Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline

Submitted by DBNGP (WA) Transmission Pty Ltd

31 October 2011
As amended on 22 December 2011

Economic Regulation Authority
WESTERN AUSTRALIA

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Economic Regulation Authority website at www.erawa.com.au.

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FINAL DECISION

1. On 1 April 2010, DBNGP (WA) Transmission Pty Ltd (**DBP**) submitted to the Economic Regulation Authority (**Authority**) an access arrangement revision proposal for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) for approval by the Authority under the *National Gas Access (Western Australia) Act 2009* (**NGA**).

2. The access arrangement revision proposal was submitted by DBP pursuant to rule 52 of the National Gas Rules (**NGR**) and comprises a proposed revised access arrangement and revised access arrangement information.

3. On 14 March 2011, the Authority made a draft decision to not approve the access arrangement revision proposal. The draft decision included a statement of the reasons for the decision and set out 109 amendments to the proposed revised access arrangement that would be required before the Authority would be prepared to approve the access arrangement revision proposal.

4. Under rule 59(3) of the NGR, the Authority fixed a period (**revision period**) within which DBP may, under rule 60, submit additions or other amendments to the access arrangement revision proposal to address matters raised in the draft decision. The Authority fixed the revision period at five weeks from the date of the draft decision, expiring on 18 April 2010.

5. On 18 April 2011, DBP submitted revisions to the access arrangement revision proposal.[1] These revisions comprised:

   - a revised proposed access arrangement;
   - a revised access arrangement information; and
   - revised calculations of the reference tariff.

6. On 20 May 2011, 11 August 2011 and again on 8 September 2011, DBP submitted further revised versions of the access arrangement proposal that incorporated corrections to several errors in the reference tariff calculation.[2] This included corrected versions of the access arrangement, access arrangement information and tariff model. It is the corrected version of the revised access arrangement proposal as of 8 September 2011 that is the subject of this final decision.

7. DBP also provided the following information in support of the revisions to the access arrangement revision proposal:

   - Submission 47: Revised Access Arrangement Proposal (18 April 2011)
   - Submission 48: Overarching (20 May 2011)
   - Submission 49: Response to Specific Amendments (18 April 2011)
   - Submission 50: Reference Service (17 May 2011)
   - Submission 51: Terms & Conditions (20 May 2011)

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1 DBP, 18 April 2011, Submission 47, Revised Access Arrangement Proposal.

2 DBP, 20 May 2011, Submission 61, DBP, 11 August 2011, Submission 66. DBP, 8 September 2011, Submission 70.

- Submission 52: Opening Capital Base (20 May 2011)
- Submission 53: Roll Forward of the Capital Base (20 May 2011)
- Submission 54: Operating Expenditure (20 May 2011)
- Submission 55: Rate of Return (20 May 2011)
- Submission 56: Other Tariff Matters (20 May 2011)
- Submission 57: Non tariff Matters (17 May 2011)
- Submission 58: Disclosure of Confidential Information (21 April 2011)
- Submission 59: DBNGP Proposal Tariff Model Public (2 May 2011) (Excel spreadsheet file)
- Submission 60: Ernst and Young Agreed upon Procedures Letter (4 May 2011)
- Submission 61: Corrected Amended AA Proposal (20 May 2011)
- Submission 62: Response to initial Disclosure Notice – Submissions 50 – 56 (31 May 2011)
- Submission 63: Not Provided
- Submission 64: Response to Third Party Submissions (20 July 2011)
- Submission 65: Regulatory Estimate of gamma in light of recent decisions of the Australian Competition Tribunal (20 July 2011)
- Submission 66: Response to information requests from the Economic Regulation Authority, including corrected access arrangement, corrected access arrangement information and revised tariff model of 21 July 2011 (11 August 2011)
- Submission 67: Rate of Return in Recent AER Decisions (13 September 2011)
- Submission 68: Response to information requests from the Economic Regulation Authority (17 August 2011)
- Submission 69: Response to information requests from the Economic Regulation Authority (5 September 2011)
- Submission 70: Corrected Model, AA and AAI documents (8 September 2011)
- Submission 71: Confidentiality assessment of Submissions 68 & 69 (30 September 2011)
- Submission 72: Further Information Request Received 10 October 2011 (17 October 2011)

8. The Authority invited public submissions on the draft decision[3] and on DBP's revisions to the access arrangement revision proposal with a closing date for submissions of 20 May 2011[4] subsequently extended to 20 July 2011. The Authority agreed to the extension because it was concerned that interested parties would otherwise be unable to consider DBP's submissions in support of its amended proposal due to the timing of, and confidentiality claims over, those submissions. Interested parties had expressed concern about the inability to properly consider DBP's supporting submissions and requested that the public consultation process be extended. Submissions were received from the following parties.

- Alinta Pty Limited, public and confidential versions (20 May 2011)
- Alinta Pty Limited (20 July 2011)
- APA Group (20 May 2011)
- BHP Billiton (20 May 2011)
- BHP Billiton (20 July 2011)
- Office of Energy (20 May 2011)
- Retail Energy Market Company Limited (REMCO) (20 May 2011)
- Verve Energy, public and confidential versions (20 May 2011)
- Verve Energy (20 July 2011)

9. Under rule 62 of the NGR, the Authority is required to make a final decision on the revised access arrangement proposal that is a decision to approve, or to refuse to approve, the revised proposal.

10. After considering submissions received from DBP and from other interested parties, the final decision of the Authority is to not approve the revised access arrangement proposal. The Authority's reasons for refusing to approve the proposal are set out in this final decision. The reasons as set out in this final decision include amendments to an original version of the final decision. These amendments were made pursuant to a notice issued by the Authority on 1 December 2011 and relate to the forecast of operating expenditure, the extension and expansion requirements and correction of minor and inconsequential errors of fact in the original version of the final decision.

11. Under rule 64 of the NGR, when the Authority refuses to approve an access arrangement revision proposal, the Authority is required to itself propose revisions to the access arrangement and make a decision giving effect to its proposal within two months of this final decision. The Authority will in due course publish its proposed revisions to the access arrangement and its decision to give effect to these revisions.

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3 Economic Regulation Authority, Notice of 14 March 2011.

4 Economic Regulation Authority, Notice of 26 May 2011.

12. The Authority will formulate its proposed revisions having regard to the requirements of the National Gas Law, DBP's proposed revised access arrangement and the Authority's reasons for refusing to approve the revised access arrangement. Amendments to the proposed revised access arrangement that the Authority intends to include in its proposed revisions are set out in this final decision.

Summary of Intended Amendments to the Proposed Access Arrangement Revisions

Required Amendment 1

The revised access arrangement proposal should be amended so that the description of the DBNGP is current as of the date of approval of the access arrangement.

Required Amendment 2

The revised access arrangement proposal should be amended to remove the proposed R1 Service as a reference service.

Required Amendment 3

The revised access arrangement proposal should be amended to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement.

Required Amendment 4

The definition of "part haul service" in the revised proposed access arrangement and the terms and conditions for reference services should be amended to: *Part Haul Service means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.*

The specification of the P1 Service as a reference service in the access arrangement should be consistent with this definition of part haul service.

Required Amendment 5

The revised access arrangement proposal should be amended such that any inflation escalation applied in the calculation and subsequent annual adjustment of reference tariffs is based on actual or forecast values (as appropriate) of the all groups, eight capital cities CPI published by the Australian Bureau of Statistics.

Required Amendment 6

The value of conforming capital expenditure for the 2005 to 2010 access arrangement period must be amended to values as indicated in Table 11 of this final decision.

Required Amendment 7

The forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period must be amended to values shown in Table 17 of this final decision.

Required Amendment 8

The revised access arrangement proposal should be amended so that the calculation of total revenue and reference tariffs reflects a treatment of asset disposals that comprises:

- values of asset disposals as indicated in Table 19 of this final decision;
- adjustment of the capital base by deduction (as “accelerated depreciation”) of the value of the disposed-of assets from the relevant asset classes in the asset account of the initial capital base; and
- addition of the amount of accelerated depreciation to total revenue to compensate for the reduction in the capital base.

Required Amendment 9

The values of depreciation allowances for the 2005 to 2010 and 2011 to 2015 access arrangement periods must be amended to values as indicated in Table 24 of this final decision.

Required Amendment 10

The revised access arrangement proposal should be amended to state an opening capital base value for 2011 and a projected capital base for the 2011 to 2015 access arrangement period as shown in Table 25 and Table 26 of this final decision.

Required Amendment 11

The revised access arrangement proposal (including Table 22 of the proposed Access Arrangement Information) must be amended to reflect the values in Table 43 of this final decision.

Required Amendment 12

The revised access arrangement proposal must be amended to adopt a real pre-tax rate of return of 5.74 per cent.

Required Amendment 13

The revised access arrangement proposal should be amended so that the amounts added to total revenue under the incentive mechanism are $11.938 million in each of 2011 and 2012.

Required Amendment 14

The revised access arrangement proposal should be amended such that the forecast of operating expenditure for the 2011 to 2015 access arrangement period is as indicated in Table 55 of this final decision.

Required Amendment 15

The proposed revised access arrangement should be amended to specify the reference tariff charges for the T1 reference service for the calendar year 2012 as (in dollar values of 31 December 2010):

Capacity Reservation Charge: $1.087228

Commodity Charge: $0.092402

The proposed revised access arrangement should be amended to provide for determination of the corresponding reference tariff charges for the P1 and B1 reference services as:

Reference tariff charge = F × D/1399

where

F is the value of the charge that would apply if the service were the T1 reference service; and

D is the distance in kilometres of pipeline between the relevant receipt point and the relevant delivery point.

Required Amendment 16

The proposed revised access arrangement should be amended to change the definition of CPI in the reference tariff variation mechanism to "CPI means the Consumer Price Index, all groups, eight capital cities".

Required Amendment 17

The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a Tax Changes Variation:

- is limited to costs of tax changes that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR; and
- is subject to the Authority's approval of the variation.

Required Amendment 18

The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a New Costs Pass Through Variation:

- excludes provision for a new costs pass through variation in respect of a change in cost of system use gas;
- is limited to costs that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR;
- is subject to the Authority's approval of the variation;
- provides for an adjustment of reference tariffs for either an increase or decrease in costs arising from the occurrence of a defined event; and
- provides that the minimum notice period for a cost pass through notice to be issued before a variation to the reference tariff commences to have effect is 30 business days.

Required Amendment 19

The term "B1 Service", under clause 1 of the proposed revised terms and conditions should be amended to be the B1 Service described as a reference service in the access arrangement, amended as required by this final decision.

Required Amendment 20

Clause 1 of the proposed revised terms and conditions should be amended to include the term "Contracted Firm Capacity" with the same meaning as the term "Contracted Firm Capacity" in the existing terms and conditions.

Required Amendment 21

Clause 1 of the proposed revised terms and conditions should be amended to delete clause (i) under the definition of force majeure, which relates to insolvency events of a third party supplier.

Required Amendment 22

Clause 1 of the proposed revised terms and conditions should be amended to restore definitions of “option” and “original capacity”.

Required Amendment 23

Clause 1 of the proposed revised terms and conditions should be amended to include the term “Overrun Gas” with the same meaning as the term “Overrun Gas” in the current access arrangement terms and conditions for the T1 Service.

Required Amendment 24

Clause 1 of the proposed revised terms and conditions should be amended to have the same meaning as the term “T1 Service” in the terms and conditions for the T1 Service under the current access arrangement.

Required Amendment 25

Clause 3.2 of the proposed revised terms and conditions should be amended to be materially the same as clause 3.2 of the current terms and conditions for the T1 Service.

Required Amendment 26

The proposed revised terms and conditions should be amended to reinstate clauses 4.3 to 4.7 of the current terms and conditions and to incorporate a change to clause 4.5, in relation to a shipper exercising an option to renew its contract, so that the time limit for a user to provide notice to exercise an option is not later than 12 months before the capacity end date.

Required Amendment 27

Clause 5.2(b) of the terms and conditions should be amended to require DBP to deliver gas at the nominated outlet points in the quantities required by the shipper at each point, up to a maximum of the shipper's contracted capacity aggregated across all outlet points.

Required Amendment 28

Clause 5.3(e) of the proposed terms and conditions should be amended to indicate that the assessment of the reduction of gas transmission capacity and the consequent decision of DBP to refuse to receive gas are subject to DBP acting as a reasonable and prudent pipeline operator.

Required Amendment 29

Clause 5 of the proposed revised terms and conditions should be amended to include terms and conditions that are materially the same as clause 5.5 and 5.9 of the existing terms and conditions for the T1 Service, which relates to refusal to receive or deliver gas as a curtailment in limited circumstances.

Required Amendment 30

Clause 5 of the proposed revised terms and conditions should be amended so that the absence of liability for refusal to receive gas is subject to the provisions of the terms and conditions under which a refusal to receive gas may be deemed a curtailment and to clause 17 that deals with DBP's liability for curtailments.

Required Amendment 31

Clause 5.6(b) of the proposed terms and conditions should be amended to indicate that the assessment of the reduction of gas transmission capacity and the consequent decision of DBP to refuse to deliver gas are subject to DBP acting as a reasonable and prudent pipeline operator.

Required Amendment 32

Clause 5 of the proposed revised terms and conditions should be amended so that the absence of liability for refusal to deliver gas is subject to the provisions of the terms and conditions under which a refusal to deliver gas may be deemed a curtailment and to clause 17 that deals with DBP's liability for curtailments.

Required Amendment 33

Clause 5.9 of the proposed revised terms and conditions, in relation to no change in contracted capacity, should be amended to:

- include provisions that are materially the same as those in clause 5.9 of the existing terms and conditions where the refusal to deliver gas is a curtailment in certain circumstances; and
- reflect situations where the capacity reservation charge must be refunded under clause 17.4 in the event of a curtailment.

Required Amendment 34

Clause 6.4 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.4(d) of the current terms and conditions.

Required Amendment 35

Clause 6.5 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.5(d) of the current terms and conditions.

Required Amendment 36

Clause 8.9 of the proposed revised terms and conditions, in relation to the scheduling of daily nominations, should be amended to replace references to a R1 Service with references to a T1 Service.

Required Amendment 37

Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.15 and 8.16 in the existing terms and conditions in relation to an aggregated T1 Service and to nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity.

Required Amendment 38

Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.18 in the 2005 to 2010 terms and conditions in relation to full haul capacity upstream of CS9.

Required Amendment 39

Clause 9 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clause 9.5 of the existing terms and conditions in relation to accumulated imbalance limits.

Required Amendment 40

Clause 9.6 of the proposed revised terms and conditions, in relation to cashing out imbalances at the end of each gas month, should be amended to be substantially consistent with the existing terms and conditions.

Required Amendment 41

Clause 10.3 of the proposed revised terms and conditions, in relation to consequences of exceeding hourly peaking limits, should be amended to be substantially consistent with clause 10.3 of the existing terms and conditions and the words “shipper must use best endeavours to comply with a notice issued under clause 10.3” reinstated.

Required Amendment 42

The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.4 of the existing terms and conditions in relation to outer hourly peaking limit.

Required Amendment 43

The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the existing terms and conditions in relation to the overrun charge.

Required Amendment 44

The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.2 of the existing terms and conditions in relation to an unavailability notice.

Required Amendment 45

Clause 11.7(c) of the proposed terms and conditions, in relation to savings and damages, should be amended to reinstate the word “not”.

Required Amendment 46

Clause 15.5 of the proposed revised terms and conditions, in relation to the provision of information to shippers, should be amended to include requirements for DBP to provide information to shippers as required under clauses (e), (f) and (g) of the current terms and conditions.

Required Amendment 47

Clause 17.2 of the proposed terms and conditions, in relation to curtailment generally, should be amended to reinstate sub-clauses (c) and (d) in the existing terms and conditions.

Required Amendment 48

Clause 17.3(b) of the proposed revised terms and conditions, in relation to curtailment without liability, should be amended to be substantially the same terms as clause 17.3(b) in the existing terms and conditions.

Required Amendment 49

Clause 17.5 of the proposed revised terms and conditions, in relation to the operator's right to refuse to receive or deliver gas, should be amended so that the words "Subject to clauses 5.5 and 5.9,…" are reinstated at the beginning of clause 17.5.

Required Amendment 50

Clause 17.9 of the proposed revised terms and conditions, in relation to priority of curtailment, should be amended to be substantially the same as clause 17.9 of the current terms and conditions.

Required Amendment 51

Clause 17.10 of the proposed revised terms and conditions, in relation to the apportionment of a shipper's curtailments, should be amended to be substantially consistent with clause 17.10 of the current terms and conditions and to maintain the requirement of the proposed clause 17.10(e) for DBP to notify the shipper of apportionment as soon as practicable after the end of the relevant gas day be included.

Required Amendment 52

Clause 18 of the proposed revised terms and conditions, in relation to maintenance and major works should be amended to include terms that are substantially the same as clause 18(e) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the operator to notify the shipper of changes to its schedule of major works and planned maintenance issued to shippers under clause 18(c) of the terms and conditions.

Required Amendment 53

Clause 20.4 of the proposed revised terms and conditions, in relation to other charges, should be amended to include provision for all of the "other charges" to be rebateable to shippers.

Required Amendment 54

Clause 20.5 of the proposed revised terms and conditions should be amended to refer to the T1 Service rather than the R1 Service.

Required Amendment 55

Clause 20.7 of the revised terms and conditions, in relation to other taxes, should be amended to replace references to the R1 Service with references to the T1 Service.

Required Amendment 56

Clause 22.3 of the proposed revised terms and conditions, in relation when the operator may exercise a remedy, should be amended to replace the reference to “20 Working Days” with a reference to “40 Working Days”.

Required Amendment 57

Clause 22.9 of the proposed revised terms and conditions, in relation to no indirect damages, should be deleted.

Required Amendment 58

Clauses 23.6 and 23.7 of the proposed revised terms and conditions, which establish the shipper’s and operator’s responsibility for contractors’ personnel and property respectively, should be amended to reinstate the liability for death or injury to a party’s personnel or damage to a party’s property.

Required Amendment 59

Clause 25.3 of the proposed revised terms and conditions, in relation to assignment, should be amended to be substantially the same as the existing terms and conditions.

Required Amendment 60

Clause 25.4 of the proposed revised terms and conditions, in relation to a deed of assumption, should be amended to be substantially consistent with the existing terms and conditions.

Required Amendment 61

Clause 25.5 of the proposed revised terms and conditions should be amended to include terms and conditions that are substantially consistent with clause 25.5 of the existing terms and conditions.

Required Amendment 62

Clause 25.6 of the proposed revised terms and conditions should be amended to include terms and conditions substantially the same as clause 25.8 of the existing terms and conditions.

Required Amendment 63

Clause 26 of the proposed revised terms and conditions should be amended to be substantially the same as clause 26 of the 2005 to 2010 terms and conditions for the T1 Service, which establishes terms for a general right of relinquishment by a shipper.

Required Amendment 64

Clause 28.3 of the proposed revised terms and conditions, in relation to permitted disclosure, should be amended to expressly incorporate the operator’s obligations to comply with ring fencing provisions under the NGL and NGR.

Required Amendment 65

Clause 30.1 of the proposed revised terms and conditions, in relation to operator’s representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.

Required Amendment 66

Clause 30.1(a)(i) of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to use the definition of "authorisation" provided in clause 1.

Required Amendment 67

Clause 31 of the proposed revised terms and conditions, in relation to the preparation and maintenance of records and information, should be amended to be substantially the same as the existing terms and conditions.

Required Amendment 68

Clause 38 of the proposed revised terms and conditions, in relation to revocation, substitution and amendment, should be amended to be substantially the same as the existing terms and conditions.

Required Amendment 69

Clause 45 of the proposed revised terms and conditions should be amended to be substantially the same as clause 45 of the existing terms and conditions, which establish terms for non-discrimination.

Required Amendment 70

Schedule 2 of the proposed revised terms and conditions should be amended to detail

- the "T1 capacity reservation tariff" and "T1 commodity tariff", as determined under this draft decision; and
- the rates at which other charges are determined under the proposed terms and conditions, being the:

– "excess imbalance charge" at 200 per cent of the T1 reference tariff;

– "hourly peaking charge" at 200 per cent of the T1 reference tariff;

– "overrun charge" at the rate specified in clause 11.1(b); and

– "unavailable overrun charge" at the greater of:

▪ 250 per cent of the T1 reference tariff; and

▪ the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

Required Amendment 71

Schedule 6 of the proposed revised terms and conditions, which sets out the curtailment plan, should be amended to be substantially consistent with Schedule 8 of the 2005 to 2010 terms and conditions for the T1 Service.

Required Amendment 72

The proposed revised access arrangement should be amended to include terms and conditions for the part haul service (i.e. the P1 Service) and back haul service (i.e. the B1 Service), as reference services, that are substantially the same as for the T1 Service as established by the Authority under the final decision.

Required Amendment 73

The revised access arrangement proposal should be amended to delete clause 7.4(f) of the proposed revised access arrangement.

Required Amendment 74

The revised access arrangement proposal should be amended to change clauses 7.3 and 7.4 of the proposed revised access arrangement so that the access arrangement will apply to incremental services to be provided as a result of any expansion in capacity of the DBNGP, except in instances where DBP can demonstrate to the Authority's reasonable satisfaction that application of the access arrangement to such services is inconsistent with the National Gas Objective.

REASONS

Introduction

Regulatory Framework

13. The purpose of an access arrangement for a gas pipeline is to provide details of the terms and conditions, including price, upon which an independent third party (user) can gain access to the pipeline.

14. The requirements for an access arrangement are established by the *National Gas Law* (**NGL**) and *National Gas Rules* (**NGR**) as enacted by the *National Gas (South Australia) Act 2008* and as implemented in Western Australia by the *National Gas Access (WA) Act 2009* as the *National Gas Access (Western Australia) Law* (**NGL(WA)**).

15. The NGL and NGR replace the previous National Gas Pipeline Access Law, and National Third Party Access Code for Natural Gas Pipeline Systems (**Gas Code**), implemented in Western Australia by the *Gas Pipeline Access (WA) Act 1998*.

16. Under rule 100 of the NGR all provisions of an access arrangement are required to be consistent with the national gas objective. Section 23 of the NGL(WA) sets out the national gas objective.

> 23. National gas objective
>
> The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

17. Sections 28(1) and (2) of the NGL(WA) specify the manner in which the Authority must perform or exercise its economic regulatory functions or powers.

> 28. Manner in which [ERA] must perform or exercise [ERA] economic regulatory functions or powers
>
> (1) The [ERA] must, in performing or exercising an [ERA] economic regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.
>
> (2) In addition, the [ERA]—
>
> (a) must take into account the revenue and pricing principles—
>
> (i) when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff; or
>
> (ii) when making an access determination relating to a rate or charge for a pipeline service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other [ERA] economic regulatory function or power, if the [ERA] considers it appropriate to do so.

Special Circumstances of the Dampier to Bunbury Natural Gas Pipeline

18. Access contracts between DBP and users of the DBNGP – the DBNGP shipper contracts – are currently substantially independent of the access terms and reference tariffs established under the access arrangement for the DBNGP. With the exception of an access contract with one user (Alcoa), the current shipper contracts with the major users predominantly take the form of the "standard shipper contract" that was negotiated between DBP and major users in 2004. The standard shipper contract is published on DBP's website.[5]

19. Clause 20.5 (sub clauses (d) to (g)) of the standard shipper contract makes provision for gas transmission tariffs to transition to a reference tariff under the access arrangement in 2016:

(d) With effect from 08:00 hours on 1 January 2016, the Base T1 Tariff must be adjusted so that the Base T1 Tariff, T1 Capacity Reservation Tariff and T1 Commodity Tariff is at any time the same as the Firm Service Reference Tariff (or equivalent) at that time.

(e) In this clause 20.5, Firm Service Reference Tariff means the Reference Tariff for the Reference Service under the Access Arrangement that is, at 100 per cent load factor, the closest equivalent Full-Haul Service to the T1 Service as at 1 January 2016 (T1 Equivalent Reference Service).

(f) The Parties agree the following in relation to the Reference Tariff:

(i) the present intention of the Parties is that, with effect from 08:00 hours on 1 January 2016, the tariff payable by the Shipper under clause 20.5(d) will be a Reference Tariff based on the Reference Tariff Policy in clause 7 of the Access Arrangement as that clause was in force at 27 October 2004 (for the purposes of which that clause 7 is to be read as though references to "Firm Services" were replaced with "T1 Service");

(ii) the diagram and the financial model assumptions in Schedule 9, being the forecast tariff post 2016, illustrate the Parties' current expectations as to the effect of clause 20.5(f)(i). The Parties agree that the tariff levels depicted in Schedule 9 are based on certain assumptions about the inputs and methodology for determining tariffs under the approach approved by the Authority in the Reference Tariff Policy referred to in clause 20.5(f)(i), and that the actual tariff levels payable under clause 20.5(d) may differ from the tariff levels shown in Schedule 9 if the inputs and methodology are different at 2016. The Parties acknowledge that this clause 20.5 and Schedule 9 may be provided to the Regulator in making any submission referred to in clause 20.5(f)(iii) or clause 20.5(f)(iv).

[5] http://www.dbp.net.au/Libraries/Customer_Access_and_Information/22_09_08_-_Full_Haul_T1_Standard_Shipper_Contract.pdf (accessed on 21 October 2011).

(iii) Subject to clause 20.5(f)(v), the Operator agrees as soon as it considers is appropriate after 27 October 2004 to endeavour as a Reasonable and Prudent Person to have the Regulator approve amendments to the Access Arrangement that have the following outcomes (and the Shipper agrees to support those amendments (provided such amendments are not inconsistent with the intention of the Parties as at the date of this Contract in respect of the Firm Service Reference Tariff as of 1 January 2016, as reflected by Schedule 9) if necessary by making written submissions to the Regulator):

A. the Full Haul T1 Service to be included as a Reference Service;

B. the Base T1 Tariff as adjusted under clauses 20.5(b) and 20.5(c) to be the Reference Tariff for the Reference Service referred to in clause 20.5(f)(iii)A for the periods identified in clauses 20.5(b) and 20.5(c); and

C. the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iii)B to be 80 per cent /20 per cent.

(iv) Subject to clause 20.5(f)(v), the Parties must not make any submission to the Regulator which is inconsistent with the following outcomes:

A. the tariff described in clause 20.5(f)(i) becoming the Reference Tariff for the Reference Service described in clause 20.5(f)(iii)A from 1 January 2016; and

B. the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iv)A to be 80 per cent/20 per cent.

(v) The Parties agree that should the regulatory methodology for calculation of the Reference Tariff assumed in Schedule 9 be one that is considered by the Regulator not to be appropriate for use on the DBNGP from 1 January 2016 or is not consistent with pipeline regulatory practice within Australia, the Parties will endeavour as Reasonable and Prudent Persons to work together to achieve a tariff path outcome which as close as possible delivers the outcomes described in clause 20.5(f)(ii). However, the Parties agree that nothing in this clause 20.5(f), requires the Parties to make a submission which:

A. means the Operator is unable to recoup its full operating and capital costs to the full extent permitted by the Gas Access Code in Schedule 2 to the Access Regime (Code);

B. means the return on capital (debt and equity) to the Operator is outside the range permitted by the Code having regard to reasonable market requirements, including those deemed by the relevant Regulator as being reasonable, at the relevant point in time;

C. means the Operator is unable to perform any of its obligations under the Alcoa Exempt Contract; or

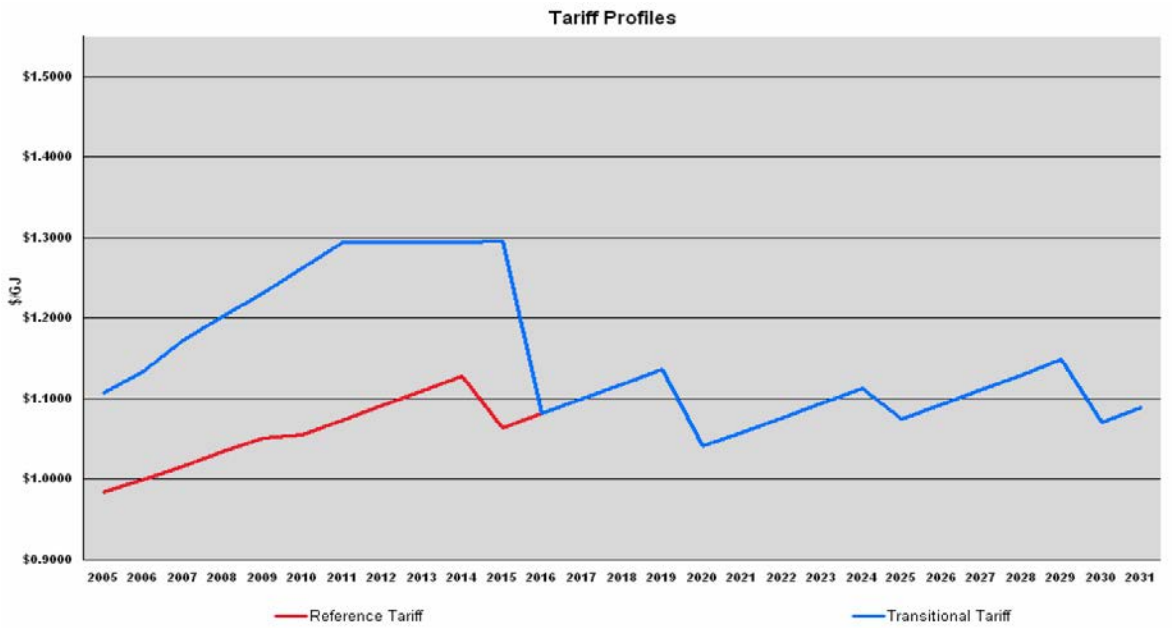
D. is otherwise inconsistent with the provisions of the Code; and

(vi) the Parties intend this clause 20.5 to have effect as a contractual right for the purposes of clauses 2.47 and, if applicable, 6.18(c) of the Gas Access Code in Schedule 2 to the Access Regime.

(g) If on 1 January 2016, and during any time thereafter, the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) is not 80 per cent/20 per cent of the Firm Service Reference Tariff, the capacity reservation charge/commodity charge split of the Base T1 Tariff will be the same percentage split as the Firm Service Reference Tariff at and during that time.

20. As indicated in sub-clause 20.5(f)(ii) of the standard shipper contract, Schedule 9 of the standard shipper contract illustrates the expectations of the parties as to the time profile of pipeline tariffs, with the contract tariff being in excess of the reference tariff for the period to 2016 and thereafter decreasing to the value of the reference tariff (Figure 1).

Figure 1 Tariff expectations set out under Schedule 9 of the Standard Shipper Contract[6]



21. As a result of the contractual arrangements between DBP and users of the DBNGP, the reference services and reference tariffs of the revised access arrangement to apply for the 2011 to 2015 access arrangement period may not significantly affect users during the course of this period. However, parameters of this revised access arrangement will affect the starting point for the subsequent access arrangement, including the approved building-block components that determine the total revenue requirement and reference tariffs.

6 http://www.dbp.net.au/Libraries/Customer_Access_and_Information/22_09_08_-_Full_Haul_T1_Standard_Shipper_Contract.pdf, Schedule 9.

22. In submissions to the Authority on the proposed revised access arrangement, some parties contend that the link between the standard shipper contract and the access arrangement is explicit and needs to be maintained to ensure the transition in 2016 to reference tariffs. Some users submitted that the link is critical to the re-commercialisation and ongoing investment in the DBNGP and users have paid a premium over and above the reference tariff to ensure this. Further, it was submitted that the link needs to be maintained and to do otherwise would be inconsistent with section 23 (the national gas objective) and section 321 (protection of certain pre-existing contractual rights) of the NGL(WA).[7]

23. In response to these submissions, DBP has submitted that:

- there are no contractual obligations owed by DBP in the standard shipper contract to include anything in the access arrangement at any point in time unless DBP considers this appropriate;
- the standard shipper contract envisages the possibility of future changes and therefore that reference services and tariffs may differ due to different inputs and methodology; and
- the standard shipper contracts do not bind the Authority in any way to make certain decisions in relation to the access arrangement.[8]

24. The Authority considers that the existence and terms of the standard shipper contract (and any other contract for services that DBNGP may have) do not have a direct bearing on the Authority's assessment of the access arrangement proposal except that, under section 321 of the NGL, an access arrangement must not have the effect of depriving a person of a relevant protected contractual right.

25. The Authority has considered the terms of clause 20.5(f)(iii) of the standard shipper contract (relating to obligations of the operator in respect of a reference service for the access arrangement and the tariff for that service) in light of the requirements of section 321. The Authority is of the view, however, that whether or not this clause creates contractual obligations for DBP to make certain inclusions in the access arrangement is a matter for DBP and its contracted shippers to resolve and does not affect the Authority's assessment of the access arrangement proposal.

26. Indeed, the parties themselves appear to have recognised this, as clause 20.5(f)(iii) required no more from the Operator than "to endeavour … to have the Regulator approve amendments" to the access arrangement that would have specified outcomes. This is implicit acknowledgement that any submissions made to the Authority would have, at best, persuasive value and would not be binding on the Authority.

27. Notwithstanding this, the Authority has had regard to the terms of the standard shipper contract, and submissions made by users referring to these terms, as evidence relevant to the Authority's assessment of some elements of the proposed revised access arrangement, such as the demand for certain pipeline services.

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7 Alinta Pty Ltd, submissions of 9 July 2010 and 20 April 2011; Verve Energy, submission of 9 July 2010 and 20 April 2011.

8 DBP, 6 August 2010, Submission 26.

Content of an Access Arrangement

28. Under section 2 of the NGL(WA), a "full access arrangement" means an access arrangement that:

- provides for price or revenue regulation as required by the NGR; and
- deals with all other matters for which the NGR require provisions to be made in an access arrangement.

29. The required content of a full access arrangement proposal is specified in rule 48 of the NGR.

> 48 Requirements for full access arrangement (and full access arrangement proposal)
>
> (1) A full access arrangement must:
>
> (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected; and
>
> (b) describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and
>
> (c) specify the reference services; and
>
> (d) specify for each reference service:
>
> (i) the reference tariff; and
>
> (ii) the other terms and conditions on which the reference service will be provided; and
>
> (e) if the access arrangement is to contain queuing requirements – set out the queuing requirements; and
>
> (f) set out the capacity trading requirements; and
>
> (g) set out the extension and expansion requirements; and
>
> (h) state the terms and conditions for changing receipt and delivery points; and
>
> (i) if there is to be a review submission date – state the review submission date and the revision commencement date; and
>
> (j) if there is to be an expiry date – state the expiry date.
>
> (2) This rule extends to an access arrangement proposal consisting of a proposed full access arrangement.

30. When submitting a full access arrangement proposal, the service provider must also submit access arrangement information (rule 43). Access arrangement information is information that is reasonably necessary for users to understand the background to the access arrangement, and the basis and derivation of the various elements of the access arrangement (rule 42).

31. The DBNGP access arrangement is a full access arrangement, for which a proposed revised access arrangement and a revised access arrangement information have been submitted by DBP. The reasons for the Authority's final decision address elements of DBP's access arrangement revision proposal in the following order:

- A description of the pipeline.
- Pipeline services, including the specification of reference services.
- Total revenue requirements.
- Reference tariffs.
- Non-tariff components.

Pipeline Description

Regulatory Requirements

32. Rule 48(1)(a) of the NGR requires an access arrangement proposal to identify the pipeline to which the access arrangement relates and to make reference to a website where a description of the pipeline can be inspected.

Original Access Arrangement Proposal

33. Clause 2 of the proposed revised access arrangement identifies the DBNGP as the pipeline to which the access arrangement relates. The DBNGP is indicated to comprise assets that are described in the following pipeline licences (**PL**) issued under the *Petroleum Pipelines Act 1969 (WA)*:

- PL 40 (as amended or varied before the date the revisions to the access arrangement have effect under clause 14.1 of the access arrangement);
- PL 41 (as amended or varied before the date the revisions to the access arrangement have effect under clause 14.1 of the access arrangement);
- PL 47 (as amended or varied before the date the revisions to the access arrangement have effect under clause 14.1 of the access arrangement);
- PL 69 (as amended or varied before the date the revisions to the access arrangement have effect under clause 14.1 of the access arrangement); and
- an amount of capacity of the Burrup Extension Pipeline (**BEP**),[9] if at the commencement of the revised access arrangement an agreement between DBP and the owners of the BEP (**BEP Agreement**) has commenced.

[9] The BEP is described in PL 38 issued under the *Petroleum Pipelines Act 1969 (WA)*.

34. A description of the DBNGP is provided on DBP's website at http://www.dbp.net.au. DBP has advised that the document is titled "Dampier to Bunbury Natural Gas Pipeline System: Description of the Gas Transmission System as at 22 September 2009".[10]

35. DBP's originally proposed revised access arrangement included two changes in the description of the pipeline:

- the addition of assets described in PL 69; and
- leased capacity of the BEP.

36. PL 69 relates to a lateral pipeline from the DBNGP to the Kemerton Industrial Area (hereafter referred to as the Kemerton Lateral).

37. The BEP is a 24 km length of pipeline commissioned in 1996 and owned by Epic Energy. The pipeline commences at the North West Shelf Domgas Plant and runs close and parallel to the DBNGP to connect to the Pilbara Energy Pipeline. The BEP Agreement provides for DBP to lease part of the capacity of the BEP and operate the BEP as the first loop of the DBNGP. DBP proposed that an amount of leased capacity of the BEP be included as part of the pipeline to which the access arrangement relates, rather than the physical asset of the BEP.

38. If these pipeline assets are included under the access arrangement, it will follow that the assets form part of the covered pipeline of the DBNGP. DBP proposed to include an amount of value attributable to these assets in the capital base of the DBNGP (addressed elsewhere in this final decision).

Draft Decision

39. In the draft decision, the Authority addressed the matter of whether it is sufficient for the access arrangement to contain a cross-reference to a description of the pipeline in another document rather than the description being contained in the access arrangement itself. DBP's proposed revised access arrangement identified the DBNGP as the pipeline to which the access arrangement relates while indicating that a description of the DBNGP is contained in a document that is available for inspection on DBP's website.

40. The Authority determined in the draft decision that rule 48(1)(a) of the NGR requires that the access arrangement include a comprehensive description of the pipeline. The Authority considered that a simple listing of pipeline licences for parts of the DBNGP does not satisfy this requirement. The Authority further indicated that the level of detail required to comply with the NGR is the same level of detail as the description provided in the access arrangement information for the current access arrangement.

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[10] Email correspondence from DBP to ERA, 21 June 2010. *Dampier to Bunbury Natural Gas Pipeline System: Description of the Gas Transmission System as at 22 September 2009*, viewed 21 October 2010, < http://www.dbp.net.au/files/DBNGP_Pipeline_Description_22_Sept_2009_Rev6.pdf >.

41. The Authority required the following amendment to the proposed revised access arrangement:

> Draft decision amendment 1
>
> The proposed revised access arrangement should be amended to include a full description of the DBNGP to the same level of detail as set out in the access arrangement information.

Revised Proposed Access Arrangement

42. DBP's revised access arrangement proposal includes a new Appendix 2 to the access arrangement that comprises a detailed description of the DBNGP, as well as maintaining a link to the DBP website where it is indicated that a description of the DBNGP can be found.

