at which gas will be transported to customers and maximum allowable error limits for metering;
- provide an outline of the contents of the service agreement;
- include a definition of 'curtailable load' and 'notice of curtailment';
- provide that EastCoast Gas will give Users a reasonable period of notice of planned maintenance where it will result in supply being curtailed;
- provide that the Terms and Conditions state that
 - ⇒ the tariff is the Reference Tariff as it exists from time to time; and

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⇒ the Terms and Conditions are those that exist from time to time.

REVISED ACCESS ARRANGEMENT

In its revised Access Arrangement, EastCoast Gas has amended its Services Policy to:

- remove the distinction between single supply point and multiple supply point from section 2.3;
- remove the reference to an 'economic threshold test' in section 2.5.8, replacing it by a negotiated agreement with the User;
- explicitly state that the Tariffed Distribution Service is a Reference Service.

EastCoast Gas also amended its Terms and Conditions to:

- stipulate that best endeavours will be used to comply with the performance standards stipulated by the Gas Distribution System Code;
- provide an outline of the contents of the service agreement;
- include a definition of 'Curtailed Load' and 'Notice of Curtailment';
- provide that where load is to be interrupted for maintenance, EastCoast Gas will give those Users with Curtailed Load agreements at least the period of notice stipulated by the Curtailed Load agreement. If the Users Service Agreement does not stipulate a minimum period of notice, then the User will be given at least the period of notice stipulated in the Gas Distribution System Code;
- state that the tariff is the Reference Tariff as it exists from time to time; and
- state that the Terms and Conditions are those that exist from time to time

OFFICE'S FINAL DECISION

The Office is of the opinion that all the required amendments as stated in this section of the Draft Decision have been met by the applicant. The Office decides that no further amendments are required in respect of the proposed Services Policy and the Terms and Conditions.

2.3 REFERENCE TARIFFS

CODE REQUIREMENTS

Sections 3.5 and 3.6 of the Code require a Service Provider to submit Reference Tariffs for a Covered Pipeline:

3.5 An Access Arrangement must include a Reference Tariff for:

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- (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 Relevant Regulator considers a Reference Tariff should be included.

3.6 Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.23 to 3.38, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.

THE APPLICANT'S PROPOSAL

The Reference Tariffs proposed by the Applicant were determined through a competitive tender process. They are set out in Schedule 1 to the Access Arrangement and are repeated in section 3.1 of this document.

OFFICE'S DRAFT DECISION

In the case of this Access Arrangement as the initial Reference Tariffs and the escalation factor were determined by a competitive tender, the Office is precluded from reviewing them, and they are not required to comply with the Tariff Principles in the Code. The Office's views on the Tariffs and escalation factor are discussed in Part C of this document.

Definition of the Reference Tariff

The Code requires a Reference Tariff to be defined for a Reference Service. As discussed above the Office interpretation is that Tariffed Distribution Services are in fact Reference Services, and that the tariffs set for these services are consequently Reference Tariffs. In its Draft Decision, the Office required that, in order to avoid any possible confusion, Schedule 1 of the Access Arrangement, the term 'Reference Tariff' should be used to describe the tariffs applying to these Reference Services.

Application of the Reference Tariff

Under section 2.5.4 of the Access Arrangement EastCoast Gas initially proposed that:

- where a new supply point is connected during a month the full monthly charge will apply, regardless of when during the month the new supply point is connected; and
- where a consumer ceases taking gas during a month the full monthly supply charge will apply, regardless of when supply is ceased.

The Office noted that this would result in consumers being somewhat 'overcharged' in these months. However, given the magnitude of the monthly supply charge (\$5), and provided that EastCoast Gas makes Users and consumers aware of this condition, the Office did not object to the proposal.

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However, the Office was concerned to ensure that where a new customer takes supply from a supply point within the same month that the previous customer has ceased supply (to which the previous customer has paid the monthly charge), the new customer is not charged the monthly charge for that month. To do so would amount to double charging for that month. The Office thus requires that this be explicitly stated in the Access Arrangement.

This clause also described the approach to the monthly supply charge where a consumer changes retailers. While it was clear that the new retailer would be liable for a monthly charge, it was not clear from the Access Arrangement whether the old retailer was also liable. The Office understood from discussions with EastCoast Gas that the old retailer was not liable - and required that this should be explicitly stated in the Access Arrangement.

REQUIRED AMENDMENTS

In its Draft Decision, for the reasons discussed above, the Office required the Reference Tariffs to be altered to:

- state that the tariffs for the Tariffed Distribution Services is a Reference Tariff;
- state that where a new customer takes possession of a supply point in the same month as the previous customer ceases taking supply from that supply point, the new customer will not be charged the monthly charge for that month; and
- state that where a customer changes retailers during a month, the former retailer will not be liable for the monthly supply charge.

REVISED ACCESS ARRANGEMENTS

In its revised Access Arrangements, EastCoast Gas made the following amendments to its Reference Tariffs:

- stipulated that the Tariffed Distribution Services is a Reference Tariffed Service;
- stated that where a new consumer commences to withdraw gas from the same supply point during the same month as a previous consumer ceases to withdraw gas, the User will not be charged the monthly charge for that month; and
- stated that where a customer changes retailers during a month, the former retailer will not be liable for the monthly supply charge.

OFFICE'S FINAL DECISION

The Office is of the opinion that the applicant has met all the required amendments stated in the Reference Tariffs section of the Draft Decision. The Office thus decides that no further amendments are required under this section.

2.4 REFERENCE TARIFF POLICY

CODE REQUIREMENTS

Section 3.7 of the Code requires an Access Arrangement to include a Policy on the principles to be used to determine Reference Tariffs. It also requires that the Policy must comply with the Reference Tariff Principles in section 8 of the Code.

Section 3.6 of the Code provides that where a Reference Tariff has been determined by a tender process (as is the case here) then that Reference Tariff, and the Reference Tariff Policy governing that Reference Tariff, need not comply with the Reference Tariff Principles in section 8 of the Code.

THE APPLICANT'S PROPOSAL

Several elements of the Reference Tariff Policy, and the Reference Tariffs themselves, were determined as part of the tender process. They are therefore not subject to review by the Office (although the Office has commented upon them - see Part C of this document). However, some elements of the Reference Tariff Policy were not tender outcomes. These include principles relating to:

- the under-recovery of revenue and determination of the capital base and residual asset value - these are sections 3.8, 3.9 and 6 of Schedule 1 of the Access Arrangement. These sections are related to sections 3.6 and 3.7 of the Access Arrangement which are tender outcomes;
- an Additional Revenue Policy (section 4 of Schedule 1 of the Access Arrangement);
- Force Majeure Pass Through (section 5 of Schedule 1 of the Access Arrangement);
- matters that the Office must have regard to when considering the next Access Arrangement (section 3.10 of Schedule 1 of the Access Arrangement). This section is related to item 3.1 of the Access Arrangement which is a tender outcome; and
- the definition of the CPI.

OFFICE'S DRAFT DECISION

Under-recovery of revenue, capital base and residual asset value

As will be the case in any greenfields site, the take-up of gas by customers of the proposed East Gippsland distribution system will be a gradual process. During an initial Access Arrangement Period, it is likely that the returns on the Service Provider's investment will, all other things being equal, be significantly less than the average return expected over the life of the project.

There will be a need for an over-recovery of revenue in subsequent years to compensate for this initial under-recovery, in order that 'average' returns could be made over the life of the project.

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As set out in section 3.7 of the Access Arrangement, the Office accepted as a tender outcome a forecast Residual Value at the end of the initial Access Arrangement Period that has been generated by inference from tender bid. The Residual Value is equal to:

- the forecast level of capital expenditure incurred over the period; plus
- for each year, the difference between -
 - ⇒ the nominal post-tax percentage rate of return in the tender multiplied by the value of capital expenditure incurred to that point; and
 - ⇒ the forecast dollar value of revenue less Non-Capital Costs (including tax)

This has the effect of capitalising any ‘under-recovery’ in the initial years of the Access Arrangement and ensuring this under-recovery can be recovered in subsequent years (subject to the comments below on the immaturity of the market).¹

Clause 3.6, which is also a tender outcome, provides that this forecast Residual Value will be “*adjusted to take into account of any differences between the forecast and actual expenditure*”. This will ensure that the Residual Value is ultimately based on actual capital expenditure, rather than forecast capital expenditure. In making this adjustment, the Office proposes to apply the prudence test in section 8.16(a) of the Code. Such a test will seek to ensure that the expenditure was justified in terms of its timing and efficiency. (This matter is discussed further in section 3.2 of this document).

Proposed clauses 3.8 and 3.9 have the effect of ensuring that any under-recovery is also based on actual revenue and actual Non Capital Costs, rather than their forecast values. If the Office is to accept these clauses, the result would be to ensure that the under-recovery is entirely based on actual Non-Capital costs and revenues, and to this extent EastCoast Gas will not face either demand or cost risk.

This has the disadvantage of muting incentives for efficiency. If EastCoast Gas is able to make any shortfall up in later periods it may be indifferent about generating additional revenue during the initial Access Arrangement Period, and also indifferent about reducing costs.

However, these proposed regulatory mechanisms will not protect EastCoast Gas from the market risks that it faces due to the immaturity of the East Gippsland market. Carrying forward any under recovery, however calculated, will only protect EastCoast Gas from risk to the extent that higher prices can be passed on to customers. Where customers’ willingness to pay is less than the price (either because prices are too high in absolute terms or because alternatives such as LPG are competitively priced) neither the default position in the Code nor any arrangements in respect of carrying forward any

¹ This under-recovery can be considered, in the terminology of the Code, as being ‘an element of negative depreciation’. This enables the Reference Tariff to be stable over the Access Arrangement period and the life of the asset, and is consistent with the growth of the market for the Services.

