



# **Issues Paper**

## **Tender Approval Request for the Supply of Natural Gas to the Central Ranges Region of NSW**

14 January 2003

## ***Background***

On 3 January 2003, the Central Ranges Natural Gas and Telecommunications Association Incorporated (CRNG&TAI) submitted a Tender Approval Request (TAR) for the supply of natural gas to the Central Ranges region of New South Wales. The application was made under section 3.21 of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code).

The proposal includes the construction of a new transmission pipeline that would likely transport gas from an existing transmission pipeline (the Central West Pipeline which terminates at Dubbo), in addition to the construction of a network of distribution pipelines to deliver gas to prospective users in the Central Ranges region, which extends broadly from Dubbo to Tamworth and Gunnedah. Whilst there are no specific towns that must be supplied with natural gas, it is expected that the successful tenderer will serve at a minimum, Mudgee, Tamworth and Gunnedah.

Under the Code, the Australian Competition and Consumer Commission (ACCC) has responsibility for the regulation of transmission pipelines and the Independent Pricing and Regulatory Tribunal of NSW (IPART) has responsibility for the regulation of distribution pipelines in NSW. Where a TAR has been submitted, the regulators are required to invite public submissions concerning the TAR before making a decision as to whether or not to approve the request. Approval of the tender process is required before the tender can be conducted under the Code.

The process proposed by the CRNG&TAI requires some collaboration on the part of the regulators in assessing the TAR and the Final Approval Request (FAR) for this project. While the ACCC and IPART have agreed to work co-operatively on the appraisal process for the TAR and FAR, each has an obligation to make their own separate decision pursuant to the Code. The successful tenderer will still be required to submit separate access arrangement proposals to the regulators for the assessment of the elements not determined by the tender process.

The purpose of this Issues Paper is to explain the context in which the request has been made, describe the essential features of the proposed tender process, explain the matters that the regulators are required to consider and describe some of the issues for potential bidders, gas users and the community.

The Issues Paper should be read in conjunction with the TAR. Copies of CRNG&TAI's application, including the TAR, can be obtained from the ACCC and IPART's websites ([www.accc.gov.au](http://www.accc.gov.au) – under the heading Gas; and [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au) – under the heading Gas). Alternatively a hardcopy or diskette version may be obtained from IPART by contacting Andrew Hall (phone 02-9290-8435).

## ***Assessment process by regulators***

The process for assessing a TAR which is set out in Section 3 of the Code is described in the flow chart in Attachment 1 to this document. The flow chart also shows the process that the successful tenderer would need to undertake in order for an access arrangement to be approved. Following consideration of the TAR and submissions

received, the ACCC and IPART expect to issue a decision by 7 March 2003 stating whether or not they individually approve the TAR under section 3.25 of the Code.

The ACCC and IPART have jointly placed advertisements in the following newspapers providing notice of the TAR and calling for submissions from interested parties **by 5:00pm, Friday 7 February 2003:**

The Australian	14 January 2003
Australian Financial Review	14 January 2003
Mudgee Guardian	14 January 2003
Tamworth Northern Daily Leader	14 January 2003
North West Magazine	20 January 2003
Western Magazine	20 January 2003

Submissions should address relevant matters upon which the ACCC and IPART will base their decisions on whether or not to approve the TAR. The criteria by which the TAR will be assessed are listed in section 3.28 of the Code (see [Attachment 2](#) to this document).

Should you not wish to lodge a submission, but would like to receive information in the future on the progress of this TAR, please complete [Attachment 3](#) and forward the details to the ACCC or IPART.

### ***Possible issues for comment***

The following headings are intended to focus interested parties on the requirements of the Code. Interested parties are encouraged to raise other issues in their submissions where relevant.

#### **Public interest and reference tariff objectives**

The requirement in section 3.28(b) of the Code is ‘that using the tender process as outlined in the TAR to determine Reference Tariffs is in the public interest and is an appropriate mechanism in the circumstances for ensuring that Reference Tariffs achieve the objectives in section 8.1.’

A tender conducted pursuant to the Code does not require the regulator’s approval of the service provider’s reference tariffs and tariff policy<sup>1</sup> – this is in contrast to an access arrangement submitted outside the tender provisions of the Code whereby the regulator must make an assessment of the actual tariffs and tariff policy proposed based on the requirements of the Code and consideration of comments by interested parties. This is because the tariffs and related conditions for the proposed pipeline are determined by competition for the development rights of the pipeline. Therefore, without the scrutiny of the regulator, it is important that the tender process used to determine the reference tariffs produces an outcome that meets the general reference tariff objectives of section 8.1 of the Code.