43. In a supporting submission to the revised proposed access arrangement, DBP indicates that it considers it more appropriate for the pipeline description document to:

- remain separate from the access arrangement (which is what is envisaged under the NGR in any case);
- be placed on the DBP website; and
- be referenced in the access arrangement by the inclusion of a hyperlink to the DBP website page that contains the pipeline description.[11]

44. DBP submits that having the pipeline description document separate from the access arrangement would allow the description to be kept up to date, ensuring that DBP complies with its obligations under rule 48(1)(a) of the NGR.

45. DBP further submits that the pipeline description document it submitted in the amended revised access arrangement proposal has been amended to be consistent with the asset and capital expenditure that has been included in the capital base as at 31 December 2010. DBP maintains that, consistent with its approach to the expenditure associated with conforming capital expenditure, items are not part of the covered pipeline until the capital expenditure has been transferred from "capital works in progress" to the asset register. DBP argues that if the Authority is to treat these assets as part of the covered pipeline as at 1 January 2011 it must also reflect the capital expenditure associated with the assets in the capital base at 1 January 2011. Not doing so would deprive DBP of the ability to include these costs at a later regulatory reset due to the limitations of rule 79 of the NGR.[12]

Submissions

46. No public submissions made to the Authority subsequent to the draft decision address the description of the pipeline.

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11 DBP, 18 April 2011, Submission 49.

12 DBP, 6 September 2011, Submission 69.

Considerations of the Authority

47. The Authority has reviewed the description of the DBNGP provided as Appendix 2 of the revised access arrangement. The Authority considers that the general form of the description of the DBNGP that is provided in Appendix 2 is consistent with the requirements of rule 48(1)(a) of the NGR and draft decision amendment 1 as the description includes elements of the DBNGP that are covered under the NGL and NGR.

48. However, the Authority observes that the description of the DBNGP provided as Appendix 2 differs in some details from the pipeline description published on DBP's website (as at the date of this final decision). These differences include:

- depiction in the Appendix 2 description of the BEP Capacity as an element of the pipeline;
- depiction in the Appendix 2 description of some inlet and outlet points being inactive or decommissioned;
- depiction in the website description, but not in the Appendix 2 description, of some additional lateral pipelines (Devil Creek, Cape Preston, Ashburton, Mandurah);
- depiction in the website description, but not in the Appendix 2 description, of a Pluto branching point and Pluto delivery point; and
- depiction in the website description, but not in the Appendix 2 description, of an offtake connection to Western Energy.

49. These differences lead the Authority to the view that the description of the DBNGP in Appendix 2 of the revised proposed access arrangement is not up to date.

50. As indicated above, DBP submitted that the description of the pipeline is consistent with pipeline assets for which the related capital expenditure is or has been added to the capital base up to 31 December 2010. The description intentionally excludes assets which were in existence at 31 December 2010, but for which the capital expenditure has been included in forecast capital expenditure for 2011. The Authority requires this to be remedied before the access arrangement proposal will be approved.

51. The Authority does not accept that the timing of adding capital expenditure to the capital base is the determinant of whether the assets created by this capital expenditure form part of the pipeline at a given time. Rather, the Authority considers that the relevant determinant is whether the assets were in place and commissioned at that time, and hence available for the provision of pipeline services.

52. The Authority accepts that modifications of the DBNGP that occur after approval of the access arrangement proposal will cause the description of the DBNGP in the access arrangement to be inaccurate. Users and prospective users of the DBNGP may be confused by the discrepancies between the pipeline description in the access arrangement and any updated pipeline description provided by DBP on its website. Neither the NGL nor NGR contemplate changes in a pipeline description in the access arrangement over the course of the access arrangement period. As such, the Authority considers that such discrepancies cannot be addressed as part of the process of approval of the revised proposed access arrangement. However, the access arrangement will maintain a link to DBP's website where a current description of the DBNGP will be available.

Required Amendment 1

The revised access arrangement proposal should be amended so that the description of the DBNGP is current as of the date of approval of the access arrangement.

53. In its submission to the Authority, APA has also expressed concern over the minimum contract periods for the P1 and B1 Services as set out, as non-reference services, in the proposed revised access arrangement.

54. Clauses 3.4 and 3.5 of the proposed revised access arrangement establish minimum contract periods for the P1 and B1 Services of 15 years. This contrasts with minimum contract periods under the current access arrangement of 2 years for existing spare pipeline capacity and 15 years for developable capacity.

55. APA claims that the minimum contract period of 15 years stated by DBP in the proposed revised access arrangement is an unreasonably long and inflexible period and, as such, the non-reference P1 and B1 Services do not facilitate the efficient operation of the Mondarra Gas Storage Facility and do not service the interests of users of this facility and their wider stakeholders.[13]

56. DBP has not provided reasons for the change in minimum contract periods for its proposed P1 and B1 non-reference services as compared with the current reference services.

57. In this final decision, the Authority is requiring that the proposed revised access arrangement be amended to include, as reference services, the P1 Service and B1 Service as described in the current access arrangement. This will include these services having the same minimum contract periods as in the current access arrangement.

[13] APA Group, Submission of 20 May 2011

Pipeline Services

Regulatory Requirements

58. A 'pipeline service' is defined in section 2 of the NGL(WA).

> Pipeline service means—
>
> (a) a service provided by means of a pipeline, including—
>
> (i) a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
>
> (ii) a service providing for, or facilitating, the interconnection of pipelines; and
>
> (b) a service ancillary to the provision of a service referred to in paragraph (a),
>
> but does not include the production, sale or purchase of natural gas or processable gas.

59. Under rule 48(1) of the NGR, a full access arrangement proposal must (amongst other things):

- identify the pipeline to which the access arrangement relates (rule 48(1)(a));
- describe the pipeline services the service provider proposes to offer to provide by means of the pipeline (rule 48(1)(b)); and
- specify the reference services (rule 48(1)(c)).

60. Rule 101 of the NGR requires a full access arrangement to specify all reference services.

> 101 Full access arrangement to contain statement of reference services
>
> (1) A full access arrangement must specify all reference services.
>
> (2) A reference service is a pipeline service that is likely to be sought by a significant part of the market.

Original Access Arrangement Proposal

61. Clause 3 of the proposed access arrangement included a description of the pipeline services to be offered by means of the DBNGP. These services comprised one reference service, the full haul R1 service (the "**R1 Service**"), and several non-reference services.

62. DBP's proposal differed from the current 2005 to 2010 access arrangement in that:

- the proposed R1 Service has different characteristics than the full haul reference service offered under the current access arrangement (that is, the T1 Service); and
- the three existing reference services under the current access arrangement – the T1 Service, P1 Service (a part haul service) and B1 Service (a back haul service) – are proposed to be non-reference services.

63. Under the proposed access arrangement non-reference services were offered subject to availability of capacity or operational ability.

64. Non-reference services subject to the availability of capacity are:

- firm full haul T1 service ("T1 Service");
- part haul T1 service ("P1 Service");
- back haul T1 service ("B1 Service");
- spot capacity service;
- park and loan service; and
- seasonal service.

65. Non-reference services subject to operational availability are:

- peaking service;
- metering information service;
- pressure and temperature control service;
- odorisation service;
- co-mingling service;
- pipeline impact agreement service; and
- interconnection service.

66. Descriptions of the R1 Service and non-reference services were provided in clauses 3.2 to 3.6 of the proposed revised access arrangement. Terms and conditions for the proposed R1 Service ("R1 Terms and Conditions") were provided in Appendix 1 of the proposed revised access arrangement.

67. DBP provided the Authority with further information in a confidential supporting submission to justify the inclusion of the R1 Service as the only reference service to be offered under the proposed revised access arrangement.[14]

The market for pipeline services

68. DBP submitted that in considering the relevant market for pipeline services the Authority:

- must not have regard to the terms of pre-existing access contracts between DBP and users, including the services to be provided under those contracts, or to any incremental demand that arises from exercising capacity expansion rights under those contracts;
- should only have regard to the market of prospective users for each pipeline service; and should disregard the market of prospective shippers for all pipeline services on the pipeline aggregated together, and the market of existing shippers under pre-existing contracts;
- should have evidence of contracts for such services being entered into; and
- must have regard to whether there is spare, uncontracted capacity and, if this is not relevant, the likelihood of any future expansions.[15]

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[14] DBP, 14 April 2010, Confidential supporting submission 3: Pipeline Services. A public version of this submission is available at: www.erawa.com.au.

Draft Decision

69. In the draft decision the Authority considered separately the reference services and non-reference services set out in the access arrangement.

70. In assessing DBP's proposal to include the proposed R1 Service as the only reference service the Authority considered the following matters:

- the market of users for pipeline services that are offered by means of the DBNGP;
- whether the proposed R1 Service is a service likely to be sought by a significant part of that market; and
- whether there are other pipeline services that should be included as reference services.

71. 64. Rule 48(1)(b) of the NGR requires that the access arrangement include a description of the pipeline services that the service provider proposes to offer to provide by means of the pipeline. Therefore, the Authority has also given consideration to whether the access arrangement should include a description of any other services that should be included in the access arrangement, in addition to the non-reference services described in the proposed revised access arrangement.

The market for pipeline services

72. In considering the market for pipeline services, the Authority took the view in the draft decision that rule 101 of the NGR is concerned with the pipeline services that are *likely* to be sought by users of the pipeline, rather than what pipeline services the service provider proposes to offer to provide by means of the pipeline. The broad requirement of the national gas objective is served through the provision of services that are likely to be sought by a significant part of the market.

73. The Authority further took the view that pre-existing contracts between DBP and users are an important indicator of services that are likely to be sought by a significant part of the market. Pre-existing contracts and the services provided under these contracts, whether reference services or other pipeline services, including those contracted for under a contract that is not subject to the regulatory regime, are indicative of the nature of services sought by pipeline users.

74. In addition to the existing demand for pipeline services, the Authority took the view that new services may be sought by a significant part of the market. This would be due to either new users or existing users seeking pipeline services with different characteristics, or as a result of changes in patterns of energy use and management of an energy supply chain**.**

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[15] DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (section 4). A public version of this submission is available at www.erawa.com.au.

75. As such, the Authority considered that rule 101(2) requires consideration of the nature of services sought by users and prospective users, unconstrained by the availability of pipeline capacity to expand the provision of services during the course of the relevant access arrangement period. This is consistent with the approach adopted by the Authority in its determination for the approval of the current access arrangement under the Gas Code.[16]

Should the proposed R1 Service be included in the access arrangement as a reference service?

76. DBP submitted that the proposed R1 Service will be more attractive to shippers and encourage shippers to access capacity on the DBNGP as a result of the changes that have been made to the existing T1 Service.[17] The proposed R1 Service is different to the T1 Service in that:

- it does not include additional behavioural features, such as extended peaking and imbalance rights;
- the method for defining the availability of the service is different; and
- the R1 Service will be curtailed as if it were a firm service (for the purposes of applying the curtailment plan in the standard shipper contract for the T1 Service).

77. DBP stated that the terms and conditions for the R1 Service, while based on the terms and conditions of the T1 Service, have been modified to deal with such things as:

- the reduction in behavioural limits that will enable more capacity to be made available to the R1 Service than the T1 Service; and
- the practical experience of operating under the T1 Service terms and conditions.

78. Several users of the DBNGP addressed the proposed R1 Service in submissions to the Authority. These users consistently submitted that the proposed R1 service is of an inferior quality to the existing T1 Service and that they would not be seeking to use the R1 Service. [18]

79. Taking into account these submissions, and the absence of any submissions that indicate demand for the proposed R1 Service, the Authority took the view in the draft decision that a service in the nature of the R1 Service is unlikely to be sought by a significant part of the market and that the proposed R1 Service does not meet the requirements for a reference service under rule 101 of the NGR.

80. The Authority required the following amendment to the proposed revised access arrangement:

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16 Economic Regulation Authority, 2005, Final Decision on the Proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (reprinted 11 November 2005), paragraph 51.

17 DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (section 4.8). A public version of this submission is available at www.erawa.com.au.

18 Alinta Pty Ltd, submission of 9 July 2010; BP Australia Pty Ltd, submission of 6 July 2010; BHP Billiton, submission of 9 July 2010; Rio Tinto, submission of 20 July 2010; Synergy, submission of 9 July 2010; Verve Energy, submission of 9 July 2010, ERM Power Pty Ltd, submission of 7 July 2010; and NewGen Power Kwinana Pty Ltd, submission of 9 July 2010.

Draft decision amendment 2:

The proposed revised access arrangement should be amended to remove the proposed R1 Service as a reference service.

Should other pipeline services be included in the access arrangement as reference services?

Existing reference services

81. The current access arrangement provides for the following reference services:

- a full haul T1 service (**T1 Service**);
- a part haul T1 service (**P1 Service**); and
- a back haul T1 service (**B1 Service**).

82. DBP submitted that these pipeline services do not meet the requirements to be reference services in that each service:

- is not likely to be sought during the access arrangement period; or
- is not likely to be sought by a significant part of the market, to the extent that there is likelihood for the pipeline service not to be sought during the access arrangement period.[19]

83. Specifically, DBP submitted that it does not expect any additional amount of the T1 Service to be sought by users during the 2011 to 2015 access arrangement period over and above the amount of the T1 Service obtained under current contracts. DBP similarly submitted that the P1 Service and B1 Service are not likely to be sought by users during the 2011 to 2015 access arrangement period over and above the amount of the P1 and B1 Services obtained under current contracts.

84. In its draft decision, the Authority took the view that, under rule 101(2) of the NGR, the question of whether a pipeline service is likely to be sought by a significant part of the market requires consideration of the nature of services sought by users and prospective users, unconstrained by the availability of pipeline capacity to expand the provision of services during the course of the relevant access arrangement period. That is, the Authority took the view that the question of whether a pipeline service is likely to be sought by a significant part of the market requires consideration of the totality of demand for services and should not be limited to consideration of only incremental demand over and above the quantum of services already contracted for under pre-existing contracts.

85. On this basis, the Authority rejected DBP's submission that the T1, P1 and B1 Services are not likely to be sought during the 2011 to 2015 access arrangement period. The Authority instead considered whether the existing demand for the T1, P1 and B1 Services is likely to be maintained during the 2011 to 2015 access arrangement period.

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[19] DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (section 5). A public version of this submission is available at www.erawa.com.au.

86. The Authority considered that there is evidence that demand for the T1, P1 and B1 Services will be maintained during the 2011 to 2015 access arrangement period. In particular:

- historic and forecast volume data for each of the reference services submitted by DBP indicate that existing reference services are likely to continue to be sought by a significant part of the market; and
- submissions from interested parties indicated that they will continue to seek the existing reference services; and
- in relation to P1 and B1 Services, resource projects north of, or off, the Goldfields Gas Pipeline as well as the Mondarra Gas Storage Facility increases the likelihood of demand for these services.

87. DBP also submitted that inclusion of the T1 Service as a reference service under the access arrangement will create difficulties for DBP under the terms of the standard shipper contract that DBP holds with existing users of the DBNGP.[20]

88. In the draft decision, the Authority did not accept that any of the contractual difficulties referred to by DBP constitutes a basis for not including the T1 Service as a reference service in the access arrangement. The contractual difficulties that DBP may encounter do not constitute a deprivation of a contractual right for which DBP may receive protection under section 321 of the NGL(WA). Rather, the contracting difficulties referred to by DBP represent an outworking of contractual terms that contemplate the potential consequences and allocation of risk in the event of the T1 Service being included in the access arrangement as a reference service.

89. Taking into account the above matters, the Authority determined that the T1, P1 and B1 Services are likely to be sought by a significant part of the market and should be maintained in the access arrangement as reference services.

90. The Authority required the following amendment to the proposed revised access arrangement:

> Draft decision amendment 3:
>
> The proposed revised access arrangement should be amended to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement.

Other services currently provided

91. In the draft decision the Authority considered whether the access arrangement should include, as reference services, any services other than the T1, P1 and B1 Services.

[20] DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (sections 5.10 and 5.11). A public version of this submission is available at www.erawa.com.au.

92. The DBNGP is used to provide a range of other pipeline services in addition to the T1, P1 or B1 Services or services of a similar nature. This includes a range of non-reference services described in the current 2005 to 2010 access arrangement as well as some other services that have been contracted with users under the standard shipper contract.

93. The current access arrangement describes the following non-reference services:

- spot capacity service;
- park and loan service;
- seasonal service;
- peaking service;
- metering information service;
- pressure and temperature control service;
- odorisation service; and
- comingling service.

94. The standard shipper contract includes an "other reserved service", defined as:

> [A] Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, a Firm Service and Capacity under a Spot Transaction).

95. The other reserved services include services designated as the:

- "Tk Service", being a peaking service specific to Verve Energy;[21]
- "Tp Service", being a service that offers shippers who have contracted additional capacity as part of the Stage 5A Expansion project under the standard shipper contract access to interruptible capacity at times when the actual heating value of gas distribution in the pipeline is higher than the minimum specification, giving rise to additional pipeline capacity for the provision of services;[22]
- "Tx Service", being an interruptible service specific to Western Power;[23]
- "Ty Service", being a firm service specific to Western Power;[24] and
- "Tw Service", being an interruptible service specific to Alinta Sales.[25]

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21 DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (section 6). A public version of this submission is available at www.erawa.com.au.

22 DUET (p. 50) http://www.duet.net.au/web/au/duet/investor-centre/investor-guides.

23 DBNGP Standard Shipper Contract, clause 1. "Tx Service" has the meaning given in the Diversified Utility and Energy Trust (DUET) Product Disclosure Statement for the issue of 164.6 million New Stapled Units dated November 2004. The DUET Product Disclosure Statement (19 November 2004, p. 154) indicates that "Tx Service" is a capacity service in the Western Power Standard Shipper Contract.

24 DUET Product Disclosure Statement, 19 November 2004, p. 156. "Ty Service" is a capacity service in the Western Power Standard Shipper Contract.

96. The level of use of these services during the current access arrangement period is indicated in Table 1 below.

Table 1 Average contracted capacity and throughput over the 2006 to 2010 access arrangement period[26]

Pipeline Service	Average contracted capacity (TJ/d)	Average throughput (TJ/d)
Tk, Tp, Tw, Tx, Ty Services	43.747	20.313
Spot, Spot take or pay	0.210	1.655
Park and Loan and Storage and Delivery	-	0.340
Interruptible, Interruptible Reservation	5.768	-
Commingling, Commingling Reservation	0.167	-
Other, Other Reservation (Inlet Sales fees, out of spec, comp fuel, commissioning)	1.969	13.115
Other (seasonal service, peaking service, metering service, pressure and temperature control service, odorisation service)	Not provided	Not provided

97. DBP submitted that the non-reference services specified under the current access arrangement are not sought by a significant part of the market due to low throughput, few shippers and short contract periods.[27]

98. DBP further submitted that:

- the Tx Service is a service that is no longer available to shippers as there is no capacity left on the DBNGP to provide such a service and it is also not a service requested by any shipper or prospective shipper; and
- the Tp Service is, in fact, not generally available to shippers and was only extended to shippers participating in the Stage 5A project.[28]

99. The Authority did not discover any quantitative information on the use of any of these services that contradicts DBP's submission. The Authority also observed that submissions by interested parties do not address the matter of whether any of these services should be reference services.

100. The Authority therefore determined in the draft decision that the volumes of the services (referred to in paragraphs 94 to 96) sought during the current (2005 to 2010) access arrangement period, and likely to be sought during the next (2011 to 2015) access arrangement period, do not constitute a significant part of the market.

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25 DUET Product Disclosure Statement, 19 November 2004, p. 156. "Tw Service" is a capacity service in the Alinta Sales Standard Shipper Contract.

26 Aggregated information from DBP, 7 January 2011, Submission 35.

27 DBP, 14 April 2010, Confidential supporting submission 3: Pipeline services (section 6). A public version of this submission is available at www.erawa.com.au.

28 DBP, 26 May 2010, Submission 13: Response to ERA Issues Paper.

101. The Authority accordingly determined in the draft decision that there is no basis for any of the existing non-reference services described under the current access arrangement or otherwise currently provided by means of the DBNGP to be included in the access arrangement as reference services.

New pipeline services likely to be sought by a significant part of the market

102. In the draft decision, the Authority gave consideration to whether any additional services not previously offered as reference services or non-reference services should be included in the access arrangement as reference services.

103. The Authority considered submissions from interested parties and DBP and determined that there is a reasonable prospect of increased use of the Mondarra Gas Storage Facility during the course of the 2011 to 2015 access arrangement period, and of this facility being used by a significant part of the market. The Authority also observed that the Western Australian Government is contemplating greater use of gas storage as a means of achieving greater security of gas supplies.[29]

104. Having regard to the prospect of increased use of the Mondarra Gas Storage Facility, the Authority considered that reference services under the access arrangement should support use of the facility. The Authority took the view that the P1 Service and the B1 Service under the current (2005 to 2010) access arrangement; and required by the Authority to be included in the access arrangement for the 2011 to 2015 access arrangement period, support the use of the Mondarra Gas Storage Facility. The P1 Service accommodates part haul transport of gas at a per km tariff rate from the Carnarvon Basin to an outlet point at Mondarra, and from an inlet point at Mondarra to an outlet point south of Mondarra. The B1 Service accommodates the back haul "transport" of gas at a per km tariff rate from an inlet point at Mondarra to an outlet point north of Mondarra. There did not appear to the Authority to be anything in the existing terms and conditions for P1 and B1 Services that prevents a single point of connection with the DBNGP (to take gas to or from the MGSF) being both an inlet and outlet point.

105. Taking these matters into consideration, the Authority took the view in the draft decision that the reference services under the current access arrangement, and those required by the Authority for the proposed revised access arrangement, support the use of the Mondarra Gas Storage Facility[30]. While there may be particular requirements in relation to services for transport of gas to, or from, the Mondarra Gas Storage Facility, such as matters of gas pressure and temperature, the Authority considers that these would be idiosyncratic to the use of the Mondarra Gas Storage Facility and would be unlikely to be sought by a significant part of the market. Accordingly, the Authority determined in the draft decision that no additional pipeline services should be included in the access arrangement as reference services.

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29 Government of Western Australia Office of Energy, September 2009, Gas Supply and Emergency Management Committee Report to Government. A recommendation of this report is that the Government "require gas retailers to have adequate back-up supply arrangements to ensure continuity of supply for small use customers on standard contracts, with standard tariffs, (such as residential and small business customers) and offer such back-up supply arrangements as an opt-in service for other gas distribution system customers". The report explicitly recognises the potential to use the Mondarra gas storage facility as a means of meeting a storage requirement.

30 ERA Draft Decision, reprinted 5 May 2011, paragraph 92.

Pipeline services other than reference services to be included in the access arrangement

106. An access arrangement is required to include a description of pipeline services (rule 48(1)(b) of the NGR). This includes both reference services and other (non-reference) services.

107. DBP included in the proposed revised access arrangement a range of non-reference (pipeline) services, which are of the same nature as pipeline services offered under the current access arrangement (refer to paragraph 93 of this final decision).

108. The Authority observed that a range of pipeline services appear to be offered or provided by means of the DBNGP that are not described in the proposed revised access arrangement. The services that the Authority is aware of are the "Tx Service", "Ty Service", and "Tp Service".

109. In relation to these services, DBP advised that:

- the Tx Service is a service that is no longer available to shippers as there is no capacity left on the DBNGP to provide such a service and it is also not a service requested by any shipper or prospective shipper; and
- the Tp Service is not generally available to shippers and was only extended to shippers participating in the Stage 5A project.[31]

110. The Authority took the view that whether or not there is additional capacity available for a particular pipeline service is not a relevant consideration under rule 48(1)(b) of the NGR. Rather, the relevant issue is whether or not the service provider proposes to offer to provide the pipeline service.

111. In the draft decision the Authority observed that the Tp, Tx and Ty Services continue to be provided under long term contracts and continue to be offered or made available to users by DBP. As such, the Authority took the view that DBP is likely to continue to offer these services to parties that have such contracts and, hence, these services should be described in the access arrangement in accordance with rule 48(1)(b).

112. The Authority required the following amendment to the proposed revised access arrangement:

> Draft decision amendment 4:
>
> The proposed revised access arrangement should be amended to include descriptions of the Tp, Tx and Ty Services and any other pipeline services that DBP is making available or will offer during the relevant access arrangement period.

[31] DBP, 26 May 2010, Submission 13: Response to ERA Issues Paper.

Revised Proposed Access Arrangement

113. DBP has not made revisions to the access arrangement proposal in accordance with the requirements of draft decision amendments 2, 3 and 4. Rather, DBP maintains the proposal to offer the R1 Service as the sole reference service, and non-reference services as per the original proposed revised access arrangement. The one exception to this is that, in partial response to draft decision amendment 4, DBP has revised clause 3.6(a) of the proposed access arrangement to indicate that the spot capacity service may be available at varying levels of reliability, consistent with the Ty service.

114. In support of its position in the revised access arrangement proposal, DBP makes several contentions on the approach taken by the Authority in its assessment of reference services and non-reference services. [32]

115. First, DBP reiterates its position set out in a submission with the original access arrangement proposal that the relevant "market" to be considered in determining what pipeline services should be reference services is a market only for the services that may be procured during the access arrangement period. Whether a service should be a reference service under the access arrangement should be assessed on whether there is a likelihood of the service being sought by a significant part of this market, not solely by reference to the existing contracts in place for pipeline services.

116. Secondly, DBP contends that for a service to be sought, it must also be able to be provided by the service provider and, therefore, the only services that may be considered to be sought during the 2011 to 2015 access arrangement period are those that are likely to be requested by users and that may be provided by DBP. DBP submits that pre-existing contracts are only a relevant consideration in assessing the market for pipeline services and considering which pipeline services should be reference services if there is a likelihood that any service provided under these pre-existing contracts is likely to be sought (whether it be by a user or a prospective user) for any spare capacity or additional capacity to be developed during the access arrangement period where this capacity will form part of the covered pipeline.

117. These first two contentions were the basis of DBP's arguments in support of the original access arrangement proposal that existing contracts for the T1 Service are an irrelevant consideration in assessing the reference services under the proposed revised access arrangement as there is not forecast to be any capacity to provide the T1 Service during the 2011 to 2015 access arrangement period. [33]

118. Thirdly, DBP submits that it is wrong for the Authority to have disregarded in its assessment the pipeline service that DBP proposed to offer. DBP submits that disregarding the service provider's proposed reference service limits the ability of the service provider to introduce services that enable the service provider to grow its business and contribute to the efficient operation and use of natural gas services.

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32 DBP, 17 May 2011, Submission 50.

33 DBP, 14 April 2010, Submission 3.

119. Fourthly, DBP submits that consideration of reference services under rule 101 of the NGR is "better" made according to a broad interpretation of a pipeline service, which is that a service should only be considered in its general character, as opposed to precise terms and conditions. In this context, existing contracts for the T1 Service under the standard shipper contract indicate only a demand for a form of firm service.

120. In relation to the requirements of the Authority under draft decision amendment 2 to remove the R1 Service as a reference service, DBP submits that:

- the R1 Service is a firm, forward haul service that is similar to the T1 Service under the standard shipper contract and to the T1 Service under the current access arrangement;
- the R1 Service was an attempt to create a service that removed the various features of the T1 Service that in DBP's view were not likely to be sought by prospective shippers, and that leads to more efficient use of pipeline capacity; and
- there is nothing to suggest that the R1 Service would not likely be sought by a significant part of the market during the 2011 to 2015 access arrangement period.

121. DBP also questions the possible incentives of existing users of the DBNGP that oppose the R1 Service, indicating that many shippers that have a dominant position in downstream markets have incentives to defer the introduction of alternative reference services that either:

- facilitate the entry into those markets of competitors who may take away market share; or
- remove certain features of an existing pipeline service that are not features that would be desired by all participants in the market.

122. In relation to the Authority's requirement under draft decision amendment 3 to include the T1 Service in the access arrangement as a reference service, DBP:

- reiterates its submission made with the original access arrangement proposal that there was no demand for the existing T1 Service and there is not expected to be any demand for this service during the 2011 to 2015 access arrangement period; and
- the risks of providing the T1 Service are not reflected in the rate of return allowed by the Authority in the draft decision, with the relevant risks being the operational risks faced by DBP as a result of the imbalance, peaking and aggregation rights of users of the T1 Service.

123. DBP has not made any further submissions specifically addressing the requirement of draft decision amendment 3 to include the P1 Service and B1 Service in the access arrangement as reference services.

124. In relation to the requirements of draft decision amendment 4 for the access arrangement to include descriptions of the Tp, Tx and Ty Services and any other pipeline services that DBP is making available or will offer during the relevant access arrangement period, DBP has submitted that this requirement under the draft decision is an incorrect construction of the law.

125. DBP submits that:[34]

> Rule 48(1) of the NGR only requires DBP to include the following in the AA proposal in respect of pipeline services:
>
> (a) to specify each reference service; and
>
> (b) to include a description of pipeline services it proposes to offer.
>
> Accordingly, Rule 48(1) does not require DBP to include a description of a service that DBP has previously offered but does not intend to offer in the future (i.e. the service is only available only under existing access contracts). DBP does not offer to provide a pipeline service to an existing shipper under an existing access contract – rather, DBP provides the pipeline service which was offered to the existing shipper at the time that DBP made the existing contract with it. There is no "continuing offer" to existing contracted shippers.
>
> To require an AA proposal to include a description of such pipeline services which DBP will not offer during the AA period is an incorrect construction of the law and would therefore be *ultra vires*.

126. In relation to the specific requirement under the draft decision for the access arrangement to include the Tp, Tx and Ty Services, DBP makes the following submission.

> Tx service - A description of the Tx service has not been included in the Amended AA Proposal because:
>
> (a) DBP does not presently have a contractual obligation to provide it to any shipper;
>
> (b) DBP does not intend to make it available during the access arrangement period; and
>
> (c) there is no uncontracted capacity expected to be available on the pipeline during the period of the access arrangement that could be offered to a prospective user to access the Tx service.
>
> As to the Tp service – A description of the Tp service has not been included in the Amended AA Proposal because:
>
> (a) although DBP presently has a contractual obligation to provide it to shippers but this service was only offered to shippers who accessed capacity as part of the Stage 5A expansion;
>
> (b) DBP does not intend to offer it available during the access arrangement period to any prospective shippers; and
>
> (c) there is no uncontracted capacity expected to be available on the pipeline during the period of the access arrangement that could be offered to a prospective user to access the Tp service.
>
> Ty Service - This is a type of interruptible spot capacity service. DBP has therefore amended clause 3.6(a) of the Amended AA Proposal.

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[34] DBP, 18 April 2011, Submission 49.

Submissions

127. Submissions from three users of the DBNGP supported the Authority's determination under the draft decision to require removal of the proposed R1 Service as a reference service from the proposed access arrangement and to require inclusion of the T1 Service, P1 Service and B1 Service as reference services.[35] The Authority did not receive any submissions opposing these requirements from third parties.

128. On the matter of a part-haul service and a back haul service as reference services, APA Group has submitted that the P1 Service and B1 Service, to the extent that they are the same as the corresponding reference services under the current access arrangement, do not facilitate access to, and efficient operation of, the Mondarra Gas Storage Facility. This is contrary to the Authority's determination in the draft decision that the P1 Service and B1 Service would adequately cater for gas transport into and out of the facility. The specific details of APA Group's submission are set out and addressed below under "Considerations of the Authority".

129. On the matter of additional non-reference services to be described in the access arrangement, Alinta and Verve Energy indicate support for draft decision amendment 4 and inclusion of the Tx, Tp and Ty services as non-reference services under the access arrangement.[36] Both parties, however, indicate that the Tp service should be available only to users that acquired additional contracted capacity as part of the Stage 5A expansion of the DBNGP. In addition, Alinta and Verve Energy submit that a description of the Tp service would clarify the curtailment plan.

Considerations of the Authority

Reference Services

130. DBP has opposed the requirements of the draft decision to remove the R1 Service as a reference service from the proposed access arrangement and to include the T1 Service, P1 Service and B1 Service as reference services in forms substantially the same as under the current access arrangement. This is a contrary position to users of the DBNGP that support maintaining the T1, P1 and B1 Services as reference services.

131. The Authority disagrees with contentions made by DBP in support of its proposal for the R1 Service as a reference service and its opposition to the requirements of the draft decision in respect of reference services.

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35 Alinta Pty Ltd, submission of 20 May 2011; Verve Energy, submission of 20 May 2011; BHP Billiton, submission of 20 May 2011.

36 Alinta Pty Limited, submission of 20 May 2011. Verve Energy, submission of 20 May 2011.

132. The Authority disagrees with DBP's contention that a consideration of reference services should only occur according to the "general character" of the service and without regard to the terms and conditions for the service. The character of the service is in large part determined by the principal terms on which the service is provided. In the case of the R1 Service, this service is characterised by features established in the terms and conditions, including priority of curtailment relative to other services; provisions for overrun, imbalances and peaking; and provisions for aggregation across inlet and outlet points. Users regard the R1 service as different from the T1 Service as a result of these terms and conditions.

133. On the matter of the relevant market for services that forms the basis of consideration of which services should be reference services, the Authority maintains the view expressed in the draft decision that the relevant market is the total market for pipeline services provided by the DBNGP, which will include any expected increase in provision of services during the access arrangement period for which the approved access arrangement will apply.

134. On the matter of the relevance of existing contracts for services, the Authority maintains the view that existing contracts comprise one source of evidence of the nature of services demanded by users, which indicates a demand for services in the nature of the T1, P1 and B1 services. A second source of evidence is submissions from users of the DBNGP that clearly indicate a demand for the T1, P1 and B1 Services included in the current access arrangement, and indicate that there is no demand for a service in the nature of the proposed R1 Service. Together, these two sources of evidence are the only substantive evidence available to the Authority on the nature of services sought by users. In contrast to this evidence, DBP has not provided any supporting evidence of demand for the proposed R1 Service.

135. The Authority does not agree with DBP's argument (paragraph 122) that providing the T1 Service presents greater risks to DBP and that this greater risk should be reflected in the rate of return. DBP has not provided any information to substantiate this claim that the differences in the terms and conditions between the existing T1 Service and the proposed R1 Service affects DBP's exposure to the types of risks relevant to the determination of the rate of return.

136. In coming to a view on the nature of the reference services that should be included in the access arrangement, the Authority has not disregarded DBP's proposal of the R1 Service as the sole reference service. Rather, the Authority has considered this proposal and come to the view that there is no evidence to indicate that this service is sought by a significant part of the market.

137. On the basis of the above considerations, the Authority maintains its determination that the proposed R1 Service does not satisfy the requirements of rule 101 of the NGR for a reference service, and that these requirements are best satisfied by the T1 Service, P1 Service and B1 Service as described in the current access arrangement. The Authority accordingly maintains the requirements that the proposed revised access arrangement be amended to remove the proposed R1 Service as a reference service and that the proposed revised access arrangement be amended to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement.

Required Amendment 2

The revised access arrangement proposal should be amended to remove the proposed R1 Service as a reference service.

Required Amendment 3

The revised access arrangement proposal should be amended to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement.

Reference services supporting use of the Mondarra Gas Storage Facility

138. In the draft decision the Authority determined that reference services under the access arrangement should support use of the Mondarra Gas Storage Facility. The Authority took the view that the P1 Service and the B1 Service under the current access arrangement that were required by the Authority to be included in the access arrangement for the 2011 to 2015 access arrangement period, support the use of the Mondarra Gas Storage Facility.

139. APA Group has submitted that the definitions of the services under the current access arrangement are open to an interpretation that would result in the P1 Service not supporting use of the Mondarra Gas Storage Facility.[37]

140. The scope of the P1 and B1 Services are derived from the terms “forward haul”, “full haul”, “part haul” and “back haul”, which are defined terms under the current access arrangement:

> Forward Haul means a Gas transportation service on the DBNGP where the inlet point is upstream of the outlet point.
>
> Full Haul means a Gas transportation service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point is downstream of Compressor Station 9 on the DBNGP.
>
> Part Haul means a Forward Haul Gas transportation service on the DBNGP which is not Full Haul.
>
> Back Haul means a Gas transportation service in the DBNGP where the Receipt Point is downstream of the Delivery Point

[37] APA Group, submission of 20 May 2011.

141. APA Group submits that, under these definitions, the P1 Service is potentially limited to transport of gas between inlet points downstream of MLV31 and upstream of CS9. On that interpretation, the P1 service could not be used for either transport of gas from upstream of MLV31 to the Mondarra Gas Storage Facility, or transport of gas from the Mondarra Gas Storage Facility to customers in the South West.

142. APA Group also refers to the terms and conditions of the current access arrangement for the P1 and B1 Services relating to the relocation of capacity that could cause restrictive interpretations to be applied to the P1 and B1 Services. APA Group points to clause 14.7(b) of the current terms and conditions for the P1 Service which states:

> 14.7 Charges for relocation
>
> …
>
> (b) Subject to subsection (c), if a relocation of Capacity under this clause results in Gas being transported to an Outlet Point down stream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to:
>
> (i) be treated as if it were on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
>
> (ii) be treated under this Contract as though it was Full Haul Capacity.

143. APA Group submits that this clause indicates that the P1 Service under the current access arrangement does not support outlet points downstream of CS9.

144. Similarly, APA Group points to the same clause in the current terms and conditions for the B1 Service and submits that this clause may be interpreted to mean that a back haul service with outlet point(s) and hence inlet point(s) downstream of CS9 is to be treated as full haul transport.

145. The Authority has considered APA Group's submission and is of the view that, while it does not necessarily agree with the detailed interpretation of the terms and clauses by the APA Group, the definition of the term "part haul service" in the revised proposed access arrangement should be revised to achieve clarity in the nature of the P1 service, consistent with the intent for this service in the current access arrangement and for inclusion of this service in the access arrangement for the 2011 to 2015 access arrangement period.

Required Amendment 4

The definition of "part haul service" in the revised proposed access arrangement and the terms and conditions for reference services should be amended to: *Part Haul Service means a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.*

The specification of the P1 Service as a reference service in the access arrangement should be consistent with this definition of part haul service.

Non-Reference Services

146. In the draft decision the Authority determined that the Tp, Tx and Ty Services should be described in the access arrangement as non-reference services, together with any other pipeline services that DBP is making available or will offer during the relevant access arrangement period.

147. DBP has objected to including the Tp and Tx Services in the access arrangement for reasons that:

- for the Tx Service, DBP does not presently have a contractual obligation to provide it to any shipper, DBP does not intend to make it available during the access arrangement period, and there is no uncontracted capacity expected to be available on the pipeline during the period of the access arrangement that could be offered to a prospective user to access the Tx service; and
- for the Tp Service, DBP presently has a contractual obligation to provide it to shippers but this service was only offered to shippers who accessed capacity as part of the Stage 5A expansion, DBP does not intend to offer it during the access arrangement period to any prospective shippers, and there is no uncontracted capacity expected to be available on the pipeline during the 2011 to 2015 access arrangement period.

148. For the Ty Service, DBP indicates that it has responded to the requirement to include this service in the access arrangement by making an amendment to clause 3.6(a) of the revised proposed access arrangement to indicate that the spot capacity service described as a non-reference service is a pipeline service available on an interruptible basis and at varying levels of interruptibility.