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under-recovery of revenue will be able to protect EastCoast Gas from stranded asset risk. This alone provides EastCoast Gas with a strong incentive to minimise costs.

Conversely, by utilising the difference between forecast costs and forecast revenue, EastCoast Gas is given strong incentives to increase revenue and decrease costs. The problem with this approach is that it relies upon relatively accurate forecasts, particularly about gas take-up. There is a strong possibility that these forecasts, particularly during the initial Access Arrangement Period, will be inaccurate, often due to factors over which the distributor has no control. EastCoast Gas thus faces the risks of being rewarded or penalised accordingly (with implications for the expected rate of return).

On balance, the Office is prepared to accept EastCoast Gas' proposals for actual rather than forecast revenue and Non-Capital costs to be used when calculating the level of under-recovery. Aside from the reasons described above, this approach is consistent with the use of the actual capital expenditure numbers mandated by the tender outcomes of clause 3.6. In doing so, the Office made it clear that it will tightly apply the 'prudent operator' test as described in section 8.37 of the Code to the Non Capital Costs during the Access Arrangement Period. In applying this test and assessing reasonable levels for these costs, the Office will have reference to, amongst other things, forecasts of costs made by EastCoast Gas in its tender. Similarly, the Office made it clear that it will interpret the term 'actual revenue' to refer to the volume of gas sold multiplied by the Reference Tariff.

While the under-recovery of revenue is a tender outcome, it is not a fixed principle. The Office will therefore review whether this arrangement should be continued into the future. This will include a review of what exactly is 'forecast revenue'. Clearly in subsequent Access Arrangement periods it will be appropriate to assess the forecast revenues at the time, not the original forecasts. The Office will then have to determine the number of intervening years until revenues would exceed costs using a 'cost of service approach and will have to assess what the projected asset lives are at that point in time.

The Office has worked with the applicant to ensure that the proposed Residual Value is consistent with the tender outcome and the Code. It is based on a nominal post-tax internal rate of return over the life of the project of 10.35% - given the average inflation assumption over the first 4 years of 3.74%, and assuming a 25% average tax rate, this equates to a real pre-tax return of 8.82%.

Method of carrying forward under-recovery

Clauses 3.8 and 3.9 proposed that, rather than being capitalised through the Residual Value, any under-recovery arising from the fact that actual revenue and Non-Capital Costs are different from forecasts be added to the Total Revenue for the next Access Arrangement Period (and not capitalised and embodied in the Residual Value).

As discussed above, the Office accepted that the under-recovery can be calculated with reference to actual rather than forecast revenue and Non-Capital Costs. However the Office believes that the under-recovery due to actuals being different from forecasts

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should be capitalised and included in the Residual Value for the following reasons rather than added to the Total Revenue required for the next Access Arrangement Period. Such a treatment:

- is consistent with the treatment of differences between forecast and actual capital expenditure;
- is consistent with the proposal embodied in 3.7 that the forecast under-recovery be capitalised and embodied in the Residual Value;
- spreads the under-recovery over a longer period and removes as much as possible any ‘lumpiness’ in revenue requirement and price spikes that might result from recovering this amount in the next Access Arrangement Period.

Method for Determining the Capital Base

Section 6 of Schedule 1 of the Access Arrangement comprises two parts. The first states that Reference Tariffs determined by the tender process are designed to provide a forecast IRR that has been disclosed to the Office. The second part proposes a method for determining the Capital Base and repeats the principles relating to the calculation of the Capital Base in section 8.9 of the Code.

With respect to the first part, the Office notes that IRR in the tender bid is established for the initial Access Arrangement Period only. It is not established over the life of the Access Arrangement (a concern noted by AGL) and will have no formal stance in subsequent Access Arrangement Periods, except to the extent that -

- its value is reflected in the under-recovery of revenue that will be capitalised through the Residual Value and form part of the Capital Base in subsequent Access Arrangement Periods; and
- the Office will ‘have regard’ to this value when establishing an appropriate IRR for subsequent Access Arrangement Periods.

Given that the IRR is a tender outcome for the initial regulatory period not requiring the Office’s approval, the Office did not see the need to keep this number confidential. EastCoast Gas will be the monopoly service provider with limited exposure to competition. Public knowledge of the IRR used to assess the economic and financial feasibility of this project and to calculate the required revenue will be of limited competitive value to a third party. It was thus the Office’s intention to release the IRR when it makes the final decision.

The second part of the section states that:

The Capital Base at the commencement of each Access Arrangement Period after the first will be:

(a) the Residual Value assumed in the previous Access Arrangement Period (adjusted as relevant as a consequence of

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section 8.22 of the Access Code to allow for the differences between actual and forecast New Facilities Investment); less

(b) Redundant Capital identified prior to the commencement of the Access Arrangement Period.

The initial capital base for the EastCoast Gas distribution system will be the actual capital cost of the assets at the time they first enter service.

Apart from establishing prudence in determining the initial capital base, the Office has no objections to the above, although it notes that in the initial and some subsequent Access Arrangement Periods the Residual Value will reflect the under-recovery of revenue. In order to clarify terminology and methodology, the Office's understanding of this section 6 when combined with sections 3.6 to 3.9 is that -

- The Initial Capital Base will comprise the actual capital cost of the assets [forecast in initial tender bid];
- The Residual Value at the end of the initial Access Arrangement Period will be the Initial Capital Base adjusted to capitalise the actual under-recovery of revenue during the initial Access Arrangement Period and to include new facilities investments which are further investments in gas distribution assets not included in the tender;
- The Capital Base at the commencement of the second Access Arrangement will be the Residual Value less Redundant Capital

Removal of Redundant Capital

The Code provides that a Service Provider may elect whether or not to provide a Redundant Capital policy, unless the Office mandates its inclusion. The key issue for the Office in considering the merits of a Redundant Capital policy is whether there should be some sharing of the risk associated with the use of common-use assets (such as mains) between the Service Provider and Users.

A mechanism for dealing with Redundant Capital will only have an effect at the next review when the Capital Base is being re-determined. However, as the Office is required to have regard to the uncertainty that such a mechanism will create, and to consider this mechanism when determining the Rate of Return and Depreciation, the mechanism needs to be specified in advance.

The default position under the Code is that the full value attributable to the assets in the Capital Base would be carried forward to the next Access Arrangement Period, regardless of the level of use of those assets (this is the effect of section 8.9 of the Code). Accordingly, if demand falls, average tariffs will rise, provided the market is deep enough, and permit the Service Provider to recover the full cost that is associated with the assets.

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It needs to be borne in mind, however, that the default position in the Code will only protect EastCoast Gas from risk to the extent that higher prices are able to be passed on to end-users. Where the market is 'shallow', neither the default position in the Code nor any arrangements in respect of carrying forward any under-recovery of revenue will be able to protect EastCoast Gas from stranded asset risk. Customers who may face higher costs from this stranded asset may choose to disconnect.

In contrast to the default position in the Code, in competitive markets a fall in use of an asset would cause a fall in the revenue stream, and in turn cause a fall in the value of the asset (which competitive markets value as the net present value of income from that asset). In a competitive market the Service Provider would thus have the incentive to take action to minimise the likelihood that assets will become stranded. This incentive does not exist under the default provisions in the Code, although replicating this competitive environment via the Access Arrangements is not itself cost-free:

- asset stranding is not an exact science and will involve some degree of regulator-discretion. This itself is a source of risk (in addition to the competitive market risk that is trying to replicated); and
- as mentioned above, EastCoast Gas faces significant market risk due to the undeveloped nature of the market, without the regulator trying to mimic the competitive market.

EastCoast Gas defined redundant capital as “*assets to be removed from the Capital Base as they do not contribute in any way to the delivery of the services*”. The Office interprets this definition as applying to assets that are:

- sold during the period; or
- not in service and are unlikely to be used in the foreseeable future because they have been bypassed or replaced or a customer has ceased using gas.

EastCoast Gas's proposal to remove Redundant Capital will generally be in the interests of Users and Prospective Users as it assigns the majority of the stranded asset risk to EastCoast Gas. While the exact point at which an asset does not contribute in any way to the delivery of the service is not obvious from the definition provided, the Office believes that any further definition is likely to be problematic.

Additional Revenue Policy

EastCoast Gas had proposed the following Additional Revenue Policy -

As a result of the three year tariff review and revision process outlined in this Schedule, any additional revenue resulting from the volume of gas actually transported by the proposed pipeline exceeding a forecast volume will be returned in part to Users in the form of lower tariffs in accordance with the tariff review and revision policy in section 3 of this Schedule.

The concept of an Additional Revenue Policy is introduced in section 3.30 of the Code. This section requires that competitive tenders include a policy on how additional

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revenue resulting from gas forecasts being exceeded during an Access Arrangement Period will be retained by the Service Provider or shared with Users.

Furthermore, section 3.20 of the Code requires that where an Access Arrangement Period is more than 5 years, the Regulator consider mechanisms to address the risk of forecasts proving incorrect. The intention of this clause is that where a very long Access Arrangement Period is proposed, that there be a way that excess revenue be returned to Users **during** the Access Arrangement Period (as against Users having to wait until the end of the period for a re-set). This excess revenue might be generated, for example, because actual volumes of gas transported are higher than forecast.

The Additional Revenue Policy proposed by the applicant is not required by the Code. Furthermore, the Office was not required to consider risk mechanisms such as the return of revenue in this case because the Access Arrangement Period is just 4 years. Indeed, the policy does not provide for revenue to be returned during an Access Arrangement Period - it simply provides that any additional revenue above forecasts will be passed on through lower tariffs in the subsequent Access Arrangement Period. To this extent it is not an Additional Revenue Policy in the language of the Code, and it adds nothing new to the Access Arrangement. Therefore, to eliminate any confusion, the Office required that the policy be deleted from the Access Arrangement.