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<sup>1</sup> With the exception that where a tender specifies a Revisions Commencement Date of greater than 15 years, the Regulator can only approve the Final Approval Request if it considers the longer period is appropriate on the basis of the proposed tariffs (including but not limited to the Reference Tariffs).

- Is the tender process in the public interest either in terms of the process adopted (with respect to transparency, fairness of process, and consistency with the objectives of the Code) and/or whether the use of the tender under the Code is the most appropriate means to select the project developer and determine tariffs?
- Potential conflicts of interest. Section 3.27 of the Code states that the relevant regulator may decide not to approve a TAR if it is of the opinion that the person submitting the TAR may have, or may appear to have, a conflict of interest if they conduct the process. Is there a conflict of interest?

### **Tender process will be competitive**

Section 3.28(c) of the Code requires a competitive outcome.

When a tender process is conducted in a competitive market, the number of potential bidders in the market is expected to apply competitive pressure on any bidder. As a result, any bidder, who does not know the details of any other bid, will be encouraged to price its bid with the aim of being the successful tenderer. That is, there will be a downward pressure on price.

- Does the tender process proposed facilitate this objective?

### **Exclusion of certain tenders**

Section 3.28(d) of the Code establishes the requirements for a conforming tender and sets out and gives grounds under which a tender may be excluded.

The regulator is required to form a view as to whether any restrictions imposed on the content of the tender are considered reasonable. This assessment will be based on whether the restrictions are consistent with the objectives of the Code, including an assessment of the impact on the effectiveness of the competitive tendering process. The regulator is also required to assess whether the tender process is expected to result in tariffs that meet the broad objectives in section 8.1 of the Code.

- Does the TAR impose any restrictions on bids that are inconsistent with the objectives of the Code?

### **Consideration of all conforming bids**

Section 3.28(e) of the Code states that ‘the proposed procedures and rules to be followed in conducting the proposed tender will result in no tender being excluded from consideration except in the circumstances outlined in paragraph (d) or if the tender does not conform to other reasonable requirements in the request for tenders or does not meet reasonable prudential and technical requirements’.

This criterion relates to the reasonableness of the requirements set for potential tenderers. A well structured tender should require enough information to meet two requirements. Firstly, to ensure an equal basis for comparing bids and secondly, to allow persons conducting the tender to make an informed choice as to the successful

tenderer's background and bid. However, the requirements on those tendering should not be so onerous as to exclude or deter what would otherwise be competitive tenderers and thereby reduce the overall competitiveness of the tender process.

- Do the requirements for tenderers and the tender process appear reasonable in terms of: the rules by which the tender will be conducted; the information requirements for tenderers; the obligations of the successful tenderer in terms of the construction timetable; and the selection criteria and selection process?

## **Selection criteria**

Section 3.28(f) of the Code requires:

(f) that the selection criteria to be applied in conducting the proposed tender:

- (i) will result in the successful tender being selected principally on the basis that the tender will deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipeline; and
  - (ii) are likely to result in Reference Tariffs that meet the criteria specified in section 3.33(c)
- Do the selection criteria and selection process outlined in the TAR facilitate these objectives?

## **Determination of items with the reference tariffs**

Section 3.28(g) of the Code requires 'that the tender documents specify which items required to be included in an Access Arrangement other than Reference Tariffs will be determined by the tender and that those items are directly relevant to the determination of Reference Tariffs.'

The tender process determines a number of items of an access arrangement that will be fixed for the duration of the initial access arrangement period. These items will not form part of the regulator's consideration in its assessment of the successful tenderer's subsequent proposed access arrangement.

Section 3.28(g) requires that the tender documentation identify the items to be determined by the tender process as tender outcomes. The Code provides for more than just the reference tariff to be a tender outcome but specifies that any additional tender outcomes must be directly relevant to the determination of the reference tariffs.

- Is the TAR consistent with this Code requirement?

## **Configuration of the pipeline**

Section 3.28(h) of the Code requires that ‘the tender documents published by the person conducting the tender will not specify the configuration of the proposed pipeline, including the areas the proposed pipeline will service, pipeline dimensions, level of compression or other technical specifications, unless the relevant regulator is satisfied it would be appropriate to do so’.

The purpose of this Code requirement is to ensure that the rules of the tender are not unnecessarily restrictive or have the effect of reducing the level of competition in the process of running the tender. For example, this provision seeks to avoid unnecessary restrictions on the source of gas supply (that is, where the pipeline comes from) and to which points it is able to deliver gas.

- Is the TAR consistent with this Code requirement?