149. Alinta and Verve Energy indicate support for inclusion of the Tx, Tp and Ty services as non-reference services under the access arrangement, but indicate that the Tp Service should be available only to users that acquired additional contracted capacity as part of the Stage 5A expansion of the DBNGP.[38]

150. The Authority has reconsidered the requirement under the draft decision for amendment of the proposed access arrangement to include descriptions of these services.

151. The Authority considers that rule 48(1)(b), requiring that "a full access arrangement describe the pipeline services the service provider proposes to offer to provide by means of the pipeline", should be interpreted such that the words "offer to provide" refer to an offer that is capable of acceptance.

152. The Authority has applied this interpretation when considering DBP's submissions regarding the Tp and Tx Services.

153. In relation to the Tx Service, DBP submits that the service does not involve an existing contractual obligation, and that it does not intend to offer to provide this service during the access arrangement period. On the basis of the presently available information (which indicates that there is unlikely to be a relevant offer capable of acceptance), the Authority accepts DBP's submission.

154. In relation to the Tp Service, DBP submits that, while it has an existing contractual obligation, there is no uncontracted capacity expected to be available on the pipeline during the access arrangement period. In other words, while there will be a continuing offer to provide this service, it will not be one that is capable of acceptance.

155. DBP has, in effect, incorporated the Ty Service into the access arrangement by amending the description of a non-reference service so as to include that service. The Authority accepts DBP's amendment in relation to this service.

156. Accordingly, the Authority accepts DBP's submission that there are no grounds for requiring the Tx, Tp and Ty Services to be described in the access arrangement as non-reference services. The Authority agrees that the inclusion in the access arrangement of these services may clarify the operation of terms such as the curtailment plan, but considers that this is not a sufficient reason to include these services in the access arrangement as services that DBP proposes to offer to provide by means of the pipeline.

Total Revenue

Method of Determination

157. Rule 76 of the NGR provides that total revenue is to be determined for each regulatory year of the access arrangement period using a building block approach in which the building blocks are:

[38] Alinta Pty Limited, submission of 20 May 2011. Verve Energy, submission of 20 May 2011.

- a return on the projected capital base for the year; and
- depreciation on the projected capital base for the year; and
- if applicable – the estimated cost of corporate income tax for the year; and
- increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in efficiency; and
- a forecast of operating expenditure for the year.

158. The parameters relevant to the building blocks that make up total revenue are addressed in the following sections of this final decision.

159. A general matter relating to the Authority's assessment of total revenue is that the Authority has had to rely on statements by DBP of actual capital and operating expenditures in the 2005 to 2010 access arrangement period. An outcome of the Draft Decision was that DBP provided the Authority with verification of the stated expenditures using a verification method determined in consultation with the Authority. Whilst the Authority has concluded that the verification of stated capital and operating expenditure provided by DBP was adequate in the circumstances to address the Authority's requirements for this final decision, to facilitate a more focussed and efficient response in future reviews, the Authority will consider nominating precisely the information it requires for verification of capital and operating expenditure utilising its powers under Division 4 of Part 1 of Chapter 2 of the NGL(WA).

Basis for Financial Information

Regulatory Requirements

160. Rule 73 of the NGR contains specific requirements for the provision by the service provider of financial information.

> 73 Basis on which financial information is to be provided.
>
> (1) Financial information must be provided on:
>
> (a) a nominal basis; or
>
> (b) a real basis; or
>
> (c) some other recognised basis for dealing with the effects of inflation.
>
> (2) The basis on which financial information is provided must be stated in the access arrangement information.
>
> (3) All financial information must be provided, and all calculations made, consistently on the same basis.

Original Proposed Access Arrangement

161. Section 2 of the revised access arrangement information sets out the basis on which financial information is provided.

- Financial information is provided in real terms with all values expressed in dollar values of December 2009.

- Real values of financial information have been calculated by applying escalation factors derived from December quarter values of the Consumer Price Index (all groups, Perth).
- Financial data is provided on a calendar year basis.

Draft Decision

162. The Authority indicated in the draft decision that it was satisfied that provision of financial information expressed in real values is consistent with the requirements of rule 73. However, the Authority was not satisfied that DBP has adopted a consistent treatment of inflation in its financial calculations. The use of escalation factors based on a measure of inflation for Perth (the all groups, Perth CPI) is inconsistent with the treatment of inflation in the rate of return applied in the calculation of Total Revenue. The rate of return is estimated using a forecast of inflation for the Australian economy, consistent with an implicit assumption made in determination of the rate of return of the DBNGP that the DBNGP is being financed by Australian investors.

163. In the draft decision, the Authority calculated total revenue in real terms with real values of financial information calculated by applying escalation factors derived from December quarter values of the Consumer Price Index (all groups, eight capital cities).

164. Given the efflux of time between the submission of the proposed access arrangement and the draft decision, the Authority also undertook financial calculations using values of financial information expressed in dollar values of 31 December 2010.

Revised Proposed Access Arrangement

165. In revisions to the access arrangement proposal, DBP has undertaken calculations of total revenue and reference tariffs in dollar values of 31 December 2010. However, in deriving real values of financial information DBP has maintained use of escalation factors based on a measure of inflation for Perth (the all groups, Perth CPI).

166. In support of this position, DBP makes the following contentions in a submission supporting the revised access arrangement proposal.[39]

167. First, DBP contends that there is no issue of inconsistency when financial calculations are being made with a Perth measure of inflation used in escalation factors for the roll forward of the capital base and a forecast of inflation being applied in determining the rate of return, as the former is a measure of actual inflation while the latter is an inflation expectation.

[39] DBP, 18 April 2011, Submission 49.

168. Secondly, DBP contends that use in financial calculations of the national CPI measure (all groups, eight capital cities) rather than the Western Australia measure (all groups, Perth) will result in a divergence of reference tariffs from costs as DBP's costs are predominantly incurred as payments to Western Australian suppliers (citing 72 per cent of materials and services expenditures in 2010 as being to suppliers located in Western Australia).

Submissions

169. Alinta and Verve Energy indicate support for the Authority's determination in the draft decision to use the national CPI measure in inflation calculations.[40]

Considerations of the Authority

170. The practical significance of the choice of inflation measure and inflation forecast to be applied in determining reference tariffs is that the choice of measure can significantly alter the value of the reference tariffs and returns to DBP.

171. For the 2005 to 2010 access arrangement period, the inflation rate in Western Australia (as measured by the all groups, Perth CPI) typically exceeded the national inflation rate (as measured by the all groups, eight capital cities CPI) over the 2005 to 2011 access arrangement period. Application of the Perth CPI measure rather than national CPI measure to inflation escalation would result in significant increases in the value of the capital base and to amounts added to total revenue under the incentive mechanism. This would lead to corresponding increases in total revenue and reference tariffs in the 2011 to 2015 access arrangement period.

172. In the financial calculations for determining of reference tariffs for the 2011 to 2015 access arrangement period, historical inflation measures are applied:

- in the roll forward calculation of the capital base so that the capital base at the commencement of the 2011 to 2015 access arrangement period is determined in real dollar values at 31 December 2010; and
- in the determination of amounts to be added to total revenue under the incentive mechanism that applied for the 2005 to 2010 access arrangement, so that the amounts are determined in real dollar values at 31 December 2010.

173. In the financial calculations for determination of reference tariffs for the 2011 to 2015 access arrangement period, forecast inflation rates are applied:

- in determination of the rate of return, to translate a nominal rate of return to a real rate of return; and
- in de-escalating forecasts of capital and operating expenditures from a forecast determined in nominal dollar values (in dollar values of each year of the 2011 to 2015 access arrangement period) to real values of 31 December 2010.

[40] Alinta Pty Ltd, submission of 20 May 2011; Verve Energy, submission of 20 May 2011.

174. Over the course of the 2011 to 2015 access arrangement period, a measure of actual inflation will be used to escalate values of the reference tariffs so that the values of the reference tariffs are maintained constant in real terms.

175. The Authority does not accept DBP's arguments for use of the all groups, Perth CPI rather than all groups, eight capital cities CPI, as a basis for inflation escalation in financial calculations of total revenue and reference tariffs.

176. In the determination and application of reference tariffs, the inflation measure is applied to shelter investors in the DBNGP as far as practicable from the effects of inflation on the real value of their assets (the principle of financial capital maintenance). As the objective is to preserve the value of the assets in the eyes of investors, it follows that the relevant measure of inflation is one that reflects the prices of goods and services that investors could purchase with the distributions from the asset, namely a measure of inflation for final goods and services.

177. The use of a national measure of inflation is consistent with a geographically dispersed ownership of the DBNGP beyond Western Australia. This is consistent with the Authority's determination of the rate of return: many of the inputs into the calculation of the weighted average cost of capital, including in the selection of the risk free rate – the Commonwealth Government bond rate – which is an Australian interest rate and so would be expected to impound an expectation of Australia-wide inflation (rather than the expected inflation for Perth). It follows that the principle of financial capital maintenance is implemented in the calculation of reference tariffs by consistently applying an Australian national measure of inflation, including in:

- escalating the value of the capital base (and values of other parameters carried forward from one access arrangement period to another, such as amounts determined under the incentive mechanism) by a national measure of inflation;
- using a forecast of national inflation in determination of the rate of return; and
- determination of reference tariffs in real dollar values and then applying annual escalation by a national measure of inflation.

178. Whether or not a national measure of inflation reflects the change in costs incurred by DBP is not a relevant consideration in applying the principle of financial capital maintenance. In the determination of reference tariffs, capital and operating expenditures are accounted for by forecasts of costs made in nominal terms that presumably include allowances for expected inflation in costs of specific expenditure line items. DBP ultimately bears the risk that the actual inflation in costs of particular expenditure line items will vary from assumptions made in producing forecasts, although for capital expenditures this risk is small as these expenditures are ultimately accounted for at their actual cost. As discussed above, the objective when indexing the asset base is to protect as far as practicable the financial value of the capital base to investors.

179. The Authority therefore requires that inflation escalation in financial calculations incorporate escalation factors based on actual and forecast inflation as measured by the all groups, eight capital cities CPI be applied in financial calculations.

Required Amendment 5

The revised access arrangement proposal should be amended such that any inflation escalation applied in the calculation and subsequent annual adjustment of reference tariffs is based on actual or forecast values (as appropriate) of the all groups, eight capital cities CPI published by the Australian Bureau of Statistics.

Capital Base

Regulatory Requirements

Opening Capital Base

180. Rule 77(2) of the NGR establishes the approach to determine the opening capital base for an access arrangement period that follows immediately on the conclusion of a preceding access arrangement period.

181. Under Rule 77(2), the opening capital base for the later access arrangement period is to be:

(a) the opening capital base as at the commencement of the earlier access arrangement period (adjusted for any differences between estimated and actual capital expenditure);

plus:

(b) conforming capital expenditure made, or to be made, during the earlier access arrangement period;

plus:

(c) any amounts to be added to the capital base under rule 82 [capital contributions by users], rule 84 [speculative capital expenditure account] or rule 86 [re-use of redundant assets];

less:

(d) depreciation over the earlier access arrangement period (to be calculated in accordance with any relevant provisions of the access arrangement governing the calculation of depreciation for the purpose of establishing the opening capital base); and

(e) redundant assets identified during the course of the earlier access arrangement period; and

(f) the value of pipeline assets disposed of during the earlier access arrangement period.

Projected Capital Base

182. Rule 78 of the NGR establishes the approach to determine the projected capital base for an access arrangement period.

183. Under rule 78, the projected capital base for a particular period is:

(a) the opening capital base;

plus:

(b) forecast conforming capital expenditure for the period;

less:

(c) forecast depreciation for the period; and

(d) the forecast value of pipeline assets to be disposed of in the course of the period.

Conforming Capital Expenditure

184. Conforming capital expenditure is capital expenditure that conforms with criteria under rule 79 of the NGR:

(1) Conforming capital expenditure is capital expenditure that conforms with the following criteria:

(a) the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services;

(b) the capital expenditure must be justifiable having regard to one of the following grounds stated in rule 79(2).

(2) Capital expenditure is justifiable if:

(a) the overall economic value of the expenditure is positive; or

(b) the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital expenditure; or

(c) the capital expenditure is necessary:

(i) to maintain and improve the safety of services; or

(ii) to maintain the integrity of services; or

(iii) to comply with a regulatory obligation or requirement; or

(iv) to maintain the service provider's capacity to meet levels of demand for services existing at the time the capital expenditure is incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity); or

(d) the capital expenditure is an aggregate amount divisible into 2 parts, one referable to incremental services and the other referable to a purpose referred to in paragraph (c), and the former is justifiable under paragraph (b) and the latter under paragraph (c).

(3) In deciding whether the overall economic value of capital expenditure is positive, consideration is to be given only to economic value directly accruing to the service provider, gas producers, users and end users.

(4) In determining the present value of expected incremental revenue:

(a) a tariff will be assumed for incremental services based on (or extrapolated from) prevailing reference tariffs or an estimate of the reference tariffs that would have been set for comparable services if those services had been reference services;

(b) incremental revenue will be taken to be the gross revenue to be derived from the incremental services less incremental operating expenditure for the incremental services; and

(c) a discount rate is to be used equal to the rate of return implicit in the reference tariff.

(5) If capital expenditure made during an access arrangement period conforms, in part, with the criteria laid down in this rule, the capital expenditure is, to that extent, to be regarded as conforming capital expenditure.

(6) The [ERA's] discretion under this rule is limited.

185. Rule 79 is supplemented by clause 7(2) of Schedule 1 to the NGR:

7 Additional criteria related to capital expenditure for WA transmission pipelines

…

(2) In making a relevant decision under rule 79(3) on whether the overall economic value of capital expenditure is positive, the [ERA] must consider not only the economic value directly accruing to the service provider, gas producers, users and end users (as required by rule 79(3)) but also material economic value that is likely to accrue directly to electricity market participants and end users of electricity from additional gas fired generation capacity.

186. Rule 71 of the NGR is relevant to the Authority's consideration of actual and forecast capital expenditure against the requirements of rule 79. It states that:

71 Assessment of compliance

(1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [ERA] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [ERA] considers appropriate.

(2) The [ERA] must, however, consider and give appropriate weight to, submissions and comments received when the question whether a relevant access arrangement proposal should be approved is submitted for public consultation.

Capital Redundancy

187. Rule 77(2) of the NGR provides that the opening capital base for an access arrangement period may exclude redundant assets identified during the course of the earlier access arrangement period. This is subject to the access arrangement including a mechanism under rule 85 to ensure that assets that cease to contribute in any way to the delivery of pipeline services (redundant assets) are removed from the capital base.

188. Rule 85(1) of the NGR provides that a full access arrangement may include a mechanism to ensure that assets that cease to contribute in any way to the delivery of pipeline services are removed from the capital base. Rule 85(2) of the NGR provides that a reduction of the capital base in accordance with such a mechanism may only take effect from the commencement of the first access arrangement period to follow the inclusion of the mechanism in the access arrangement, or the commencement of a later access arrangement period.

189. Rule 85(4) of the NGR provides that before requiring or approving a capital redundancy mechanism, the Authority must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

Capital Contributions

190. Rule 82 of the NGR deals with the addition to the capital base of capital expenditure in respect of which a user has paid a capital contribution to the service provider. Rule 82(3) allows the Authority to approve the rolling forward of capital expenditure, including a capital contribution made by a user or part of such a capital contribution, into the capital base on condition that the access arrangement contain a mechanism to prevent the service provider from benefiting, through increased revenue, from the user's contribution to the capital base.

Original Access Arrangement Proposal

Opening Capital Base for the 2011 to 2015 Access Arrangement Period

191. In the originally submitted access arrangement proposal, DBP proposed an opening capital base for the 2011 to 2015 access arrangement period of $3,441.158 million (dollar values of 31 December 2010).

192. The roll forward calculation for DBP's originally proposed value of the opening capital base for the 2011 to 2015 access arrangement period (indicated as the closing values for 2010) is shown in Table 2.

Table 2 DBP's original proposal for calculation of the opening capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[41]

Year ending 31 December	2005	2006	2007	2008	2009	2010
Capital Base at 1 January	1,943.61	1,892.96	1,902.06	2,265.33	2,843.88	2,811.15
plus						
Conforming Capital	0.803	63.177	420.294	644.910	18.410	690.033
Capital Contributions	2.272	-	0.086	-	21.833	14.677
less						
Depreciation	53.726	54.073	57.119	66.356	72.973	74.705
Capital base at 31	1,892.96	1,902.06	2,265.33	2,843.88	2,811.15	**3,441.15**

Projected Capital Base

193. In the original access arrangement proposal, DBP proposed projected capital base values for the 2011 to 2015 access arrangement period with a decrease in the capital base over the period from an opening capital base of $3,441.158 million to a closing capital base of $3,098.810 million (dollar values of 31 December 2010) (Table 3). The projected decrease in the value of the capital base over the 2011 to 2015 access arrangement period is a result of a forecast of only limited capital expenditures that are less than amounts of depreciation.

Table 3 DBP's original proposal for the projected capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[42]

Year	2011	2012	2013	2014	2015
Capital Base at 1 January	3,441.158	3,418.824	3,343.434	3,263.704	3,181.309
plus					
Forecast Conforming Capital Expenditure	71.972	18.450	15.804	15.034	15.331
Forecast Capital Contributions	0.235	2.726	1.479	-	-
less					
Forecast Asset Disposals	-	-	-	-	-
Forecast Depreciation	94.540	96.566	97.012	97.428	97.831
Capital Base at 31 December	**3,418.824**	**3,343.434**	**3,263.704**	**3,181.309**	**3,098.810**

41 DBNGP revised access arrangement information and tariff model of 12 April 2010. Dollar values of 31 December 2010 have been derived from values presented by DBP (in dollar values of 31 December 2009) with escalation for inflation according to changes in the "all groups, eight capital cities" CPI.

42 DBP, 12 April 2010, revised access arrangement information and tariff model.

Draft Decision

194. In the draft decision the Authority determined different values of the capital base than proposed by DBP reflecting:

- corrections to the calculation methods applied by DBP in the roll-forward calculation of capital base values;
- amendments to values of conforming capital expenditure in the 2005 to 2010 access arrangement period that may be added to the capital base;
- amendments to values of forecast conforming capital expenditure in the 2011 to 2015 access arrangement period that may be taken into account in determining the projected capital base.

195. In the draft decision the Authority:

- revised the value of the opening capital base to $3,413.839 million compared with $3,441.158 million proposed by DBP (dollar values of 31 December 2010); and
- revised the projected capital base so that the closing capital base for the 2011 to 2015 access arrangement period is $3,069.409 million, compared with $3,098.810 million proposed by DBP (dollar values of 31 December 2010).

Revised Access Arrangement Proposal

196. In the revised access arrangement proposal DBP has substantially revised the determination of the capital base from its original proposal, but other than in accordance with the draft decision.

197. DBPs revised proposal for the roll-forward calculation of the capital base over the 2005 to 2010 access arrangement period incorporates a different starting value, substantial changes to the values of capital expenditure and capital contributions, and amounts of asset disposals (Table 4). In the revised access arrangement proposal, DBP proposes an opening capital base of $3,386.511 million (dollar values of 31 December 2010), compared with $3,441.158 million in the original access arrangement proposal and $3,413.839 million determined by the Authority in the draft decision (dollar values of 31 December 2010). The difference between the original and revised proposal results from changes made by DBP to the capital-base calculation that include changes in values of the amounts of capital expenditure over the 2005 to 2010 access arrangement period and the inclusion of allowances for asset disposals over this period.

198. DBPs revised proposal for the projected capital base for the 2011 to 2015 access arrangement period incorporates substantial changes to the values of forecast capital expenditure and capital contributions (Table 5). The revised proposed closing capital base for the 2011 to 2015 period is $3,152.467 million, compared with $3,098.810 million in the original access arrangement proposal and $3,069.409 million determined by the Authority in the draft decision (dollar values of 31 December 2010).

Table 4 DBP's revised proposal for the opening capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[43]

Year ending 31 December	2005	2006	2007	2008	2009	2010
Capital Base at 1 January	1,966.215	1,970.695	2,360.953	2,317.943	2,909.903	2,838.223
plus						
Conforming Capital Expenditure	60.959	430.210	5.679	657.241	1.315	622.958
Capital Contributions	3.028	14.089	8.425	1.059	-	-
less						
Asset disposals	5.814	-	0.029	0.023	0.066	0.010
Depreciation	53.693	54.041	57.085	66.316	72.929	74.660
Capital base at 31 December	**1,970.695**	**2,360.953**	**2,317.943**	**2,909.903**	**2,838.223**	**3,386.511**

Table 5 DBP's revised proposal for the projected capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[44]

Year ending 31 December	2011	2012	2013	2014	2015
Capital Base at 1 January	3,386.511	3,479.048	3,401.801	3,320.159	3,236.370
plus					
Forecast Conforming Capital Expenditure	162.029	16.453	13.825	13.525	13.815
Forecast Capital Contributions	21.562	2.718	1.473	-	-
less					
Forecast Asset Disposals	-	-	-	-	-
Forecast Depreciation	91.054	96.419	96.940	97.314	97.718
Capital Base at 31 December	**3,479.048**	**3,401.801**	**3,320.159**	**3,236.370**	**3,152.467**

43 DBP, 8 September 2011, Submission 70, reference tariff model.

44 DBP, 8 September 2011, Submission 70, reference tariff model.

Submissions

199. In submissions on the draft decision, Alinta Limited and Verve Energy have submitted that the Authority's assessment of capital expenditure against rule 79 is flawed in respect of assessment of whether the capital expenditure conforms with the prudence and efficiency criteria of rule 79(1) and is justified under rule 79(2) by a net economic benefit.[45] These submissions are set out and addressed in subsequent parts of this final decision dealing with the criteria for conforming capital expenditure.

Considerations of the Authority

200. The elements of the roll forward calculations of the capital base are addressed in the following sections of this final decision. As in the draft decision, the Authority has addressed the following matters.

- The calculation methods and the accuracy of financial calculations applied by DBP.
- The proposed conforming capital expenditure in the 2005 to 2010 access arrangement period, assessing whether DBP's proposed conforming capital expenditure meets the requirements for conforming capital expenditure in rule 79 of the NGR.
- The forecast conforming capital expenditure for the 2011 to 2015 access arrangement period, assessing DBP's forecast of conforming capital expenditure against the requirements for conforming capital expenditure in rule 79 of the NGR.
- The depreciation schedules applied by DBP and DBP's calculation of depreciation allowances.
- The values and treatment of assets disposals.
- DBP's proposed treatment of capital contributions from users.

Calculation Methods

201. The Authority reviewed the calculation methods applied by DBP in determining the proposed capital base values and identified elements of the calculation method that require amendment. These elements comprise:

- the measure of inflation applied in escalation of capital base values; and
- the values of capital expenditure applied in a re-calculation by DBP of the roll-forward of the capital base from 31 December 1999.

[45] Alinta Limited, submissions of 20 May 2011 and 20 July 2011; Verve Energy, submissions of 20 May 2011 and 20 July 2011.

Inflation Escalation

202. In its original access arrangement proposal, DBP calculated the opening capital base for the 2011 to 2015 access arrangement period by re-creating a roll-forward calculation of capital base values from the initial capital base for the DBNGP that was established for the pipeline as it existed at 31 December 1999 and in dollar values of that date. In re-creating this roll-forward calculation, DBP included escalation of the capital base values for inflation so that the capital base is expressed in dollar values of 31 December 2009. In escalating values of the capital base for inflation, DBP applied escalation factors derived from the "all groups, Perth" CPI.

203. In the draft decision the Authority addressed two matters relating to the inflation escalation applied by DBP:

- DBP's use of inflation factors in deriving an opening value of the capital base value for 2005; and
- DBP's use of the "all groups, Perth" CPI for the inflation escalation of financial parameters from the 2005 to 2010 access arrangement period to the commencement of the 2011 to 2015 access arrangement period.

204. The Authority's further consideration of these two matters is set out below.

205. In its original access arrangement proposal, DBP applied inflation-escalation factors derived from the "all groups, Perth" CPI in a re-calculation of capital base values from the value of the initial capital base determined as at 31 December 1999. This resulted in DBP having, effectively, determined a real value of the capital base at the commencement of the 2005 to 2010 access arrangement period that is different to (and larger than) the value approved by the Authority for that access arrangement period, which was calculated using escalation factors derived from the "all groups, eight capital cities" CPI.

206. In its revised access arrangement proposal, DBP accepts that the calculation of the capital base should start from the opening capital base for the 2005 to 2010 access arrangement period as approved by the Authority for that access arrangement period. DBP indicates that it has made this correction to the calculation of the capital base in its reference tariff model.[46]

207. The Authority has examined DBP's capital base calculations to verify that the value of the opening capital base for 2005 has been correctly specified.

208. In its final decision on the access arrangement for the 2005 to 2010 access arrangement period, the Authority approved an opening capital base for 2005 in dollar values of 31 December 2004 as follows ($ million).

Pipeline	1,356.557
Compression	181.369
Metering	21.019
Other depreciable assets	47.341
Non depreciable assets	12.086
Total	**1,618.372**

[46] DBP, 20 May 2011, submission 52, p 3.

209. In the reference tariff model provided for the revised access arrangement proposal, DBP has indicated closing capital base values for 2004 (equivalent to the opening capital base values for 2005) in dollar values of 31 December 2010 as follows ($ million).[47]

Pipeline	1,648.127
Compression	220.351
Metering	25.537
Other depreciable assets	57.517
Non depreciable assets	14.684
Total	**1,966.215**

210. Using the inflation escalation factors applied by DBP in its model, these values correspond to the following amounts in dollar values of 31 December 2004 ($ million).

Pipeline	1,356.557
Compression	181.369
Metering	21.019
Other depreciable assets	47.341
Non depreciable assets	12.086
Total	**1,618.372**

211. The values of the opening capital base for 2005 applied by DBP in the reference tariff model accompanying its revised access arrangement proposal thus accord with the capital base approved by the Authority, both in total and in values for individual asset categories.

212. Turning to inflation escalation at the commencement of the 2011 to 2015 access arrangement period, in its original access arrangement proposal DBP applied the "all groups, Perth" CPI in inflation escalation of the capital base parameters from the 2005 to 2010 access arrangement period to the commencement of the 2011 to 2015 access arrangement period.

213. The Authority has addressed the choice of the inflation measure earlier in this final decision (paragraph 170 and following), including addressing DBP's submission and reasons for applying the Perth CPI measure rather than the "all groups, eight capital cities" CPI measure (paragraphs 166 to 168). The Authority has determined that the "all groups, eight capital cities" CPI measure should be applied for inflation escalation and has made corrections to the reference tariff model to reflect this.

Values of Capital Expenditure Applied in Recalculation of the Capital Base from 31 December 1999

214. In re-calculating capital base values from the value of the initial capital base determined at the date of 31 December 1999, DBP applied in the original access arrangement proposal a slightly different value of capital expenditure for compression assets in 2000 than was applied in the calculation of the capital base value at 31 December 2004 that was approved by the Authority as the capital base at the commencement of the 2005 to 2010 access arrangement period.

[47] DBP, 8 September 2011, Submission 70, reference tariff model.

215. The difference was immaterial in relation to the value of the capital base (approximately $0.005 million), but in the draft decision the Authority in any case used the correct value of the capital base at the start of the 2005 to 2010 access arrangement period as the basis for the roll-forward calculation of the capital base.

216. In its revised access arrangement proposal, DBP appropriately addresses this matter by accepting that the roll-forward calculation of the capital base should commence from the opening capital base for the 2005 to 2010 access arrangement period as approved by the Authority.

Conforming Capital Expenditure in the 2005 to 2010 Access Arrangement Period

217. DBP classifies capital expenditure into two categories:

- expansion expenditure; and
- stay-in-business capital expenditure.

218. DBP has indicated that expansion expenditure in the 2005 to 2010 access arrangement period comprises expenditure for three stages of expansion, stages 4, 5A and 5B.[48]

219. In the original access arrangement proposal, DBP indicated the capital expenditure on expansion to be as indicated in Table 6 (dollar values of 31 December 2010).

[48] DBP, 14 April 2010, Submission 9, section 5.

Table 6 DBP's originally stated expansion capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[49]

Year	2005	2006	2007	2008	2009	2010	Total
Expansion Stage 4							
Pipeline	-	-	249.734	-	-	-	249.734
Compression	-	58.972	166.960	-	9.787	-	235.719
Metering	-	-	-	-	-	-	-
Other depreciable	-	-	-	-	1.097	-	1.097
Non depreciable	-	-	-	-	-	-	-
Total	**-**	**58.972**	**416.694**	**-**	**10.884**	**-**	**486.550**
Expansion Stage 5A							
Pipeline	-	-	-	517.157	-	-	517.157
Compression	-	-	-	122.785	-	-	122.785
Metering	-	-	-	-	-	-	-
Other depreciable	-	-	-	1.509	-	-	1.509
Non depreciable	-	-	-	-	-	-	-
Total	**-**	**-**	**-**	**641.452**	**-**	**-**	**641.452**
Expansion Stage 5B							
Pipeline	-	-	-	-	-	450.000	450.000
Compression	-	-	-	-	-	155.000	155.000
Metering	-	-	-	-	-	-	-
Other depreciable	-	-	-	-	-	29.900	29.900
Non depreciable	-	-	-	-	-	-	-
Total	**-**	**-**	**-**	**-**	**-**	**634.900**	**634.900**
Linepack (other non depreciable assets)					4.568		**4.568**
Total	-	**58.972**	**416.694**	**641.452**	**15.452**	**634.900**	**1,767.469**

[49] DBP, 14 April 2010, Submission 9, paragraph 1.13. Values are escalated to dollar values of 31 December 2010 using inflation factors derived from the all groups, eight capital cities CPI.

220. DBP indicated that the investment in expansion of the DBNGP was undertaken to:

- provide an expansion in capacity (stage 4 expansion) to meet expansion commitments to users that lodged access requests prior to completion of the sale of the DBNGP in October 2004, in accordance with obligations under clause 9 of schedule 1 of the Financial Assistance Agreement between the Western Australian Government and buyers of the DBNGP, and obligations under a contract with Alcoa (Alcoa Exempt Contract); and
- provide expansions in capacity (stage 5A and 5B expansions) to meet capacity expansion requests for users that hold a "standard shipper contract" with DBP.

221. In addition to the values of investment in expansion indicated above, DBP proposed that the conforming expansion expenditure should include an amount of $19.96 million (dollar values of 31 December 2010)[50] relating to the lease by DBP of part of the capacity of the Burrup Extension Pipeline ("BEP Capacity"), which is owned by Epic Energy, although DBP indicated to the Authority that this value was excluded by error from the capital base calculation of the proposed access arrangement.[51] The BEP parallels the DBNGP for the first 23 km from the North West Shelf Domgas Plant to Mainline Valve No.7. DBP indicated that it has entered into a lease of 150 TJ/day of capacity of the BEP for a period of 20 years, with options to expand the leased capacity to 400 TJ/day and to extend the term of the lease by a further 40 years.[52]

222. DBP indicated that stay-in-business capital expenditure in the 2005 to 2010 access arrangement period comprised expenditure of $80.429 million (dollar values of 31 December 2010) (Table 7).[53]

Table 7 DBP's originally stated stay-in-business capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[54]

Year	2005	2006	2007	2008	2009	2010	Total
Stay-in-business capital expenditure	0.797	4.554	4.119	6.080	13.119	51.760	80.429

223. The value of stay-in-business capital expenditure presented by DBP in the submission supporting the original access arrangement proposal and as shown in Table 7 is different to the value evident in DBP's tariff model when calculated as a difference between total capital expenditure and expansion capital expenditure. This difference suggested an error in DBP's division of expansion and stay-in-business capital expenditure. In the draft decision the Authority used the values of capital expenditure presented in the tariff model rather than the values presented in supporting submissions.

50 DBP, 14 April 2010, Submission 9, section 16; the value stated in dollar values of 2010 corresponds to the value indicated in DBP's submission 9 of $19.04 million in 2008 dollar values.

51 DBP, 14 April 2010, Submission 9, section 16.

52 DBP, 14 April 2010, Submission 9, section 16.

53 DBP, 1 April 2010, Submission 10, paragraph 4.1.

54 DBP, 1 April 2010, Submission 10, paragraph 4.1. Values are escalated to dollar values of 31 December 2010 using inflation factors derived from the all groups, eight capital cities CPI.

224. For the draft decision, the Authority addressed the proposed values of capital expenditure to be added to the capital base by consideration of:

- the scope of capital expenditure to be added to the capital base, addressing in particular the proposed capital expenditure comprising the cost of the lease of the BEP Capacity, capital expenditure for construction of a lateral pipeline at Kemerton, and capital expenditure on linepack gas;
- information provided to verify values of capital expenditure;
- whether capital expenditure conforms with the prudence and efficiency criteria of rule 79(1)(a); and
- whether capital expenditure is justified on the grounds of rule 79(2).

225. Having considered the above matters, the Authority determined in the draft decision that not all of the stated capital expenditure in the 2005 to 2010 access arrangement period satisfies the prudence and efficiency requirements of rule 79(1)(a).

226. For expansion capital expenditure, the Authority identified inconsistencies in the values of capital expenditure indicated by DBP in different documents and in audited values of capital expenditure for expansion stages 4 and 5A. The Authority determined to only allow audited values of capital expenditure to be added to the capital base and required adjustment of the values of capital expenditure for stages 4 and 5A that are to be added to the capital base to reflect the audited values. The Authority also indicated in the draft decision that it will require independent audit reports for the expansion capital expenditure of the stage 5B expansion and for stay-in business capital expenditure before the values to be added to the capital base are finally approved.

227. Also in relation to expansion capital expenditure, the Authority determined that an amount of expenditure on linepack gas in 2009 of $4.45 million be reclassified for regulatory accounting purposes from other depreciable assets (as proposed by DBP) to other non-depreciable assets.

228. For stay in business capital expenditure, the Authority determined in the draft decision that an amount of payments to a contractor to maintain capacity to undertake capital works – the project management retainer fee – does not satisfy the prudence and efficiency requirements of rule 79(1)(a). The Authority required that the amount of this fee (determined by the Authority as $2.373 million in each of the years 2008, 2009 and 2010; dollar values of 31 December 2010) be removed from the amount of capital expenditure to be added to the capital base.

229. These required amendments to the values of conforming capital expenditure comprised a reduction in conforming capital expenditure of $36.476 million (dollar values of 31 December 2010) from that proposed by DBP, corresponding to a reduction of 4.1 per cent. The Authority's required amended values of conforming capital expenditure to be added to the capital base for the 2005 to 2010 access arrangement period were as shown in Table 8.

Table 8 Authority's draft decision amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[55]

Year	2005	2006	2007	2008	2009	2010	Total
Pipeline	0.749	3.041	241.866	514.734	0.153	445.642	1,206.185
Compression	-	51.062	161.072	121.361	4.417	170.144	508.056
Metering	-	0.057	-	-	0.068	0.050	0.175
Other depreciable	0.044	3.553	2.336	5.810	2.260	66.820	80.823
Other non-depreciable	-	-	-	-	4.568	-	4.568
Total	**0.793**	**57.713**	**405.274**	**641.905**	**11.466**	**682.657**	**1,799.808**

Note: Includes expansion capital expenditure and stay-in-business capital expenditure.

230. In the draft decision the Authority required the following amendment to the proposed access arrangement revisions.

> Draft decision amendment 5
>
> The value of conforming capital expenditure for the 2005 to 2010 access arrangement period must be amended to values as indicated in Table 15 of the draft decision [reproduced as Table 8 of this final decision].

231. In the revised access arrangement, DBP includes substantial revisions to statements of expansion capital expenditure and stay-in-business capital expenditure for the 2005 to 2010 access arrangement period. A breakdown of stated capital expenditure into these categories, derived from information provided by DBP in a supporting submission to the revised access arrangement proposal, is shown in Table 9 and Table 10.

232. For both expansion capital expenditure and stay-in-business capital expenditure, there has been a substantial change in the distribution of stated capital expenditure across the years of the 2005 to 2010 access arrangement period. There is also a substantial reduction in stay-in-business capital expenditure for the period 2005 to 2010. The latter reflects a change in timing of addition of expenditure to the capital base rather than a changing of the timing of actual capital expenditures: stay-in-business capital expenditure previously stated as having occurred (or being forecast to be incurred) in 2010 has been included instead in the forecast capital expenditure for 2011.

[55] ERA Draft Decision, reprinted 5 May 2011, table 15.

Table 9 DBP's revised statement of expansion capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[56]

Year	2005	2006	2007	2008	2009	2010	Total
Expansion Stage 4							
Pipeline	8.686	257.269	-	0.168	-	-	266.124
Compression	47.173	171.997	-	9.987	-	-	229.157
Metering	-	-	-	-	-	-	-
Other depreciable	0.161	-	-	0.953	-	-	1.114
Non depreciable	-	-	-		-	-	-
Total	**56.020**	**429.267**		**11.108**	-	-	**496.395**
Expansion Stage 5A							
Pipeline	-	-	-	516.834	-	-	516.834
Compression	-	-	-	122.710	-	-	122.710
Metering	-	-	-		-	-	
Other depreciable	-	-	-	1.594	-	-	1.594
Non depreciable	-	-	-		-	-	
Total	-	-	-	**641.138**	-	-	**641.138**
Expansion Stage 5B							
Pipeline	-	-	-	-		489.960	489.960
Compression	-	-	-	-		52.261	52.261
Metering	-	-	-	-		4.756	4.756
Other depreciable	-	-	-	-		75.315	75.315
Non depreciable	-	-	-	-	-	-	-
Total	-	-	-	-		**622.292**	**622.292**
Linepack (non-depreciable asset)	-	-0.134	1.950	1.483	0.678	0.666	4.643
Total	**56.020**	**429.133**	**1.950**	**653.729**	**0.678**	**622.958**	**1,764.468**

[56] DBP, 20 May 2011, Submission 52, p 14, nominal values are escalated to dollar values of 31 December 2010 using DBP inflation factors.

Table 10 DBP's revised statement of stay-in-business capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[57]

Year	2005	2006	2007	2008	2009	2010	Total
Pipeline	-	0.107	1.245	-	-	-	1.352
Compression	0.986	0.088	0.148	0.158	-	-	1.380
Metering	-	-	-	-	0.078	-	0.078
Other depreciable	3.953	0.879	2.335	3.353	0.558	-	11.078
Non depreciable	-	-	-	-	-	-	-
Total	**4.939**	**1.074**	**3.729**	**3.511**	**0.636**	**-**	**13.888**

233. In coming to the final decision, the Authority has addressed the same matters in respect of the assessment of conforming capital expenditure as were addressed in the draft decision:

- the scope of capital expenditure to be added to the capital base;
- information provided to verify values of capital expenditure;
- whether capital expenditure conforms with the prudence and efficiency criteria of rule 79(1)(a); and
- whether capital expenditure is justified on the grounds of rule 79(2).

234. The Authority's analysis of each of these matters are set out below.

Scope of Capital Expenditure to be added to the Capital Base

235. The Authority has addressed three matters relating to the scope of capital expenditure to be added to the capital base:

- treatment of the cost of the lease of capacity in the Burrup Extension Pipeline (BEP Capacity) as capital expenditure;
- capital expenditure on a lateral pipeline to the Kemerton industrial area (Kemerton Power Station Lateral); and
- capital expenditure on linepack gas.