Force Majeure Pass Through

EastCoast Gas has proposed that if a force majeure event occurs, EastCoast Gas may seek Regulator approval to alter tariffs to pass through the financial impact of the force majeure event.

It has also proposed that *'any pass through will not be taken into account in deciding revenues, IRR or tariffs'*.

A 'force majeure' event was defined in the Access Arrangement as

Any act, occurrence or omission, as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations and which is beyond the reasonable control of that party, including (without limitation) occurrence of inclement weather or other forces of nature, industrial action and action or inaction by any government, government agency or person charged with the administration of any applicable law or regulations established under any applicable law.

This part of the Access Arrangement should be read in conjunction with the tender outcomes in sections 3.3 to 3.5 in Schedule 1 to the Access Arrangement which require EastCoast Gas to seek the Office's approval for pass through of increases in fees, levies, charges and taxes. Comment on these sections 3.3 to 3.5 is in section 3.2 of this document.

The Office has no in-principle objections to Service Providers seeking to reducing their risks through force majeure clauses, either in respect of obligations to provide a certain level of supply, or in respect of financial effects. This is because of the potentially

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significant effects they may otherwise have on the business interests of the Service Provider and the consequent increase in business risk.

However, the Office was of the opinion that the definition of 'force majeure' provided was too broad. The Office agreed that where the event is beyond the control of EastCoast Gas, it should not be required to bear the financial impact of the event. The Office did not agree that in all these cases, EastCoast Gas may seek to alter tariffs to pass the financial effects of the event through to customers. Losses caused by '*inclement weather or other forces of nature*' or other types of accidents may be insurable and EastCoast Gas should seek to limit its exposure to such risk by obtaining adequate insurance or by self-insuring by making prudent provisions for the consequences of such events. The reasonable premium of such insurance including self-insurance is recoverable from customers as part of its tariffs. The Office also considered that industrial action occurring within EastCoast Gas or related parties may not be regarded as a force majeure event. In many cases, such an event may be within the ability of the company to avoid and in other cases, the company may contribute to the occurrence of such events through its commercial and management decision-making.

The proposed clause ensures that the Office is the final arbitrator in respect of whether the changes are passed on to customers during the Access Arrangement Period. The Office believes that where EastCoast Gas applies to the Office to pass through the effects of any force majeure event, this approval should be sought through the review process outlined in section 2.28 to 2.43 of the Code (as distinct from being a 'variation' in accordance with section 8.3 of the Code). In assessing the amount to be passed through to customers, the Office will also take into account whether the event was insurable (not whether EastCoast Gas did in fact insure against the event). Where the Office is of the opinion that the event was insurable, a pass through of the financial effects will not be allowed. In other events EastCoast Gas may have the ability to seek redress from other parties either through its contracts, legislated rights or common law. In such cases, the Office did not believe that customers should be required to bear the associated risks.

The Office noted that in the absence of a force majeure clause, where a force majeure event imposed capital costs on a Service Provider, the Service Provider will be able to recover the capital costs in subsequent Access Arrangement Periods (provided that the Office viewed the costs as meeting the prudency criteria in 8.16(a) of the Code). Where a force majeure event imposed additional Non-Capital Costs the Service Provider will normally be unable to recover them in the absence of a force majeure clause.

The intent behind the suggestion that '*any pass through will not be taken into account when deciding revenues, IRR or tariffs*' was not immediately obvious. The Office understood from further discussions with EastCoast Gas that it was intended to ensure that any pass through of the financial effects of a force majeure event was treated as a surcharge, and separate from any review of the Reference Tariffs, primarily due to concerns about whether any capital expenditure would form part of the Capital Base.

A force majeure event could warrant tariffs being raised because either:

- a) capital is destroyed and needs to be replaced; or
- b) additional capital expenditure is required; or

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- c) additional Non Capital costs are required; or
- d) demand is significantly reduced.

As noted above, in cases (a) and (b) the default position under the Code is that this capital expenditure would form part of the Capital Base at the time of the next review (provided it met prudency tests). Contrary to EastCoast Gas' concerns, in the absence of a Redundant Capital policy to the contrary, the Office was of the view that any capital destroyed would still form part of the Capital Base.

In the absence of a force majeure clause the financial effects of reduced demand or additional Non Capital costs resulting from a force majeure event could not be taken into account at the next price review, except to the extent that these effects were felt in periods subsequent to the price review.

The Office believed that the best way for EastCoast Gas' needs to be met, and to eliminate ambiguity, was for the effects of any force majeure event be passed through via a surcharge to apply only until the next Access Arrangement period. The future effects of the force majeure event will then be taken into account automatically as part of the Access Arrangement review. Where the force majeure event has caused additional capital expenditure, any 'depreciation' that is recovered by the surcharge can be taken into account when bringing forward the capital expenditure in the capital base.

Matters to which the Office must have regard

Section 3.10 of Schedule 1 to the Access Arrangement proposes that '*When reviewing tariffs, the Regulator will have regard to the rate of return projected as a part of the EastCoast Gas tender bid which has been disclosed on a confidential basis to the Regulator.*'

Although the Code does not explicitly require it, the Office will in fact take into account **all** the tender outcomes and the contents of EastCoast Gas' bid (and not just the rate of return) when reviewing the Access Arrangement for the next Access Arrangement Period. It will also take into account any other agreements or undertakings made between the Council and EastCoast on other elements of the Access Arrangement. The Office will do so on the basis that the tender outcomes and other agreements reflect the outcome of a competitive market process, and are therefore clearly 'relevant matters' in accordance with section 2.24 (b)(vii) of the Code. The Office will make all these relevant matters public in the Final Determination.

It should be noted that while the Office will 'have regard to' the rate of return encapsulated in the tender bid, it does not limit the Office's decision on an appropriate level of return for subsequent Access Arrangement Periods.

Definition of the CPI

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The only element of the Reference Tariffs that was not a tender outcome is the definition of the CPI to be used in escalating tariffs. EastCoast Gas has proposed that the definition of the CPI to be used is the All Groups CPI for Melbourne.

The Office believes that a more appropriate measure is the All Groups CPI - Average of Eight State Capitals. The role of the CPI in a CPI-X regime is to insulate the investor from risks associated with unanticipated inflation. The Office believes that the Average of Eight State Capitals provides a more accurate view of changes in investor's and EastCoast Gas' purchasing power in Australia. This definition of the CPI is used in the indexation of Commonwealth Capital Indexed Bonds (which the Office has used elsewhere as an indicator of the risk-free rate).

REQUIRED AMENDMENTS

For the reasons discussed above, the Office required the Reference Tariff Policy to be amended to:

- state that actual revenue will be calculated by reference to the volume of gas sold, multiplied by the Reference Tariff;
- remove reference to industrial action in its definition of force majeure event and to state that EastCoast Gas will not seek to pass through any losses resulting from a force majeure event that may be insurable or where it may have a right of compensation through other means;
- change the definition of the CPI to refer to the All Groups CPI - Average of Eight State Capitals rather than the All Groups CPI for Melbourne;
- remove the Additional Revenue Policy;
- remove the second paragraph in section 5 of schedule 1 and replace it with a statement that any pass through of the effects of a force majeure event will occur via a surcharge to remain in place until the next Access Arrangement review at which time the pass-through will occur as part of 'normal' price-setting arrangements;

REVISED ACCESS ARRANGEMENT

Following discussions with the Office, the applicant agreed that actual revenue would be calculated by converting the volume of gas sold to energy and multiplying it by the Reference Tariff. Where it can be demonstrated that discounting the reference tariff to some consumers will lower or prevent the need to increase tariffs for the majority of consumers, these discounts will be taken into consideration when calculating revenue. Section 3.1(1) of Schedule 1 of the Access Arrangement was amended accordingly.

The applicant also accepted that reference to industrial action in its definition of force majeure event be removed. It was also agreed that EastCoast Gas would only seek approval to pass through the financial impact of a force majeure event if insurance against the event was unobtainable, was not available at a reasonable, commercially acceptable premium or a claim was rejected for reasons other than EastCoast's negligence. Where EastCoast Gas was successful in making an insurance claim for the financial impact of a force majeure event, EastCoast Gas may seek the Office's approval to pass through the difference between the actual cost of the event and the amount paid to EastCoast Gas by the insurer. These revisions are found in Section 5 of Schedule 1.

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Also in the same section, EastCoast Gas stated that any pass through of the effects of a force majeure event will occur via a surcharge to remain in place until the next Access Arrangement review at which time the pass-through will occur as part of 'normal' price-setting arrangements.

Other amendments made to its Reference Tariffs Policy include:

- changing the definition of the CPI to refer to the All Groups CPI - Average of Eight State Capitals rather than the All Groups CPI for Melbourne;
- removing the Additional Revenue Policy.

FINAL DECISION

The Office accepts that the response by EastCoast Gas to the Office's Draft Decision on how to treat discounts is prudent and economically sound. Where the application of discounts to an individual customer can be shown to so increase usage of the network resulting in all customers benefiting, it would be efficient to take the application of the discount into account in calculating actual revenues. This will avoid the situation where marginal customers are being discouraged from connecting to the network resulting in higher average network prices due to a lower utilisation factor. The Office will thus look favourably on taking such discounts into account if it can be shown that such discounts also benefit other customers. The application of such a prudence test in the decision whether to approve the discount would ensure that the majority of customers are not penalised by having to cross subsidise large users who may be able to obtain the discount more readily than small customers. As a result of this test, if the majority of customers do not benefit from the discount applied then the discount will not be taken into account in determining the actual revenues achieved by the applicant and EastCoast Gas and will have to absorb the discount.