## **Other documents**

The Code requires the regulator to be confident that the documentation relating to or supporting a tender does not place restrictions on tenderers that are too onerous or which may undesirably discourage potential bidders.

Section 3.28(i) of the Code requires that any other supporting or related tender documentation does not limit or purport to limit the tender process in any way that is not consistent with the Code. Specifically, the criterion refers to not limiting: the services that may be provided or to which access may be sought; the technical specifications of the pipeline; or the construction or the operation of any other pipelines that could deliver gas to the region.

- Is the TAR consistent with this Code requirement?

## **Revisions Commencement Date**

The TAR nominates a Revisions Commencement Date of 1 July 2019, which is 15 years from the time upon which gas is expected to be first available in the region and the time at which access arrangements for the transmission and distribution pipelines are expected to be approved. The TAR also comments that ‘tenderers are free to propose a shorter or longer Revisions Commencement Date, however special approval from the Regulators is required if [the Date] is beyond 1 July 2019’.

The recent final report of the Parer Review<sup>2</sup> identified that prospective pipeline developers are likely to seek long term regulatory certainty by ‘locking-in’ key regulatory parameters ‘for extended periods of time’. On this basis the Review recommended that provision be made in the Code to enable new pipeline developments the option of either a regulation free period of 15 years or an upfront regulatory ruling for an extended period. The regulatory periods recommended by

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<sup>2</sup> *Toward a Truly National and Efficient Energy Market*. Final Report of the Council of Australian Governments’ Independent Review of Energy Market Directions, 20 December 2002, pp214-215

Parer are broadly consistent with the Revisions Commencement Date contemplated under the tender provisions.

Under section s3.33(d) of the tender provisions in the Code, a Revisions Commencement Date of more than 15 years can only be approved if the Regulator considers it appropriate on the basis of the proposed tariffs (including but not limited to the Reference Tariffs). Accordingly, the onus would be on tenderers to argue the appropriateness of a regulatory period greater than 15 years. Subject to the approval of the TAR, any potential tenderer is strongly encouraged to consult with IPART and the ACCC on this matter **prior to** lodging a tender application.

## ***Lodging a submission***

Public submissions should be lodged with either the ACCC or IPART by **5:00pm, Friday 7 February 2003** (the ACCC and IPART are not obliged to consider late submissions). They should be in writing and, where possible, be supplied in electronic format compatible with Microsoft Word 2000 for Windows. Electronic copies of submission can be emailed to [nicole.moffatt@accc.gov.au](mailto:nicole.moffatt@accc.gov.au) or [deborah\\_walker@ipart.nsw.gov.au](mailto:deborah_walker@ipart.nsw.gov.au). These submissions will be made publicly available and placed on public registers held by the ACCC, IPART and the Code Registrar. Any information considered to be of a confidential nature should be clearly marked as such, and the reasons for seeking confidentiality should be provided. Under the terms of the Code, the ACCC and IPART must not disclose such information unless it is of the opinion that disclosure would not be unduly harmful to the legitimate business interests of the service provider, a user or a prospective user.

Submissions should address issues relating to both distribution and transmission of natural gas and should be mailed or hand delivered to either:

Deborah Walker  
Independent Pricing and Regulatory  
Tribunal of NSW  
Level 2, 44 Market Street  
SYDNEY NSW 2000  
(PO Box Q290  
QVB POST OFFICE NSW 1230)

Nicole Moffatt  
Australian Competition and Consumer  
Commission  
Level 7, Angel Place, 123 Pitt Street  
SYDNEY NSW 2000  
(GPO Box 3648,  
SYDNEY NSW 2001)

## ***Requests for copies of submissions***

The ACCC and IPART will endeavour to place all submissions received on its websites as soon as possible ([www.accc.gov.au](http://www.accc.gov.au) and [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)). Requests for hard copies of submissions lodged by interested parties should be directed to Andrew Hall (phone 02-9290-8435, fax 02-9290-2061, email [andrew\\_hall@ipart.nsw.gov.au](mailto:andrew_hall@ipart.nsw.gov.au)) or to the Code Registrar (phone 08-8226-5786, fax 08-8226 5866, email [enquiries@coderegistrar.sa.gov.au](mailto:enquiries@coderegistrar.sa.gov.au)). While submissions may be inspected free of charge, a fee is payable for copies.