236. In the original access arrangement proposal, DBP proposed a value of capital expenditure in respect of the BEP Capacity determined as the present value of forecast lease payments to be made by DBP.

[57] DBP, 20 May 2011, Submission 52, p 14, nominal values are escalated to dollar values of 31 December 2010 using DBP inflation factors.

237. DBP submitted that the lease arrangement is in the nature of a finance lease and is consistent with economic ownership of the BEP Capacity. As such, DBP contended that the cost of the lease is in the nature of capital expenditure. DBP proposed that the cost of the BEP Capacity should be added to the capital base in 2010, with the value of capital expenditure equal to $19.96 million (dollar values of 31 December 2010), determined as the present value of the lease fee.[58]

238. In the draft decision the Authority accepted the proposal of DBP that the costs of BEP lease arrangement may constitute capital expenditure for the purposes of the NGR if the lease is in the nature of a finance lease.

239. The Authority also accepted that the capital cost of the BEP lease meets the requirements of the NGR for conforming capital expenditure and that this capital cost is appropriately calculated as a present value of lease payments. However, the Authority was not satisfied that the capital cost ascribed to the lease of the BEP Capacity has been appropriately determined.

240. The matters of concern to the Authority in DBP's determination of the capital cost ascribed to the lease of the BEP Capacity were the forecast inflation rate and discount rate applied in calculating the present value of the lease payments. The Authority re-calculated the capital cost ascribed to the lease of the BEP capacity as $17.274 million (dollar values of 31 December 2010) based on:

- lease payments as per the lease agreement, adjusted for actual CPI values to September 2010 and using forecast CPI values based on a forecast inflation rate of 2.65 per cent;
- annual discounting of lease payments, consistent with an implicit assumption in financial calculations for the draft decision (and as applied by DBP) that all costs are incurred on the last day of each year; and
- a nominal annual discount rate of 10.00 per cent, consistent with the rate of return applied under the draft decision for determination of total revenue.

241. The Authority treated the capital expenditure of the BEP capacity as actual expenditure occurring in 2010, taking into account that the lease for the capacity became unconditional on 17 December 2010.

242. The Authority also required that the asset that comprises the BEP Capacity be depreciated for regulatory purposes in accordance with the depreciation schedule for pipeline assets, but taking into account that the BEP is an existing pipeline constructed c.1999 and does not have the same asset life as new pipeline assets. The Authority calculated depreciation allowances for the BEP capacity as a separate asset class with a total asset life of 60 years. The Authority considered that the total asset life of 60 years is consistent with the terms of the lease of the BEP Capacity (an initial lease term of 20 years and option for extension for an additional 40 years) and the remaining physical life of the pipeline assets of the BEP.

[58] DBP, 14 April 2010, Submission 9, section 16; the value stated in dollar values of 2010 corresponds to the value indicated in DBP's submission of $19.04 million in 2008 dollar values.

243. In a submission accompanying the revised access arrangement proposal, DBP takes issue with three elements of the Authority's draft decision in respect of the capitalisation of lease costs of the BEP capacity:

- the timing of capitalisation of the expenditure;
- the categorisation of the expenditure and the timing of depreciation; and
- the quantum of the expenditure and its substantiation.[59]

244. On the matter of timing of the capital expenditure for the BEP Capacity, DBP proposes that the expenditure be treated as an element of forecast capital expenditure for 2011, rather than actual capital expenditure in 2010. DBP's stated reasons for this are as follows.

- Treatment as capital expenditure in 2011 is consistent with the treatment of capital expenditure in independently reviewed financial accounts that are used to verify amounts of capital expenditure, in which the expenditure for the BEP capacity is treated as "capital works in progress" in 2010, and all expenditure so classified is to be added to the capital base in 2011.
- As the BEP Lease only became unconditional on 17 December 2010, to have included it in the capital base in 2010 would have meant DBP would have had to depreciate that expenditure for a full calendar year but without having had the benefit of an increase in the reference tariff for that calendar year.

245. The Authority accepts that the first of these reasons is sufficient justification for addition of the BEP Capacity to the capital base in 2011. The Authority has addressed the timing of additional capital expenditures to the capital base elsewhere in this final decision and has accepted a principle of adding expenditures to the capital base in the year that the assets and expenditures are first included in asset registers and financial accounts (paragraph 335) and following of this final decision). On this basis, the Authority determines that the BEP Capacity is appropriately included in forecast capital expenditure for 2011 in calculation of values of the projected capital base for the 2011 to 2015 access arrangement period.

246. The Authority considers that the second of DBP's stated reasons for adding the value of the BEP Capacity to the capital base in 2011 rather than 2010 reflects a misunderstanding of regulatory depreciation. Whether the capital value of the BEP Capacity is added to the capital base in 2010 or 2011 does not affect the value of the cost ultimately recoverable through depreciation allowances in reference tariffs, only the timing of this recovery. Adding the capital cost to the capital base in 2010 would mean that depreciation allowances are first determined for the asset in 2011, whereas adding the capital cost to the capital base in 2011 would mean that depreciation allowances are first determined for the asset in 2012. Either way, the capital value of the BEP lease will be fully recoverable in depreciation allowances taken into account in reference tariffs for the 2011 to 2015 access arrangement period and subsequent access arrangement periods.

[59] DBP, 20 May 2011, Submission 52 pp 4 – 9.

247. On the matter of categorisation of the BEP Capacity asset and the timing of depreciation, DBP proposes that the asset be treated as an "other depreciable asset" and depreciated over the standard regulatory life for these assets (30 years) for reasons that:

- the primary lease term under the DBP lease (20 years) is most closely aligned with the regulatory life of assets in the category of other depreciable assets (30 years);
- the term of each of the access contracts entered into with shippers for which the BEP capacity was required (20 years) is aligned most closely to the regulatory life of assets in the category of other depreciable assets; and
- there is no certainty that DBP will extend the term of the BEP lease beyond the primary lease term.

248. The Authority has given consideration to DBP's submission on depreciation of the BEP Capacity asset but is of the view that the reasons stated by DBP do not justify treating the BEP Capacity in the category of "other depreciable assets". The Authority maintains the view expressed in the draft decision that the "purchase" of the BEP Capacity is in the nature of a purchase of pipeline assets as both have the same practical outcome for the capacity of the pipeline system to provide services. A different regulatory treatment of a leased pipeline asset from that of a self-constructed pipeline asset would risk affecting incentives for particular ownership and financing arrangements for assets. It follows that the period of depreciation should be determined on the basis of the projected economic life of pipeline assets, taking into account that the BEP Capacity is in the nature of a second-hand pipeline asset.

249. The Authority therefore maintains the determination of the draft decision that the BEP Capacity should be treated as a pipeline asset for regulatory purposes with depreciation over a remaining asset life determined as the assumed life for new pipeline assets (70 years) less the age of the BEP to 2011. The BEP was constructed in 1998 and therefore the remaining asset life for the purposes of depreciation is 57 years.

250. On the matter of the capital value of the BEP Capacity to be added to the capital base, DBP proposes (in the revised access arrangement proposal) that the capital value should be determined as $23.117 million (in dollar values of 31 December 2010) rather than the value of $17.274 million (in dollar values of 31 December 2010) determined by the Authority in the draft decision. The proposed value of $23.117 million is substantially greater than the value proposed by DBP for the purposes of its original access arrangement proposal of $19.96 million (also in dollar values of 31 December 2010).[60]

251. DBP describes its derivation of the proposed value of the BEP Capacity in submissions to the Authority.[61]

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60 DBP, 14 April 2010, Submission 9, section 16. The value stated in dollar values of 31 December 2010 corresponds to the value indicated in DBP's submission 9 of 19.04 million in 2008 dollar values.

61 DBP, 20 May 2011, Submission 52 paragraphs 3.13 to 3.42. DBP, 11 August 2011, Submission 66. DBP, 6 September 2011, Submission 69.

252. The method applied by DBP to derive the value of the BEP Capacity is summarised as follows.

- DBP estimated a depreciated optimised replacement cost of the BEP Capacity at $19.2 million at May 2008 and states that it is reasonable to conclude that this was the fair value of the BEP Capacity at this date.
- DBP calculated a present value of the minimum lease payments applying a discount rate of 6.78 per cent, such that the present value of lease payments is determined equal to the fair value of $19.2 million.
- DBP escalated the value of $19.2 million from May 2008 to December 2010 by an interest rate equal to the discount rate applied in the present value calculation (6.78 per cent) resulting in addition of $3.6 million of "interest" to the value of the BEP Capacity to derive a value of $22.8 million.
- DBP added a further amount of "initial direct costs" to the value of the BEP Capacity to derive a total value of $23.117 million.

253. DBP states that the value of $23.117 million:

- has been determined in accordance with the relevant Australian accounting standard AASB 117, which the Authority erred in applying in the draft decision; and
- has been reviewed and signed off as appropriate by DBP's independent auditor as part of the auditor's review of DBP's half yearly accounts to 31 December 2010.

254. The Authority has considered DBP's submission on the value of the BEP capacity that should be added to the capital base. The Authority maintains the view expressed in the draft decision that the value to be added to the capital base should be a value determined in accordance with Australian accounting standard AASB 117. However, the Authority considers that DBP's proposed value of $23.117 million does not accord with this standard for the following reasons.

255. First, AASB 117 requires that the asset value be determined at the date of inception of the lease and recognised at the date of commencement of the lease. For the BEP Capacity, this means that the asset value should be determined at May 2008 and the same value added to the capital base at December 2010. DBP's valuation does not accord with this requirement due to DBP's addition of an amount of "interest" to the value at May 2008. There are no grounds under AASB 117 to include this amount of "interest" in the value to be added to the capital base.

256. Second, AASB 117 requires that the asset value be determined as the lesser of the fair value of the leased property or the present value of the minimum lease payments. This requires independent determination of the fair value and the present value of lease payments and the comparison of these two values. DBP has not done this, but rather has determined a fair value and then equated a present value of lease payments to this fair value by applying a discount rate in the present value calculation that achieves this equality.

257. Third, while DBP states that its proposed capital value of the BEP Capacity has been reviewed and signed off as appropriate by DBP's independent auditor as part of the auditor's review of DBP's half yearly accounts to 31 December 2010, information provided to the Authority suggests that this did not amount to a review of the valuation itself.[62]

258. The Authority has re-calculated the present value of minimum lease payments under the BEP lease as $17.361 million on the basis of:

- DBP's stated minimum lease payments for a period of 20 years;[63]
- a discount rate of 7.01 per cent, which is the nominal cost of debt estimated by the Authority for the DBNGP as part of the Authority's determination of the rate of return as set out in this final decision.

259. The Authority observes that this present value of lease payments is less than the fair value of the BEP Capacity of $19.2 million, as determined by DBP applying a method of depreciated optimised replacement cost. Accordingly, the Authority determines that the BEP Capacity should, in accordance with AASB 117, be valued at the present value of lease payments of $17.362 million. The Authority accepts DBP's proposal that AASB 117 allows an amount of initial direct costs of DBP in establishing the lease can be added to this value, giving a total capital value to be added to the capital base of $17.679 million.

260. Turning to the Kemerton Power Station lateral, this comprises a pipeline and meter station constructed in 2005 and 2006. DBP indicated the expenditure was incurred mainly (96 per cent) in 2005.[64] DBP indicates that this expenditure was entirely financed by a capital contribution from one party with the amount of capital contributions included in DBP's stated value of contributions for 2009.[65] As an element of its access arrangement, DBP has proposed that conforming capital expenditure that is financed by capital contributions from users be added to the capital base, but the values of a return on the capital expenditure and depreciation be excluded from the total revenue to be recovered from reference services.

261. Subject to implementation of this treatment of capital expenditure financed by capital contributions, the Authority determined in the draft decision that capital expenditure for the Kemerton lateral may appropriately be added to the capital base.

262. Neither DBP nor other interested parties made submissions on this matter and the Authority maintains its determination that the Kemerton lateral may appropriately be added to the capital base.

263. Turning to capital costs of linepack gas, DBP originally proposed that a cost of $4.568 million (dollar values of 2010) for linepack gas in 2009 be treated as capital expenditure. For the purposes of calculating depreciation allowances, DBP categorised linepack gas as an "other depreciable asset".

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62 DBP, 11 August 2011, Submission 66.

63 DBP, 20 May 2011, Submission 52 pp 6, 7.

64 DBP, 6 September 2010, Submission 31.

65 DBP, 6 September 2010, Submission 31.

264. The Authority determined in the draft decision that linepack gas should not be treated as a depreciable asset as it is an asset that is not used or degraded over time in the delivery of pipeline services, but rather that linepack gas should be treated as an "other non-depreciable asset".

265. DBP has not explicitly addressed the categorisation of linepack gas in submissions made with the revised access arrangement proposal. However, DBP's financial model and information provided for verification of capital expenditures indicates that DBP has revised the financial model to treat linepack gas as a non-depreciable asset. DBP has also adjusted the value and timing of expenditures on linepack gas to accord with verified values of capital expenditure.

Verification of Capital Expenditure

266. During the course of the Authority's assessment of the original access arrangement proposal, DBP provided the Authority with audit reports on capital expenditure for the stage 4 and stage 5A expansions and an interim audit report of capital expenditure for the stage 5B expansion.

267. The Authority observed differences between the values of expansion expenditure as stated by DBP and the values verified by audits, with audited values being (in total) $23.314 million (nominal) less than the values of expenditure stated by DBP.

268. The Authority also observed other discrepancies in values of capital expenditure provided by DBP, in particular, values of stay-in-business capital expenditure stated by DBP exceeded total values of stated capital expenditure in some asset classes in some years. The Authority considered that such discrepancies called into question the accuracy and reliability of DBP's stated values of capital expenditure, and the division of expenditure between the categories of expansion expenditure and stay-in-business expenditure.

269. In view of the differences between stated and audited values of expenditure for the stages 4 and 5A expansions and the discrepancies in statements of capital expenditure, the Authority determined in the draft decision that it will only approve the addition to the capital base of audited values of capital expenditure. DBP had already provided audited values of expenditure for the stage 4 and 5A expansions. The Authority stated that DBP will need to provide final audited statements of capital expenditure for the stage 5B expansion (for costs incurred up to 31 December 2010) and stay-in-business capital expenditure before a final determination on the value of the capital base at the commencement of the 2011 to 2015 access arrangement period.

270. In the draft decision, the Authority amended the value of capital expenditure in the 2005 to 2010 access arrangement period to reflect audited values of expenditure for the stage 4 and 5A expansions and interim audited values of expenditure for the stage 5B expansion. This resulted in a reduction in the value of capital expenditure added to the capital base.

271. In supporting submissions to the revised access arrangement proposal, DBP has provided an audit verification of the revised statement of capital expenditures in the 2005 to 2010 access arrangement period, covering the Stage 4, 5A and 5B expansions. DBP indicates that it has reconciled its actual capital expenditure with the capital expenditure included in annual and half-yearly audited financial statements and this reconciliation has been independently audited by DBP's external financial auditors according to an "agreed upon procedures" audit method.[66]

272. The Authority has reviewed the audit results provided by DBP and is satisfied that these results adequately verify the capital expenditures for the 2005 to 2010 access arrangement period as stated by DBP in its revised access arrangement proposal.

273. The Authority notes that the requirement under the draft decision for verification of stated capital expenditure has resulted in DBP making substantial changes to the values of capital expenditure to be added to the capital base for 2010. In total, DBP has reduced the value of stated capital expenditure for the 2005 to 2010 access arrangement period by $72 million (in dollar values of 31 December 2010), although some of this reduction represents a shift in capital expenditure from 2010 to 2011. As well, DBP has made changes to stated values of capital contributions from users and stated values of asset disposals, as addressed elsewhere in this final decision.

Prudence and Efficiency

274. Rule 79(1)(a) of the NGR requires that conforming capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services. For simplicity of reporting, the Authority refers in this decision to the requirement of rule 79(1)(a) as the "prudence and efficiency" requirement.

275. In assessing whether the capital expenditure of the 2005 to 2010 access arrangement period meets the prudence and efficiency requirement the Authority has given consideration to:

- commercial incentives for DBP to be prudent and efficient in capital expenditures, both under the scheme of regulation of the NGL and NGR, and under the terms of the standard shipper contracts with pipeline users;
- a comparison of actual capital expenditure for the 2005 to 2010 access arrangement period with the values of expenditure forecast for that period and taken into account by the Authority for the purposes of setting reference tariffs for the period;
- expert engineering advice on the scope of capital projects and the planning, management and procurement processes applied by DBP in undertaking the capital projects; and
- the costs incurred by DBP as "project management fees" and "project management retainer fees" under an "Operating Services Agreement" with a contracted provider of project management services for pipeline expansions and pipeline maintenance.

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66 DBP, 20 May 2011, Submission 52 (including attachments to this submission that comprise reports from DBP external auditors).

276. The Authority determined in the draft decision that the capital expenditure in the 2005 to 2010 access arrangement period largely, but not entirely, satisfies the prudence and efficiency requirements of rule 79(1)(a). This determination was based on considerations of incentives for efficiency under the scheme of regulation of the NGL and NGR, and under the terms of the standard shipper contracts with pipeline users, and expert engineering advice.

277. The exception to satisfaction of the prudence and efficiency requirements of rule 79(1)(a) was the cost incurred by DBP in payment of the project management retainer fee to the contracted provider of project management services for pipeline expansions. The project management retainer fee comprises a fee payable for the contractors to maintain certain capabilities for management of pipeline expansion works during periods where no such works are occurring. The Authority determined in the draft decision that the amount of the project management retainer fee does not satisfy the prudence and efficiency requirements of rule 79(1)(a) for reasons that:

- DBP has not provided information that satisfies the Authority that the payment of the project management retainer fee is necessary to be able to contract for project management services within the required time frames for an expansion of the DBNGP;
- the Authority is not satisfied that the project management retainer fee is a genuine fee for a service or facility to be provided by WestNet Energy Services Pty Ltd, given:
  - a lack of a detailed specification in the Amended and Restated Operating Services Agreement of any relevant requirements to be met by WestNet Energy Services Pty Ltd in return for the fee;
  - a view of expert engineering advisors to the Authority that there is a lack of precedent to suggest that the nature and quantum of the project management retainer fee are consistent with common industry practice;
  - DBP has forecast no expansion of the DBNGP for the 2010 to 2015 access arrangement period; and
- the Authority was concerned that the project management retainer fee[67] may represent a negotiated compensation to Alinta Asset Management and WestNet Energy Services Pty Ltd for the termination of a management fee under the Operating Services Agreement, rather than a fee for an additional service or obligation under the Amended and Restated Operating Service Agreement.

[67] At paragraph 237 of the draft decision, a typographical error resulted in this referring to the project management fee rather than project management retainer fee.

278. In the draft decision the Authority required that the amount of this fee be removed from the capital expenditure. DBP had not provided a clear statement of the value of the project management retainer fee in specified nominal or real values. The Authority therefore estimated the amount of this fee for the three year period 2008 to 2010, based on the terms of the Operating Services Agreement, as an inflation-indexed amount of $2 million in 2004. The amounts deducted from the additions to the capital base (in dollar values of 31 December 2010) comprise $2.375 million in each of the three years.[68]

279. In submissions to the Authority on the draft decision, Alinta and Verve Energy question the adequacy of the Authority's assessment of the prudence and efficiency of capital expenditure in the 2005 to 2010 access arrangement period, indicating that:

- the terms of the standard shipper contract do not provide a commercial incentive for DBP to be efficient in capital costs as, in practice, there is a direct pass through of any cost overruns in pipeline expansions to pipeline tariffs; and
- there is a lack of documentation of the analysis undertaken by the Authority's engineering advisor and this analysis may have been compromised by the provision of information by DBP.

280. Neither Alinta nor Verve Energy provides any evidence or contention in their submissions of imprudence or inefficiency in capital expenditures for the 2005 to 2010 access arrangement period.

281. Notwithstanding the submissions from Verve Energy and Alinta, the Authority maintains its determination in the draft decision that capital expenditure in the 2005 to 2010 access arrangement period satisfies the prudence and efficiency requirements of rule 79(1)(a), with the exception of the amount of the project management retainer fees as addressed below. The engineering advice obtained by the Authority for the draft decision indicated that the planning, management and contracting processes for capital works are consistent with prudent and efficient works and costs, and no evidence has been presented to the Authority or discovered by the Authority that would provide cause to question this advice.

282. In the draft decision, the Authority determined that costs of the project management retainer fee in the 2005 to 2010 access arrangement period do not satisfy the prudence and efficiency requirement of rule 79(1)(a). DBP has not made any submission to the Authority on this determination. DBP has, however, addressed this matter in relation to forecast capital expenditure.[69]

283. DBP reiterates contentions made in a submission with the original access arrangement proposal that payment of the project management retainer fee is necessary to be able to contract project management services within the required time frame of 30 months for an expansion of the DBNGP where a shipper requests additional capacity under the terms of the standard shipper contract or "Alcoa Exempt Contract".

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68 Although the Amended and Restated Operating Services Agreement commenced in 2009, DBP's statement of costs includes an amount of the project management retainer fee for each of the three years 2008 to 2010.

69 DBP, 20 May 2011, Submission 53.

284. DBP also reiterates a contention made in a submission with the original access arrangement proposal that the value of the retainer fee would be significantly smaller than the additional costs that the operator is likely to incur in bringing a new project management team up to speed with the requirements of an expansion project for the DBNGP.

285. DBP contends that the project management retainer fee is a genuine fee for service and is efficient, evidenced by:

- in 2009 when the project management retainer fee was initiated, there was a likelihood that the expansion programme for the DBNGP would not continue beyond Stage 5B, hence it was necessary to ensure that the project manager retained the relevant personnel to commence any further project;
- the Operating Services Agreement does provide that in consideration for the payment of the retainer fee, WestNet must retain the necessary personnel, corporate systems and procedures to maintain an ongoing capability to provide the Project Management Services irrespective of whether an Additional Capacity Expansion is being planned or undertaken;
- the project management retainer fee covers an expansive range of services provided by WestNet under the OSA in relation to capacity expansions and capital works, including the retention of all project services, from conceptual design, through front-end engineering design (FEED) studies, planning, approvals, construction, commissioning and final delivery of the projects for operation (and all services to support these activities e.g. human resources management, and financial control); and
- project management retainer fees are accepted industry practice in the construction industry.

286. DBP contends that the expense of the project management retainer fee, as an expense incurred under the Operating Services Agreement, is an expense incurred by a prudent service provider acting efficiently given:

- it is prudent for the ownership consortium for the DBNGP to have relied on the resources and expertise of one of the members of that consortium to provide services relating to the operation and expansion of the pipeline;
- at acquisition, negotiations took place at arm's length and all parties had experience in negotiating major construction and operating contracts;
- Alcoa and DUET were commercially motivated to ensure that any fees charged by one member of the consortium were at reasonable levels;
- there was no reason, and there continues to be no reason, for either DUET or Alcoa, to have any commercial or other interest in Alinta deriving non-commercial fees for performing services under the Operating Services Agreement, or for the contractual arrangements to be of a nature that are neither efficient nor in accordance with good or accepted industry practice;
- the amount for the project management retainer fee is efficient because it covers an expansive range of services provided by WestNet under the OSA; and
- DBP has a positive obligation to seek to minimise the capital costs of expansion of the DBNGP under the standard shipper contract.

287. DBP states that shippers on the DBNGP have, through the tariff adjustment mechanism under the standard shipper contract, agreed that fees such as the retainer fee can be included in the tariff.

288. In submissions on the draft decision, Alinta and Verve Energy indicate that they share the Authority's concerns in relation to the project management retainer fee, and support the Authority's requirement that the expenditure be removed from the conforming capital expenditure.[70]

289. In the absence of adequate justification of the project management retainer fee, the Authority maintains the determination that the amount of this fee does not satisfy the prudence and efficiency requirements of rule 79(1)(a).

290. In its revised access arrangement proposal and supporting submissions, DBP still does not provide a clear statement of the value of the project management retainer fee during the 2005 to 2010 access arrangement period. DBP does, however, indicate a value of this fee in the forecast of capital expenditure for 2011 to 2015, with this value being a constant real value of $2.255 million per year in dollar values of 31 December 2010.[71] The Authority has therefore deducted this value from the value of stated capital expenditure for each of the years 2008 to 2010.[72]

Justification of Capital Expenditure under Criteria of Rule 79(2)

291. In the draft decision, the Authority determined that all of the capital expenditure of the 2005 to 2010 access arrangement period is justified under the criteria of rule 79(2).

292. In making this determination the Authority gave separate consideration to expansion expenditure and stay-in-business expenditure.

293. For expansion expenditure, DBP contended in submissions provided with the original access arrangement proposal that expenditure is justified under the criteria of rule 79(2) on the grounds that:

- the expansion investment was undertaken to comply with the terms of an undertaking provided to the Australian Competition and Consumer Commission under section 87B of the (then) *Trade Practices Act 1974* to expand the capacity of the DBNGP, which constitutes a regulatory obligation or requirement within the meaning of rule 79(2)(c)(iii);[73] and/or
- the entire amount of capital expenditure on the stage 4, 5A and 5B expansion programs meets the requirement of rule 79(2)(a) of the NGR that the overall economic value of the expenditure is positive.[74]

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70 Alinta Limited, submission of 20 May 2011; Verve Energy, submission of 20 May 2011.

71 DBP, 11 August 2011, Submission 66, Tariff Model of 21 July 2011.

72 Although the Amended and Restated Operating Services Agreement commenced in 2009, DBP's statement of costs includes an amount of the project management retainer fee for each of the three years 2008 to 2010.

73 DBP, 14 April 2010, Submission 9, section 2 and paragraph 18.4.

74 DBP, 14 April 2010, Submission 9, paragraph 18.5.

294. The Authority determined in the draft decision that the undertaking provided to the ACCC does not constitute a regulatory obligation that compelled DBP to expand the DBNGP and does not justify capital expenditure under rule 79(2)(c)(iii). Rather, the Authority determined that the terms of the undertaking do not add to any possible expansion obligations that already existed at the time of the undertakings under the Gas Access Law, in particular under section 6.22 of the Gas Code. These expansion obligations would compel DBP to expand the DBNGP only in limited circumstances; that is, where the expansion is economically feasible and the service provider is not required to fund part or all of the expansion. As such, the Authority did not take the contended regulatory obligation into account in the draft decision when considering whether capital expenditure in the 2005 to 2010 access arrangement is justified under rule 79(2).

295. The Authority determined in the draft decision that the expansion capital expenditure meets the requirement of rule 79(2)(a) of the NGR that the overall economic value of the expenditure is positive. In making this determination, the Authority did not have regard to the supporting analysis presented by DBP, which the Authority considered was too simplistic and inexact to be relied on as an indication of the value of these economic benefits of the expenditure. Rather, the Authority took into account that, under the terms of the standard shipper contract, the expansions in capacity of the DBNGP have occurred with users of the DBNGP contracting for the full extent of the expansions in capacity and knowingly and willingly being exposed over a long contractual term to transmission tariffs that reflect the expansion costs. That is, all of the current users of the DBNGP have willingly entered into the standard shipper contract in full knowledge of eventual exposure to the cost of pipeline expansions. As users of the DBNGP may be assumed to be behaving in a commercially reasonable and rational manner, these contractual arrangements are *prima facie* evidence that expansions in capacity of the DBNGP have only occurred where the benefits to the users of the transmission services exceed the costs of the expansion as reflected, or eventually to be reflected, in transmission tariffs.

296. DBP did not specifically contend that the stay-in-business capital expenditure meets the criteria of rule 79(2), although DBP's submission on this category of capital expenditure set out justifications for this expenditure in terms of compliance with DBP's safety case for the pipeline and maintaining the capacity of the DBNGP to meet demand for services.[75] That is, DBP provided justification for expenditure items of stay-in-business capital expenditure in terms of needs to maintain the capacity and reliability of the DBNGP for service provision and to maintain health and safety standards.[76] Taking into account expert engineering advice, the Authority determined in the draft decision that the stay-in-business capital expenditure for the 2005 to 2010 access arrangement period conforms with safety and reliability criteria in rule 79(2)(c)(i) and (ii).

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75 DBP, 1 April 2010, Submission 10.

76 DBP, 1 April 2010, Submission 10, pp 20 – 57.

297. In a supporting submission to the revised access arrangement proposal, DBP takes issue with both the Authority's assessment in the draft decision on whether the undertaking provided to the ACCC constitutes a regulatory obligation or requirement within the meaning of rule 79(2)(c)(iii), and the Authority's consideration of the analysis put forward by DBP to demonstrate that the overall economic value of expansion expenditure is positive.

298. On the matter of the Authority's assessment in the draft decision of whether the undertaking provided to the ACCC constitutes a regulatory obligation or requirement within the meaning of rule 79(2)(c)(iii), DBP submits that the Authority incorrectly interpreted the obligations that are imposed on DBP under the ACCC Undertaking.[77]

299. For ease of reference, the relevant clauses of the ACCC Undertaking are as follows:

> 5.6 Capacity Expansion Rights for Prospective Shippers
>
> (a) Subject to clause 5.6(b), DBNGP Holdings undertakes to ensure that EEWAT offers to all prospective Shippers who require a T1 Service, a Standard Shipper Contract that contains Capacity Expansion Rights that are not materially less favourable than the Capacity Expansion Rights contained in any other Shipper Contract for a T1 Service.
>
> (b) To avoid doubt, nothing in clause 5.6(a):
>
> (i) requires DBNGP Holdings or EEWAT to enter into a Shipper Contract with a Prospective Shipper if it would not be required to do so under the Gas Access Law and the Access Arrangement;
>
> (ii) prevents DBNGP Holdings or EEWAT from requiring a Prospective Shipper to enter into a Standard Shipper Contract for a T1 Service, which contains particular Capacity Expansion Rights, on terms and conditions that are equivalent to other Standard Shipper Contracts that contain equivalent Capacity Expansion Rights; nor
>
> (iii) requires DBNGP Holdings or EEWAT to offer to any Shipper Capacity Expansion Rights that are the same as the Capacity Expansion Rights in the Exempt Alcoa Contract.
>
> 5.7 Obligation to Expand Capacity
>
> (a) Obligation to Expand
>
> Subject to this clause 5.7, DBNGP Holdings undertakes to expand the Capacity of the DBNGP between the DOMGAS Dampier Plant Inlet Point and CS10 by not less than 100 TJ/d, in aggregate, to meet the known Capacity requirements of Contracted Shippers or Prospective Shippers who enter into Standard Shipper Contract.
>
> (b) Timeframe

[77] DBP, 20 May 2011, Submission 52.

DBNGP Holdings undertakes to complete the expansion of Capacity under clause 5.7(a) no later than 5 years following completion of the Proposed Acquisition.

(c) Obligation to Invest in the Capacity Expansion

DBNGP Holdings undertakes to invest up to $400 million in connection with the expansion of Capacity under clause 5.7(a) provided that Shippers that require the Capacity have entered into Standard Shipper Contracts as contemplated by clause 5.7(a).

(d) Feasibility, Safety and Reliability

DBNGP Holdings is not required to carry out the expansion of Capacity under clause 5.7(a) if it reasonably determines that the expansion is not:

(i) technically or economically feasible; or

(ii) consistent with the safe and reliable provision of DBNGP Services.

300. DBP makes the following assertions in relation to these clauses. [78]

- Clause 5.7 of the ACCC Undertaking clearly imposes an obligation on DBP to expand the DBNGP by a certain capacity (i.e. minimum of 100 TJ in aggregate) to meet the known capacity requirements of contracted shippers or prospective shippers within a certain timeframe (i.e. 5 years), subject only to:
  - an assessment by DBP as to whether such an expansion was technically or economically feasible;
  - the shipper which requested the expansion having a standard shipper contract (which meets the requirement in clause 5.6(a) that the contract include non-discriminatory capacity expansion rights as compared to other shipper contracts for a T1 service); and
  - the expansion being carried out in accordance with the terms of that contract.
- In the case of the Stage 4 expansion of the DBNGP:
  - DBP's feasibility assessment indicated that expansion to meet requested capacity from contracted shippers was both economically and technically feasible; and
  - each of the shippers requesting expansion capacity had an existing shipper contract which included expansion capacity rights (clause 16).
- The expansion obligations of Clause 5.7 are not subject to, or conditioned by, clause 5.6 in any way other than the Standard Shipper Contract must include capacity expansion obligations (clause 5.6(a)).

[78] DBP, 20 May 2011, Submission 52.

- The conditionality of clause 5.6(b)(i) is not relevant for the purpose of the Authority's consideration of whether the obligations imposed under the ACCC Undertaking meets the criteria set out in clause 79(2)(c)(iii) to justify new capital expenditure during the access arrangement period (i.e. for the Stage 4 expansion). This is because the Stage 4 expansion was necessary to meet the capacity requirements of contracted shippers (and not prospective shippers), as DBP demonstrated in section 2.14 of Submission 9; whereas clause 5.6(b)(i) of the ACCC undertaking applies only to prospective shippers – it does not apply to contracted shippers. This is true also in respect of contracted shippers who sought expansion capacity under Stage 5A and Stage 5B expansions.
- Whether or not the obligations imposed on DBP under the ACCC Undertaking were additional to any other statutory obligation that may have required DBP to expand the DBNGP is an irrelevant consideration in circumstances where those other obligations did not, in fact, apply for the purpose of new expenditure during the access arrangement period (e.g. section 6.22 of the Gas Code which the Authority refers to but which did not impose an obligation with respect to the Stage 4 expansion). Rule 79(2)(c)(iii) confines the Authority to considering whether capital expenditure was necessary in order for DBP to comply with the ACCC Undertakings, on the basis that the obligations contained in the undertakings are regulatory obligations or requirements which were imposed on DBP during the access arrangement period. If the obligations under the ACCC Undertaking comply with that criterion, which DBP submits they did, then the Authority must not withhold its approval of that element of the access arrangement proposal.

301. Having regard to DBP's submission, the Authority has reconsidered whether the expansion investment can be considered as necessary to comply with undertakings to the ACCC under section 87B of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*), and whether this requirement constitutes a regulatory obligation within the meaning of rule 79(2)(c)(iii) of the NGR.

302. The Authority accepts that a voluntary undertaking provided under section 87B of the Competition and Consumer Act 2010 can constitute an obligation in that it can be enforced by the ACCC.

303. The Authority also accepts that DBP could have been held to be in breach of the undertaking if it had failed to expand the capacity of the DBNGP to the limits requirements of clause 5.7 of the undertaking, being expansion of not less than 100 TJ/day, within five years and with an investment of up to $400 million.

304. Taking these two matters into account, the Authority accepts that it is strongly arguable that DBP would have breached the undertaking if it had not made the stage 4 expansion of the DBNGP and that DBP could have been compelled to implement expansions to the extent of stage 4. As such, the Authority accepts that the stage 4 expansion of the DBNGP is justified under rule 79(2)(c)(iii) of the NGR. The Authority does not accept that any expansion beyond stage 4 can be considered as necessary to comply with the undertaking provided to the ACCC.

305. On the matter of the Authority's consideration of the supporting analysis presented by DBP for the assertion that the overall economic value of the expansion expenditure is positive, DBP provides some explanatory commentary on the analysis and submits that an analysis of economic benefits that was based on simple assumptions was undertaken because "refinement is difficult".[79] DBP further submits that a reliable quantification of economic benefits is not required by rule 79(2)(a), which requires only that the economic value of the expenditure be shown to be positive, and the analysis presented by DBP shows that the economic value is substantially positive.[80]

306. Notwithstanding the additional explanation of the analysis provided by DBP, the Authority remains of the view that the analysis is too simplistic and inexact to be relied on as an indication of the value of the economic benefits of the expansion. The Authority agrees with DBP that an exact quantification of benefits is not required to show justification of the expenditure under rule 79(2)(a). However, if an approach is to be taken of quantifying certain benefits to show justification under rule 79(2)(a), which is the approach taken by DBP, then there is at least a need to rigorously quantify the benefits to the extent necessary to demonstrate or provide reasonable satisfaction that the value of economic benefits is greater than the value of the capital expenditure. The Authority considers that the analysis presented by DBP does not achieve this.

307. On the approach ultimately taken by the Authority in consideration of the net economic benefits of expansion of the DBNGP (inferring a net economic benefit from the fact of users contracting for the additional capacity and being exposed to the expansion costs), DBP indicates agreement with the Authority's analysis:[81]

> In this context, reference to the specific arrangements of the Standard Shipper Contracts is not particularly relevant. The fact is, as the Authority correctly identified in paragraph 269 [of the draft decision], a number of businesses entered into commercial arrangements with DBP for access to additional capacity in the DBNGP. That these arrangements were entered into by businesses which can reasonably be assumed to be acting rationally and commercially is evidence of expected positive economic benefits from pipeline expansion.

308. Two additional parties made submissions on the approach taken by the Authority to conclude that the expansion capital expenditure provided a net economic benefit and was justified under rule 79(2)(a). Alinta and Verve Energy submit that the approach taken by the Authority is "fundamentally flawed" for the following reasons.

- There is no liberty under the NGR for the Authority to abrogate its duties to require the service provider to satisfy it that one or more of the requirements of rule 79(2) of the NGRs have been met. The draft decision makes it clear that DBP has not satisfied the Authority in this regard.

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79 DBP, 20 May 2011, Submission 52 paragraph 6.23.

80 DBP, 20 May 2011, Submission 52 paragraph 6.32.

81 DBP, 20 May 2011, Submission 52 paragraph 6.34.

- The existence and provisions of the standard shipper contract compel conclusions that are precisely the opposite of the Authority's inferences and assumptions from very limited prima facie evidence. Capital expenditure, provided it was shown by audit to have been actually spent, was agreed to be automatically rolled into the asset capital base for the calculation only of the tariff applying to 2016. A significant protection afforded by the standard shipper contract for shippers agreeing to pay the higher tariff from 2004 to 2014[82] was that it would be paid only for that period. From 2016 shippers would pay a regulated, Reference Tariff, which protected shippers by ensuring that the regulated asset base, at every regulatory reset, only increased by capital expenditure that met the tests in the Applicable Regime.
- If shippers had been asked to commit to paying the contractual tariff from 2004 to the expiration of their shipper contracts on the basis that the contractual tariff was calculated on an asset base where unregulated capital expenditure subject to no financial discipline other than an audit confirming the money had actually been spent was automatically rolled into the capital asset base, they would not have done so. They would have found other more prudent and economically efficient ways to debottleneck the DBNGP.
- The Authority is now merging the two distinct processes (of investment processes under the standard shipper contract and the capital tests of the NGR) without any basis for doing so under the NGL and NGR.

309. Notwithstanding the concerns expressed in their submissions, neither Alinta nor Verve Energy make any assertion or provide any evidence that the capital expenditure on expansion of the DBNGP does not have a positive overall economic value. This is despite the implication in the submissions that there may have been "other more prudent and economically efficient ways to debottleneck the DBNGP" than the expansion works carried out by DBP.

310. The Authority maintains the view expressed in the draft decision that the contractual arrangements under the standard shipper contract that resulted in expansions in capacity being fully contracted to users in advance of the expansions occurring in circumstances where the users were fully exposed to the costs of the expansions is sufficient evidence to conclude that the expansion capital expenditure provided a net economic benefit. Accordingly, the Authority maintains its determination that the capital expenditure on expansion of the DBNGP is justified under rule 79(2)(a).