The Office also accepts the applicant's response to the Draft Decision on force majeure. However, the Office notes that in the event that EastCoast Gas under-insures so that the actual cost of an event exceeds the compensation from the insurer, the Office will not look favourably on an application to allow the difference to be pass through to customers. The question of what constitutes "*a reasonable, commercially acceptable premium*" is also left to the discretion of the Office. The Office will make these decisions if and when an application for a pass through is received.

All other amendments in this section have acceded to the Office's requirements. The Office thus decides that no further amendments are required under this section.

2.5 CAPACITY MANAGEMENT POLICY

CODE REQUIREMENTS

Section 3.10 of the Code requires an Access Arrangement to include a statement that the proposed pipelines are either Contract Carriage Pipelines or Market Carriage Pipelines.

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THE APPLICANT'S PROPOSAL

Section 2.5.2 of the Access Arrangement proposes that the East Gippsland natural gas distribution system will be a Market Carriage system whereby:

- (1) EastCoast Gas does not manage its ability to provide services primarily by requiring Users to use no more than the quantity of service specified in a contract;*
- (2) Users are not required to enter into a contract that specified a quantity of service;*
- (3) charges for use of services are based on actual usage of services; and*
- (4) a User does not have a right to trade its right to obtain a service to another User.*

OFFICE'S ANALYSIS

Under a typical Contract Carriage system Users enter a legally enforceable contract that entitles them to a specified quantity of pipeline capacity. Capacity is usually managed by requiring that Users not exceed their contracted quantities. Prices are usually set primarily on the basis of contracted quantity, not the actual quantity of gas transported. Users have rights to trade the contracted quantity to others (set out in the Service Provider's Trading Policy).

Under the Market Carriage approach, no contracts are entered into and charges are normally based on actual use. There are no rights to trade in capacity.

Typically the distinction between the two approaches is blurred and often the operation of a gas network will have elements of both Market and Common Carriage. However, in this case EastCoast Gas' proposal mirrors the definition of 'Market Carriage' in the Code.

Furthermore, the Office notes that:

- it is generally not feasible, in a distribution system, to manage constraints purely by signing contracts that sum to a system capacity;
- capacity trading in a distribution system is generally exceedingly complex, or likely to lead to very illiquid markets; and
- there are likely to be no capacity constraints in the East Gippsland during the initial Access Arrangement Period.

OFFICE'S CONCLUSION

The Office notes that EastCoast Gas proposes that its distribution system will be a Market Carriage Pipeline and decides that no amendments are required to be made to the Capacity Management Policy.

2.6 TRADING POLICY

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Section 3.11 of the Code requires Access Arrangements that involve Contract Carriage to include a policy explaining the rights of a User to trade its rights to obtain a Service to another person.

As EastCoast Gas has proposed that the East Gippsland distribution system is a Market Carriage system, and the Office agrees with this proposal, there is no requirement for the Access Arrangement to contain a Trading Policy.

2.7 QUEUING POLICY

CODE REQUIREMENTS

Section 3.14 of the Code requires Access Arrangements to have a policy for determining the priority that one Prospective User has against any other for negotiating access to a Service should it not be possible to accommodate both. This is known as a Queuing Policy.

Section 3.15 of the Code states that:

The Queuing Policy must:

- (a) set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;
- (b) accommodate, to the extent reasonably possible, the legitimate business interests of the Service Provider and of Users and Prospective User; and
- (c) generate, to the extent reasonably possible, economically efficient outcomes.

THE APPLICANT'S PROPOSAL

Section 3.2 of the Access Arrangement sets out EastCoast Gas' proposed Queuing Policy. This has been amended to take into account the Office's requirement as stated in its Draft Decision.

OFFICE'S DRAFT DECISION

The role of a Queuing Policy is to provide a rule for the allocation of scarce capacity amongst competing parties. Such a rule is necessary as the price regulation system contemplated by the Code precludes prices from rising automatically to ration capacity as it becomes scarce (unlike a competitive market). Queuing Policies are most relevant where the incremental cost of a capacity expansion is in excess of the Reference Tariff and so a Surcharge would apply for the Incremental Users.

There are two policy reasons for requiring an Access Arrangement to contain the Queuing Policy (and so be subject to the regulator's scrutiny):

- anti-competitive favouritism - to ensure the Service Provider is prevented from providing an unfair advantage to an Affiliate (when there is a constraint and prices are regulated, the value of the capacity may be well above the regulated price); and

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- dispute resolution - to ensure that if an arbitrator is faced with two competing claims for the same capacity, there is an appropriate rule for selecting between the Prospective Users.

The requirement for the Queuing Policy to 'set out sufficient detail' is sufficient to meet these requirements. Moreover the Office considers that compliance with these objectives is consistent with the public interest (section 2.24(b)(v) of the Code).

Queuing policies within a distribution network are less likely to be a significant issue than for a transmission pipeline. This is because all Users generally use the same transmission pipeline, but capacity in a distribution network is location specific. In addition, the costs of augmentation are much lower, so the likelihood of requiring a surcharge is less.

In the case of the East Gippsland network, and in particular in the early years of the project, system constraints are unlikely to occur, and thus the Queuing Policy is of limited relevance. Furthermore, the incremental cost of capacity expansions is unlikely to be much greater than Reference Tariff - hence a User that must wait for incremental capacity to be developed for his request to be met will not be greatly disadvantaged in price terms. Nevertheless it is desirable that a workable policy be established at the outset, while at the same time recognising it may need to change in future in response to different circumstances.

The initial policy proposed by EastCoast Gas was a simple first come, first served rule with the exception that:

- a) requests for supply to existing supply points take priority over services to new supply points; and
- b) requests for Tariffed Distribution Services take priority over Negotiated Services.

In respect of point (a) EastCoast Gas believed that it was efficient to give existing Users priority because these customers are more likely to require increased capacity at short notice. Furthermore EastCoast Gas argued that this policy was economically efficient as it maximised network utilisation on the basis that existing Users were more likely to use the newly available Capacity earlier than Prospective Users who have 30 days to enter into a Service Agreement.

While the Office noted EastCoast Gas' arguments it expressed concerns that the effect of such a policy would be to reduce access to the system for Prospective Users, hence reducing competition. It also had the potential to provide scope for existing Users to abuse the policy in an anti-competitive way in order to deliberately keep out potential new Users. The Office therefore required that this section be removed from the Access Arrangement.

In respect of the point (b) EastCoast Gas justified giving Prospective Users of Tariffed Distribution Service higher priority because Prospective Users of Tariffed Distribution Services were likely to be paying a higher price than those Prospective Users of Negotiated Services. Hence it argued the policy would be in EastCoast Gas' legitimate commercial interests.

The Office had no objections to the policy on the basis that it likely to be economically efficient. In general it would give Prospective Users that have a higher willingness to pay (ie those who place a higher value on usage of the pipelines) priority access. However, the

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Office noted that where a Prospective User was seeking a Negotiated Service at the same or greater price than the Tariffed Distribution Service (ie only the Service mix is different) the effect of the policy was to give this User a lower priority. This was not economically efficient and the Office required this clause to be amended to provide that Prospective Users that seeks access to a Negotiated Service at the same price, or higher, as the Tariffed Distribution Service, not be given reduced priority.

The policy also did not describe EastCoast Gas' approach to the situation where free capacity becomes available, but the request at the top of the queue is seeking more than the newly available capacity. The Office believed that an appropriate policy would be for EastCoast Gas to first offer the capacity to the request at the top of the queue. If this offer was accepted, the amount still unsatisfied should remain at the top of the queue. If the offer was rejected, the same offer should be made to the next person in the queue. The Office believed that in accordance with sections 3.15(a) and (b) of the Code such a policy would be in the legitimate interests of Users and Prospective Users, would not disadvantage the Service Provider, and would enable Users and Prospective Users to better understand how the Queuing Policy operates.

EastCoast Gas also proposed several operational rules for the Queuing Policy, including:

- where a prospective User has been advised that capacity was available, the prospective User had 30 days to enter into a service agreement or the request will lapse and be removed from the queue;
- EastCoast Gas would advise Prospective Users of their position on the queue and provide an estimate of when capacity may be available and the terms, conditions and costs of providing that capacity;
- EastCoast Gas may periodically seek confirmation from a Prospective User on a queue that its request for service is still current, and if confirmation is not received in 14 days the request would lapse and be removed from the queue.

The Office believed that the first two rules facilitated the smooth operation of the queuing policy, and were in the legitimate business interests of the Service Providers and Users respectively. The third rule was acceptable to the Office to the extent that the 'periodic' seeking of confirmation was no more frequent than every six months. Any more frequent questioning may impose an administrative burden on Prospective Users. This should be clarified in the Access Arrangement.

REQUIRED AMENDMENTS

For the reasons discussed above, the Office required amendments to the Queuing Policy to:

- enable prospective Users at the top of the queue to take up remaining pipeline capacity before lower-place requests are considered;
- clarify whether a request for a Negotiated Service to an existing supply point takes preference over a request for Tariffed Distribution services to a new supply point;
- delete the part of the policy that gives existing Users priority over Prospective Users;
- state that Prospective Users of Tariffed Distribution Services have priority over Prospective Users of a Negotiated Service only where the Prospective User of the Negotiated Service is proposing to pay a price less than the price of the Tariffed Distribution Service.

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- state that EastCoast Gas may seek confirmation from Prospective Users on the status of their requests no more frequently than once every six months.

REVISED ACCESS ARRANGMENT

To meet the requirements of the Office, the applicants amended their proposed Queuing Policy. The amendments provided that the following exceptions apply to the simple first come first served rule:

- existing supply points requests for Tariffed Distribution Services will have priority over Negotiated Services;
- requests for Negotiated Services to existing supply points will take priority over requests for Tariffed Distribution Services to a new supply point;
- Prospective Users of Tariffed Distribution Services will have priority over Prospective Users of Negotiated Services if the Prospective Users of the Negotiated Service is proposing to pay a price less than the price of the Tariffed Distribution Service.