## ***Inquiries***

Any inquiries on this matter should be directed to:

### **ACCC**

Ms Nicole Moffatt phone 02-9230-9115, fax 02-9231-5652  
Email: [nicole.moffatt@accc.gov.au](mailto:nicole.moffatt@accc.gov.au)

or

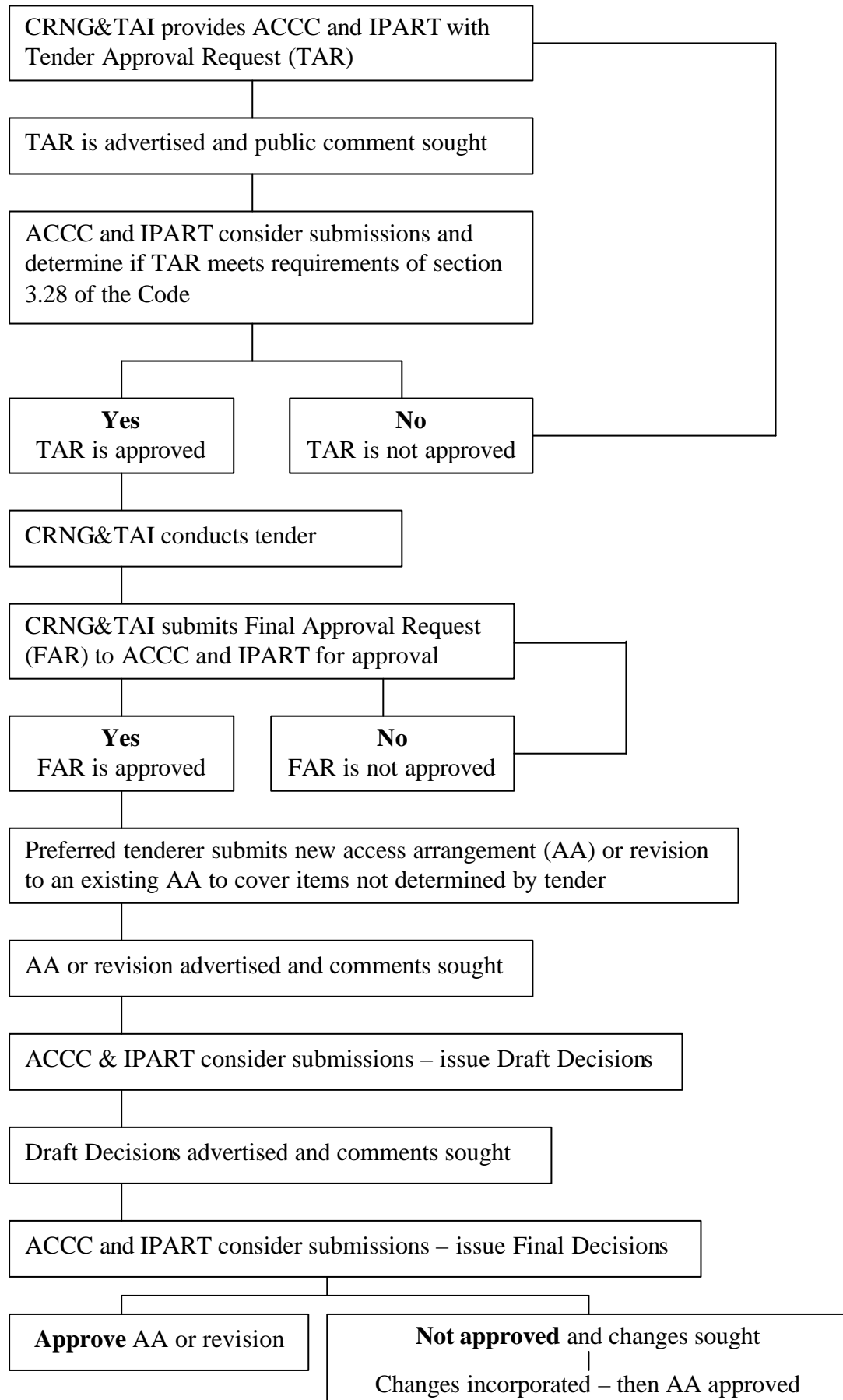
### **IPART**

Ms Deborah Walker phone 02-9290-8450, fax 02-9290-2061  
Email: [deborah\\_walker@ipart.nsw.gov.au](mailto:deborah_walker@ipart.nsw.gov.au)



## The Tender Process Flowchart

The process for assessing a tender is set out in section 3 of the Code and follows the flowchart below.