311. The Authority has not further assessed actual stay-in-business capital expenditure for the 2005 to 2010 access arrangement period, but maintains the determination made under the draft decision that this expenditure (with the exception of the amounts of the project management retainer fee) is justified under rule 79(20(c) of the NGR as being necessary to maintain the safety of services, the integrity of services and the capacity of the pipeline.

[82] It is assumed that "2014" is a typographical error in the submissions of Alinta and Verve Energy and should read "2015", which is the end of the period for which the special tariff arrangements apply under the standard shipper contract.

Conclusion on Conforming Capital Expenditure in 2005 to 2010

312. DBP's revised statement of capital expenditure in the 2005 to 2010 access arrangement period included substantial changes from the original access arrangement proposal in the timing of stated expenditures across years and material changes in the total values of stated capital expenditure. There was also a shift of some capital expenditure from 2010 to forecast capital expenditure for 2011 as a result of DBP adopting a consistent approach to the timing of the addition of capital expenditure to the capital base. The latter reflects a change in timing of addition of expenditure to the capital base rather than a change in the timing of actual capital expenditures.

313. For the reasons set out above, the Authority determines that DBP's revised stated capital expenditure for 2005 to 2010 conforms to the requirements of rule 79 of the NGR with the exception of the amount of the project management retainer fee in each of the years 2008 to 2010.

314. The Authority considers that the amounts of the project management retainer fee in 2008 to 2010 do not satisfy the prudence and efficiency criteria of rule 79(1)(a). The Authority therefore requires that the value of capital expenditure to be added to the capital base be reduced by the amounts of this fee, which the Authority takes to be $2.255 million in each of these three years (dollar values of 31 December 2010). This amount is deducted from capital expenditure in the "other depreciable assets' class of assets.

315. The Authority also requires the values of conforming capital expenditure to be amended to reflect inflation escalation based on the all groups, eight capital cities CPI.

316. The amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period are shown in Table 11.

Table 11 Authority's final decision amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[83]

Year	2005	2006	2007	2008	2009	2010	Total
Pipeline	8.589	257.230	1.246	517.327	-	489.960	1,274.351
Compression	47.620	171.988	0.148	132.939	-	52.261	404.956
Metering	-	-	-	-	0.078	4.756	4.834
Other depreciable	4.067	0.879	2.336	3.650	-1.696	73.060	82.296
Other non-depreciable	-	-0.134	1.950	1.484	0.679	0.666	4.645
Total	**60.277**	**429.962**	**5.680**	**655.399**	**-0.939**	**620.703**	**1,771.082**

Required Amendment 6

The value of conforming capital expenditure for the 2005 to 2010 access arrangement period must be amended to values as indicated in Table 11 of this final decision.

Forecast Capital Expenditure for the 2011 to 2015 Access Arrangement Period

317. DBP's originally proposed forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period totalled $136.508 million and comprised:

- an amount of $49.144 million (dollar values of 31 December 2010) for expansion of the DBNGP, being a final amount in respect of expansion stage 5B that is expected to be capitalised in financial accounts in 2011; and
- an amount of $87.364 million (dollar values of 31 December 2010) for stay-in-business capital expenditure.

318. The annual amounts of capital expenditure and asset categories of expenditure are shown in Table 12.

83 The negative capital expenditure shown for other non-depreciable assets in 2006 results from DBP's statement of a negative value for linepack gas in 2006. The negative value of capital expenditure for other depreciable assets in 2009 results from the Authority's deduction of the value of the project management retainer fee from the value of expenditure in this class. The Authority has treated negative values of capital expenditure in financial calculations as an amount of "over-depreciation" in the relevant asset class and asset age. Under this treatment, the absolute value of the amount is added to the capital base but deducted from total revenue in the first year of the 2011 to 2015 access arrangement period.

Table 12 DBP's originally proposed forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[84]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Expansion						
Pipelines	5.188	-	-	-	-	**5.188**
Compression	8.161	-	-	-	-	**8.161**
Metering	0.145	-	-	-	-	**0.145**
Other depreciable assets	35.651	-	-	-	-	**35.651**
Non-depreciable assets	-	-	-	-	-	**-**
Sub-total	**49.144**	**-**	**-**	**-**	**-**	**49.144**
Stay-in-business						
Pipelines	5.571	4.463	4.827	0.631	0.836	**16.328**
Compression	10.615	8.610	3.981	4.740	8.012	**35.958**
Metering	0.328	0.498	2.724	2.724	0.159	**6.433**
Other depreciable assets	6.271	4.868	4.263	6.930	6.315	**28.647**
Non-depreciable assets	-	-	-	-	-	**-**
Sub-total	**22.785**	**18.439**	**15.794**	**15.024**	**15.322**	**87.364**
Total						
Pipelines	10.759	4.463	4.827	0.631	0.836	**21.516**
Compression	18.775	8.610	3.981	4.740	8.012	**44.118**
Metering	0.473	0.498	2.724	2.724	0.159	**6.577**
Other depreciable assets	41.922	4.868	4.263	6.930	6.315	**64.297**
Non-depreciable assets	-	-	-	-	-	**-**
Total	**71.929**	**18.439**	**15.794**	**15.024**	**15.322**	**136.508**

319. For expansion capital expenditure, information provided by DBP indicated that the forecast expenditure of $49.144 million (dollar values of 31 December 2010) is a final amount in respect of expansion stage 5B that is expected to be capitalised in financial accounts in 2011.

[84] DBP 1 April 2011, Submission 11, sections 4, 5. DBP tariff model of 12 April 2010. Values of stay-in-business capital expenditure are derived as the difference between total expenditure and expansion expenditure. Values are escalated to dollar values of 31 December 2010 using inflation factors derived from the all groups, eight capital cities CPI.

320. In the draft decision the Authority addressed separately the forecast capital expenditure for expansion of the DBNGP and the forecast stay-in-business capital expenditure.

321. For expansion capital expenditure, the Authority determined in the draft decision that the forecast capital expenditure for stage 5B in 2011 is forecast conforming capital expenditure under rule 78. This determination was consistent with the Authority's determination that actual capital expenditure in the 2005 to 2010 period for the stage 5B expansion conforms to the criteria of rule 79. The Authority noted that prior to determining the value of the capital base at the commencement of the next access arrangement period in 2016, only a value of the actual expenditure that has been verified by audit of costs will be added to the capital base.

322. For stay-in-business capital expenditure the Authority determined that not all of the forecast stay-in-business capital expenditure conforms to the prudence and efficiency requirement of rule 79(1)(a), taking into account that:

- for several projects and expenditure items, DBP has not provided sufficient information to demonstrate conformity of forecast capital expenditure with the prudence and efficiency requirement of rule 79(1)(a);
- for several projects and expenditure items, there is some evidence of front-loading of forecast expenditure in the access arrangement period, particularly for projects where there is a time delay between FEED studies and the projected undertaking of capital works; and
- the annual cost of the project management retainer fee does not conform to the prudence and efficiency requirement of rule 79(1)(a).

323. The Authority accepted that the forecast stay-in-business capital expenditure is for the purposes of maintaining and improving the safety of services and maintaining the integrity of services and is justified under the criteria of rule 79(2).

324. Taking into account the assessment of forecast stay-in-business capital expenditure against the criteria of rule 79(1)(a), the Authority required amendment of forecast capital expenditure to be included in the projected capital base for the 2011 to 2015 access arrangement period to the amounts shown in Table 13. The amended forecast of conforming capital expenditure is $22.461 million (16.5 per cent) less than was proposed by DBP (dollar values of 31 December 2010).

Table 13 Authority's draft decision amended values of forecast conforming capital expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)

Year	2011	2012	2013	2014	2015	Total
Forecast Expenditure						
Pipeline	9.848	3.506	3.646	0.415	0.649	**18.064**
Compression	17.186	6.765	3.006	3.121	6.221	**36.299**
Metering	0.433	0.391	2.057	1.794	0.123	**4.798**
Other depreciable	38.374	3.825	3.220	4.564	4.903	**54.886**
Other non-depreciable	-	-	-	-	-	**-**
Total	**65.841**	**14.487**	**11.929**	**9.894**	**11.897**	**114.048**

325. The Authority required the following amendment to the proposed access arrangement revisions.

> Draft decision amendment 5
>
> The forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period must be amended to values shown in Table 15 of the draft decision [Table 13 of this final decision].

326. In the revised access arrangement proposal, DBP included revisions to the forecast of capital expenditure for the 2011 to 2015 access arrangement period. The revised forecast is shown in Table 14 and comprises an increase of $108.877 million over the forecast of the original access arrangement proposal, and an increase of $131.347 million over the forecast determined by the Authority in the draft decision.

327. DBP submits that the increase results from:[85]

- a carryover of expenditure from 2010 in respect of expenditure that has actually been incurred but not added to the asset register and hence not included in verified values of stated capital expenditure in 2010; and
- an update of the forecast of capital expenditure that will be incurred in 2011.

[85] DBP, 20 May 2011, Submission 53.

Table 14 DBP's revised forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[86]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Expansion						
Pipelines	36.593	-	-	-	-	36.593
Compression	27.219	-	-	-	-	27.219
Metering	0.141	-	-	-	-	0.141
Other depreciable assets	45.174	-	-	-	-	45.174
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**109.127**	**-**	**-**	**-**	**-**	**109.127**
Stay-in-business						
Pipelines	7.963	3.950	4.255	0.615	0.815	17.598
Compression	9.290	7.273	2.760	3.500	6.690	29.512
Metering	0.409	0.485	2.655	2.655	0.155	6.359
Other depreciable assets	35.240	4.745	4.155	6.755	6.155	57.050
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**52.902**	**16.453**	**13.825**	**13.525**	**13.815**	**110.520**
Shipper funded assets						
Pipelines	15.166	-	-	-	-	15.166
Compression	2.683	-	-	-	-	2.683
Metering	3.713	2.718	1.473	-	-	7.905
Other depreciable assets	-	-	-	-	-	-
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**21.562**	**2.718**	**1.473**	**0.000**	**0.000**	**25.754**
Total						
Pipelines	59.723	3.950	4.255	0.615	0.815	69.358
Compression	39.192	7.273	2.760	3.500	6.690	59.415
Metering	4.262	3.204	4.128	2.655	0.155	14.404
Other depreciable assets	80.414	4.745	4.155	6.755	6.155	102.224
Non-depreciable assets	0.000	0.000	0.000	0.000	0.000	0.000
Total	**183.591**	**19.171**	**15.298**	**13.525**	**13.815**	**245.401**

[86] DBP, 8 September 2011, Submission 70, tariff model.

328. In a supporting submission to the revised access arrangement proposal, DBP sets out reasons for the revised forecast.[87] This submission addresses:

- DBP's response to the Authority's assessment of stay-in-business capital projects and expenditure items and the Authority's required amendments to forecast capital expenditure based on this assessment;
- a shift in stated capital expenditure from 2010 to 2011, reflecting updated values of actual capital expenditure and a revised forecast for 2011; and
- inclusion in forecast capital expenditure for 2011 of values of assets that comprise "construction works in progress", i.e. values of capital expenditure that have been incurred in 2010 but not entered into the accounting asset register before 31 December 2010.

329. These elements of DBP's submission are addressed below under "considerations of the Authority".

330. For this final decision the Authority has addressed the revised forecast of capital expenditure by considering:

- inclusion in forecast capital expenditure for 2011 of values of assets that comprise "construction works in progress", i.e. values of capital expenditure that have been incurred in 2010 or prior years but not entered into the accounting asset register before 31 December 2010;
- the revised forecast of expansion capital expenditure to be incurred in 2011 and whether this revised forecast conforms to the criteria of rule 79 of the NGR;
- the revised forecast of stay-in-business capital expenditure and DBP's response to the Authority's draft decision assessment of stay-in-business capital projects and expenditure items; and
- the forecast of shipper-funded capital expenditure.

Carryover of costs of "construction works in progress"

331. DBP indicates that the original statements of actual and forecast capital expenditure contained some inconsistencies in the timing of the addition of capital expenditures to the capital base. The intention was to add expenditure to the capital base in the year that the relevant asset was commissioned or entered into service. However, in some cases expenditures were proposed to be added to the capital base at the time the expenditure was entered into DBP's asset register and asset accounts, which may occur some time after the asset entered service.[88]

332. In presenting a revised forecast of capital expenditure for the 2011 to 2015 access arrangement period, DBP has altered the timing of addition to the capital base of some capital expenditure to take a consistent approach of adding expenditure to the capital base at the time the expenditure is entered into DBP's asset register and asset accounts. This approach was applied in order to facilitate verification of stated amounts of capital expenditure by reconciliation of the stated amounts with audited financial statements.

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87 DBP, 20 May 2011, Submission 53.

88 DBP, 20 May 2011, Submission 53 p 21.

333. As a result of this change in timing of addition of capital expenditure to the capital base, there are expenditures of $117.949 million (in dollar values of 31 December 2010) that were incurred in 2010 (or previous years) but that are included by DBP in forecast capital expenditure for 2011, as shown in Table 15. In part, this represents a change in the timing of addition to the capital base of capital expenditures rather than a change in the timing of actual capital expenditures.

Table 15 DBP's stated values of "construction works in progress" included in forecast capital expenditure for 2011 (real $ million at 31 December 2010)[89]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Expansion						
Pipelines	31.536	-	-	-	-	31.536
Compression	19.265	-	-	-	-	19.265
Metering	-	-	-	-	-	
Other depreciable assets	10.424	-	-	-	-	10.424
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**61.225**	**-**	**-**	**-**	**-**	**61.225**
Stay-in-business						
Pipelines	3.503	-	-	-	-	3.503
Compression	2.420	-	-	-	-	2.420
Metering	0.089	-	-	-	-	0.089
Other depreciable assets	29.384	-	-	-	-	29.384
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**35.396**	**-**	**-**	**-**	**-**	**35.396**
Shipper funded assets						
Pipelines	15.166	-	-	-	-	15.166
Compression	2.683	-	-	-	-	2.683
Metering	3.479	-	-	-	-	3.479
Other depreciable assets	-	-	-	-	-	-
Non-depreciable assets	-	-	-	-	-	-
Sub-total	**21.328**	**-**	**-**	**-**	**-**	**21.328**
Total						
Pipelines	50.206	-	-	-	-	50.206
Compression	24.368	-	-	-	-	24.368
Metering	3.567	-	-	-	-	3.567
Other depreciable assets	39.808	-	-	-	-	39.808
Non-depreciable assets	-	-	-	-	-	-
Total	**117.949**	**-**	**-**	**-**	**-**	**117.949**

334. DBP has provided the Authority with details of the capital projects that are included in the values of "capital works in progress" for 2011.[90]

89 DBP, 8 September 2011, Submission 70, tariff model.

90 DBP, 8 September 2011, Submission 70, tariff model.

335. The Authority is of the view that DBP's proposed practice of coordinating the timing of adding expenditure to the regulatory capital base with addition of the expenditure and assets to the asset register and capital account facilitates verification of the amounts of capital expenditure. The practical advantage of accounting for capital expenditure at the same time (for regulatory purposes and accounting purposes) is that it avoids the need to reconcile expenditure values and make consequential adjustments to those values.

336. The Authority observes that the amount of capital expenditure attributed to construction works in progress and that is carried over from 2010 to 2011 is verified as part of DBP's verification of capital expenditure for 2005 to 2010.[91]

337. Given that the value of capital works in progress relates to capital expenditures in 2010 or earlier years, the Authority is of the view that, with one exception, this amount of forecast capital expenditure in 2011 is likely to be justified under rule 79 of the NGR for the reasons set out earlier in this final decision in respect of the conforming capital expenditure for the 2005 to 2010 period. The exception to this is the amount in respect of the value of BEP Capacity included in the value of construction works in progress, for which the Authority is requiring a change in the capital valuation (addressed at paragraph 236 and following of this final decision).

Revised Forecast of Expansion Capital Expenditure

338. DBP's revised forecast of expansion capital expenditure comprises: [92]

- for expenditure that is forecast to occur in 2011, an amount of $47.902 million, which is a small decrease of $1.242 million from the original forecast of $49.144 million; plus
- an amount in respect of "construction works in progress" of $61.225 million that was not included in the original forecast.

339. For the expenditure that is forecast to occur in 2011, the change from the original to the revised forecast is small. Accordingly, the Authority has not altered its determination from that of the draft decision that this forecast expenditure is likely to be justified under rule 79 of the NGR.

340. For the forecast expenditure that comprises an amount in respect of construction works in progress, the Authority determines that this amount of expenditure is likely to be justified under rule 79 of the NGR for the reasons set out above (paragraphs 331 to 337).

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91 DBP, 20 May 2011, Submission 52 p 12. This submission shows a verified value of assets under construction at 31 December 2010 of $129,357 million. In a subsequent submission, DBP indicates that, of this, $11.408 million is treated as operating expenditure for regulatory purposes (DBP, 17 August 2011, submission 68). The residual amount of $117.949 million corresponds to the stated value of assets under construction that is carried over to forecast capital expenditure of 2011.

92 DBP, 8 September 2011, Submission 70, tariff model.

341. An additional matter of relevance to the consideration of forecast capital expenditure is the treatment of the cost of lease of the BEP Capacity. DBP has proposed that a capitalised value of the lease should be added to the capital base. Part of DBP's proposal is that the capitalised value of the lease should be added to the capital base in 2011 and that this value should be categorised as an "other depreciable" asset for the purposes of regulatory depreciation.

342. The Authority has determined that the capitalised value of the lease of the BEP Capacity can be treated as forecast capital expenditure for 2011. However, the Authority has determined a different capital value than proposed by DBP ($17.679 million rather than $23.117 million as proposed by DBP) and determined that the BEP Capacity asset should be treated for regulatory purposes as a second-hand pipeline asset with a separate asset class established for depreciation purposes.

343. The Authority therefore requires that the forecast of capital expenditure be amended to reflect the change in value and asset category for the BEP Capacity. For this final decision the Authority has undertaken this amendment by reducing the value of forecast capital expenditure for 2011 in the "pipeline assets" category by $23.117 million and increasing the value in the "pipeline category" by $17.679 million.

Revised forecast of Stay-in-business Capital Expenditure

344. DBP's revised forecast of stay-in-business capital expenditure comprises:

- an amount of $35.396 million in 2011 in respect of "construction works in progress" that was not included in the original forecast and which in large part represents a transfer of costs from actual costs of 2010 to forecast costs of 2011; and
- for expenditure that is forecast to occur in 2011 to 2015, an amount of $75.124 million, which is a decrease of $12.240 million from the original forecast of $87.364 million.

345. For the forecast stay-in-business capital expenditure that comprises an amount in respect of construction works in progress, the Authority determines that this amount of expenditure is likely to conform to the criteria of rule 79 of the NGR for the reasons set out in paragraphs 338 to 343.

346. For expenditure that is forecast to occur in 2011 to 2015, the Authority made an assessment for the purposes of the draft decision of the major capital projects that give rise to this forecast expenditure. The Authority's assessment had regard to technical advice[93] and resulted in the Authority requiring a reduction in the value of forecast stay-in-business capital expenditure.

[93] Halcrow Pacific Pty Ltd and Zincara Pty Ltd, November 2010, Dampier to Bunbury Natural Gas Pipeline Access Arrangement Review – Technical Assessment. (Halcrow & Zincara (a)).

347. For this final decision the Authority has given further consideration to the same set of major capital projects, having regard to DBP's subsequent submission on the Authority's draft decision[94] and further technical advice from Halcrow & Zincara that the Authority has obtained on these projects.[95] This further consideration is set out as follows.[96]

348. LM500 Compressor Units Decommissioning – DBP originally forecast a cost [redacted] to examine decommissioning of compressor units. Halcrow & Zincara took the view that the study and expenditure is justified, but noted that no allowance is made in the forecast stay-in-business capital expenditure for implementing the decommissioning. Taking the view that this indicates that no actual decommissioning works are intended during the 2011 to 2015 access arrangement period, Halcrow & Zincara recommended that the FEED study and expenditure could be shifted to 2014.[97] DBP has not revised the cost of this project and contends that the complexity of the project (for moving compressors to a mothballed state without compromising operation of the compressor stations) justifies the timing of the FEED study.[98] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost and timing as originally forecast is adequately substantiated.[99] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

349. Replacement of PVC oil waste pipes at compressors – DBP originally forecast a cost [redacted] for replacement of oil waste pipes at compressors. Halcrow & Zincara observed that this corresponds to a cost per compressor of between $0.060 million and $0.098 million (dollar values of 31 December 2010), depending upon how many compressors are to have pipes replaced. Halcrow & Zincara considered this cost to be excessive and recommend a forecast cost of $0.021 million per compressor, to a maximum total cost of $0.267 million.[100] DBP has accepted this view and revised the forecast cost for this project to $0.260 million to be incurred in 2011.[101]

94 DBP, 20 May 2011, Submission 53.

95 Halcrow Pacific Pty Ltd and Zincara Pty Ltd, August 2011, Dampier to Bunbury Natural Gas Pipeline Access Arrangement Review – Technical Assessment Supplementary Report. (Halcrow & Zincara (b)).

96 Specific values associated with the expenditure discussed in paragraphs 348 to 363 are included in the confidential of this final decision (Appendix 4).

97 Halcrow & Zincara (a), pp 84, 85.

98 DBP, 20 May 2011, Submission 53 pp 5, 6.

99 Halcrow & Zincara (b) pp 5 – 6.

100 Halcrow & Zincara (a) pp 86, 87.

101 DBP, 20 May 2011, Submission 53 p 6.

350. Replacement of compressor exhaust (CS6 Nova Pignone Compressor) – DBP originally forecast a cost [redacted] for replacement of a compressor exhaust system at CS6. Halcrow & Zincara considered that DBP established a case for these works (based on a risk of failure), but did not provide sufficient information to justify the delay of the works until 2014 given the assessed risk of failure nor to justify the cost estimate. On this basis, Halcrow & Zincara recommended that the cost be excluded from the forecast of stay-in-business capital expenditure.[102] DBP has not revised the cost of this project and contends that the planned replacement is based on inspection and assessment of the asset and the estimated cost based on a tendered cost outcome for a previous similar project.[103] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost as originally forecast is adequately substantiated.[104] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

351. Standardisation of turbine/compressor "control logic" – DBP originally forecast a cost [redacted] for standardisation of a part of compressor control equipment. Halcrow & Zincara found that DBP had not provided sufficient information to demonstrate that this standardisation could not be better undertaken as part of an upgrade of compressor control equipment projected as a separate item of stay-in-business capital works. On this basis, Halcrow & Zincara recommended that the cost be excluded from the forecast of stay-in-business capital expenditure.[105] DBP has not revised the cost of this project and provides more detail on the proposed works and reasons why the project cannot be undertaken as part of an upgrade of compressor control equipment.[106] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost as originally forecast is adequately substantiated.[107] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

102 Halcrow & Zincara (a) pp 91, 92.
103 DBP, 20 May 2011, Submission 53 p 6.
104 Halcrow & Zincara (b) pp 7,8.
105 Halcrow & Zincara (a) pp 92, 93.
106 DBP, 20 May 2011, Submission 53 pp 6, 7.
107 Halcrow & Zincara (b) pp 8, 9.

352. Replacement of underground pipework at compressor stations – DBP originally proposed a cost [redacted] in each year of the 2011 to 2015 access arrangement period for replacement of pipework at compressors. Halcrow & Zincara considered the replacement to be prudent, but considered the unit cost per compressor to be unjustifiably greater than the cost of similar works in the 2005 to 2010 access arrangement period. On this basis, Halcrow & Zincara recommended the forecast cost be reduced to $0.615 million per year (dollar values of 31 December 2010).[108] DBP has not made any revision of the cost of this project and has provided further information to justify the unit cost per compressor.[109] On consideration of DBP's further submission, Halcrow & Zincara maintain the conclusion that the information provided by DBP justifies a lesser cost than proposed. On the basis of the further information provided by DBP, Halcrow & Zincara conclude that a total cost of $4.135 million over the access arrangement period is justified, based on an average cost of $3,514 per metre of pipework, an expected requirement for refurbishment or replacement of 40 per cent of pipework, and works undertaken at six compressor stations with a total length of pipework of 2,940m.[110] On the basis of this advice, the Authority has made allowance for $0.830 million in each year in dollar values of 31 December 2010, being a reduction of $0.708 million per year from DBP's forecast cost.

353. Replacement of water pipework at CS2 – DBP originally proposed a [redacted] for replacement of water pipework at CS2. Halcrow & Zincara considered that DBP has provided insufficient information to justify the cost and recommend that half of the proposed cost be excluded from the forecast.[111] DBP has accepted this view and revised the forecast cost for this project to $0.050 million to be incurred in 2011.[112]

354. Installation of gas chromatographs – DBP originally proposed a cost [redacted] for a FEED study for installation of additional gas chromatographs on the DBNGP for monitoring of gas quality. Halcrow & Zincara considered that this cost is excessive for the study and considered that a lower cost of $0.021 million (dollar values of 31 December 2010) should be included in the forecast.[113] DBP has not revised the cost of this project and contends that the high cost results from complexity of the required study to determine strategic locations for gas monitoring given the range of new gas sources and inlet points expected to commence in the 2005 to 2011 period.[114] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost as originally forecast is adequately substantiated.[115] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

108 Halcrow & Zincara (a) pp 96, 97.
109 DBP, 20 May 2011, Submission 53 pp 7, 8.
110 Halcrow & Zincara (b) pp 9, 10.
111 Halcrow & Zincara (a) pp 100, 101.
112 DBP, 20 May 2011, Submission 53 p 8.
113 Halcrow & Zincara (a) pp 109, 110.
114 DBP, 20 May 2011, Submission 53 pp 9, 10.
115 Halcrow & Zincara (b) pp 11.

355. Relocation of microwave batteries – DBP originally proposed a cost [redacted] for a FEED study on relocation of microwave batteries. Halcrow & Zincara considered the study and the estimated cost to be justified, but that there is an unwarranted period of time between the FEED study and the forecast timing of the works, and consider that the cost should be deferred until 2014.[116] DBP has not revised the cost of this project and has provided further information to justify the timing of the FEED studies given the importance of these studies in broader planning of power supplies at compressor stations.[117] On consideration of DBP's further submission, Halcrow & Zincara have maintained the conclusion that the timing of the cost at three years before the actual works is unjustified given the relatively minor nature of the works.[118] The Authority notes, however, that the value of expenditure for which the timing is in question is very small ($0.005 million) and, as such, the Authority accepts that this expenditure conforms to the criteria of rule 79 of the NGR without any adjustment to timing.

356. Structural analysis and upgrades of microwave towers – DBP originally proposed costs [redacted] over the course of the 2011 to 2015 access arrangement period for structural analysis and upgrades of microwave towers. Halcrow & Zincara considered that this cost has not been justified as prudent, taking into account that the age of the towers is less than typical design lives and any upgrades necessary for a change in use of the towers should be considered as part of projects for the change in use. Halcrow & Zincara considered that the cost should be removed from the forecast of stay-in-business capital expenditure.[119] DBP indicates that it no longer intends to proceed with the project and that it has revised the forecast of capital expenditure to exclude the forecast project cost.[120] The Authority observes, however, that the amount of forecast capital expenditure for this project has not actually been removed from the forecast of capital expenditure in DBP's reference tariff model.[121] Accordingly, the Authority requires that the amount of this forecast expenditure ($0.06 million in 2011 and $0.1 million in each of 2012 to 2015, dollar values of 31 December 2010) be removed from the forecast of capital expenditure.

116 Halcrow & Zincara (a) pp 117.

117 DBP, 20 May 2011, Submission 53 p 11.

118 Halcrow & Zincara (b) pp 11, 12.

119 Halcrow & Zincara (a) pp 119, 120.

120 DBP, 20 May 2011, Submission 53 p 12.

121 DBP, 11 August 2011, Submission 66, Tariff Model of 21 July 2011.

357. Upgrade of solar panels – DBP originally proposed costs [redacted] for a FEED study and implementation for replacement of solar panels. Halcrow & Zincara considered the proposed works and overall cost to be reasonable, but questioned whether the cost for FEED study should be allowed for in 2011 rather than put back to 2012.[122] DBP has not revised the cost or timing of this project and has provided further information to justify the timing of the FEED study given a likelihood that the study will trigger a change from the original design intent for the assets and an imperative for the study given damage to existing solar panels.[123] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost and timing as originally forecast is adequately substantiated.[124] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

358. Replacement of closed circuit vapour turbines – DBP originally proposed costs [redacted] for a program of replacement of closed circuit vapour turbines that commenced in 2010. Halcrow & Zincara indicated that this program had an original estimated project cost of $4.4 million (nominal), of which $3.6 million (nominal) has been included in the statement of actual stay-in-business capital expenditure for 2010. Halcrow & Zincara considered that only the balance of this estimated cost ($0.8 million) should be provided for in forecast stay-in-business capital expenditure for the 2011 to 2015 access arrangement period.[125] In the revised forecast of capital expenditure DBP has included the cost incurred up to 2010 as an amount in respect of "capital works in progress" for 2011 (as a cost incurred in 2010 but not added to asset accounts until 2011). DBP has removed allowance from the cost forecast for the remaining cost of the project expected to be incurred in 2011.[126]

359. Relocation of the disaster recovery system – DBP originally proposed costs [redacted] for a FEED study and implementation for relocation of the disaster recovery system to Kwinana. Halcrow & Zincara considered the proposed works and overall cost to be reasonable, but question whether the cost for the FEED study should be allowed for in 2012 rather than put back to 2013.[127] DBP has not revised the cost or timing of this project and contends that the timing of the FEED study is appropriate for DBP's decision making processes for capital projects.[128] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost and timing as originally forecast is adequately substantiated.[129] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

122 Halcrow & Zincara (a) p 120.
123 DBP, 20 May 2011, Submission 53 p 12.
124 Halcrow & Zincara (b) pp 13, 14.
125 Halcrow & Zincara (a) p 121.
126 DBP, 20 May 2011, Submission 53 pp 12, 13.
127 Halcrow & Zincara (a) pp 124, 125.
128 DBP, 20 May 2011, Submission 53 p 13, 14.
129 Halcrow & Zincara (b) pp 16, 17.

360. Upgrade of security – DBP originally proposed costs [redacted] for upgrades of security at facility sites. Halcrow & Zincara considered that DBP has provided inadequate information to justify the expenditure and recommend that the costs be excluded from the forecast of stay-in-business capital expenditure.[130] DBP has not revised the cost of this project and has provided further information to justify the cost given degradation over time of security arrangements and the need to upgrade security.[131] On consideration of DBP's further submission, Halcrow & Zincara have concluded that the cost and timing as originally forecast is adequately substantiated.[132] On this basis, the Authority accepts that this element of forecast capital expenditure conforms to the criteria of rule 79 of the NGR.

361. SCADA upgrade – DBP originally included in the forecast of stay-in-business capital expenditure an amount [redacted] for a SCADA upgrade, but DBP subsequently advised Halcrow & Zincara that expenditure for these works would actually occur in 2010. Halcrow & Zincara thus recommended that this amount should be removed from the forecast of stay in business capital expenditure.[133] In the revised access arrangement proposal, DBP has included a full amount of expenditure for this project ($3.474 million) in the forecast expenditure for 2011 as an amount in respect of "construction works in progress", as a cost incurred in 2010 but being added to the asset registers of financial accounts and to the capital base in 2011.[134] The Authority accepts this treatment.

362. Computer purchases – DBP originally proposed costs [redacted] over the 2011 to 2015 access arrangement period for computer purchases. Based on consideration of unit costs, Halcrow & Zincara considered the forecast cost to be excessive and recommend that a cost of $0.075 million (dollar values of 31 December 2010) be included for each year, for a total of $0.375 million.[135] DBP has not made any revision of the cost of this project and has provided further information to justify the cost on the basis of an inventory of 276 computers replaced every five years at a unit cost of $0.003 million giving a total cost of just over $0.820 million every five years.[136] Halcrow & Zincara has undertaken a further assessment of costs of computer purchases on the basis of assumptions of the number of computers required by DBP and arrived at an estimated cost of $0.720 million over the five year period.[137] The Authority accepts that Halcrow & Zincara's estimate of costs is sufficiently close to the DBP forecast cost to verify the forecast. On this basis, the Authority accepts that DBP's forecast cost conforms to the criteria of rule 79 of the NGR.

130 Halcrow & Zincara (a) pp 128.
131 DBP, 20 May 2011, Submission 53 p 11.
132 Halcrow & Zincara (b) pp 17, 18.
133 Halcrow & Zincara (a) p 129.
134 DBP, 20 May 2011, Submission 53 pp 14, 15.
135 Halcrow & Zincara (a) pp 131, 132.
136 DBP, 20 May 2011, Submission 53 p 15.
137 Halcrow & Zincara (b) pp 19, 20.

363. New vehicle purchases – DBP originally proposed costs [redacted] for new vehicle purchases. Halcrow & Zincara considered that DBP has provided inadequate information to justify the expenditure and recommend that the costs be excluded from the forecast of stay-in-business capital expenditure.[138] DBP has not made any revision of the cost of this project and has provided further information to justify the cost on the basis of an additional requirement for three vehicles (at a unit cost of $0.080 million) for managing meter stations at an increased number of inlet and outlet points.[139] The Authority accepts that this additional information justifies the forecast expenditure.

364. Project management retainer fee – DBP originally proposed a cost of $2.31 million per year (dollar values of 31 December 2010) over the 2011 to 2015 access arrangement period for the project management retainer fee payable to WestNet Energy Services Pty Ltd under the terms of the Operating Services Agreement. Halcrow & Zincara considered that the value of the fee is excessive by industry standards and notes that there is a lack of provision for the value of the fee to be netted off against any actual project management fees that are payable.[140] In the draft decision the Authority determined that the amount of the project management retainer fee is not justified under the criteria of rule 79 and required that the amount of this fee be excluded from the forecast capital expenditure. DBP has not revised the forecast of capital expenditure to remove the amount of the fee, which is indicated in the revised access arrangement proposal to be an amount of $2.255 million per year in dollar values of 31 December 2010. The Authority has give additional consideration to this fee in this final decision (paragraph 282 and following) and maintains the view that DBP has not provided information to indicate that this fee is prudent and efficient and conforms with the requirements of rule 79(1)(a). Accordingly, the Authority maintains the view that the amount of this fee should be excluded from the forecast of capital expenditure.

365. Having regard to the above assessment of line items of forecast stay-in-business capital expenditure and DBP's revisions to the forecast, the Authority considers that the revised forecast conforms with the requirements of rule 79 of the NGR with the following exceptions that amount to $15.275 million:

- an amount in respect of refurbishment and replacement of pipework at compressor stations ($0.708 million in each year, dollar values of 31 December 2010);
- an amount in respect of structural analysis and upgrades of microwave towers ($0.060 million in 2011 and $0.100 million in each of 2012 to 2015, dollar values of 31 December 2010); and
- the amount of the project management retainer fee ($2.255 million per year in dollar values of 31 December 2010).

138 Halcrow & Zincara (a) p 132.

139 DBP, 20 May 2011, Submission 53 pp 15, 16.

140 Halcrow & Zincara (a) pp 138 – 141.

Forecast Shipper-Funded Capital Expenditure

366. In the revised access arrangement proposal, DBP has separately specified an amount of the forecast capital expenditure that will be funded by users through payments over and above tariffs for pipeline services. The forecast values of shipper-funded capital expenditure are indicated in Table 16.

Table 16 DBP's revised forecast of shipper-funded capital expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[141]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Pipelines	15.166	-	-	-	-	**15.166**
Compression	2.683	-	-	-	-	**2.683**
Metering	3.713	2.718	1.473	-	-	**7.905**
Other depreciable assets	-	-	-	-	-	**-**
Non-depreciable assets	-	-	-	-	-	**-**
Total	**21.562**	**2.718**	**1.473**	**-**	**-**	**25.754**

367. DBP's forecast of capital expenditure to be funded by capital contributions comprises:

- for expenditure that is forecast to occur in 2011 to 2015, an amount of $4.426 million, which is close to the value of $4.437 million in the original forecast (in dollar values of 31 December 2010); plus
- an amount for 2011 in respect of "construction works in progress" of $21.328 million that was not included in the original forecast.

368. Given the small value of the forecast of shipper-funded capital expenditure for new projects and that these projects are undertaken under a direct contract with individual users, the Authority considers that this expenditure is likely to conform to the criteria of rule 79 of the NGR.

369. For the forecast shipper-funded capital expenditure that comprises an amount in respect of construction works in progress, the Authority determines that this amount of expenditure is likely to conform to the criteria of rule 79 of the NGR for the reasons set out in paragraphs 331 to 337.

Conclusion on Forecast Conforming Capital Expenditure

370. Taking account of the above matters, the Authority is of the view that not all of the forecast capital expenditure conforms to the prudence and efficiency requirement of rule 79(1)(a). The Authority requires amendment of the forecast to:

- adjust the forecast for a change in value and categorisation of the capitalised value of the lease of the BEP Capacity, reducing the value of forecast capital expenditure for 2011 in the "pipeline assets" category by $23.117 million and increasing the value in a new "BEP Capacity" category by $17.679 million;

[141] DBP, 20 May 2011, Submission 61, attachment 3.

- remove an amount in the compressor asset category of stay-in-business capital expenditure in respect of refurbishment and replacement of pipework at compressor stations ($0.708 million in each year, dollar values of 31 December 2010);
- remove an amount in the pipeline asset category of stay-in-business capital expenditure in respect of the cost of structural analysis and upgrades of microwave towers ($0.06 million in 2011 and $0.1 million in each of 2012 to 2015, dollar values of 31 December 2010); and
- remove an amount in the other depreciable asset category of stay-in-business capital expenditure in respect of the project management retainer fee ($2.255 million in each year, dollar values of 31 December 2010).

371. The Authority's required amended forecast of conforming capital expenditure is shown in Table 17.

Table 17 Authority's final decision amended forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)

Year ending 31 December	2011	2012	2013	2014	2015	Total
Expansion						
Pipelines	13.476	-	-	-	-	**13.476**
Compression	27.219	-	-	-	-	**27.219**
Metering	0.141	-	-	-	-	**0.141**
Other depreciable assets	45.174	-	-	-	-	**45.174**
BEP Capacity	17.840	-	-	-	-	**17.840**
Non-depreciable assets	-	-	-	-	-	**-**
Sub-total	**103.689**	**-**	**-**	**-**	**-**	**103.689**
Stay-in-business						
Pipelines	7.903	3.850	4.155	0.515	0.715	**17.138**
Compression	8.582	6.565	2.052	2.792	5.982	**25.972**
Metering	0.409	0.485	2.655	2.655	0.155	**6.359**
Other depreciable assets	32.985	2.490	1.900	4.500	3.900	**45.775**
BEP Capacity	-	-	-	-	-	**-**
Non-depreciable assets	-	-	-	-	-	**-**
Sub-total	**49.879**	**13.390**	**10.762**	**10.462**	**10.752**	**95.245**
Shipper funded assets						
Pipelines	15.166	-	-	-	-	**15.166**
Compression	2.683	-	-	-	-	**2.683**
Metering	3.713	2.718	1.473	-	-	**7.905**
Other depreciable assets	-	-	-	-	-	**-**
BEP Capacity	-	-	-	-	-	**-**
Non-depreciable assets	-	-	-	-	-	**-**
Sub-total	**21.562**	**2.718**	**1.473**	**-**	**-**	**25.754**
Total						
Pipelines	59.663	3.850	4.155	0.515	0.715	**68.898**
Compression	38.484	6.565	2.052	2.792	5.982	**55.875**
Metering	4.262	3.204	4.128	2.655	0.155	**14.404**
Other depreciable assets	55.042	2.490	1.900	4.500	3.900	**67.832**
BEP Capacity	17.679	-	-	-	-	**17.679**
Non-depreciable assets	-	-	-	-	-	**-**
Total	**175.290**	**16.108**	**12.235**	**10.462**	**10.752**	**224.848**

Required Amendment 7

The forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period must be amended to values shown in Table 17 of this final decision.