EastCoast Gas also agreed to refrain from requiring Prospective Users to confirm that it wished to remain on a queue more frequently than once every six months.

OFFICE'S FINAL DECISION

The amended Queuing Policy has removed the priority that existing supply points have over new supply points where both are to be supplied under as a Reference Tariffed Service. Existing and prospective users of a Reference Tariff Service will be served on a first come first served basis. The applicant has also met the Office's request to clarify that a request for a Negotiated Service to an existing supply point takes preference over a request for Tariffed Distribution services to a new supply point. Thirdly, EastCoast Gas has acceded to the Office's request to stipulate that only where Prospective Users of the Negotiated Service is proposing to pay a price less than the price of the Tariffed Distribution Service will a Prospective User of the Tariffed Service have priority.

Given that the applicant has made all required amendments to the proposed Access Arrangements, the Office requires no further amendments to be made.

2.8 EXTENSIONS/EXPANSIONS POLICY

CODE REQUIREMENTS

Section 3.18 of the Code requires an Access Arrangement to set out whether extensions to, or expansions of, the Covered Pipeline should be treated as part of the Covered Pipeline, and how these extensions and expansions will affect Reference Tariffs. It also requires that the Access Arrangement set out the conditions under which the Service Provider will fund New Facilities:

- 3.18 An Access Arrangement must include a policy (an *Extensions/Expansions Policy*) which sets out:
- (a) the method to be applied to determine whether any extension to, or expansion of the

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Capacity of, the Covered Pipeline:

- (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or
- (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);

(b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs;

(for example, the Extensions/Expansions Policy could provide:

- (i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or
- (ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);

(c) if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

The Relevant Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.

The first component of section 3.18 is a decision rule which permits an Access Arrangement to provide for extensions to, or expansions of, the existing system to automatically be treated as part of the existing system (and hence 'covered') without requiring a revision to the Access Arrangement itself. The alternative is that the extension or expansion would be included in the Access Arrangement following a request for a revision, or open to be covered under the processes in section 1 of the Code. If covered under the processes in section 1 it would be required to have its own Access Arrangement.

The second component requires an Access Arrangement to state how that extension or expansion that is automatically covered will affect Reference Tariffs, and in particular, how Users will be charged for that extension or expansion.

The third component is linked to section 6.23(e) of the Code which precludes a Service Provider from being required to fund New Facilities Investment in an access dispute unless that Service Provider has agreed to fund a New Facility under certain conditions. This policy recognises that it may not be appropriate for the regulator to agree to Reference Tariffs being determined on the basis of forecast New Facilities Investment if the regulator is precluded from requiring the Service Provider to fund the New Facilities Investment when required.

THE APPLICANT'S PROPOSAL

Section 5 of the Access Arrangement sets out EastCoast Gas' proposed Extensions/Expansions Policy:

OFFICE'S DRAFT DECISION

An extension or expansion raises three separate issues:

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- whether it should be treated as part of the existing system (and therefore covered automatically) or treated as a stand-alone system and not automatically covered;
- if included as part of the existing system, how that extension or expansion should be priced; and
- where New Facilities Investment has been assumed in the calculation of Reference Tariffs or is necessary to ensure maintenance of the system's safety, integrity or service standards, whether there is a need to ensure that the investment is funded.

Coverage

In its initial application, EastCoast Gas proposed that -

Extensions within the planned service envelope - will be incorporated into the Access Arrangement via a revision.

Extensions outside the planned service envelope - will not be incorporated into the Access Arrangement (and presumably not covered or be the subject of a separate Access Arrangement).

Expansions within the planned service envelope - to be incorporated into this Access Arrangement subject to the Office's approval

Expansions outside the planned service envelope - will be incorporated into the Access Arrangement via a revision

The Office had a number of concerns with these proposals. These were as follows -

Definition of the Planned Service Envelope

As the East Gippsland gas distribution system does not yet exist, it was important to distinguish between the initial system and what constitutes an extension or expansion to that system. One area where the distinction is material is in the application of the Reference Tariff: Users on the existing system will pay the Reference Tariff, whereas Users of an extension or expansion may have to pay a Surcharge on the Reference Tariff if the roll-in test in the Code (section 8.16) is not met.

The Access Arrangement makes reference to a 'planned service envelope' which is '*the level of services provided by and the geographical area of the planned EastCoast Gas distribution system as outlined in the Access Arrangement Information*'.

The maps accompanying the Access Arrangement Information outline the proposed pipe layout, however they did not clearly establish which properties are to be served and which are not. It is important that they do so, in order that EastCoast's obligations to provide Reference Services and Reference Tariffs to potential customers are clearly established. The Office considered that a reasonable solution was for EastCoast Gas to carefully define the outer boundary and the customers to be potentially served by the initial system (the service envelope) using detailed maps. Any additions to the distribution system to serve

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customers outside this boundary would be an extension to the system, whilst all customers within this boundary would be considered to be part of the initial system.

Using this interpretation of the planned service envelope there will, by definition, be no extensions within the planned service envelope. This part of the Extensions/Expansions policy can thus be removed.

Clarity and Adequacy of the Policy

Section 5.1(1) of the Access Arrangement proposed that extensions (ie construction of new pipelines to serve properties outside the planned service envelope) would not be treated as part of the Access Arrangement for any purpose under the Code.

It was not clear to the Office whether the intent of this clause was that:

- extensions outside the planned service envelope would not automatically be covered as part of the Access Arrangement, but may be included subject to EastCoast Gas submitting revisions to the Office;

OR

- EastCoast Gas' intention was that under no circumstances would extensions be included under the existing Access Arrangement, either automatically or by submission of a revision.

Section 5.2(1) suggested that expansions outside the proposed service envelope would be incorporated in the Access Arrangement following a revision process.

Where an expansion is outside the planned service area, the extension is not included in the Access Arrangement. The Office believed that this was inconsistent and was inappropriate to have parts of the same network covered by different Access Arrangements, or one part covered and the another not.

The Office thus required that these two sections 5.1(1) and 5.2(1) be reviewed in light of the above comments and those below on the matter of automatic coverage.

Automatic Coverage

The Code envisages that, in general, a Service Provider has the right to have coverage of a new asset assessed on its merits, and only regulated under the Code if the coverage criteria are met. Against this, however, automatic coverage would avoid possible delays to access, and also avoid a possible proliferation of regulatory instruments, particularly for a distribution system where there is likely to be a small number of extensions and expansions in the short term. It would also make the regulatory task easier as costs and revenues would need to be quarantined and allocated across a number of regulatory instruments.

EastCoast Gas was not proposing that there be automatic coverage for any extensions or expansions, but that certain extensions and expansions were to be included via the revision process outlined in the Code.

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The Office believed that an appropriate balance between automatic coverage and the rights of the Service Provider to elect whether to have new assets covered was required. This may be for the Extensions/Expansions Policy to provide that all expansions and extensions were to be normally covered automatically. The Service Provider would then have the option of having an extension or expansion not covered as a stand-alone pipeline. The Service Provider could exercise this option by providing written notice to the Office prior to the extension or expansion entering into service. This solution would avoid the need to undertake the revisions process for each extension/expansion proposed to be included in the Access Arrangement.

Effect on Reference Tariffs

In view of the Office's views regarding automatic coverage and the need for EastCoast Gas to address the matter of coverage for expansions within the service envelope, EastCoast Gas's proposals on tariffs for extensions and expansions would need to be revised.

New Facilities Investment

The proposed Extensions/Expansions policy made no reference to any obligation on the Service Provider to fund New Facilities Investment.

While EastCoast Gas would have an incentive to invest in New Facilities Investment that was economically feasible, no such incentive existed in respect of expenditure on New Facilities Investment to maintain the system's safety, integrity or capacity (ie New Facilities Investment made in accordance with section 8.16(b)(iii) of the Code). However, section 3.18 of the Code provides that the Office cannot insist the Extensions/Expansions Policy oblige the Service Provider to make these investments (unless, in accordance with section 3.18(c) the Office and the Service Provider have agreed that the Investment should be included in the calculation of Reference Tariffs - this is not the case here).

Despite the above, EastCoast Gas would be obliged to make New Facilities Investment to the extent that it needs to do so to:

- meet its obligations to Users;
- meet any obligations imposed as part of any gas distribution licence; and
- meet its obligations under the *Gas Safety Act 1994*.

The Office believed that it was appropriate that these obligations to fund New Facilities Investment be reflected in the Extensions/Expansions Policy.

REQUIRED AMENDMENTS

For the reasons discussed above, the Office required that EastCoast Gas amend the Extensions/Expansions Policy to:

- carefully define the outer boundary and the customers to be potentially served by the initial system (the service envelope) using detailed maps;
- address the matters of coverage and the effect on Reference Tariffs in respect of extensions outside the planned service envelope, and expansions both within and outside the planned service envelope, bearing in mind Office's comments on the

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ambiguity of the current Extensions/Expansions Policy and the advantages of automatic coverage; and

- describe obligations to fund New Facilities Investment.

REVISED ACCESS ARRANGMENTS

In response to the Office's requirements, EastCoast Gas provided revised maps that clearly defined the outer boundary of the initial distribution system and thus the service envelope. These maps show the potential customers to be served by the initial system that will be charged the Reference Tariffs. Customers that connect to the system outside this boundary may be charged the Reference Tariffs plus a surcharge in accordance with section 8.25 and 8.26 of the Victorian Third Party Access Code for Natural Gas Pipeline Systems.

The applicant also amended its policy to provide automatic coverage to extensions both within and outside the planned service envelope unless EastCoast Gas notifies the Office that the extension is to be excluded from coverage.

Finally, EastCoast Gas has included in its Extensions and Expansions Policy a new section that describes its obligations to fund New Facilities Investments. These are to:

- meet obligations imposed as part of its gas distribution licence, the Gas Safety Act 1994 and the Gas Distribution system Code; and
- meet its contractual obligations to existing customers.