### Tender Approval Request Criteria under the Code

Under s3.28 of the Code, the Relevant Regulator must decide to approve a Tender Approval Request if satisfied of all of the following and must decide not to approve a Tender Approval Request if not satisfied of all of the following:

- (a) (***new pipeline***): that the proposed Pipeline will be a new Pipeline;
- (b) (***public interest and Reference Tariff objectives***): that using the tender process as outlined in the Tender Approval Request to determine Reference Tariffs is in the public interest and is an appropriate mechanism in the circumstances for ensuring that Reference Tariffs achieve the objectives in section 8.1;
- (c) (***tender process will be competitive***): that the number and character of tenders likely to be received would be such as to ensure a competitive outcome; and
- (d) (***exclusion of certain tenders***): that the proposed procedures and rules to be followed in conducting the proposed tender will result in a tender being excluded from consideration if it:
  - (i) does not include a statement of the Reference Tariffs the tenderer proposes and the Reference Services to which those Reference Tariffs would apply;
  - (ii) does not include a policy on whether the additional revenue which would result if the volume of gas actually transported by the proposed Pipeline exceeds a certain volume will either be retained by the Service Provider or returned in whole or in part to Users in the form of lower charges or some other form (an ***Additional Revenue Policy***);
  - (iii) does not provide that the residual value of the proposed Pipeline after the expiration of the initial Reference Tariff will be based on depreciation over the Pipeline's economic life;
  - (iv) limits or purports to limit the Services to which access might be sought under this Code; or
  - (v) otherwise includes elements inconsistent with this Code except as contemplated by section 3.34;
- (e) (***consideration of all conforming tenders***): that the proposed procedures and rules to be followed in conducting the proposed tender will result in no tender being excluded from consideration except in the circumstances outlined in paragraph (d) or if the tender does not conform to other reasonable requirements in the request for tenders or does not meet reasonable prudential and technical requirements;
- (f) (***selection criteria***): that the selection criteria to be applied in conducting the proposed tender:
  - (i) will result in the successful tender being selected principally on the basis that the tender will deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipeline; and
  - (ii) are likely to result in Reference Tariffs that meet the criteria specified in section 3.33(c);

- (g) (***determination of items with the Reference Tariffs***): that the tender documents specify which items required to be included in an Access Arrangement other than Reference Tariffs will be determined by the tender and that those items are directly relevant to the determination of Reference Tariffs;
- (h) (***configuration of Pipeline not limited***): that the tender documents published by the person conducting the tender will not specify the configuration of the proposed Pipeline, including the areas the proposed Pipeline will service, pipeline dimensions, level of compression or other technical specifications, unless the Relevant Regulator is satisfied it would be appropriate to do so;
- (i) (***other documents***): that any document supporting or relating to the tender process is consistent with this Code and does not purport to limit:
  - (i) the Services which the Service Provider may provide or to which access may be sought under this Code;
  - (ii) the configuration of the proposed Pipeline including the areas the Proposed Pipeline will service, pipeline dimensions, level of compression and other technical specifications unless the Relevant Regulator is satisfied it would be appropriate to do so; or
  - (iii) the construction or operation of other Pipelines which could deliver gas to the same gas market as the proposed Pipeline.

#### Other relevant Code provisions

#### **Pricing Principles**

- 8.1 A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:
- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service;
  - (b) replicating the outcome of a competitive market;
  - (c) ensuring the safe and reliable operation of the Pipeline;
  - (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries;
  - (e) efficiency in the level and structure of the Reference Tariff; and
  - (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

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

## **ATTACHMENT 3**

### **Interested Parties' Registration**

#### **DISTRIBUTION LIST FOR THE CENTRAL RANGES PROPOSED TENDER**

The ACCC and IPART will consider submissions received from interested parties regarding the TAR received from the CRNG&TAI before making a decision on whether to approve the TAR.

Parties wishing to be included on the mailing list for future information regarding this matter are requested to forward the following details to the ACCC or IPART.

Name: .....

Title: .....

Organisation: .....

Address: .....

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Phone: .....

Fax: .....

Email\*: .....

*\*Email is the preferred method for notifying interested parties of new information relevant to this matter.*

Please return the above information to:

Deborah Walker  
Independent Pricing and Regulatory  
Tribunal of NSW  
Level 2, 44 Market Street  
SYDNEY NSW 2000  
(PO Box Q290  
QVB POST OFFICE NSW 1230)  
Fax: 02-9290-2061  
Email: [deborah\\_walker@ipart.nsw.gov.au](mailto:deborah_walker@ipart.nsw.gov.au)

Nicole Moffatt  
Australian Competition and Consumer  
Commission  
Level 7, Angel Place, 123 Pitt Street  
SYDNEY NSW 2000  
(GPO Box 3648,  
SYDNEY NSW 2001)  
Fax: 02-9231-5652  
Email: [nicole.moffatt@accc.gov.au](mailto:nicole.moffatt@accc.gov.au)