Regulatory Treatment of Capital Contributions

372. The treatment of capital contributions in determining the capital base is guided by rule 82 of the NGR.

> 82 Capital contributions by users to new capital expenditure
>
> (1) A user may make a capital contribution towards a service provider's capital expenditure.
>
> (2) Capital expenditure to which a user has contributed may, with the [ERA's] approval, be rolled into the capital base for a pipeline but, subject to subrule (3), not to the extent of any such capital contribution.
>
> (3) The [ERA] may approve the rolling of capital expenditure (including a capital contribution made by a user, or part of such a capital contribution) into the capital base for a pipeline on condition that the access arrangement contain a mechanism to prevent the service provider from benefiting, through increased revenue, from the user's contribution to the capital base.

373. In the original access arrangement proposal, DBP proposed a treatment of capital contributions involving adding the capital expenditure financed by capital contributions to the capital base for the DBNGP, but separately accounting for the return on these amounts and the depreciation of these amounts, and to not allocate these amounts to any pipeline service.[142]

374. The Authority took the view in the draft decision that the treatment of capital contributions proposed by DBP adds complexity to the financial accounting and financial calculations for determination of reference tariffs by requiring separate accounting of the portion of the capital base that corresponds to amounts of capital expenditure funded by capital contributions. However, the Authority determined that the treatment proposed by DBP has the same ultimate outcome as excluding the amounts of capital expenditure funded by capital contributions from the capital base. On this basis the Authority was satisfied that this treatment constitutes a mechanism that prevents DBP from benefiting, through increased revenue, from the capital contributions, and that the treatment is consistent with the requirements of rule 82.

[142] DBP, 14 April 2010, proposed revised access arrangement, clause 12.

375. The Authority stated in the draft decision that financial calculations for implementing DBP's proposed treatment of capital contributions must include separate capital accounts for capital expenditure that is financed by capital contributions. This enables returns on this expenditure and depreciation allowances to be correctly calculated and excluded from the amount of total revenue to be recovered by reference tariffs. DBP's financial calculations did not accord with this requirement. Without these separate capital accounts, it is not possible to ensure that the proposed treatment of capital contributions has been implemented correctly. The Authority's financial calculations for the draft decision corrected the treatment of capital contributions and include separate capital accounts in the financial calculations of total revenue.

376. No submissions made to the Authority on the draft decision addressed the regulatory treatment of capital contributions.

377. In this final decision the Authority maintains the determination that DBP's proposed treatment of capital contributions accords with the requirements of rule 82 of the NGR.

Redundant Assets and Asset Disposals

378. Rule 77(2) of the NGR provides that the opening capital base for an access arrangement period may exclude redundant assets identified during the course of the earlier access arrangement period. This is subject to the access arrangement including a mechanism under rule 85 to ensure that assets that cease to contribute in any way to the delivery of pipeline services (redundant assets) are removed from the capital base.

379. Rule 85(1) of the NGR provides that a full access arrangement may include a mechanism to ensure that assets that cease to contribute in any way to the delivery of pipeline services are removed from the capital base. Rule 85(2) of the NGR provides that a reduction of the capital base in accordance with such a mechanism may only take effect from the commencement of the first access arrangement period to follow the inclusion of the mechanism in the access arrangement, or the commencement of a later access arrangement period.

380. Rule 85(4) of the NGR provides that before requiring or approving a capital redundancy mechanism, the Authority must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

381. In the original proposed access arrangement, DBP made no provision for redundant assets or asset disposals in the roll forward calculation of the capital base.

382. In its revised access arrangement proposal, DBP has made allowance in the calculation of the capital base for asset disposals to the value of $6.596 million (dollar values of 31 December 2010) in the 2005 to 2010 access arrangement period.[143] A subsequent submission to the Authority indicates different values of asset disposals, with the total value being $5.943 million (dollar values of 31 December 2010).[144] The Authority has taken the later submitted values to be the values intended by DBP to be taken into account in the calculation of total revenue (Table 18).

Table 18 DBP's revised allowances for asset disposals in the 2005 to 2010 access arrangement period (real dollar values of 31 December 2010)[145]

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	-	-	-	-	-	-	-
Compressors	3.706	-	-	-	-	-	3.706
Meters	-	-	-	-	-	-	-
Other depreciable	0.068	-	0.029	0.023	0.066	0.010	0.196
Non depreciable	2.041	-	-	-	-	-	2.041
Total	**5.814**	**-**	**0.029**	**0.023**	**0.066**	**0.010**	**5.943**

383. The disposed-of assets are indicated by DBP to comprise buildings at Karratha and Geraldton (classed as compression assets), motor vehicles and software (both classed as other depreciable assets) and properties at Geraldton and Karratha (classed as non-depreciable assets).

143 DBP, 20 May 2011, Submission 61 Attachment 3. DBP, 20 May 2011, Submission 52 pp 17, 18.

144 DBP, 5 September 2011, Submission 69. Values expressed in nominal terms in this submission have been escalated to dollar values of 31 December 2010 using DBP's inflation escalation factors.

145 DBP, 08 September 2011, Submission 70, tariff model. DBP, 20 May 2011, Submission 52 pp 17, 18.

384. DBP indicates that it determined a depreciated regulatory value for each disposed-of asset by assuming that the asset formed part of the initial capital base of the DBNGP (established in 1999) and determining a regulatory value of the asset as a proportion of the initial capital base:

$$\textit{Undepreciated value of asset } i = \frac{\textit{Statutory account value of asset } i \textit{ at time of disposal}}{\textit{Capital base at time of disposal}} \times \textit{Original initial capital base value in 1999}$$

and

$$\textit{Depreciated value of asset } i = \textit{Undepreciated value of asset } i - \left[\frac{\textit{Number of years from 2000 to year of asset disposal}}{\textit{Remaining asset life of asset class at 1 January 2000}}\right] \times \textit{Undepreciated value of asset } i$$

385. DBP's treatment of asset disposals in the calculation of reference tariffs is to subtract the values of asset disposals from the values of conforming capital expenditure to be added to the capital base in each year.

386. Rules 77 and 78 of the NGR provide for the value of disposed-of assets to be deducted from the capital base in the roll forward calculations of the actual and projected capital base values. However, the NGR do not provide instruction or guidance on either the methods to be applied to value the disposed-of assets or the methods to be applied to account for asset disposals in regulatory accounts. Both the valuation methods applied for disposed of assets and the treatment of asset disposals in regulatory accounts affect the impact of asset disposals on the value of the capital base, the total revenue requirement and reference tariffs.

387. On the valuation of the disposed-of assets, the Authority accepts that the method applied by DBP to value the disposed-of assets as if those assets were part of the initial capital base is a reasonable means of ascribing a regulatory value to the assets. However, the Authority has checked the calculations made by DBP of these asset values[146] and considers that DBP has made errors in these calculations. The Authority has corrected these errors to derive values for asset disposals as shown in Table 19.

[146] DBP, 17 August 2011, Submission 68.

Table 19 Authority's amended values for asset disposals in the 2005 to 2010 access arrangement period (real dollar values of 31 December 2010)

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	-	-	-	-	-	-	
Compressors	4.465	-	-	-	-	-	4.465
Meters	-	-	-	-	-	-	
Other depreciable	0.080	-	0.035	0.026	0.085	0.011	0.237
Non depreciable	2.420	-	-	-	-	-	2.420
Total	**6.964**	**-**	**0.035**	**0.026**	**0.085**	**0.011**	**7.122**

388. Turning to the regulatory treatment of asset disposals, DBP treats the asset disposal as "negative capital expenditure" that is netted off from actual capital expenditure in the year that the asset disposals occur. An alternative treatment is deduction of the value of disposed-of assets from the residual asset value of the initial capital base. The two alternative treatments have different implications for the value of total revenue and reference tariffs due to different time periods over which the value of asset disposals is reflected in lower depreciation allowances. That is:

- with treatment of asset disposals as negative capital expenditure, the resultant reduction in total revenue and reference tariff is spread over the period of the life of new assets; and
- with treatment of asset disposals as a deduction from the asset value of the initial capital base, the resultant reduction in total revenue and reference tariff is spread over the remaining life of older assets of the regulated pipeline.

389. As asset disposals are more likely to comprise relatively old rather than relatively new assets, the Authority considers that treatment as a deduction from the asset value of the initial capital base better reflects capital costs in regulated tariffs and better achieves the national gas objective.

390. The Authority has therefore applied a treatment of asset disposals that comprises:

- adjustment of the capital base by deduction (as "accelerated depreciation") of the value of the disposed-of assets from the relevant asset classes in the asset account of the initial capital base; and
- addition of the amount of accelerated depreciation to total revenue so that the asset disposals are neutral in their financial effect on total revenue and reference tariffs (in present value terms over the remaining asset life).

391. The Authority requires the following amendment to the revised access arrangement proposal.

Required Amendment 8

The revised access arrangement proposal should be amended so that the calculation of total revenue and reference tariffs reflects a treatment of asset disposals that comprises:

- values of asset disposals as indicated in Table 19 of this final decision;
- adjustment of the capital base by deduction (as "accelerated depreciation") of the value of the disposed-of assets from the relevant asset classes in the asset account of the initial capital base; and
- addition of the amount of accelerated depreciation to total revenue to compensate for the reduction in the capital base.

Depreciation

392. Rule 88(1) of the NGR provides that the depreciation schedule sets out the basis on which the pipeline assets constituting the capital base are to be depreciated for the purpose of determining a reference tariff. Rule 88(2) of the NGR provides that the depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or class of assets.

393. Rules 89 and 90 of the NGR specify particular depreciation criteria and requirements for the calculation of depreciation for establishing the opening capital base for the subsequent access arrangement period.

> 89 Depreciation criteria
>
> (1) The depreciation schedule should be designed:
>
> (a) so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services; and
>
> (b) so that each asset or group of assets is depreciated over the economic life of that asset or group of assets; and
>
> (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset, or a particular group of assets; and
>
> (d) so that (subject to the rules about capital redundancy), an asset is depreciated only once (ie that the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted, if the accounting method approved by the [ERA] permits, for inflation)); and
>
> (e) so as to allow for the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.
>
> (2) Compliance with subrule (1)(a) may involve deferral of a substantial proportion of the depreciation, particularly where:
>
> (a) the present market for pipeline services is relatively immature; and

(b) the reference tariffs have been calculated on the assumption of significant market growth; and

(c) the pipeline has been designed and constructed so as to accommodate future growth in demand.

(3) The [ERA's] discretion under this rule is limited.

90 Calculation of depreciation for rolling forward capital base from one access arrangement period to the next

(1) A full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period after the one to which the access arrangement currently relates.

(2) The provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.

394. Clause 9 of the originally proposed revised access arrangement contains provisions for calculation of depreciation to establish the opening capital base for the access arrangement period commencing 1 January 2016. The provisions comprise principles that include:

- determining separate depreciation schedules for four groups of asset classes: pipeline assets, compressor station assets, metering assets and other assets;
- applying a straight-line depreciation method; and
- depreciating each group of assets over the economic life of that group.

395. Values of DBP's originally proposed depreciation allowances for the 2005 to 2010 access arrangement period have been presented in DBP's proposed tariff model and are shown in Table 20 (expressed in dollar values of 31 December 2010).

Table 20 DBP originally proposed values of depreciation allowances for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[147]

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	33.301	33.379	33.479	37.894	42.651	44.103	224.806
Compression	15.245	15.324	18.112	22.865	24.503	24.519	120.567
Metering	0.724	0.752	0.736	0.785	0.784	0.785	4.566
Other depreciable	4.456	4.619	4.748	4.812	5.034	5.298	28.966
Non depreciable	-	-	-	-	-	-	-
Total	**53.726**	**54.073**	**57.074**	**66.356**	**72.971**	**74.705**	**378.905**

147 DBP, 12 April 2010, tariff model (DBNGP AA proposal tariff model confidential – Final–Amended_12Apr10.XLS).

396. DBP indicated in the access arrangement information that it calculated values of depreciation for the 2011 to 2015 access arrangement period by:

- depreciation of the asset values of the initial capital base established at 1 January 2000 by a straight-line depreciation calculation over average remaining asset lives established at that date of:
  - 54.5 years for pipeline assets;
  - 19.34 years for compression assets;[148]
  - 39.98 years for metering assets;[149] and
  - 16.85 years for other depreciable assets;
- depreciation of the asset values resulting from capital expenditure subsequent to 1 January 2000 by a straight-line depreciation calculation over asset lives of:
  - 70 years for pipeline assets;
  - 30 years for compression assets;
  - 50 years for metering assets; and
  - 30 years for other depreciable assets.

397. Values of DBP's originally proposed depreciation allowances for the 2011 to 2015 access arrangement period are shown in Table 21.

Table 21 DBP originally proposed values of depreciation allowances for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[150]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Pipelines	50.764	51.131	51.254	51.311	51.378	255.838
Compression	34.356	34.639	34.656	34.747	34.838	173.236
Metering	1.045	1.108	1.541	1.617	1.654	6.964
Other depreciable	7.994	9.395	9.557	9.699	9.930	46.576
Non depreciable	-	-	-	-	-	-
Total	**94.159**	**96.273**	**97.008**	**97.374**	**97.801**	**482.614**

398. In coming to the draft decision, the Authority assessed the values of depreciation allowances derived by DBP to verify that the allowances have been determined consistently with the method and assumptions stated in the access arrangement information. The Authority also recalculated values of depreciation allowances for the 2011 to 2015 access arrangement period in accordance with other required amendments to the calculation of total revenue under the draft decision.

148 It is noted that DBP's proposed revised tariff model uses a value of 18.72 years.

149 It is noted that DBP's proposed revised tariff model uses a value of 38.01 years.

150 DBP, 1 April 2010, revised access arrangement information, section 7.14 (Table 14). DBP, 12 April 2010, tariff model (DBNGP AA proposal tariff model confidential – Final–Amended_12Apr10.XLS).

399. For depreciation allowances in the 2005 to 2010 access arrangement period, the relevant matter for assessment is whether the values applied in the roll-forward calculation of the capital base are the same (i.e. are equivalent in real terms) as the values of depreciation allowances applied in the determination of total revenue and reference tariffs for this access arrangement period. The Authority indicated in the draft decision that it was satisfied that this is the case, subject to changes to the calculations applied to escalate the values for inflation and expression of amounts in real dollar values of 31 December 2010 (paragraph 162 and following of this final decision).

400. For depreciation allowances in the 2011 to 2015 access arrangement period, the relevant matters for assessment are:

- whether the method and assumptions of depreciation schedules continue to meet the requirements of rules 88 and 89 of the NGR; and
- whether the values of depreciation allowances have been calculated correctly according to the depreciation schedules.

401. The Authority determined in the draft decision that DBP's straight-line method for determination of depreciation allowances and the assumed asset lives are consistent with the method and assumptions applied in previous access arrangement periods and the requirements of rules 88 and 89 of the NGR.

402. Notwithstanding that the depreciation schedules meet the requirements of rules 88 and 89 of the NGR, the Authority determined in the draft decision that DBP has not correctly implemented the depreciation schedules in determining depreciation allowances for the 2011 to 2015 access arrangement period.

403. The standard calculation method for determining depreciation allowances is to maintain separate asset accounts for the values of the initial capital base and for the capital expenditure of each year. This allows the residual value of assets to be tracked over time and for depreciation allowances for either the initial capital base or the capital expenditure in any particular year to be set to zero when the asset value is fully depreciated.

404. DBP did not apply this standard calculation method, but rather used a "short-cut" calculation to calculate depreciation allowances for each asset class over the 2011 to 2015 access arrangement period by:

- for 2011,
  - taking the depreciation allowance applied for the 2004 year and escalating this for inflation; and
  - calculating a value of depreciation allowances for capital expenditure in the 2005 to 2010 access arrangement period by dividing the total amounts of capital expenditure by an assumed asset life for new assets (70 years for pipeline assets, 30 years for compression assets, 50 years for metering assets, 30 years for other depreciable assets);
- for each subsequent year,
  - taking the value of the depreciation allowance for the previous year; and
  - adding an amount of depreciation for new capital expenditure in that previous year, calculated by dividing the total amounts of capital expenditure by an assumed asset life for new assets (70 years for

pipeline assets, 30 years for compression assets, 50 years for metering assets, 30 years for other depreciable assets).

405. DBP's calculation method did not allow the residual value of assets to be tracked over time and allows for the possibility of over-depreciation of assets, i.e. determination of depreciation allowances without allowing for values of assets in some type and age classes having been reduced to zero.

406. For the draft decision the Authority corrected the calculation of depreciation allowances and, as well, revised the calculation to take into account required amendments to other elements of calculation methods and values of conforming capital expenditure as set out elsewhere in the draft decision.

407. There were four further matters that the Authority addressed in the draft decision in relation to the determination of depreciation allowances.

408. First, due to differences between forecast and actual capital expenditure in the 2005 to 2010 access arrangement period, the depreciation allowances in this period have resulted in "over-depreciation" of some asset categories for some years of capital expenditure. The Authority corrected this in its financial calculations. This is a financial calculation issue only and had no impact on the value of total revenue and reference tariffs.

409. Secondly, the Authority included amounts in depreciation allowances in respect of the capital expenditure on the BEP Capacity. The Authority determined that the capital value of the BEP Capacity should be depreciated in accordance with the depreciation schedule for pipeline assets. However, the BEP is an existing pipeline constructed in c.1999 and does not have the same asset life as new pipeline assets. The Authority calculated depreciation allowances for the BEP capacity as a separate asset class assuming a total asset life of 60 years. This is consistent with the terms of the lease of the BEP Capacity (an initial lease term of 20 years and option for extension for an additional 40 years) and the consideration of DBP that this lease term is equal to the remaining physical life of the pipeline assets of the BEP.[151]

410. Thirdly, the Authority separately calculated depreciation allowances for capital expenditure that has been financed by capital contributions, consistent with DBP's treatment of capital contributions and the merits of maintaining separate regulatory asset accounts to implement this treatment.

411. Fourthly, the Authority applied inflation escalation to values of depreciation allowances in the 2005 to 2010 period (to derive amounts in dollar values of 31 December 2010 by applying escalation factors derived from the all groups, eight capital cities CPI rather than the all groups, Perth CPI.

412. The Authority's corrected and revised values of depreciation allowances under the draft decision are shown in Table 22.

[151] DBP, 9 December 2011, Submission 37, attachment 3 item 12.

Table 22 Authority's draft decision corrected and revised values of depreciation allowances for the 2005 to 2010 and 2011 to 2015 access arrangement periods (real $ million at 31 December 2010)

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	32.535	32.611	32.709	37.022	41.671	43.089	219.637
Compression	14.894	14.972	17.695	22.339	23.939	23.955	117.794
Metering	0.708	0.734	0.764	0.767	0.767	0.767	4.507
Other depreciable	4.354	4.512	4.638	4.701	4.918	5.176	28.299
Non depreciable	-	-	-	-	-	-	-
Total	**52.491**	**52.829**	**55.806**	**64.829**	**71.295**	**72.987**	**70.237**

Year ending 31 December	2011	2012	2013	2014	2015	Total
Pipelines	49.798	49.938	49.988	50.040	50.046	249.810
Compression	31.993	32.566	32.791	32.892	32.996	163.238
Metering	0.714	0.722	0.730	0.771	0.807	3.744
Other depreciable	6.982	8.261	8.389	8.496	8.648	40.776
Non depreciable	-	-	-	-	-	-
Total	**89.487**	**91.487**	**91.898**	**92.199**	**92.497**	**457.568**

413. DBP's values of depreciation allowances under the revised access arrangement proposal are shown in Table 23.

Table 23 DBP's revised values of depreciation allowances for the 2005 to 2010 and 2011 to 2015 access arrangement periods (real $ million at 31 December 2010)[152]

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	33.281	33.359	33.458	37.871	42.626	44.076	224.670
Compression	15.235	15.315	18.101	22.851	24.488	24.504	120.494
Metering	0.724	0.751	0.781	0.785	0.785	0.785	4.611
Other depreciable	4.454	4.616	4.745	4.809	5.031	5.295	28.949
Non depreciable	-	-	-	-	-	-	-
Total	**53.693**	**54.041**	**57.085**	**66.316**	**72.929**	**74.660**	**378.723**

Year ending 31 December	2011	2012	2013	2014	2015	Total
Pipelines	51.564	52.087	52.144	52.205	52.213	260.213
Compression	30.347	31.653	31.896	31.988	32.104	157.988
Metering	1.098	1.183	1.247	1.330	1.383	6.240
Other depreciable	8.045	11.496	11.654	11.792	12.017	55.004
Non depreciable	-	-	-	-	-	-
Total	**91.054**	**96.419**	**96.940**	**97.314**	**97.718**	**479.445**

414. DBP has not made any changes to the method of calculation of depreciation allowances. Changes to the values of depreciation allowances from the original access arrangement proposal for 2005 to 2010 reflect the expression of values in dollar values of 31 December 2010. Changes to values of depreciation allowances for 2011 to 2015 reflect changes to amounts of actual and forecast capital expenditure and the expression of values in dollar values of 31 December 2010.

415. Under this final decision the Authority maintains the view expressed in the draft decision that the general method applied by DBP to determine depreciation allowances and the assumed asset lives for the four main asset categories meet the requirements of rules 88 and 89 of the NGR, but that corrections need to be made to DBP's calculation of depreciation allowances.

[152] DBP, 8 September 2011, Submission 70, tariff model.

416. In the revised access arrangement proposal DBP has not remedied the deficiencies in calculations of depreciation allowances identified by the Authority in the draft decision. The Authority has therefore recalculated depreciation allowances with the following changes.

- Calculation of depreciation allowances with separate asset accounts for the values of the initial capital base and for capital expenditure of each year. This includes separate asset accounts for shipper-funded capital expenditure, consistent with DBP's treatment of capital contributions and transparency in implementation of this treatment.
- Correction of depreciation calculations to account for differences between forecast and actual capital expenditure in the 2005 to 2010 access arrangement period that resulted in "over depreciation" of some asset categories in some years. As indicated in the draft decision, this is a financial calculation issue only and is undertaken for the purposes of consistency of accounting practice in the regulatory asset accounts. The correction has no impact on the present value of total revenue and reference tariffs.
- Determination of depreciation allowances in dollar values of 31 December 2010 applying inflation escalation factors derived from the all groups, eight capital cities CPI.

417. The Authority has also given further consideration to the depreciation of the asset that is the leased BEP Capacity, as set out in paragraph 236 and following of this final decision. The Authority has depreciated the BEP Capacity as a separate asset in the category of pipeline assets and with an asset life of 57 years from 2011.

418. With the above corrections and revisions to the calculations of depreciation allowances, the values of depreciation allowances determined by the Authority are shown in Table 24.

Table 24 Authority's revised values of depreciation allowances for the 2005 to 2010 and 2011 to 2015 access arrangement periods (real $ million at 31 December 2010)

Year ending 31 December	2005	2006	2007	2008	2009	2010	Total
Pipelines	32.535	32.611	32.709	37.022	41.671	43.089	219.636
Compression	14.894	14.972	17.695	22.339	23.939	23.955	117.795
Metering	0.708	0.734	0.764	0.767	0.767	0.767	4.507
Other depreciable	4.354	4.512	4.638	4.701	4.918	5.176	28.300
Non depreciable	-	-	-	-	-	-	-
Total	**52.490**	**52.830**	**55.806**	**64.830**	**71.295**	**72.987**	**370.238**
Year ending 31 December	**2011**	**2012**	**2013**	**2014**	**2015**		**Total**
Pipelines	51.113	51.635	51.690	51.749	51.756		257.942
Compression	29.101	30.384	30.603	30.671	30.764		151.522
Metering	1.133	1.219	1.283	1.365	1.418		6.419
Other depreciable	7.038	9.644	9.727	9.790	9.940		46.139
BEP Capacity	-	0.313	0.313	0.313	0.313		1.252
Non depreciable	-	-	-	-	-		-
Total	**88.385**	**93.194**	**93.615**	**93.888**	**94.192**		**463.273**

Required Amendment 9

The values of depreciation allowances for the 2005 to 2010 and 2011 to 2015 access arrangement periods must be amended to values as indicated in Table 24 of this final decision.

Values of the Capital Base

419. The Authority has recalculated the value of the opening capital base and projected capital base for the 2011 to 2015 access arrangement period taking into account the corrections to calculations and the required amendments to conforming capital expenditure, treatment of asset disposals and depreciation allowances (Table 25 and Table 26). Given DBP's proposed treatment of capital contributions (where the contributions are added to the capital base, but quarantined from determination of total revenue) the capital base is shown as a total value and a breakdown into the component asset accounts for "DBP assets" and "shipper-funded assets".

Table 25 Authority's final decision revised calculation of the opening capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)

Year ending 31 December	2005	2006	2007	2008	2009	2010
Total Capital Base						
Capital Base at 1 January	1,922.162	1,925.979	2,317.192	2,275.456	2,867.059	2,794.740
plus						
Conforming Capital Expenditure	60.277	429.962	5.680	655.399	-0.939	620.703
Forecast Capital Contributions	2.995	14.081	8.425	1.060	-	-
Correction for over-depreciation	-	-	-	-	-	32.669
less						
Redundant and disposed assets	6.964	-	0.035	0.026	0.085	0.011
Depreciation	52.490	52.830	55.806	64.830	71.295	72.987
Capital base at 31 December	**1,925.979**	**2,317.192**	**2,275.456**	**2,867.059**	**2,794.740**	**3,375.114**
DBNGP assets						
Capital Base at 1 January	1,922.162	1,922.984	2,300.117	2,249.956	2,840.498	2,768.179
plus						
Conforming Capital Expenditure	60.277	429.962	5.680	655.399	-0.939	620.703
Correction for over-depreciation	-	-	-	-	-	32.669
less						
Redundant and disposed assets	6.964	-	0.035	0.026	0.085	0.011
Depreciation	52.490	52.830	55.806	64.830	71.295	72.987
Capital base at 31 December	**1,922.984**	**2,300.117**	**2,249.956**	**2,840.498**	**2,768.179**	**3,348.553**
Shipper-funded assets						
Capital Base at 1 January	-	2.995	17.076	25.501	26.560	26.560
plus						
Capital contribution	2.995	14.081	8.425	1.060	-	-
Correction for over-depreciation	-	-	-	-	-	-
less						
Redundant and disposed	-	-	-	-	-	-
Depreciation	-	-	-	-	-	-
Capital base at 31 December	**2.995**	**17.076**	**25.501**	**26.560**	**26.560**	**26.560**

Table 26 Authority's final decision revised calculation of the projected capital base for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)

Year	2011	2012	2013	2014	2015
Total capital base					
Capital Base at 1 January	3,375.114	3,462.019	3,384.933	3,303.554	3,220.128
plus					
Forecast Conforming Capital Expenditure	153.728	13.390	10.762	10.462	10.752
Forecast Capital Contributions	21.562	2.718	1.473	-	-
less					
Redundant and disposed assets	-	-	-	-	-
Depreciation	88.385	93.194	93.615	93.888	94.192
Capital Base at 31 December	**3,462.019**	**3,384.933**	**3,303.554**	**3,220.128**	**3,136.688**
DBNGP assets					
Capital Base at 1 January	3,348.553	3,414.521	3,335.723	3,253.931	3,171.594
plus					
Conforming Capital Expenditure	153.728	13.390	10.762	10.462	10.752
less					
Redundant and disposed assets	-	-	-	-	-
Depreciation	87.760	92.188	92.555	92.799	93.102
Capital base at 31 December	**3,414.521**	**3,335.723**	**3,253.931**	**3,171.594**	**3,089.243**
Shipper-funded assets					
Capital Base at 1 January	26.560	47.498	49.210	49.624	48.534
plus					
Forecast Capital Contributions	21.562	2.718	1.473	-	-
less					
Redundant and disposed assets	-	-	-	-	-
Depreciation	0.625	1.006	1.060	1.089	1.089
Capital base at 31 December	**47.498**	**49.210**	**49.624**	**48.534**	**47.445**

420. The Authority's financial model, released with this final decision (Appendix 3), contains details of the Authority's calculation of the opening capital base for the current access arrangement period based on the Authority's approved escalation rate.

421. The Authority requires the following amendment to the revised access arrangement proposal.

Required Amendment 10

The revised access arrangement proposal should be amended to state an opening capital base value for 2011 and a projected capital base for the 2011 to 2015 access arrangement period as shown in Table 25 and Table 26 of this final decision.

Return on Capital

422. The Authority has rejected DBP's revised real pre-tax rate of return of 10.03 per cent as it is not commensurate with prevailing conditions in the market for funds and the risks associated in providing reference services. The Authority is of the view that the real pre-tax rate of return of 5.74 per cent, as set out in this section of the final decision, is commensurate with prevailing conditions in the market for funds and the risks involved in providing the reference services.

423. This section sets out the Authority's consideration of the rate of return for the 2011 to 2015 access arrangement period. The key issues considered in this section are the input parameters for the weighted average cost of capital (**WACC**); and matters raised in DBP's revised submissions in response to the Authority's Draft Decision in March 2011, principally regarding the cost of equity, the cost of debt, the Market Risk Premium (**MRP**), value of imputation credits (**Gamma**), and the nominal risk-free rate.

Requirements of the National Gas Law and the National Gas Rules

424. Rule 72(1)(g) of the NGR requires that the access arrangement information for a full access arrangement proposal must include the proposed rate of return, the assumptions on which the rate of return is calculated and a demonstration of how it is calculated.

425. Rule 74 of the NGR requires that any forecast or estimate included in the access arrangement information be arrived at on a reasonable basis, be supported by a statement of the basis of that forecast or estimate, and represent the best forecast possible in the circumstances.

426. The Authority is required to determine the rate of return for regulated businesses in accordance with Rule 87 of the NGR.

427. Rule 87(1) of the NGR establishes a criterion for the setting of a rate of return. The rate of return to be used in determining total revenue and reference tariffs:

> ... is to be commensurate with prevailing conditions in the market for funds and the risks involved in providing the reference services.

428. Rule 87(2) requires that:

- the rate of return is to be established using a well accepted approach, such as a weighted average cost of capital (WACC), which incorporates the costs of equity and debt; and

- a well accepted financial model, such as the Capital Asset Pricing Model, is to be used.

Draft Decision

429. DBP initially proposed a real, pre-tax WACC of 10.76 per cent, based on an indicative averaging period to 18 March 2010. In its draft decision the Authority did not approve the following components of the WACC parameters as initially proposed by DBP:

- the cost of equity;
- the cost of debt;
- the Market Risk Premium (MRP);
- the value of imputation credits (gamma); and
- the nominal risk free rate.

430. For an estimate of the cost of equity, DBP initially proposed that the standard Capital Asset Pricing Model (**CAPM**), known as the Sharp-Lintner CAPM, together with its derivations – namely Black's CAPM, the Fama and French Model, and Zero-beta Fama-French Model – should be used. DBP submitted the estimates of these four models, ranging from 8.79 per cent to 14.36 per cent. In addition, DBP also submitted the empirical evidence from analysts' reports, prepared by its consultant on the issue, Strategic Finance Group Consulting (**SFG**), to support its argument that the cost of equity lies within the range of 13 per cent to 14 per cent. In the draft decision, based on its own analysis as reported therein, the Authority was of the view that there is no reason to depart from the current practice of Australian regulators with regard to the method used to estimate the cost of equity for regulated businesses. As a result, the Authority decided that only the Sharp-Lintner CAPM should be used to determine the cost of equity for the DBNGP's proposed access arrangement.

431. For an estimate of the cost of debt, DBP was of the view that conditions in the market for funds are such that a capital intensive business requiring substantial volumes of debt (in the order of $3 billion) would currently be unable to secure all of its requirements in the Australian capital markets. DBP initially proposed a cost of debt of 9.73 per cent, which was derived using the estimated cost of debt for the US and Australian capital markets, including the US public bond (144a) market (10 years) and the US private placement market (10 years); and the Australian bond market (7 years) and bank markets (5 years and 7 years). In its draft decision, the Authority concluded that the debt risk premium should be estimated from observed bond yields from the benchmark sample of Australian corporate bonds, known as the "Bond-Yield approach", reported by Bloomberg for the averaging period.

432. For an estimate of the MRP, DBP initially proposed using the MRP of 6.5 per cent which was used by the Australian Energy Regulator (AER) in its WACC Review in 2009. In addition, DBP also submitted that the MRP of 6.5 per cent was used by the Authority in its draft decision for the Goldfields Gas Pipeline in October 2009 and the final decision for Western Power's South West Interconnected Network in December 2009. In its draft decision, the Authority concluded that DBP had mistakenly interpreted the Authority's position on the above two decisions with regard to the estimate of the MRP. The Authority concluded that the best estimate of the MRP is 6.0 per cent, which has been consistently adopted in all regulatory decisions by the Authority. This estimate is also widely used by Australian regulators, including IPART and QCA. The AER has adopted the MRP of 6.0 per cent in its regulatory decisions in 2011.

433. For an estimate of gamma, DBP initially proposed using the value of 0.23, which was advised by its consultant (SFG) for the regulatory period. In its draft decision, the Authority concluded that an estimate of gamma of 0.53 was appropriate for the DBP's proposed access arrangement.

434. For an estimate of the nominal risk free rate, DBP initially proposed using the Reserve Bank of Australia's (**RBA**) estimates of daily yields on the 10-year Commonwealth Government Securities (CGS) of 5.48 per cent to estimate the cost of equity; and using the Bank Bill Swap Rate (BBSW) of 6.06 per cent to estimate the cost of debt. The Authority concluded that the same risk-free rate should be used in both estimates of the cost of equity and the cost of debt. Also, the Authority was of the view that the risk free rate should be estimated from observed daily yields on the CGS with a term to maturity of 5 years as reported by the RBA.

435. In addition, the following two key WACC issues were determined by the Authority in its draft decision.

- First, the Authority decided that DBP's method of ascertaining a rate of return using a real pre-tax WACC was appropriate. The Authority was satisfied that the proposed method of calculating the rate of return using a real pre-tax WACC formula meets the requirements of the NGL and the NGR.
- Second, the Authority decided that WACC parameters should be estimated using data from the Australian financial market only.

436. Table 27 sets out the WACC parameter values adopted in the Authority's draft decision.

Table 27 Authority's draft decision on WACC parameters, March 2011

Parameter	DBP's initial proposal as at 14 April 2010	Authority's draft decision as at 14 March 2011
Nominal risk free rate of return	5.48%	5.46%
MRP	6.5%	6.0%
Equity beta	0.8	0.8
Debt Risk Premium	N/A [(a)]	3.124%
Cost of debt	9.73%	8.71%
Cost of equity	13.5%	10.26%
Tax rate	30%	30%
Gamma (value of imputation credits)	20%	53%
Gearing: Debt to total value	60%	60%
Gearing: Equity to total value	40%	40%
Expected inflation	2.52%	2.65%
Real, pre-tax WACC	10.76%	7.16%

Notes: DBP proposed that the total cost of debt was 9.73 per cent per year without explicitly indicating their estimate of the debt risk premium.

Source: The Authority's draft decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 14 March 2011, (Tables 45 and 46, page 196) and DBNGP Access Arrangement Proposal Submission, 14 April 2010, (Tables 5 and 6, pages 44-5).

Revised Proposed Access Arrangement

437. In its response to the draft decision, DBP submitted that the rate of return to be used in determining total revenue for each year of the revised Access Arrangement period should be 10.03 per cent (real, pre-tax WACC).

The Cost of Equity

438. With regard to the estimate of the cost of equity,[153] DBP was of the view that the cost of equity should be determined from:

- the results obtained from a well accepted financial model, being the Sharpe-Lintner CAPM;
- the results obtained from three other well accepted financial models; and
- an examination of equity analysts' dividend yield forecasts for the period 2010 to 2012 for comparable Australian infrastructure businesses.

439. DBP argued that the CAPM and each of the three other well accepted financial models incorporate only a limited characterisation of risk, and may not provide an estimate of the cost of equity which is commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services. In

[153] DBP, 8 September 2011, Submission 70, revised access arrangement information p 22.

ensuring that the criteria of rule 87(1) of the NGR are satisfied, DBP was of the view that regard must be given to evidence as to the current market conditions and risks.

440. The estimates of the cost of equity using the CAPM and the three other financial models submitted by DBP are summarised in Table 28.

Table 28 Estimates of the Cost of Equity by DBP, September 2011

Model	DBP's proposal as at 8 September 2011 (per cent)
Sharpe-Lintner CAPM	10.91 [(a)]
Black CAPM	12.21
Fama-French three factor model	11.72
Zero beta Fama-French three factor model	14.56

Notes: the nominal risk free rate of 5.71 per cent; equity beta of 0.8 and the MRP of 6.5 per cent are used in NERA's estimate of the Sharp-Lintner CAPM.

Source: DBP, 8 September 2011, Revised Access Arrangement Information, , (Tables 20 and 21, page 23).

441. DBP also submitted that current market information indicates a cost of equity between 11.5 per cent and 12.5 per cent. These estimates include a minimum required rate of return from equity investors investing in the benchmark service provider of 9.0 per cent and the current expectation of inflation in the range of 2.5 per cent to 3.5 per cent.[154]

442. In conclusion, DBP was of the view that the cost of equity to be used in establishing the rate of return should be 12.5 per cent.[155]

The Cost of Debt

443. With regards to the estimate of the cost of debt,[156] DBP was of the view that the cost of debt should be determined from:

- The results obtained by applying the methodology adopted by the AER[157] in its October 2010 final decision for the Victorian electricity distribution businesses; and
- Advice obtained from a senior debt adviser, AMP Capital Investors (**AMP**).

444. DBP submitted that the debt risk premium of 4.24 per cent (or total cost of debt 9.95 per cent) was derived for the 20-day trading period to 28 February 2011 when the AER's methodology is used.[158]

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154 DBP, 8 September 2011, Submission 70, revised access arrangement information p 23.

155 DBP, 8 September 2011, Submission 70, revised access arrangement information p 23.

156 DBP, 8 September 2011, Submission 70, revised access arrangement information p 23.

157 In its October 2010 Final Decision for Victorian electricity businesses, the debt risk premium was calculated as a weighted average of two premiums (over the yields for 10-year CGS bonds): (i) the premium from the APT bond; and (ii) the premium from Bloomberg's estimates of 7-year CGS bonds extrapolating to 10 year CGS bonds using the spreads between 10-year CGS bonds and 7-year CGS bonds up to 22 June 2010.