OFFICE'S FINAL DECISION

It is the Office's decision that the revisions to Extensions and Expansions Policy of the proposed Access Arrangements adequately met its requirements as stated in its Draft Decision. Accordingly, the Office does not require any further amendments to the Extension and Expansion Policy of Access Arrangements proposed by EastCoast Gas.

2.9 REVISIONS SUBMISSION DATE AND REVISIONS COMMENCEMENT DATE

CODE REQUIREMENTS

The relevant provision of the Code is as follows:

3.19 An Access Arrangement must include:

- (a) a date upon which the Service Provider must submit revisions to the Access Arrangement (a Revisions Submission Date); and
- (b) a date upon which the next revisions to the Access Arrangement are intended to commence (a Revisions Commencement Date).

In approving the Revisions Submissions Date and Revisions Commencement Date, the Relevant Regulator must have regard to the objectives in section 8.1, and may in making its decision on an Access Arrangement (or revisions to an

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Access Arrangement), if it considers it necessary having had regard to the objectives in section 8.1:

- (i) require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;
- (ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

The Revisions Submission Date establishes the time period for which the Access Arrangement and Reference Tariffs remain in effect without review. The time between the Revisions Submission Date and the Revisions Commencement Date sets the time during which the Office is expected to have approved and put into effect the Access Arrangement for the next Access Arrangement period.

If a revised Access Arrangement is not approved prior to the Revisions Commencement Date then the existing Access Arrangement continues until a new Access Arrangement comes into effect.

THE APPLICANT'S PROPOSAL

EastCoast Gas has proposed the following:

8.1 The Revisions Submission Date will be 3 years from the commencement Date. Revisions to the Reference Tariffs will be made in accordance with the procedure specified in Schedule 1 of this Access Arrangement.

8.2 The Revisions Commencement Date will be 1 year following the Revisions Submission Date

The above proposals imply an Access Arrangement period of 4 years and provide the Office with 12 months to approve and put into effect the new Access Arrangement.

OFFICE'S ANALYSIS

Access Arrangement Period

The Code suggests that an Access Arrangement Period of around 5 years should be considered the norm, with additional requirements such as review triggers applying for longer periods. This accords with many CPI-X regimes overseas, although there is no established best practice for this issue.

The longer the Access Arrangement Period, the greater the level of regulatory certainty given to Service Providers and Users and the more time for efficiency gains to be captured by the Service Provider. However a longer Access Arrangement Period also exposes the Service Providers to greater or lower returns due to exogenous factors, which could increase its cost of capital.

A long regulatory period may have created difficulties for EastCoast Gas given the uncertainty regarding Capital and Non-Capital Costs and demand (particularly demand take-up) that are associated with a system that is yet to be constructed. Unlike the Multinet, Stratus and Westar systems, there is no operational history on which forecasts for the East Gippsland system could be based. However, the underrecovery principles ensure there is

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reduced risk exposure to EastCoast Gas arising from forecast demand or costs, thus ameliorating this concern.

The shorter Access Arrangement period of four years as proposed by EastCoast Gas has the advantage of allowing forecasts to be revised, and adjustments made to Reference Tariffs, earlier than would otherwise be the case. For this reason, the Office believes the Access Arrangement Period proposed is appropriate.

The Office also notes that a four year period for the initial Access Arrangement is provided for as a tender outcome by Reference Tariff Principle 3.1 in Schedule 1 of the Access Arrangement and on this basis the Office cannot review the matter.

Review Period

The Office has previously expressed a view that it will require nine months to assess Access Arrangements provided by Multinet, Stratus and Westar. Given the lower level of complexity involved in this Access Arrangement, the Office believes that the twelve month review and approval period proposed by EastCoast Gas is unnecessarily lengthy, and that six months will be adequate. This shorter period for review will enable more data on the operation of the system to be incorporated in the review.

However, this twelve month period is given effect as a tender outcome by Reference Tariff Principle 3.1 in the Access Arrangement. On this basis the Office cannot review the matter in respect of case of the initial Access Arrangement Period. However, the Office places on notice its views that a shorter period will be required for subsequent Access Arrangements.

Commencement of the Access Arrangement

Section 2.26 of the Code grants the Office some discretion as to when a decision to approve a new Access Arrangement comes into effect, with the limitation that an Access Arrangement cannot commence less than 14 days after the Office has issued its final decision.

The applicant has proposed that this Access Arrangement become effective from the 'Commencement Date', and, as detailed above, that the Revisions Submissions Date and Revisions Commencement Date be defined in respect of this Commencement Date. (Note that this 'Commencement Date' is not, in terms of it being the defining date at which the Access Arrangement becomes effective, a tender outcome). The Commencement Date is defined by EastCoast Gas in the Access Arrangement as being the date on which EastCoast Gas obtains all necessary authorisations (including approval of the Access Arrangement, relevant licences and approvals under the *Pipelines Act 1967*) and gas is available to customers.

By defining the Access Arrangement Period in terms of a 'Commencement Date', EastCoast Gas is able to ensure the second Access Arrangement Period commences after 4 years operation of the system. This reduces any potential uncertainties associated with specifying a certain date for the second Access Arrangement Period to commence. For example, if a specific date of 1 January 2003 was set, but completion of the scheme was delayed until say 1 January 2001, then the initial Access Arrangement Period would be just 2 years and the amount of operational data on which the review of the Access Arrangement can be based will consequently also be reduced. By specifying the Revisions

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Commencement Date as being 4 years after the system becomes operational, the length of the Access Arrangement is fixed and this risk is avoided.

Another issue with specifying the Access Arrangement Period in terms of the 'Commencement Date' is that it is highly unlikely this date will co-incide with any particular milestone in the calendar (eg end of financial or calendar year). This Office does not believe that this will present any difficulties, on the basis that during the initial Access Arrangement Period tariffs will be reset on 1 January each year.

The Code clearly contemplates Access Arrangements being approved and made effective prior to Services being available. The key difference between having the Access Arrangement take effect shortly after approval (but no less than 14 days) and taking effect only when authorisations have been obtained and Services are available is that in the former case the dispute resolution provisions under the Code will be available earlier than in the latter case. Given that disputes are relatively unlikely during this period, and that in any event the resolution of any dispute cannot be put into force until Services are available, the Office does not see any material differences in the two approaches.

In summary, the Office has no objections to making any approved Access Arrangement effective from the 'Commencement Date' as defined by EastCoast Gas.

OFFICE'S CONCLUSION

The Office does not require any amendments to be made to the Revisions Commencement Date and the Revisions Submissions Date proposed in the Access Arrangement.

2.10 OTHER MATTERS

Information Disclosure to market participants

The Code places obligations on the Service Provider and Users to disclose market information relevant to obtaining access to services provided. The Code requires that Service Providers make available an Information Package containing general information on the terms and conditions of access and explaining how potential users may request access. It also requires the Service Provider to establish and maintain a Public Register of spare and developable capacity in the covered pipeline.

Ring fencing

Ring fencing is a term used to describe the segregation for regulatory purposes of a regulated activity from a non-regulated activity within a vertically integrated distribution/retail business.

In this context, regulated activities refer to those activities undertaken by the Service Provider that are the subject of an Access Arrangement.

Regulators require adequate ring-fencing to ensure that Service Providers:

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- do not indulge in anti-competitive cross subsidisation which may unfairly favour the jointly owned contestable retail business; or
- are prevented from disclosing to their retail affiliates commercially sensitive information obtained from users and prospective users which could lead to a lessening of competition in the contestable gas supply market.

While the Code does not require Service Providers to provide details of its ring-fencing procedures as part of the Access Arrangement, it establishes minimum ring fencing obligations that require Service Providers to:

- establish and maintain separate accounts in respect of -
 - ⇒ each activity that is the subject of an Access Arrangement, and
 - ⇒ all the activities undertaken by the Service Provider;
- allocate any shared costs; and
- ensure all confidential information provided by users or prospective users is appropriately treated and used to prevent disclosure to any contestable affiliate.

Section 4.15 of the Code enables the Office to grant a waiver of certain of the ring-fencing obligations and Section 6 of EastCoast Gas's Access Arrangement foreshadows an application by EastCoast Gas for such a waiver.

In its submission AGL argued that *'such a waiver may be appropriate for a small business if compliance costs are expected to outweigh public benefit: however, as the business grows and more retailers enter the market this policy should be kept under regulatory review.'*

Any decision by the Office to grant a waiver is a separate decision from that regarding whether to approve the Access Arrangement and the Office does not wish to pre-empt any decision here. The Office may undertake a separate public consultation process in considering whether to grant the waiver if an application is made. This will include advertising the application for a waiver of the ring-fencing obligations and inviting public comments. The Office will then take any relevant comments into account in making a decision in assessing the application.

PART C

ITEMS DETERMINED BY THE TENDER PROCESS

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This Part discusses those elements of the Access Arrangement that were determined by the tender process and hence are not subject to formal review by the Office.

3.1 REFERENCE TARIFFS

Tender Outcomes

The following Reference Tariffs were determined by the tender process (refer to Schedule 1 of the Access Arrangement):

Fixed Charge (per annum, per supply point) \$60.00

Volumetric Charge	per GJ
First 167GJ per month	\$4.24
Next 250GJ per month	\$3.53
Next 417GJ per month	\$2.97
Next 833GJ per month	\$2.54
Next 833GJ per month	\$1.70
Additional GJ per month	\$1.48

Connection Charge

\$25 per supply point per application, waived until 1 January 2003 at a minimum.

The above charges are expressed as at 1 January 1998. Section 3.2 of Schedule 1 to the Access Arrangement provides that in any year where tariffs are not reset by a review they will be adjusted by CPI-0.5%.