445. On the advice of the AMP, DBP submitted that the cost of debt was 9.52 per cent.[159] This revised cost of debt of 9.52 per cent was derived from the allocation of total debt finance into different markets as follows:

- the 5-year Australian Bank Market (26.2 per cent);
- the 7-year Australian Bank Market (9.5 per cent);
- the 5-year Australian Bond Market (23.8 per cent);
- the 10-year US Public Market (28.6 per cent); and
- the 10-year US Private Placement Market (11.9 per cent).

446. In conclusion, DBP argued that while the AER's methodology[160] provides an imprecise estimate of the cost of debt, AMP's methodology provides a cost of debt based on consideration of all factors affecting the issue of debt in current market conditions and on a closer examination of the costs and risks associated with financing the borrower. As a consequence, DBP submitted that the cost of debt to be used in establishing the rate of return should be 9.5 per cent.[161]

Gamma

447. DBP submitted that the value attributed to franking credits, known as gamma, should be set to zero. DBP was of the view that this is consistent with setting the value of cash dividends at one for the purpose of estimating the required rate of return on equity and that this is also consistent with market practice.[162]

448. In summary, the WACC parameter values that DBP has applied in determining the rate of return for the proposed DBNGP revised access arrangement is reproduced in Table 29 of this Final Decision.[163]

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158 DBP, 8 September 2011, Submission 70, revised access arrangement information p 24, paragraph 11.13.

159 DBP, 8 September 2011, Submission 70, revised access arrangement information p 24, paragraph 11.18.

160 DBP criticised the AER's methodology for four reasons.

- First, using a current nominal risk free rate ignores current market conditions affecting the issue of debt.
- Second, the use of the premium obtained from the Bloomberg's fair value curves is imprecise.
- Third, risk is all taken into account via the assumed credit rating, but a credit rating is an imprecise measure of risks.
- Fourth, the averaging of a premium estimated from the Bloomberg's fair yield curve and a premium on a particular APT bond is inherently arbitrary.

161 DBP, 8 September 2011, Submission 70, revised access arrangement information p 25, paragraph 11.25.

162 DBP, 8 September 2011, Submission 70, revised access arrangement information p 25.

163 DBP, 8 September 2011, Submission 70, revised access arrangement information Table 22 (p 26).

Table 29 DBP's Proposed Parameter Values for Determination of Rate of Return in Response to the Authority's draft decision

Parameters/WACC	Authority's draft decision as at 14 March 2011	DBP's revised proposal as at 8 September 2011
Nominal risk free rate of return	5.46%	5.71%
MRP	6.0%	6.50%
Equity beta	0.8	0.8 [(a)]
Debt Risk Premium	3.124%	N/A [(b)]
Cost of debt	8.71%	9.52%
Cost of equity	10.26%	12.50%
Tax rate	30%	30%
Gamma (value of imputation credits)	53%	0%
Gearing: Debt to total value	60%	60%
Gearing: Equity to total value	40%	40%
Expected inflation	2.65%	2.57%
Real pre-tax WACC	7.16%	10.03%

Notes:

(a) An equity beta of 0.8 is used in NERA's estimate of the Sharp-Lintner CAPM.

(b) DBP proposed the total cost of debt was 9.52 per cent per year without explicitly indicating their estimate of the debt risk premium.

Source: DBP: 8 September 2011, Revised Access Arrangement Information for the DBNGP Access Arrangement (Table 22, page 26).

Financial Structure (Gearing)

Draft Decision

449. The Authority approved DBP's proposal that the appropriate debt to total assets ratio is 60 per cent and the equity to total assets ratio is 40 per cent.

Submissions

450. DBP has not made any response in relation to the debt to assets ratio.

451. The Authority has not received any other public submissions in relation to the debt to assets ratio.

Considerations of the Authority

452. The Authority maintains its position in the draft decision that the appropriate debt to total assets ratio is 60 per cent and the equity to total assets ratio is 40 per cent.

Corporate Tax Rate

Draft Decision

453. The Authority approved DBP's proposal for a corporate tax rate of 30 per cent.

Submissions

454. DBP's revised proposed Access Arrangement contained the corporate tax rate of 30 per cent.

455. The Authority has not received any other public submissions in relation to the proposed corporate tax rate.

Considerations of the Authority

456. The Authority approves DBP's revised proposal for a corporate tax rate of 30 per cent.

Nominal Risk Free Rate of Return

Draft Decision

457. The Authority approved DBP's proposed method for calculating the nominal risk free rate of return using the daily yield data for the CGS reported by the RBA.[164] However, the Authority did not approve the term to maturity of 10 years for the CGS used in DBP's calculations.

458. In the draft decision, the Authority was of the view that there should be consistency between the terms of the risk free rate and the debt risk premium. This view is based on the following considerations.

459. First, the Authority noted that the possibility of over-compensation from the use of a term for the risk free rate that exceeds the length of the regulatory period was not argued before the Australia Competition Tribunal in its 2003 GasNet decision.[165]

460. Second, the Authority was of the view that there is no evidence to suggest that regulated businesses will seek to issue long-term debt as a matter of preference.

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164 In its draft decision, the Authority noted that DBP was inconsistent in its approach and had proposed two different proxies for the nominal risk free rate:

- DBP proposed using the 10-year Commonwealth Government Securities as the proxy for the nominal risk free rate to estimate the cost of equity, based on advice by its consultant NERA.
- DBP proposed using the Bank Bill Swap Rate as the proxy for the nominal risk free rate to estimate the cost of debt, based on advice by its consultant AMP Capital Investors.

In the submissions in response to the Authority's draft decision, AMP Capital Investors clarified that domestic bonds issued by Australian companies are quoted using the "swap rate" [which includes the nominal risk free rate and bond/swap spread] plus a trading margin to deliver a total yield. That is, the Australian corporate bond market does not trade corporate bond on a margin to risk free rate like some other international markets.

165 In this decision, the term to maturity of 10-year CGS was adopted in the calculations of the nominal risk free rate.

Instead, the Authority was aware that some regulated businesses issue debt over a period of less than 5 years.

461. Third, the Authority was aware that regulated businesses generally avoid the situation of having a significant proportion of their debt funding maturing in any one year.

462. Based on the above considerations, the Authority concluded that there are compelling reasons for matching the assumed term to maturity with the length of the regulatory period, which is generally 5 years. The Authority considers that the estimated nominal risk-free rate of return should be calculated from the use of observed daily yields for the 5-year CGS reported by the RBA.

Submissions

463. In its response to the Authority's draft decision, AMP, DBP's consultant on the issue, submitted that when a shorter-than-10-year-tenor, lower-yielding risk free rate is adopted, a regulated business is disadvantaged if it chooses to manage its debt maturity profile in a more prudent manner by spreading its risk across a range of longer maturities.[166]

464. In addition, AMP submitted that the 3-year and 10-year government bond futures are traded with high volumes of contracts in the Australian financial market, resulting in the physical bond markets around these maturities being more active than other tenors. There are no other futures tenors available in the Australian market. AMP's view is that a movement away from a market standard and highly traded bond represents a less than efficient outcome.[167]

465. AMP also submitted that the 10-year government bond is commonly used by market analysts, economists and business managers as the benchmark risk free rate because this tenor is able to "look through" temporary anomalies in business cycles, interest rate cycles and inflationary cycles. As such, the 10-year government bond will produce a more consistent measure of the true risk free rate over time.[168]

466. In its submission, Verve Energy agreed with the Authority's determination in its draft decision that the 5-year forecast period should be used to ensure consistency between the estimates of the nominal risk free rate and the debt risk premium.[169]

Considerations of the Authority

467. The Authority notes that DBP has maintained its approach to the estimate of the nominal risk-free rate, using the observed daily yields for the CGS bonds with terms to maturity of 10 years.

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166 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 6

167 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 6

168 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 6

169 Verve Energy, Submissions in response to the ERA's draft decision on the Proposed Revised Access Arrangement for the DBNGP, 20 May 2011, p 24

468. The Authority has examined the debt profile[170] of energy network businesses in Australia. Data on the debt maturity profiles of relevant energy businesses in Australia was obtained from publicly available 2010 annual reports.[171]

469. Table 30 below shows that the sample of privately owned energy networks in Australia has 52.5 per cent of total debt instruments with an average term of less than 5 years.

470. The Authority is aware that the interest rate swap contracts are normally used by privately owned energy networks to exchange floating interest amounts for fixed interest amounts. In doing so, regulated businesses can reduce their floating cash flow risk exposure, which results from floating rates on borrowings. Regulated businesses normally borrow actual or synthetic floating rate debts and then fix the interest rate for the term of the reset period, which is usually 5 years, using interest rate swaps.[172]

Table 30 Debt Profiles for Privately Owned Energy Network Businesses

Business	Average Term on Debt			Total Amount ($ million)
	Less than 1 year	1 to 5 years	More than 5 years	
APA Group	250	800	1,368	2,418
ETSA Utilities, SA	495	1,375	2,489	4,359
Envestra	408	905	1,049	2,362
SP Ausnet	1,403	4,042	3,902	9,347
CitiPower and Powercor, VIC	906	2,212	2,769	5,887
Total	**3,462**	**9,334**	**11,577**	**24,373**
Per cent of total (%)	**14.20**	**38.30**	**47.50**	**100.00**

Source: 2010 Annual Reports and Authority's analysis.

471. The Authority also examined the debt profile of government-owned energy networks in Australia. Table 31 below shows that the sample of government-owned energy networks in Australia has approximately 44 per cent of total debt instruments with an average term of less than 5 years.

170 Debt instruments used for funding requirements include bank loans, debentures, commercial papers, syndicated bank debts, medium term notes and (both secured and unsecured) senior notes. Liquidity management policies ensure that the energy businesses have diversified portfolio, in terms of maturity and sources, which reduces reliance on any one source of funding in any particular year.

171 The Authority uses the same sample of businesses that Deloitte had used in the advice for the AER on "Refinancing, Debt Markets and Liquidity" in 2008.

172 The Australian Energy Regulator, 2008, "Explanatory Statement: Electricity transmission and distribution network service providers – Review of the weighted average cost of capital (WACC) parameters", December 2008, pp 101-109.

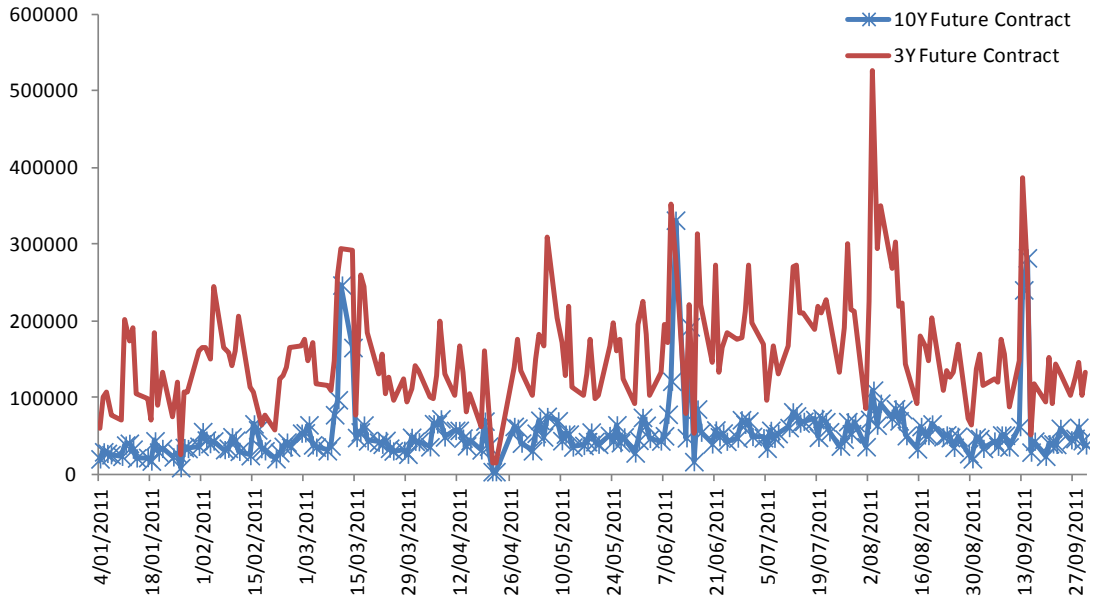
Table 31 Debt Profiles for Government Owned Energy Network Businesses

Business	Average Term on Debt			Total Amount ($ million)
	Less than 1 year	1 to 5 years	More than 5 years	
Energex, QLD	464	1,129	4,027	5,620
Ergon Energy, QLD	1,273	1,323	3,966	6,562
Powerlink, QLD	283	852	3,439	4,574
Transend Networks, TAS	0	518	0	518
Horizon Power, WA	224	418	776	1,418
Western Power, WA	1,583	2,785	1,344	5,712
TransGrid, NSW	555	1,067	1,753	3,375
Power and Water Corporation, NT	4	134	766	904
Total	**4,386**	**8,226**	**16,071**	**28,683**
Per cent of total (%)	**15.29**	**28.68**	**56.03**	**100.00**

Source: 2010 Annual Reports and Authority's analysis.

472. In addition, the Authority agrees with AMP's observation that the 3-year and 10-year government bond futures are traded with high volumes of contracts in the Australian financial market, resulting in the physical bond markets around these maturities being more active than other tenors. However, the Authority notes that the 3-year government bond contracts are highly traded compared with the 10-year government bond contracts. Using data available from Bloomberg from 1 January 2011 to 30 September 2011, Figure 2 below presents this comparison between 10-year and 3-year Commonwealth Treasury Bond Future Contracts traded in the Sydney Futures Exchange.

Figure 2 10-year versus 3-year Commonwealth Treasury Bond Future Contracts



Source: Bloomberg.

473. From Figure 2 above, the Authority considers that the shorter trading term of 3 years is preferred by market participants over the longer trading term of 10 years.

474. Given current evidence and the information available, the Authority maintains the position in its draft decision to not approve DBP's approach in relation to the calculation of the nominal risk free rate of return using daily yields for the 10-year CGS.

475. The Authority is of the view that the estimated nominal risk free rate of return should be calculated using daily yields from the 5-year Commonwealth Government bonds reported by the RBA. The Authority considers the estimated nominal risk free rate of return should be 3.80 per cent, for the 20-day trading period until 30 September 2011.

Market Risk Premium (MRP)

Draft Decision

476. The Authority did not approve DBP's proposed estimate of the MRP of 6.5 per cent.

477. The Authority considered that there is no persuasive evidence to depart from the previously adopted methods and the estimate of the MRP of 6.0 per cent applied consistently in all regulatory decisions by the Authority. The estimate of the MRP of 6 per cent was drawn from various sources including: (i) an estimate of the historical equity risk premium for the period from 1883 to 2010 by Associate Professor Handley in January 2011;[173] (ii) surveys of the market risk practice; (iii) qualitative

[173] Handley, 2011, "An estimate of the historical equity risk premium for the period for 1883 – 2010", January 2011, A report for the Australian Energy Regulator.

information on the current state of the Australian financial market; and (iv) Australian regulators' current practice.

Submissions

478. Value Adviser Associates (**VAA**), DBP's consultant on the issue, submitted that the best estimate of the MRP under current market conditions is 7 per cent. VAA's conclusion is based on the following arguments.

479. First, VAA stated that the historical average realised MRP adjusted to include a value of imputation credit falls within the range of 6 per cent to 7 per cent.

480. Second, VAA is of the view that the Australian capital market for securities is integrated. The risk premium on debt is above the historical average. As such, the same phenomena that have affected the risk premium on debt also affect the risk premium on equity (i.e. the risk premium on equity is also above the historical average). VAA stated that its view is consistent with Professor Grundy that the equity premium should be greater than or equal to 2.67 times the debt risk premium.[174]

481. Third, the stock market has not yet returned to its pre-Global Financial Crisis level.

482. Fourth, there is concern over a recent spike in the MRP in the US, given the high correlation between US and Australian economies.

483. DBP did not explicitly submit the estimate of the MRP in response to the Authority's draft decision. However, it is clear that DBP did not adopt VAA's estimate for the value of MRP of 7 per cent. The Authority notes that DBP has maintained its previous position on the MRP by adopting the estimate of 6.5 per cent in the calculation of the cost of equity using Sharpe-Lintner CAPM.[175]

484. In their submissions, Alinta[176] and Verve Energy[177] agreed with the Authority that a MRP of 6.0 per cent is appropriate in setting the rate of return.

485. Alinta maintained the view in its original submissions that DBP has minimal exposure to market risks, as the pipeline is fully contracted through "take or pay" contracts that ensure stable and predictable revenue. In addition, Alinta submitted that DBP faces very little counter-party credit risk due to the nature and financial capacity of the major users of the pipeline.[178] This view is also supported by Verve Energy.[179]

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174 Value Adviser Associates, Provision of Analysis Supporting a Value for Market Risk Premium, April 2011, p 6; And Grundy, *Calculation of the Cost of Capital: A Report for Envestra,* September 2010.

175 DBP, Revised Access Arrangement Information, 8 September 2011, p 23, Table 20.

176 Alinta, Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 20 May 2011, p 24.

177 Verve Energy, Submissions in response to the ERA's draft decision on the Proposed Revised Access Arrangement for the DBNGP, 20 May 2011, p 25.

178 Alinta, Proposed revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 20 May 2011, p 23.

179 Verve Energy, Submissions in response to the ERA's draft decision on the proposed revised Access Arrangement for the DBNGP, 20 May 2011, p 22.

486. BHP Billiton was of the view that, given the stabilisation of the Australian financial market, there are currently no financial market conditions that warrant an adjustment to the historical average range value for the MRP of greater than 6.0 per cent.[180]

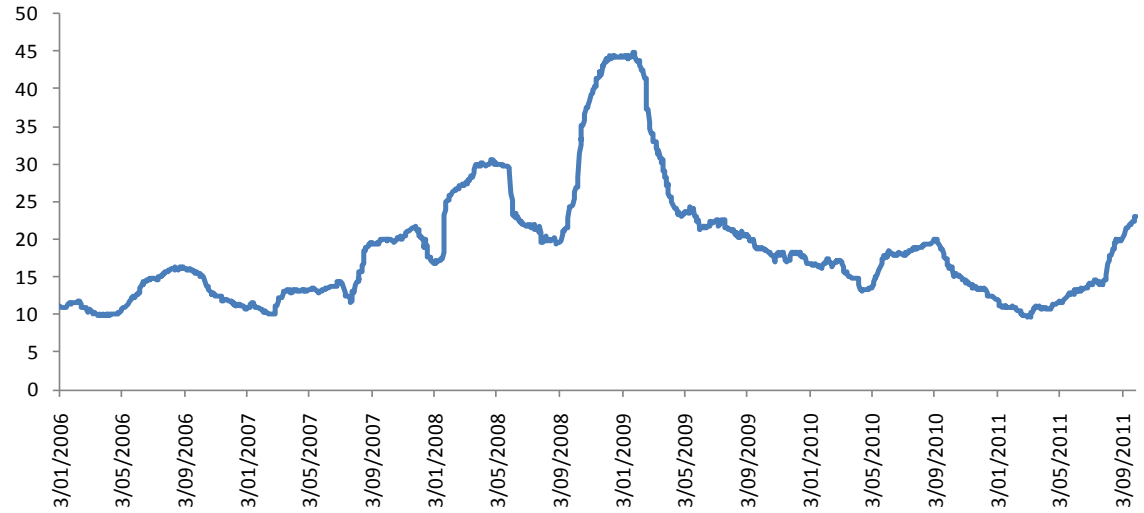
Considerations of the Authority

487. In its draft decision, the Authority presented both quantitative and qualitative evidence which it relied on in making its decision. Since the release of the draft decision, there is some new evidence which confirms the Authority's position in its draft decision.

New Quantitative Evidence

488. The Authority notes that the implied volatility of the prices of options on the ASX200 index has recently increased. However, the current level of the implied volatility from the market is still substantially below the level of volatility during the Global Financial Crisis in 2008 and 2009. Furthermore, the Authority is not aware of any reliable framework on which the MRP can be directly estimated from the implied volatility for a long-term horizon. Figure 3 presents the 90 Day Volatility of the All Ordinaries Accumulation Index for the period from 1 January 2006 to 30 September 2011.

Figure 3 90 Day Moving Volatility of All Ordinaries Accumulation Index, 1 June 2006 – 30 September 2011



Source: Bloomberg.

489. Surveys in 2009[181] and 2010[182] show that the average MRP adopted by market practitioners was approximately 6 per cent. These findings are similar to the market surveys prior to the Global Financial Crisis.[183]

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180 BHP Billiton, Public submission in response to the draft decision on DBP's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement, 20 May 2011, p 17.

490. Anthony Asher conducted a survey of MRP estimates by a number of Australian actuaries in February 2011. There were 58 respondents. Most of the respondents were associated with Investment and Wealth Management, Insurance, Superannuation and Banking. The study reported that, on average, respondents had about 15 years of experience as actuaries. The survey found that the average MRP expected over the next 12 months was 4.7 per cent, while the average expected over the next ten years was 4.9 per cent. The author noted that the standard deviation of the former estimate is 2.5 per cent, and of the latter 2.0 per cent. In these estimates, franking credits were taken into account.[184]

491. In the most recently released article, "*Market Risk Premium Used in 56 Countries in 2011: A Survey with 6,014 Answers*" by Pablo Fernandez, Javier Aguirreamalloa and Luis Corre from IESE Business School, University of Navarra, the authors provided an analysis of the results of an international survey on the MRP in March and April 2011. Of the 3,998 survey responses that provided an estimate of the MRP, 40 were from Australia and offered an estimate of the MRP for the Australian equity market. The average of these 40 estimates of the Australian MRP was 5.8. Of the 40 responses received for Australia, 15 were from academics, 21 from analysts and 4 from managers of companies. The average of the estimates of the MRP received from academics was 6.2, from analysts 5.4 and from managers 6.5. It is noted that while the overall average for Australia was 5.8, the median was significantly lower, at 5.2.[185]

492. Recent evidence from broker reports indicated that the current market practice is to adopt an MRP of approximately 6 per cent. In addition, a recent report from AMP Capital Investors indicates that its forward-looking MRP is lower than 6 per cent.

Relationship between the cost of debt and cost of equity

493. The Authority notes that one of the arguments, used by VAA to support its view that the risk premium on equity is above the historical average, is that the equity premium should be greater than or equal to 2.67 times the debt risk premium, as discussed in Professor Grundy's paper in 2010.[186]

494. In this paper, Grundy was of the view that the relationship between the cost of debt and a firm's leverage (or gearing level) as measured by the value of the firm's debt D relative to value of the firm's assets V, or D/V, is convex. This means that the cost of debt initially increases very little as D/V grows from a very low level.

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181 Fernandez and Del Campo, Market Risk Premium used by Professors in 2008: A Survey with 1400 Answers, IESE Business School Working Paper, WP-796, May 2009, p 7.

182 Fernandez and Del Campo, Market Risk Premium Used in 2010 by Analysts and Companies: A Survey with 2400 Answers, IESE Business School, 21 May 2010, p 4.

183 For example, see Truong, Partington and Peat (2008), 'Cost of capital estimation and capital budgeting practices in Australia', *Australian Journal of Management*, Vol. 33, No. 1, June 2008, p.155. KPMG (2005), *Cost of Capital – Market Practice in relation to Imputation Credits.* Capital Research (2006), *Telstra's WACC for network ULLS and the ULLS and SSS businesses – Review of reports by Professor Bowman,* Associate Professor Neville Hathaway.

184 Asher, A. (2011), "Equity Risk Premium Survey: Results and Comments", *Actuary Australia,* 161, July 2011, pp. 13-15.

185 The Australian Competition and Consumer Commission, 2011, *Network,* Issue 41, September 2011, page 11.

186 Grundy, B. 2010, The *Calculation of the Cost of Capital: A Report for Envestra,* 30 September 2010.

However, as the firm becomes increasingly debt-financed, the cost of debt will increase.

495. Grundy then rearranged the WACC formula in terms of risk premia above the risk free rate, R_f, as follows (where all notations are conventional and R_C is the weighted average cost of capital):

$$R_C - R_f = \left(\frac{D}{V} \times R_D + \frac{E}{V} \times R_E\right) - R_f \quad (1)$$

496. Rearranging equation (1):

$$\left(R_C - R_f\right) = \left[\frac{D}{V} \times \left(R_D - R_f\right)\right] + \left[\frac{E}{V} \times \left(R_D - R_f\right)\right] \quad (2)$$

497. Equation (2) means that:

Firm Risk Premium = D/V * Debt Risk Premium + E/V * Equity Risk Premium

which is known as the Miller-Modigliani Proposition II.[187]

Or:

$$FRP = \frac{D}{V} \times DRP + \frac{E}{V} \times ERP \quad (3)$$

498. Grundy then argued that the convex relationship between the DRP and the gearing level D/V implies that the DRP is less than D/V * FRP. That is, FRP is greater than DRP * V/D.

499. Equation (3) now becomes:

$$\frac{D}{V} DRP + \frac{E}{V} ERP > DRP \frac{V}{D} \quad (4)$$

$$0.6 \times DRP + 0.4 \times ERP > DRP \times \frac{1}{0.6}$$

Or

$$ERP > DRP \times 2.67$$

[187] This proposition states that the cost of capital of levered equity is equal to the cost of capital of unlevered equity plus a premium that is proportional to the debt-equity ratio (measured using market values).

500. With the assumed gearing of 60 per cent, equation (4) tells us that the ERP is greater than (or at least) 2.67 times the DRP. This is the key conclusion from Grundy's paper.

501. The Authority is aware that Professor Davis and Associate Professor Handley, the AER's consultants on the issue, both cautioned against the use of the Modigliani and Miller theorem to imply a relationship between the cost of debt and equity.[188]

502. Handley considered that the Miller-Modigliani theorem[189] in the presence of debt risk is based on the assumption that equity and debt are priced in the same integrated market, rather than being priced in separate segmented markets. Handley stated that under this assumption, an exact relationship between the firms' cost of debt and cost of equity can be established. Assuming Professor Grundy's theory is correct, Handley considered that, if the equity risk premium is less than 2.67 times the debt risk premium, this could imply that the equity and debt is priced in:[190]

- an integrated market and that the equity risk premium is too low;
- an integrated market and that the debt risk premium is too high;
- in segmented markets, so that the Modigliani and Miller theorem cannot be used to infer that the equity is mispriced relative to the debt.

503. The Authority considers that Grundy's estimation does not necessarily mean that the Authority's estimate of the cost of equity is too low. However, this estimation could also imply that the Authority's estimate of the cost of debt is excessive or that equity and debt are priced in separate segmented markets.

504. As a consequence, while the Miller-Modigliani Proposition II does have merit in the finance literature, the Authority is of the view that Grundy's conclusion of the relationship between the cost of debt and cost of equity should not be used to form a conclusion that the Authority's estimate of the cost of equity is low. As such, the Authority considers that VAA's argument based on Grundy's estimation cannot be relied upon.

New Economic Outlook and Market Conditions

505. In its draft decision, the Authority was of the view that there has been evidence to suggest that market conditions have stabilised. The Authority is aware of the current developments in the Australian economy and the Australian financial market. Even though conditions in global financial markets have continued to be very unsettled in September 2011, the Authority is of the view that Australia is well placed

188 Hanley, J. 2011, Peer Review of Draft Report by Davis on the Cost of Equity, 18 January 2011, pp 9-10.

189 F. Modigliani and M. Miller, "The cost of capital, corporate finance and the theory of investment," *American Economic Review* 48 (3) (1958): 261 – 297. Modigliani won the Nobel Prize in 1985 for his work on personal savings and for his capital structure theorems with Miller. Miller earned his Nobel Prize in 1990 for his analysis of portfolio theory and capital structure.

190 Davis, K. 2011, Cost of Equities – A Report for the AER, 16 January 2011, p. 19 and Hanley, J. 2011, Peer Review of Draft Report by Davis on the Cost of Equity, 18 January 2011, pp 9-10.

in comparison with other advanced countries[191] on the basis that economic activity is continuing to expand in China and in most of Asia.

506. In its Statement on Monetary Policy in August 2011, the RBA was of the view that:

> "The Australian economy continues to benefit from strong growth in Asia, with the terms of trade estimated to be at a record high in the June quarter."[192]

and

> "In aggregate, business conditions are around long-run average levels, while both consumer and business confidence have fallen to below-average levels. The pace of employment growth has slowed from the rapid pace seen in late 2010, though the unemployment rate has remained steady at just below 5 per cent."[193]

507. In addition, in its most recent statement on Monetary Policy Decision released on 4 October 2011, the RBA noted that:

> "It will take more time for evidence of any effects of the recent European and US financial turbulence on economic activity in other regions to emerge. Thus far, indications are that economic activity is continuing to expand in China and most of Asia. Nonetheless, recent events have led forecasters to reduce their estimates for global GDP growth, which is now expected to be about average this year and next. Prices for commodities have declined over recent weeks, though in general they remain high."[194]

and

> "Australia's terms of trade are very high, which has increased national income considerably. Investment in the resources sector is picking up very strongly and some related service sectors are enjoying better than average conditions. In other sectors, cautious behaviour by households and the earlier rise in the exchange rate have had a noticeable dampening effect. The impetus from earlier Australian Government spending programs is now also abating, as had been intended. While there remain good reasons to expect solid growth over the medium term, the indications are that the pace of near-term growth is unlikely to be as strong as earlier expected, due both to local and global factors, including the financial turmoil and related effects on business confidence."[195]

508. The Authority is aware of the current development in the Australian share market. However, the market is now at a higher level than it was in 2008 and 2009 during the Global Financial Crisis. This view is illustrated in Figure 4 below.

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191 The International Monetary Fund, September 2011, "World Economic outlook: Slowing Growth, Rising Risks", available at http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf, September 2011, pages 78 and 85

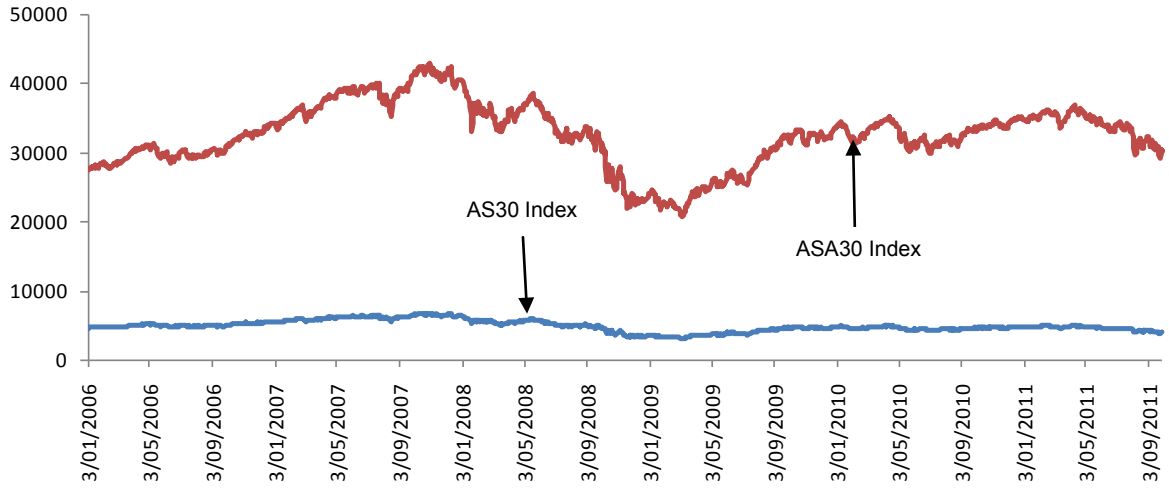
192 The Reserve Bank of Australia, August 2011, "Statement on Monetary Policy", available at http://www.rba.gov.au/publications/smp/2011/aug/html/index.html, accessed on 15th August 2011, p 3

193 The Reserve Bank of Australia, August 2011, "Statement on Monetary Policy", available at http://www.rba.gov.au/publications/smp/2011/aug/html/index.html, accessed on 15th August 2011, p 35

194 The Reserve Bank of Australia, October 2011, "Statement on Monetary Policy Decision", available at http://www.rba.gov.au/media-releases/2011/mr-11-21.html, accessed on 5th October 2011

195 The Reserve Bank of Australia, October 2011, "Statement on Monetary Policy Decision", available at http://www.rba.gov.au/media-releases/2011/mr-11-21.html, accessed on 5th October 2011

Figure 4 Australian Stock Exchange All Ordinaries Index (AS30 Index) and ASX Accumulation All Ordinaries Index.



Source: Bloomberg

509. With regard to economic conditions for the Australian economy in the coming years, in October 2010 the IMF stated that:

> "Australia avoided a recession in 2009 and is recovering on the back of a substantial policy stimulus and strong demand for its mining exports, especially from China";
>
> and
>
> "Real GDP growth is projected to recover to 3–3½ per cent in 2010 and 2011, led by commodity exports and investment in mining".[196]

510. However, in its most recent report, the IMF has cut its Australian growth forecasts from 2 per cent to 1.8 per cent for 2011 and has trimmed the growth forecast to 3.3 per cent for 2012. According to the IMF, global activity has weakened and has become more uneven, confidence has fallen sharply recently, and downside risks are growing.[197]

Conclusions on MRP

511. Consistent with its approach in the draft decision, the Authority is of the view that it is appropriate to consider a wide range of the evidence for the forward-looking long-term estimates of the MRP in this final decision:

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196 The International Monetary Fund, October 2010, "Australia: 2010 Article IV Consultation – Staff Report; and Public Information Notice on the Executive Board Discussion, available at http://www.imf.org/external/pubs/ft/scr/2010/cr10331.pdf, October 2010.

197 The International Monetary Fund, September 2011, "World Economic outlook: Slowing Growth, Rising Risks", available at http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf, September 2011, page 85

- An estimate of the historical equity risk premium for the period for 1883 – 2010 by Associate Professor Handley in January 2011;[198]
- Surveys of the market risk practice; and
- The Authority's approach and other Australian regulators' current practice.

512. The Authority is aware of current developments in the financial markets both in Australia and overseas. However, the Authority is of the view that the investors' expectation of the long run forward looking MRP is unlikely to change frequently in response to any development of the financial markets in the short term.

513. The Authority is aware that the AER adopted a MRP of 6 per cent in its recent final decision on Envestra's Access Arrangement proposal for the Queensland gas network released in May 2011.[199]

514. A MRP of 6 per cent is consistent with the view of other Australian regulators, including the AER, IPART and QCA. The estimate of the MRP of 6 per cent also reflects the view by the AER and other regulators that this is the best estimate of a forward-looking long-term MRP.

515. The Authority considers that a reasonable point estimate for the MRP is 6 per cent.

Value of Imputation Credits

Draft Decision

516. It is widely accepted that the approach adopted by regulators across Australia to define the value of imputation credits, known as 'gamma' γ, is in accordance with the Monkhouse definition,[200] as discussed at length in the Authority's draft decision. There are two components of gamma:

- the payout ratio (F); and
- theta (θ).

517. The Authority adopted a payout ratio within the range of 0.7 and 1.0 in its draft decision.

518. The Authority's draft decision also adopted the value of theta within the range of 0.37 (derived from the 2009 SFG's dividend drop-off study) to 0.81 (derived from the 2008 Handley and Maheswaran's tax statistics study).

519. Based on the payout ratio and theta, the Authority concluded that an estimated value of gamma for DBNGP proposed Access Arrangement in the draft decision was 0.53.

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198 Handley, 2011, "An estimate of the historical equity risk premium for the period for 1883 – 2010", January 2011, A report for the Australian Energy Regulator.

199 Australian Energy Regulator, June 2011, Final Decision, "Envestra Ltd, Access Arrangement Proposal for the Qld Gas Network, p 48.

200 Monkhouse, P. 'Adapting the APV Valuation Methodology and the Beta Gearing Formula to the Dividend Imputation Tax System', *Accounting and Finance*, 37, vol. 1, 1997, pp 69-88.

Submissions

520. Strategic Finance Group (**SFG**), DBP's consultant on the issue, submitted that there is no basis for using an estimate other than 70 per cent for the distribution rate (or payout ratio).[201]

521. SFG's view is that the results of a dividend drop-off analysis that uses the methodology in the 2006 Beggs and Skeels study should not be relied upon. SFG submitted that it is appropriate to use the recent 2011 SFG's dividend drop-off study, which produces the estimate of theta of 0.35 and was accepted by the Australian Competition Tribunal (**ACT**).[202]

522. SFG also submitted that, consistent with the finding of the ACT, a tax statistics approach should only be used as an upper bound check on any estimates of theta which are based on market data such as dividend drop-off studies.[203]

523. SFG also submitted that the ACT did not have reason to specifically consider the issues of internal consistency and market practices, which is set out below. SFG stated that both of the following two issues provide reasons for using a gamma value of zero:[204]

- The standard market practice is to make no adjustment in relation to franking credits when estimating WACC; and
- If the dividend drop-off analysis was performed on the basis that cash dividends were fully valued (to be consistent with the fact that the CAPM estimates the required return on equity on the basis that cash dividends are fully valued), the resulting estimate of theta (and consequently of gamma) is zero.

524. Based on SFG's advice, DBP submitted that the value attributed to franking credits, known as gamma, was set to zero. DBP was of the view that a value of zero at the lower end of the range is:[205]

- consistent with market practice;
- consistent with the ERA's approach in estimating the required return on equity; and
- consistent with the estimate presented in Cannavan, Finn and Gray (2004), which is the only estimate published in a journal that is rated A* by the Australian Research Council.[206]

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201 Strategic Finance Group, May 2011, "A regulatory estimate of gamma under the National Gas Rules: Response to draft decision", pp 1, 9.

202 Strategic Finance Group, May 2011, "A regulatory estimate of gamma under the National Gas Rules: Response to draft decision", p 12.

203 Strategic Finance Group, May 2011, "A regulatory estimate of gamma under the National Gas Rules: Response to draft decision", p 13.

204 Strategic Finance Group, July 2011, "Regulatory estimate of gamma in light of recent decisions of the Australian Competition Tribunal"", a report prepared for DBP, 20 July 2011, p 1.

205 DBP, 20 July 2011, Submission 65, p 3, *Regulatory Estimate of gamma in light of recent decisions of the Australian Competition Tribunal*.

206 Cannavan, D., Finn, F., & Gray, S., (2004), "The Value of Dividend Imputation Tax Credits in Australia," *Journal of Financial Economics*, 73, 167-197.

525. In its submission, Verve Energy[207] supported the Authority's decision that gamma of 0.53 is appropriate in setting the rate of return. BHP Billiton was of the view that, given the existence of Australian shareholding in the owners of the DBNGP, setting gamma at zero is clearly inappropriate.[208]

Considerations of the Authority

526. In considering the value of imputation credits (gamma), the Authority has had regard to the detailed consideration given by available academic studies and evidence on this element of the WACC calculation.

527. The Authority rejects the proposed use of a gamma of zero by DBP which argues that setting a gamma of zero is consistent with market practice. As discussed in its draft decision, the Authority considered the advice of McKenzie and Partington (2010) to the AER.[209] In that advice, McKenzie and Partington advised that the 2008 Truong, Partington and Peat study[210] found that the majority of firms do not account for the value of imputation credits because it is too difficult to do so. In addition, this study also found that only 6 out of 89 firms surveyed cited that the reason they did not incorporate a value for gamma was because they considered that imputation credits have zero market value.