Role of Reference Tariffs

Sections 3.5 and 3.6 of the Code, which are outlined in section 2.3 of this document, establish the requirement for Reference Tariffs to be provided.

The Code describes a Reference Tariff as a 'benchmark tariff for a specific Service, in effect giving the User a right of access to the specific Service at the Reference Tariff, and giving the Service Provider the right to levy the Reference Tariff for that Service'. The following points about Reference Tariffs should be noted:

- while the Reference Tariff is the regulator-approved price for a particular Service (called a Reference Service) a Service Provider is not obliged to sell at that price if it negotiates otherwise with the User - for example, there is no constraint on the offering of discounts; and
- there are no constraints to the Services to which a Prospective User and the Service Provider may negotiate access (and which may be the subject of binding arbitration under the Code if negotiation is not possible).

The certainty and protection that Reference Tariffs are intended to convey is provided by preventing an arbitrator from determining a different tariff for a Reference Service, (section

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6.19(e)) and by permitting the arbitrator to fast-track the dispute resolution process where it considers that the dispute is really about the tariff to apply for a Reference Service (sections 6.14 and 6.15).

Although Reference Tariffs formally are simply benchmark tariffs for standard services, it is expected that they will play a very important role in the regulation of access pricing to gas distribution pipelines:

- first, it is expected that many Users will use a Reference Service and will choose to pay the Reference Tariff rather than seek to negotiate a special deal (amongst other things because of the administrative costs of negotiating);
- Secondly, the Reference Tariffs are likely to provide a solid ‘stake in the ground’ against which to negotiate Tariffs for other Services. For example, the other Services may be the Reference Service ‘plus or minus’ something, and so the negotiations could be restricted to the price of the ‘plus or minus’; and
- thirdly, the approach taken by the regulator to the pricing of Reference Services is likely to provide a good guide to its approach to the pricing of other like Services.

The Code’s objective of reducing the number of access disputes requires a number of other elements to be satisfied in addition to the approval of a Reference Tariff. First, the Reference Tariffs must relate to specified Services that Users actually demand. Secondly, the Reference Service (and the terms and conditions attached) need to be sufficiently well defined so that the Reference Tariff is meaningful and there are relatively few elements left to negotiate.

Comment on the Reference Tariffs

Section 8 of the Code sets out the general principles with which Reference Tariffs must comply, and how Reference Tariffs should be derived. However, these principles and the associated derivation procedures are not relevant where a competitive tender has determined Reference Tariffs, as is the case here.

Reference Tariffs have two key characteristics. The first is the manner in which they split the generation of revenue between customers and customer classes (cost allocation). The second is whether the Reference Tariffs provide a sound basis for charging for the use of the system (tariff design). For the first Access Arrangement Period, EastCoast Gas has established Reference Tariffs that:

- do not distinguish between customer type; and
- comprise a fixed charge plus a volumetric charge on a decreasing per unit stepped basis for all customers

The first step is at a level of consumption that is so high that the vast majority of customers will consume all their gas at the first step rate.

Cost Allocation

Economic considerations imply that tariffs should deliver revenue on a per customer basis which lies between the (forward looking) incremental cost of serving a customer, and the stand-alone cost of replicating the service being provided. Tariffs outside these boundaries expose the Service Provider to making a loss on the provision of services (at the lower boundary) and the risk of being bypassed (at the upper boundary).

Provided by-pass is permitted (as it is here) the distributor will have an incentive to allocate costs within these bounds. This gives the Service Provider a large leeway of choice as to cost allocation methodology, subject to overriding fairness, efficiency and competition matters.

The Office at the commencement of the next Access Arrangement will review the allocation of costs.

Tariff Design

Economic considerations suggest that, amongst other things, tariffs should:

- provide a balance between the fixed and variable components that rations the use of the network when it is congested but ensures marginal usage decisions are subject to the least possible distortions at other times; and
- provide a degree of certainty over revenue for the Service Provider and certainty of costs for Users.

The tariff structure proposed by EastCoast Gas is simple and easy to understand. There is no 'peak' component for any customer category, reflecting the fact there are unlikely to be any system constraints over the initial Access Arrangement Period.

The Office does note however, that the Reference Tariff design results in revenues being based predominantly on gas flows. In the case of a gas distribution system where congestion is very unlikely, the Office would normally expect the Reference Tariff design to place greater emphasis on the non-usage related element. If the variable element is too high, then some end-users will be discouraged from taking additional gas, even though it would have been profitable for EastCoast Gas to supply them. This will result in the network being under-utilised.

Furthermore, an over-dependence on the variable element also means that the returns to EastCoast Gas will be subject to a relatively high level of variability, thus increasing its cost of capital. This will be magnified by the fact that gas usage in the initial Access Arrangement period will depend on the take-up of gas by customers and the rate at which appliances are converted.

The Office recognises, however, that the pricing signals provided by the Reference Tariffs will be very much influenced by the structure of the (bundled) retail tariffs offered to customers.

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Escalation Factor

A tender outcome was that Reference Tariffs will increase by CPI - 0.5% per annum until the end of the Access Arrangement period, with the first increase on 1 January 1999 (despite the fact that gas will not start flowing until well after this date).

To the extent that its costs vary with inflation, a CPI based inflation escalation factor insulates EastCoast Gas from much of the risk associated with changes in inflation from the time of the tender to the end of the Access Arrangement Period.

Section 3.2 of this document outlines the Office's preferred definition of the CPI.

3.2 REFERENCE TARIFF POLICY

Tender Outcomes

The Reference Tariff Policy proposed by EastCoast Gas includes both elements determined by the tender process (and hence are not subject to review and amendment by the Office) and those not determined by the tender process (and hence subject to review and amendment). The elements determined by the tender process fall under three broad headings and are discussed accordingly below.

Tariff review and revisions (sections 3.1 and 3.2 of Schedule 1 of the Access Arrangement)

The tender outcomes are as follows:

3.1 The first review of tariffs will be conducted immediately following the third anniversary of the Commencement Date and will apply from the fourth anniversary and subsequent reviews will be conducted so as to commence on the third anniversary of the immediately preceding review. Each review of tariffs for Tariffed Distribution Services will consider, among other things:

- (1) the actual capital expenditure costs and revenues up to the review date;*
- (2) the revised forecast capital expenditure for the period following the review date;*
- (3) the actual distribution system utilization up to the review date;*
- (4) the revised forecast distribution system utilization for the period following the review date; and*
- (5) the IRR calculated using the actual and forecast data over the first 20 years of life of the gas distribution system.*

3.2 In any year where tariffs are not reset by a review as outlined above, the tariffs for Tariffed Distribution Services will be adjusted from 1 January by the movement in CPI - 0.5%.

Matters here relating to the Revisions Commencement and Submissions Date, and the CPI-X increase in tariffs, are addressed in sections 2.9 and 2.4 of this document respectively.

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The second part of 3.1 above outlines several elements that the Office will consider when establishing tariffs for the next regulatory period. Elements (1) to (4) relate to projected and actual Non-Capital Costs, capital expenditure and demand. The Code clearly provides for these items to be taken into account when establishing the Total Revenue requirement for the next Access Arrangement Period. Indeed it would be remiss for the Office not to take these items into account.

Although the Code only requires that tender outcomes be formally put in place for the initial Access Arrangement Period, as outlined in section 1.2 of this document, the Office will also take into account the tender outcomes and the contents of EastCoast Gas' bid when reviewing the Access Arrangement for the next Access Arrangement Period. It will also take into account any other agreements or undertakings made between the Council and EastCoast on other elements of the Access Arrangement. The Office will do so on the basis that the tender outcomes and other agreements reflect the outcome of a competitive market process, and are therefore clearly 'relevant matters' in accordance with section 2.24 (b)(vii) of the Code.

Element (5) of 3.1 requires that the Office have regard to the 20 year forecasts of returns for project. The requirement to take into account a longer-term period than the next Access Arrangement Period when establishing Reference Tariffs is set out within section 8.1(a) of the Code. This section requires that a Reference Tariff Policy provide the Service Provider with the opportunity to earn revenue that recovers the efficient costs of delivering Reference Services *over the expected life of the assets used in delivering that Service*.

It should be noted that while the Office will have regard to the elements outlined in Schedule 1 Section 3.1 of the Access Arrangement, it does not consider itself bound to any particular treatment of these items, except where provided otherwise by the Code.

Pass through of taxes, charges and changes to laws (sections 3.3, 3.4, and 3.5 of Schedule 1 of the Access Arrangement)

The tender outcomes are as follows:

3.3 The tariffs for the Tariffed Distribution Services were established based on the regulatory fees, levies, charges and taxes existing at 1 January 1998.

3.4 If new charges or taxes are imposed or existing charges or taxes are reduced or cease to apply, EastCoast will seek Regulator approval to alter the tariffs to recover the increases in its costs from Users or to pass on to users the benefit of any reductions in its costs as the case may require.

3.5 If as a result of:

- (1) the enactment, promulgation, execution or notification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date of this instrument; or*
- (2) any action taken by any regulatory authority or Governmental Agency, or brought or threatened in a court of competent jurisdiction on or after the date of this instrument,*

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the cost of providing the Tariffed Distribution Services to EastCoast increases, EastCoast will seek the approval of the Regulator to increase the tariffs to compensate for that increased cost.

Section 3.4 outlines EastCoast Gas' intention to seek the Office's approval for amendments to the Reference Tariff's should new 'charges or taxes' be imposed or existing 'charges or taxes' be reduced or cease to apply. Section 3.5 outlines a similar intention in respect of changes in laws or action taken by a Regulator or Government Agency (and by inference including changes to regulatory fees and levies).

As with the pass-through of force majeure risks, the Office's approval should be sought through the review process outlined in section 2.28 to 2.43 of the Code. On the basis that the proposed revisions will result in changes to the Reference Tariffs, it will be necessary for public consultation to take place as part of the Office's consideration of the revisions.

The Office has no concerns with the general intent of the clauses, in that they:

- reflect the tender outcomes and correspondence between EastCoast Gas and the Council;
- are symmetric in respect of the pass-on of charges and taxes (although the Office notes this is not the case in respect of the cost increases due to changes in costs brought about by changes in laws or action taken by a Regulator or Government Agency; and
- importantly, ensure the Office is the final arbitrator in respect of whether the changes are passed on to customers during the Access Arrangement Period.

The Office, however, notes two items of concern with the Policy. The use of the word 'will', require EastCoast Gas to seek Regulator approval for every change in charges and taxes. EastCoast Gas has no choice as to whether to submit a revision to the Office in the event of a change in charges or tariffs. In some cases, for example a change in Commonwealth company tax, tracing through the effects on Reference Tariff's may be extremely difficult.

The Office also notes that the clauses have no element of materiality - on a literal interpretation, EastCoast Gas must submit a revision following any change in taxes, however small and irrespective of whether there is a material effect on Reference Tariffs. In assessing the materiality of any changes, the Office will be guided by the criteria for materiality laid down in Australian Accounting Standard 5 "Materiality", which it applied as follows:

- revenue changes (after tax) which give rise to impacts equal to or greater than 10 per cent of the Net Profit After Tax (NPAT) are clearly material;
- impacts of less than 5 per cent of NPAT are clearly not material; and
- impacts of between 5 and 10 per cent of NPAT are matters for judgement.

Under-recovery of revenue, capital base and residual asset value (sections 3.6 and 3.7 of Schedule 1 of the Access Arrangement)

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The tender outcomes are as follows:

3.6 The Capital Base at the commencement of the next Access Arrangement Period will be the forecast Residual Value determined in accordance with the tender process adjusted to take account of any differences between the forecast and actual capital expenditure.

*3.7 The forecast Residual Value for the commencement of the next Access Arrangement Period determined in accordance with the tender process is **\$21,250,837**.*

As indicated in section 2.4 above, the Office worked with EastCoast Gas to ensure that the proposed Residual Value is consistent with the tender outcome and the Code. This residual value is based on a nominal post-tax internal rate of return over the life of the project of 10.35% - given the average inflation assumption over the first 4 years of 3.74%, and assuming a 25% average tax rate, this equates to a real pre-tax return of 8.82%.

(Note that the issues here are also addressed in sections 3.8, 3.9, 3.10 and 6 of Schedule 1 of the Access Arrangement. These sections are not tender outcomes and are discussed in section 2.4 of this document.)

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ATTACHMENT 1

The following submissions were received in response to the advertised Access Arrangement:

No.	Date Received	Author of document	Title of Submission
1.	9 July 1998	BHP Petroleum	EastCoast Gas Access Arrangement
2.	15 July 1998	Department of Treasury & Finance South Australia	Access Arrangements proposed by EastCoast Gas
3.	6 August 1998	AGL	Access Arrangements by EastCoast Gas Pty Ltd

Copies of the submissions are reproduced on the Office's Web site:

<http://www.reggen.vic.gov.au>

The submissions have also been placed on the Office's Public Register and may be viewed during business hours at the Office of the Regulator-General, 1st Floor, 35 Spring St Melbourne.

GLOSSARY OF TERMS

Items capitalised in the text are defined as follows:

“**ACCC**” means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* (Cth).

“**Access Arrangement**” means an arrangement for access submitted by a Service Provider to the Office for a Covered Pipeline that has been approved by the Office.

“**Access Arrangement Information**” means information provided by a Service Provider to the Office in accordance with section 2.2 of the Code.

“**Arbitrator**” has the meaning given in section 48V of the *Gas Industry Act 1994*.

“**Capacity**” means the measure of the potential of a Covered Pipeline as currently configured to deliver a particular Service between a Receipt Point and a Delivery Point at a point in time.

“**Capital Base**” has the meaning given in section 8.4 of the Code.

“**Charge**”, for a Service, means the amount that is payable by a User to the Service Provider for that Service.

“**Code**” means the Victorian Third Party Access Code for Natural Gas Pipeline Systems as changed from time to time in accordance with the *Gas Industry Act 1994* (as amended).

“**Confidential Information**” means information that is by its nature confidential or is known by the other party to be confidential and includes:

- (a) any information relating to the financial position of the party and in particular includes information relating to the assets or liabilities of the party and any other matter that affects or may affect the financial position or reputation of the party;
- (b) information relating to the internal management and structure of the party or the personnel, policies and strategies of the party;
- (c) information of the party to which the other party has access, other than information referred to in paragraphs (a) and (b), that has any actual or potential commercial value to the first party or to the person or corporation which supplied that information; and
- (d) any information in the party’s possession relating to the other party’s clients or suppliers and like information.

“**Contracted Capacity**” means that part of the Capacity, which has been reserved by a User or Users pursuant to a contract, entered into with the Service Provider.

“**Contract Carriage**” is a system of managing third party access whereby:

- (a) the Service Provider normally manages its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;

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- (b) Users normally are required to enter into a contract that specifies a quantity of Service;
- (c) charges for use of a Service normally are based at least in part upon the quantity of Service specified in a contract; and
- (d) a User normally has the right to trade its right to obtain a Service to another User.

“Covered Pipeline” means the whole or a part of a pipeline, which is subject to an Access Arrangement, together with the whole, or part of any other pipeline, which a regulator decides, shall be covered.

“Depreciation” means, in any year and on any asset or group of assets, the amount calculated according to the Depreciation Schedule for that year and for that asset or group of assets.

“Depreciation Schedule” has the meaning given in section 8.32 of the Code.

“Developable Capacity” means the difference between the Capacity and the Capacity that would be available if additions of plant and/or pipeline were made, but does not include any extension of the geographic range of a Covered Pipeline.

“Distribution Pipeline” means a pipeline for the conveyance of gas but does not include:

- (a) a Transmission Pipeline;
- (b) a gathering line within the meaning of section 30(10) of the Petroleum Act 1958 (Vic).

“Gas Industry Act” means the Gas Industry Act 1994 (as amended).

“Information Package” means the Information Package described in section 5.1 of the Code.

“Market Carriage” is a system of managing third party access whereby:

- (a) the Service Provider does not normally manage its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;
- (b) Users are normally not required to enter into a contract that specifies a quantity of Service;
- (c) charges for use of Services are normally based on actual usage of Services; and
- (d) a User normally does not have a right to trade its right to obtain a Service to another User.

“Non Capital Costs” has the meaning given in section 8.4 of the Code.

“Office” means the Office of the Regulator-General established under the *Office of the Regulator-General Act 1994* (Vic).

“Office of the Regulator-General Act” means the *Office of the Regulator-General Act 1994* (Vic).

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“Pipeline” means a pipe or system of pipes used to transport Natural Gas and includes the entire lengths of the pipe or system of pipes and any tanks, reservoirs, machinery or equipment directly attached thereto, but does not include:

- (a) a gathering system operated as part of an upstream producing operation; or
- (b) any tanks, reservoirs, machinery or equipment used to remove or add components to or change Natural Gas (other than odourisation facilities) such as a gas processing plant.

“Prospective User” means a person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a User which seeks or may seek to enter into a contract for an additional Service.

“Public Register” means the public register kept by the Office.

“Queuing Policy” has the meaning given in section 3.14 of the Code.

“Rate of Return” has the meaning given in section 8.4 of the Code.

“Reference Service” means a Service which is specified in an Access Arrangement and in respect of which a Reference Tariff has been specified in that Access Arrangement.

“Reference Tariff” means a Tariff specified in an Access Arrangement as corresponding to a Reference Service and which has the operation that is described in sections 6.14 of the Code.

“Regulatory Instrument” means a statute, regulation, proclamation, ordinance, by-law, order in council, licence, code, sub-code, rule, including MSO Rules, Australian standard, determination, a regulatory instrument applicable under a licence or code, including a determination, decision and guideline, and any other instrument regulating or affecting the terms and conditions on which access to a Pipeline may be obtained, as amended from time to time.

“Relevant Regulator” means:

- (a) the ACCC in relation to Transmission Pipelines; and
- (b) the ORG in relation to Distribution Pipelines.

“Residual Value” has the meaning given in section 8.4 of the Code.

“Service” means a service provided by means of a Covered Pipeline

“Service Provider” means a person who owns (whether legally or equitably) or operates the whole or any part of a Pipeline.

“Spare Capacity” means:

- (a) in relation to a Covered Pipeline described in the Access Arrangement as a Contract Carriage Pipeline:
 - (i) the difference between the Capacity and the Contracted Capacity; plus
 - (ii) the difference between the Contracted Capacity and the Contracted Capacity which is being used; and
- (b) in relation to a Covered Pipeline described in the Access Arrangement as a Market Carriage Pipeline, the capacity to provide a Service without impeding the provision of the Service to any other User.

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“Surcharge” has the meaning given in sections 8.25 of the Code and which has the effect defined in section 6.20. of the Code.

“Tariff”, for a Service, means the criteria that, when applied to a User’s characteristics and requirements, determine the Charge that is payable by that User to the Service Provider (this shall not provide any limitation on the Tariff that may apply).

“Transmission Pipeline” means:

(a) a pipeline for the conveyance of gas:

(i) in respect of which a person is, or is deemed to be, the licensee under the Pipelines Act 1967 (Vic); and

(ii) that has a maximum design pressure exceeding 1050kPa - other than a gathering line within the meaning of section 30(10) of the Petroleum Act 1958 (Vic); and

(b) a pipeline that is declared under section 5 of the *Gas Industry Act 1994* to be a transmission pipeline.

“User” means a person who has a current contract for a Service or an entitlement to a Service as a result of an arbitration.