528. In addition, the Authority also considered the advice of Professor Handley in its draft decision. In the advice to the AER, Handley[211] states that, under the conventional approach to valuation (i.e. no imputation credits), Australian firms and independent valuation practitioners do not explicitly recognise the value of imputation credits in either the cash flows or in the discount rate. As such, imputation credits are not assumed to have zero value, but rather they are simply not explicitly taken into account in either the cash flows or in the discount rate.

529. The Authority also rejects DBP's proposal that setting gamma to zero is consistent with the ERA's approach in estimating the required return on equity. The Authority is of the view that the Authority's approach to estimating the cost of equity remains consistent even in the case where a non-zero value of gamma is adopted. This consistency was discussed at length in the Authority's draft decision.[212]

530. The Authority is also of the view that setting gamma to zero is clearly inappropriate given the presence of Australian shareholdings in all energy network companies in Australia.

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207 Verve Energy, Submissions in response to the ERA's draft decision on the proposed revised access arrangement for the DBNGP, 20 May 2011, p 24.

208 BHP Billiton, Public submission in response to the draft decision on DBP's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline access arrangement, 20 May 2011, p 23.

209 McKenzie and Partington, Report to the AER, Evidence and submissions on gamma, 25 March 2010, pp 27-28.

210 G. Truong, G. Partington and M. Peat, 'Cost of capital estimation and capital budgeting practices in Australia', *Australian Journal of Management*, Vol. 33, No. 1, June 2008.

211 Handley, Report prepared for the Australian Energy Regulator on the estimation of gamma, 19 March 2010, pp 3-4.

212 Economic Regulation Authority, draft decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 14 March 2011, p 177.

531. The Authority is aware that the value of gamma was considered by the Australian Competition Tribunal and this decision on the value of gamma has been taken into consideration for the Authority's final decision on the proposed Access Arrangement.

Payout Ratio (F)

532. The Authority is aware of the recent decision by the Tribunal with regard to the payout ratio. The Authority considers that the range of the payout ratio of 70 per cent to 100 per cent is appropriate given the information currently available to the Authority. This range was adopted by the Authority in its draft decision and was discussed at length in the draft decision.[213]

533. The Authority considers that an estimate of the payout ratio of 70 per cent is appropriate based on the empirical evidence currently available. This estimate is consistent with the Tribunal's decision with regard to the value of the payout ratio.[214] The Authority is of the view that existing evidence still supports the use of a range of 70 per cent and 100 per cent for payout ratio. However, for regulatory certainty, the Authority considers that there is no new evidence at this time that would cause the Authority to depart from the findings of the Tribunal in respect of gamma.

534. In conclusion, the Authority's decision is to adopt the payout ratio of 70 per cent in this final decision on the DBNGP proposed Access Arrangement.

Theta (θ)

535. The dividend drop-off study is the only approach used by the Tribunal to determine the value of theta. The Tribunal considered that redemption rate studies should only be used as a check on the reasonableness of the market value of imputation credits as estimated from dividend drop-off studies. On this basis, the Authority may consider further evidence on the estimate of theta using redemption rate studies in the future when this sort of study has been refined on economically justifiable grounds (such as a consideration of any time value loss between when imputation credits are distributed and when they are redeemed, which is currently missing in redemption rate studies).

536. The Authority maintains its position in its draft decision that dividend drop-off studies are affected by estimation issues, including multicollinearity and heteroscedasticity, which are discussed in detail in the Authority's draft decision. As such, estimates of theta using dividend drop-off studies are inherently imprecise. As a result, the Authority is of the view that a range of evidence should be considered where available.

537. For the same reason as discussed in paragraph 533 with regard to the estimate of the payout ratio, the Authority considers that, for regulatory certainty, it should apply a value of theta which is consistent with the Tribunal's decision, for the purpose of

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213 Economic Regulation Authority, draft decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 14 March 2011, pp 179-80.

214 Australian Competition Tribunal, Application by Energex Limited (Distribution Ratio (Gamma)) (No 3) [2010] ACompT 9 (24 December 2010), paragraph 4.

this final decision. As such, the Authority uses the 2011 SFG's dividend drop off study, which estimates the value of theta of 0.35, in this final decision.[215]

Gamma (γ)

538. Based on an estimate of the payout ratio of imputation credits of 70 per cent, together with an estimate of theta of 0.35, the Authority concludes that a reasonable value of gamma, for the purpose of the Authority's final decision on the DBNGP Access Arrangement, is 0.25 (or 25 per cent). The estimate of gamma of 0.25 is consistent with the Tribunal's decision on gamma.[216]

Debt Risk Premium

Draft Decision

539. The Authority did not approve the DBP's proposal of using the average cost of debt incurred in various financial markets. The Authority considered that a reasonable debt risk premium for regulated businesses should be estimated using the bond-yield approach.

Submissions

540. DBP's consultant on the issue, AMP, submitted that the Authority's bond-yield approach, which concentrates on public credit ratings as the key determinant of assessing the appropriateness of the peer group, is an overly simplistic assessment of credit risk and does not accurately reflect the analytical dynamics of the market. AMP stated that bond investors do not solely rely on rating agencies for their analysis of risk and determination of yield requirements. AMP submitted that when assessing the credit risk of an entity, most investors use a combination of:[217]

- bottom-up analysis, including factors such as company profile, business risk, financial analysis and global peer group assessment; and
- top-down analysis, including factors such as economic fundamentals, credit cycle and industry themes.

541. AMP submitted that the resulting impact of the above analysis by investors is that bonds of the same credit rating do not necessarily trade at a similar level.[218]

542. With regard to the three criteria used by the Authority to select Australian corporate bonds to be included in the benchmark bond sample for the bond-yield approach, AMP provided its comments on each of these criteria, as follows:[219]

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215 Australian Competition Tribunal, Application by Energex Limited (Gamma) (No 5) [2011] ACompT 9 (12 May 2011), paragraph 38.

216 Australian Competition Tribunal, Application by Energex Limited (Gamma) (No 5) [2011] ACompT 9 (12 May 2011), paragraph 42.

217 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 9.

218 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 9.

219 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 9.

543. Criterion 1 is that bonds should have the same Standard and Poor's credit rating of BBB/BBB-. AMP argued that this criterion should be based on a risk assessment along the lines discussed in paragraph 540 above, rather than simple public credit rating test.

544. Criterion 2 is that bonds should be in the same industry as the regulated business (i.e. the utility sector). AMP submitted that this is not necessary.

545. Criterion 3 is that bonds should have a maturity of 2 years or longer. AMP submitted that a maturity cut-off of 5 years is more appropriate.

546. In summary, AMP was of the view that as long as bonds are issued by comparable issuers (to a regulated business) in any global market, and as long as the yields are provided on a fully swapped, back-to-Australian-dollar basis, this will address the issues highlighted by the Authority in its bond-yield approach, i.e.:

- small sample size;
- illiquidity of the Australian financial market; and
- statistical error due to low sample size.

547. With regards to the Authority's bond-yield approach, AMP agreed with an aspect of weighting the observed yields from Australian corporate bonds in the benchmark sample using both volume and tenor.[220]

548. AMP updated the cost of borrowing from both Australian and the US financial markets as at April 2011.

Table 32 AMP's Estimates of Debt Risk Premium[221]

Markets	Allocation		Cost of Debt (Per cent)
	Per cent	A$ (million)	
Australian Bank Market (5 years)	26.2	550	9.23
Australian Bank Market (7 years)	9.5	200	9.61
Australian Bond Market (5 years)	23.8	500	9.39
Australian Bond Market (7 years)	0	0	9.54
US Public Market – 144a (10 years)	28.6	600	9.78
US Private Placement Market (10 years)	11.9	250	9.73
Total Debt Portfolio	**100**	**2,100**	**9.52**

Source: AMP Capital Investor, page 2.

220 AMP Capital Investors, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 10.

221 AMP Capital Investors, Cost of Debt Summary Paper, Dampier Bunbury Pipeline, April 2011, p 7.

549. In its revised submissions, Alinta submitted that the debt risk premium should be calculated on a neutral, not conservative, basis so that DBP is not unreasonably favoured in the calculation.[222] This view is also supported by Verve Energy.[223]

550. Verve Energy also submitted that the significant change in the debt composition mix under AMP's methodology results in greater volatility in the calculation of the cost of debt. As such, DBP's proposed approach to estimating the cost of debt should be rejected.[224]

Considerations of the Authority

551. AMP is of the view that the Authority's bond-yield approach, which uses Standard and Poor's credit rating as the key determinant of assessing the appropriateness of the peer group, is an overly simplistic assessment of credit risk. However, the Authority is of the view that there is no better alternative approach, which is as simple, independent, and transparent as the Standard and Poor's method, in assessing credit risk.

552. The Authority considers that both "bottom-up" and "top-down" analyses proposed by AMP are considered by Standard and Poor's in assigning credit rating for an entity. The Authority is aware that Standard and Poor's has developed a matrix in which business risk and financial risk of the firms can be assessed. In terms of business risk, factors are considered such as:

- country risk;
- industry factors;
- competition position; and
- profitability/peer group comparisons.

553. In a similar approach, factors included in the consideration of the company's financial risk by Standard and Poor's include:

- governance/risk tolerance/financial policies;
- accounting;
- cash flow adequacy;
- capital structure/asset protection; and
- liquidity/short-term factors.

554. Standard and Poor's indicates that there is no pre-determined weight for each factor which will vary from situation to situation. The matrix is presented in Table 33 below.

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222 Alinta, Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 20 May 2011, p 23.

223 Verve Energy, Submissions in response to the ERA's draft decision on the Proposed Revised Access Arrangement for the DBNGP, 20 May 2011, p 23

224 Verve Energy, Submissions in response to the ERA's draft decision on the Proposed Revised Access Arrangement for the DBNGP, 20 May 2011, p 24

Table 33 Standard and Poor's Matrix of Business Risk and Financial Risk

Business Risk Profile	Minimal	Modest	Intermediate	Aggressive	Highly Leveraged
Excellent	AAA	AA	A	BBB	BB
Strong	AA	A	A-	BBB-	BB-
Satisfactory	A	BBB+	BBB	BB+	B+
Weak	BBB	BBB-	BB+	BB-	B
Vulnerable	BB	B+	B+	B	B-
Financial Risk Indicative Ratios*	**Minimal**	**Modest**	**Intermediate**	**Aggressive**	**Highly Leveraged**
Cash flow (Funds from operations/ Debt)(%)	Over 60	45-60	30-45	15-30	Below 15
Debt leverage (Total debt/Capital) (%)	Below 25	25-35	35-45	45-55	Over 55
Debt/EBITDA (x)	<1.4	1.4-2.0	2.0-3.0	3.0-4.5	>4.5

* Fully adjusted historically demonstrated and expected to continue consistently.

Source: Standard & Poor's, Corporate Ratings Criteria 2008, p 22.

555. In addition, AMP's view on the three selection criteria from the Authority's bond-yield approach, as discussed in paragraph 543, 544 and 545, was discussed in detail in the Authority's previous decision.[225] The Authority notes that the bond-yield approach was developed on the basis that all three issues raised by AMP were already considered.

556. AMP has updated the cost of debt using its initially proposed approach to secure debts from both Australian and American bank/bond markets. The Authority notes that there has been a significant change over the past year in the amount of debt allocated for different markets or terms to maturity. Table 34 below presents a new allocation across different markets and terms to maturity, compared to the initial allocation proposed in April 2010.

[225] For example, the discussions can be found on the Authority's Final Decision on Western Australian Gas Networks released in February 2011 which is available at http://www.erawa.com.au/3/1076/48/wa_gas_networks_formerly_alintagas_distribution_sy.pm .

Table 34 AMP's Estimates of Allocation of Total Debt in Different markets and Terms to Maturity

Markets	Allocation (Per cent)	
	April 2011	April 2010
Australian Bank Market (5 years)	26.2	28.6
Australian Bank Market (7 years)	9.5	9.5
Australian Bond Market (5 years)	23.8	0
Australian Bond Market (7 years)	0	9.5
US Public Market – 144a (10 years)	28.6	33.3
US Private Placement Market (10 years)	11.9	19
Total Debt Portfolio	**100**	**100**
Cost of Debt	**9.52**	**9.73**

Source: AMP Capital Investors, Cost of Debt Summary Papers for Dampier Bunbury Pipeline, April 2010 (page 10) and April 2011 (page 7).

557. The Authority notes that the allocation of the amount borrowed from each market and for different terms to maturity is different as shown in Table 34. The Authority is of the view that the different allocations are not transparent and ad hoc. No rationale for doing so could be found from AMP's papers.

558. In addition, AMP's approach to estimating the cost of debt is to quote the cost of debt in the US market on an Australia-dollar-equivalent basis. This means that all components of the bond are swapped back into Australian dollars and the full costs of doing this are included in the pricing.[226]

559. The AMP's approach to estimating the cost of debt is different to the approach generally adopted by Australian regulators, which is to estimate the cost of debt as:

Cost of Debt = Nominal Risk Free Rate[227] + Debt Risk Premium[228]

560. In summary, the Authority maintains its position in the draft decision that the proposed approach by DBP and its consultant AMP is not appropriate for the estimation of the cost of debt for the final decision on the proposed access arrangement. The Authority is of the view that the bond-yield approach is the best available method to estimate the debt risk premium and the cost of debt.

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226 AMP Capital Investors, Cost of Debt Summary Paper, Dampier Bunbury Pipeline, April 2011, p 8.

227 The risk free rate is the rate of return an investor receives from holding an asset with guarantees payment (i.e. no risk of default). In Australia, Australian Commonwealth Government bonds are widely used as a proxy for the risk free rate.

228 The Debt Risk Premium (**DRP**) is the margin above the nominal risk free rate that a debt holder would require in order for it to invest in a benchmark efficient firm. When combined with the nominal risk free rate, the DRP represents the return on debt and is an input for calculating the WACC.

Estimate of the Debt Risk Premium – A Bond-Yield Approach

561. The Authority notes that the bond-yield approach was discussed in detail in the draft decision. As such, for this final decision, the estimate of the debt risk premium is updated with a new sample of Australian corporate bonds at the end of September 2011.

562. As at 30 September 2011, an updated sample of Australian corporate bonds is presented in Table 35 below.

Table 35 BBB-/BBB/BBB+ Australian Corporate Bonds, 30 September 2011

No.	Name of business	Bloomberg ticker	Coupon	Maturity	Main industry
1.	APT PIPELINES	E1325336 Corp	7.75	22/07/2020	Electric transmission[229]
2.	DBCT FINANCE PTY LTD	EF461870 Corp	6.25	9/06/2016	Diversified financial service
3.	NEXUS AUSTRALIA	EI204253 Corp	3.6	31/08/2017	Special Purpose entity
4.	NEXUS AUSTRALIA	EI204261 Corp	3.6	31/08/2019	Special Purpose entity
5.	MERCEDES-BENZ AUSTRALIA	EI627905 Corp	6.25	4/11/2014	Auto Cars/ Light truck
6.	DEXUS FINANCE	EI223256 Corp	8.75	21/04/2017	Mortgage
7.	ENVESTRA VICTORIA PTY LTD	EC866427 Corp	6.25	14/10/2015	Gas distribution
8.	GOODMAN AUSTRALIA INDUST	EI675822 Corp	7.75	19/05/2016	Property Trust
9.	LEIGHTON FINANCE	EH911249 Corp	9.5	28/07/2014	Diversified financial service
10.	LEASEPLAN AUSTRALIA LTD	EI579028 Corp	7.75	24/02/2014	Finance leasing company
11.	SYDNEY AIRPORT FINANCE	EI308853 Corp	8	6/07/2015	Finance-Other Services
12.	SYDNEY AIRPORT FINANCE	EI684902 Corp	7.75	6/07/2018	Finance-Other Services
13.	MIRVAC GROUP FUNDING LTD	EI195249 Corp	8.25	15/03/2015	Real Estate Oper/Development
14.	MIRVAC GROUP FINANCE LTD	EI414696 Corp	8	16/09/2016	Real Estate Oper/Development
15.	SANTOS FINANCE	EF102609 Corp	6.25	23/09/2015	Oil Comp-Exploration & Production

Source: Bloomberg

[229] This is a classification from Bloomberg. APT pipelines are generally classified as a business in a gas industry.

563. The Authority considered four scenarios in estimating the debt risk premium using the bond-yield approach:

- A full sample of 15 Australian corporate bonds (Scenario 1);
- A shortened sample excluding all bonds with BBB- credit rating (Scenario 2);
- A shortened sample excluding all bonds with less-than-5-year term to maturity (Scenario 3);
- A shortened sample excluding all bonds with BBB- credit rating and all bonds with less-than-5-year term to maturity (Scenario 4).

564. For each of the four scenarios above, the following four weighted average methods are considered:

- a simple average;
- a term-to-maturity weighted average approach;
- an amount-issued weighted average approach; and
- a median approach.

565. As presented in paragraph 475, the Authority considers that the estimated 5-year nominal risk-free rate of return should be 3.80 per cent, for the period until 30 September 2011. This nominal risk free rate is estimated for a 5-year CGS. The same principle is applied to estimate the risk free rate for Australian corporate bonds with more (or less) than 5-year term to maturity. The risk free rate for 5-year CGS must be adjusted to reflect the fact that bonds in the benchmark sample have longer (or shorter) -than-5-year term to maturity.

566. For example, column 5 from Table 36 shows that the nominal risk free rate for the APT bond with 8.81 years to maturity is 4.175 per cent for the 20 trading period to 30 September 2011.[230] By comparison, the nominal risk free rate for the APT bond, which will be used to estimate the debt risk premium for this bond in the benchmark sample, is higher than the risk-free rate for a 5-year CGS. This is consistent with the finance principle of risk and return trade-off: for longer investments with higher risks, then higher returns are required.

[230] For example, APT bond will mature on 20 July 2020. As such, the straddles dates which are used to estimate the risk free rate for the APT bonds are 15 April 2020 (for the CGS bond TB126) and 15 May 2021 (for the CGS bond TB124). The two straddle values on these two straddle dates will be interpolated in the same principle with the interpolation process for the nominal risk free rate to estimate the interpolated nominal CGS yield for the APT bond on the mature date.

Table 36 Observed Yields, Adjusted Nominal Risk Free Rates, and Debt Risk Premium for BBB-/BBB/BBB+ Australian Corporate Bonds, for the Period to 30 September 2011 (per cent)

No.	Bond	Term to maturity as at 30 September 2011 (years)	Observed yields (per cent)	Risk Free Rate (per cent)	Debt Risk Premium (per cent)
1	APT PIPELINES LTD	8.81	7.103	4.175	2.928
2	DBCT FINANCE PTY LTD	4.69	8.100	3.774	4.326
3	NEXUS AUSTRALIA MGT	5.92	7.108	3.933	3.175
4	NEXUS AUSTRALIA MGT	7.92	7.361	4.106	3.256
5	MERCEDES-BENZ AUSTRALIA	2.53	4.951	3.604	1.347
6	DEXUS FINANCE PTY LTD	5.56	6.811	3.872	2.940
7	ENVESTRA VICTORIA PTY LT	4.04	7.164	3.741	3.423
8	GOODMAN AUSTRALIA INDUST	4.64	7.310	3.772	3.538
9	LEIGHTON FINANCE LTD	2.83	7.609	3.627	3.982
10	LEASEPLAN AUSTRALIA LTD	2.40	6.626	3.599	3.027
11	SYDNEY AIRPORT FINANCE	3.77	6.529	3.706	2.823
12	SYDNEY AIRPORT FINANCE	6.77	7.129	4.010	3.119
13	MIRVAC GROUP FUNDING LTD	3.46	6.650	3.678	2.971
14	MIRVAC GROUP FINANCE LTD	4.96	7.134	3.798	3.336
15	SANTOS FINANCE LIMITED	3.98	6.143	3.733	2.410

Source: Authority's calculations

567. The debt risk premiums calculated under the different scenarios and different weighted average methods are summarised in Table 37 below.

Table 37 Debt Risk Premiums under Various Scenarios and Weighted Average Approach, (per cent) as at 30 September 2011

Weighted Average Method	Scenario 1 (15 bonds)	Scenario 2 (12 bonds)	Scenario 3 (5 bonds)	Scenario 4 (3 bonds)	Simple Average of all 4 scenarios
Simple Average	3.107	3.062	3.084	2.996	3.062
Term to Maturity Weighted Average	**3.146**	**3.106**	**3.083**	**2.992**	**3.082**
Amount Issued Weighted Average	3.162	3.148	3.064	2.965	3.085
Median	3.119	2.999	3.119	2.940	3.044

Source: Authority's calculations

568. Consistent with the draft decision, the Authority is of the view that the term-to-maturity weighted average method is likely to reflect the current conditions in the market for funds. As such, a simple average of all four term-to-maturity weighted average scenarios is used as the estimated debt risk premium.

569. As a result, for the 20-day trading period until 30 September 2011 for the final decision for the DBNGP Access Arrangement, the Authority is of the view that a debt risk premium of 3.082 per cent is reasonable.

570. Consistent with its draft decision, the Authority is of the view that the adoption of the debt risk premium of 3.082 per cent would also reflect a conservative position. The Authority views this decision as conservative because:

- The sample of 15 bonds observed from the market includes bonds with the feature of "Callable" redemption which, in principle, require a higher yield to compensate bondholders. The bond issued by the DBCT Finance Pty Ltd is the callable bond. There are no bonds issued with the feature of "Putable" redemption. It is unlikely that there will be bonds with the feature of "Putable" redemption issued in the Australian bond market in the foreseeable future.
- The sample of Australian corporate bonds includes BBB and BBB- bonds which, in principle, have higher yields in comparison with BBB+ credit rating bonds for regulated business.
- The regulated businesses have access to bank finance which, currently, is likely to be a lower cost of borrowing in comparison with bond yields.

Allowance for Debt Raising Cost

Draft Decision

571. The Authority did not approve DBP's proposal in relation to a pre-financing cost which varies from market to market depending on where funds are proposed to be raised.

572. The Authority considered that an allowance for debt raising costs of 0.125 per cent is appropriate and that this is the only component, together with debt risk premium, used to determine the cost of debt for DBNGP Access Arrangement. This allowance for debt raising cost of 0.125 per cent is based on the 2004 ACG's study and on the 2010 Handley's report.

Submissions

573. Based on AMP's advice, DBP has included an updated allowance of a range of 31 to 45 basis points[231] for pre-financing costs as part of its proposed allowance for debt raising costs. In its initial submissions in April 2010, DBP and AMP proposed an allowance for debt raising costs in the range of 44 to 65 basis points.

574. AMP submitted that the 2004 ACG's Report is now significantly outdated and the impact of the recent global financial crisis on the fundamental dynamics of the financial markets cannot be underestimated. In addition, AMP submitted that its estimates of debt raising costs for the DBNGP do not include any "completion method" costs on which the Authority based its decision.[232]

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231 AMP Capital Investor, Cost of Debt Summary Paper, Dampier Bunbury Pipeline, April 2011, p 6.

232 AMP Capital Investor, Draft Determination – Issues Paper, Dampier Bunbury Pipeline, April 2011, p 8.

575. The Authority did not receive any public submissions in relation to the estimate of an allowance for debt raising cost.

Considerations of the Authority

576. The Authority considers that DBP and AMP have not provided any persuasive evidence in support of a pre-financing cost in the range of 31 to 45 basis points, which is approximately 30 per cent lower than the range in DBP's initial submissions in April 2010.

577. There is no evidence submitted in response to the draft decision on pre-financing cost and the Authority is of the view that a reduction of 30 per cent or so in the allowance of debt raising cost within a year, from April 2010 to April 2011, is not substantiated.

578. The Authority's decision is not only based on the ACG 2004 study, which provided the debt of raising cost of less than 12.5 basis points, but also on more recent evidence provided to the AER by Associate Professor Handley from the University of Melbourne in April 2010.[233] The Authority is also of the view that, in the absence of persuasive evidence to the contrary, an allowance of 12.5 basis points provides regulatory certainty, given that this amount has been widely used in the past by Australian regulators.

579. The Authority concludes that it is appropriate to make an allowance for debt raising costs of 12.5 basis points, on the basis that such an allowance is ordinarily appropriate and provided for by Australian regulators.[234]

Expected Inflation

Draft Decision

580. The Authority approved DBP's proposed method for calculating the forecast rate of inflation. DBP has calculated the expected inflation rate as the geometric mean of the RBA's inflation forecasts for the next two years and the mid-point estimate of the RBA's long-term inflation forecasts of 2.5 per cent for the remaining eight years. The Authority was of the view that the method is widely used by Australian regulators and, as such, the Authority accepted the use of the method to calculate the expected inflation rate.

581. However, the Authority did not approve the use of a 10-year term to maturity. The Authority considered that the term used should be 5 years, which is consistent with the term used to calculate the nominal risk free rate.

Submissions

582. DBP has not made any response in relation to the method of estimating the expected rate of inflation.

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233 Handley, J, April 2010, *A Note on the Completion Method*, Report prepared for the Australian Energy Regulator.

234 The Authority is aware that IPART is currently using an allowance for debt raising cost of 20 basis points in its decisions.

583. In its amended access arrangement, DBP adopted an expected rate of inflation of 2.57 per cent, which is a geometric mean of the RBA's inflation forecasts for the next two years and the mid-point estimate of the RBA's long-term inflation forecasts of 2.5 per cent for the remaining eight years.

584. The Authority has not received any public submissions in relation to the calculation of the expected inflation.

Considerations of the Authority

585. The Authority has adopted the same approach for this final decision as was used in the draft decision. However, the expected rate of inflation has been calculated as a geometric mean of inflation forecasts by the RBA for the next two years and the mid-point estimate of the RBA's long-term inflation forecasts of 2.5 per cent for the remaining three years. The forecasts on which the Authority has relied for its calculations in this final decision are from the Reserve Bank of Australia's August 2011 *Statement on Monetary Policy:*[235]

- 2.50 per cent for the year to June 2012;
- 3.75 per cent for the year to June 2013; and
- 2.50 per cent (being a mid-point estimate of the Reserve Bank of Australia's long term inflation forecasts) for each year from June 2014.

586. Using the above forecasts, the Authority has calculated the forecast inflation rate for this final decision of 2.75 per cent.

587. Based on an estimated nominal risk free rate of return of 3.80 per cent and an expected inflation rate of 2.75 per cent, the Authority estimates a real risk free rate of 1.02 per cent.

The Cost of Equity

Draft Decision

588. The Authority did not approve DBP's proposal that other versions of CAPM (namely the Black CAPM, the Fama-French CAPM, and the Zero-beta Fama French CAPM) should be used to estimate the cost of equity for the DBNGP Access Arrangement.

589. For the same reason, the Authority also did not approve DBP's proposal that two other methods, known as the broker research reports approach and the residual income model, as proposed by DBP's consultants on the issue, SFG, should be used to estimate the cost of equity for the DBNGP Access Arrangement.

590. In its draft decision, the Authority considered that a reasonable point estimate for equity beta is 0.8 at a gearing ratio of 60 per cent debt to total assets and that only the Sharpe-Lintner CAPM should be used to estimate the cost of equity for the DBNGP Access Arrangement.

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[235] Reserve Bank of Australia, May 2011, *Statement on Monetary Policy*, available at http://www.rba.gov.au/publications/smp/2011/may/pdf/0511.pdf p 63

Submissions

591. DBP has retained both SFG and NERA Economic Consulting (**NERA**) to provide expert advice in response to the Authority's draft decision on the issue of the estimate of the cost of equity.

Updated Estimates of the Cost of Equity from NERA

592. NERA updated the inputs used in other CAPM models using Dimensional Fund Advisors Australia Ltd (DFA) data as at April 2011. Table 38 below presents the estimates.

Table 38 Input Parameters for Different Versions of CAPM using DFA data[236]

Model	Zero-beta premium	Beta			Risk premium		
		Market	HML	SMB	Market	HML	SMB
Sharp-Lintner CAPM		0.53			6.50		
Black CAPM	6.50	0.53			0		
Fama-French CAPM		0.56	0.40	0.30	6.50	5.9	-0.08
Fama-French CAPM (zero beta)	6.50	0.56	0.40	0.30	0	5.9	-0.08

593. When a different data set, by Morgan Stanley Capital International (**MSCI**), is used, input parameters for relevant CAPMs can be summarised in Table 39 below.

Table 39 Input Parameters for Different Versions of CAPM using MSCI data[237]

Model	Zero-beta premium	Beta			Risk premium		
		Market	HML	SMB	Market	HML	SMB
Fama-French CAPM		0.57	0.22	0.41	6.50	3.38	5.99
Fama-French CAPM (zero beta)	6.50	0.56	0.22	0.41	0	3.38	5.99

594. NERA submitted that the MSCI HML premium and HML beta estimates are lower than their DFA counterparts. However, the estimate of the SMB premium is higher than its DFA counterparts. As a result, NERA concluded that the estimates of the

236 NERA, Estimating the Required Rate of Return on Equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p ii.

237 NERA, Estimating the required rate of return on equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p ii.

return required on the equity of a regulated energy business do not differ substantially from the DFA estimates.[238]

595. NERA's updated estimates of the rate of return on equity for DBNGP are reproduced in Table 40 below.

Table 40 DBP's Estimated Nominal Rates of Return on Equity [239]

Method of Determining Cost of Equity	Using DFA data	Using MSCI data
Sharp-Lintner CAPM	9.16	
Black (zero beta) CAPM	12.21	
Fama-French three factor CAPM	11.72	12.58
Fama-French (zero beta) three factor CAPM	14.56	15.39

Estimates of the cost of equity from SFG

596. In the initial submissions to the Authority, SFG presented two approaches – dividend research reports, and the residual income model – to estimate the cost of equity for DBP. For the revised submission in May 2011, SFG used the same two approaches with limited updates.

597. With regard to the dividend research reports, the updated SFG report stated that:[240]

- the most up-to-date equity analyst forecasts of dividend yields for comparable firms suggest that the forward-looking yield is appropriately 9 per cent;
- SFG's conservative estimate of future capital gains is in the range of 2.5 per cent to 3.5 per cent; and
- the above two components produce a forecast return on equity of 11.5 per cent to 12.5 per cent for the set of comparable firms. SFG also noted that this estimate includes returns from dividends and capital gains only and that it does not include any assumed value for franking credits.

598. With regard to the residual income model, SFG has made no further amendments from its initial submission in 2010. In its May 2011 report, SFG submitted that the residual income estimate is one of the range of estimates that should be considered when determining the required return on equity that would be commensurate with the prevailing conditions in the market for funds.[241]

599. In its revised submissions, Verve Energy submitted that an equity beta of 0.8 adopted in the Authority's draft decision is high. Verve Energy was of the view that

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238 NERA, Estimating the required rate of return on equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p 20.

239 NERA, Estimating the required rate of return on equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p ii and Table A.1, p 20.

240 SFG, The required return on equity commensurate with prevailing conditions in the market for funds: Response to draft decision, 17 May 2011, pp 7-8.

241 SFG, The required return on equity commensurate with prevailing conditions in the market for funds: Response to draft decision, 17 May 2011, p 21.

equity beta should be within the range of 0.4 to 0.7 proposed in the AER's draft decision for Amadeus Gas Pipeline as appropriate, based on market data. Verve Energy submitted that the equity beta should be selected on a neutral, not conservative, basis so that DBP is not unreasonably favoured in the selection.[242]

600. BHP Billiton submitted that DBP appears to have adopted a random approach to calculating the cost of equity, based on continuing to use the estimated forecast of dividend yields plus a premium and multiple financial models.[243] BHP Billiton was of the view that using forecast dividend yields to estimate the cost of equity fails to satisfy the legislative requirements, which requires the use of a financial model, on the following grounds:

- the estimate is overly simplistic and the use of such estimated forecasts has been demonstrated to provide unreliable results;
- a reliance on analysts' estimated forecasts has been shown to be likely to result in an upwardly biased estimates; and
- contrary to rule 42 of the NGR, DBP has provided insufficient evidence to support the input assumptions on which its estimate is based.

Considerations of the Authority

601. The Authority notes that the rationale for a rejection of the use of other CAPMs as proposed by NERA and the two methods as proposed by SFG to estimate the cost of equity for the proposed access arrangement was discussed at length in the Authority's draft decision. The Authority considers DBP and its two consultants have not presented new and convincing evidence or arguments on the issue in response to the draft decision.

Updated estimates of the cost of equity from NERA

602. The Authority compares NERA's estimates of betas and risk premia, the inputs used in the FFM and Zero-beta FFM, in the updated NERA's report in May 2011.

Table 41 A Comparison of NERA Estimates in its updated Report in May 2011 using DFA and MSCI Data[244]

Data source	Beta		Risk premium	
	HML	SMB	HML	SMB
DFA Data	0.4	0.3	5.9	-0.08
MSCI Data	0.22	0.41	3.38	5.99
Difference (Per cent)	82	27	75	101

Source: Authority's analysis

242 Verve Energy, Submissions in response to the ERA's draft decision on the Proposed Revised Access Arrangement for the DBNGP, 20 May 2011, p 22.

243 BHP Billiton, Public submission in response to the draft decision on DBP's Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement, 20 May 2011, p 10.

244 NERA, Estimating the required rate of return on equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p ii and Table A.1, p 20.

603. The Authority considers that, among other things discussed in the draft decision, there are four fundamental issues arising from NERA's estimates of the cost of equity for the proposed Access Arrangement.

604. First, from Table 41 above, the Authority notes that there is a significant difference between the estimates using DFA data and MSCI data, for both beta and the risk premium. Using the estimates of HML, SMB betas and risk premiums from MSCI data as the base, the differences are in the range of 27 per cent to 101 per cent with an average of 71 per cent. While the same method was applied to derive these estimates, the significant difference of these estimates suggests a high degree of unreliability in the data inputs from one, or both, sources. The Authority is unable to determine which data source is more reliable.

605. Second, NERA's estimates present the SMB risk premium of -0.08 for the FFM and the Zero-beta FFM using the DFA data. This negative estimate is inconsistent with the FFM model developed from the 1993 Fama-French paper, where the size risk premium, SMB, represents the premium earned by small minus big shares. It means that the FFM states that small firms require additional returns to compensate investors for the additional risk, whereas the estimate of -0.08 from this NERA's study provides the opposite interpretation.

606. Third, many estimates are insignificantly different from zero. This simply means that the estimates are imprecise.

607. Fourth, the Authority also notes that the estimates of beta for SMB and risk premium for SMB are significantly different in the two NERA reports, the first submitted in March 2010 and the updated reported submitted in May 2011, as shown in Table 42 below. For example, the May 2011 estimate of the Beta SMB is 7 per cent higher than the March 2010 estimate, and that the March 2010 estimate of risk premium HML is 463 per cent lower than the May 2011 estimate. The same finding is applied when a comparison is done with MSCI data.

Table 42 DBNGP's Estimated Betas and Risk Premia using DFA data [245]

Estimates	May 2011	March 2010	Difference (per cent)
Beta HML	0.40	0.41	3
Beta SMB	0.30	0.28	7
Risk Premium HML	5.90	6.12	4
Risk Premium SMB	-0.08	-0.45	463

608. Based on the above consideration, consistent with its draft decision, the Authority is of the view that these estimates are best characterised as an unsystematic observation of the estimates of the Fama–French risk premium. This observation indicates a consequence of the estimates on the basis of an empirical relationship without the backing of an economic theory.

[245] NERA, Estimating the required rate of return on equity for a Gas Transmission Pipeline, 18 April 2011, Table 1, p ii and on 31 March 2010, Table 1, p iii.

Estimates of the cost of equity from SFG

609. As discussed in its draft decision, the Authority considers that the brokers' research reports used by SFG are based on forecasts from selected broker houses for dividend yields, inflation, capital gains, and economic growth. The Authority observes that all series used as inputs for the brokers' forecasts exhibit a relatively high degree of volatility.

610. However, while forecasters have been reluctant to evaluate their own performances, there exists enough evidence to conclude that the record of economic forecasting is not encouraging. Additionally, the estimate of the cost of equity using the brokers' research reports involves at least three forecasts (dividend yield, inflation and GDP growth), so the error of these estimates compounds when estimating the cost of equity.

611. Given the poor record of economic forecasting on which the brokers' research reports are based, the Authority is of the view that it is inappropriate to use the brokers' research reports to derive an estimated cost of equity.

612. With regard to the second approach, the residual income model, SFG has not submitted any new information in comparison with those submitted in the previous submission in 2010. As such, the Authority maintains its position in the draft decision to reject the use of the approach in estimating the cost of equity for the proposed access arrangement.

613. In summary, the Authority is of the view that the two approaches proposed by SFG are not appropriate for estimating the cost of equity for the proposed Access Arrangement.

Conclusion on cost of equity

614. The Authority notes that, in response to the Authority's draft decision, DBP appears to adopt a random approach to derive the cost of equity for DBNGP's revised proposed access arrangement based on continuing the use of the multiple financial models, as advised by NERA, and the brokers' research reports and the residential income model, as advised by the SFG as it did in the previous submissions in April 2010.[246]

615. By adopting the series of approaches and models, DBP's calculation of the cost of equity fails to meet the requirements of the NGR in that it has not been made on a reasonable basis and is not the best estimate possible in the circumstances.[247]

616. In summary, the Authority maintains its position in the draft decision not to approve DBP's proposal that other versions of CAPM (namely Black CAPM, Fama-French CAPM, and Zero-beta Fama French CAPM); and the two approaches (namely brokers' research reports and residential income mode); are well accepted models. As a result, they should not be used altogether to derive the estimates of the cost of equity for the proposed Access Arrangement.

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246 DBP, 31 March 2010, Submission 8, Rate of Return, pp 12-20 and 36-37.

247 See Rule 47(2).

617. The Authority considers that the Sharpe-Lintner CAPM should be solely used, with a reasonable point estimate for equity beta of 0.8 at a gearing ratio of 60 per cent debt to total assets, to estimate the cost of equity in the final decision for the proposed Access Arrangement.

618. The nominal post tax cost of equity using the Sharpe-Lintner CAPM is 8.60 per cent. The Authority notes that this estimated cost of equity is relatively low in comparison with the estimates in the Authority's previous decisions. The nominal risk free rate, which is used in the Sharpe-Lintner CAPM, was derived based on the observed yields on 5-year CGS bonds for the 20 trading day period until 30 September 2011. These yields are at (or close to) historical lows. The Authority considers that this was due to a flight to quality in the Australian financial market, in which investors were looking for safe investment by investing in CGS bonds, which drove down the yields at the time the cost of equity was estimated.

619. Moreover, the Authority is aware that mature infrastructure assets, such as mature toll roads, mature power generation, regulated utilities, gas and electricity distribution, and mature transmission assets, have ranked low in UBS's infrastructure asset risk-return spectrum. In UBS's spectrum, fixed income/bonds were ranked lowest in terms of risk (as as a result, lowest return) whereas core real estate was ranked second lowest followed by mature infrastructure, value added real estate, mid-stage infrastructure and then greenfield/early-stage infrastructure. Private equity was ranked highest in terms of risk in this risk-return spectrum.[248]

[248] UBS Global Asset Management, June 2009, *CFA Alternative Investment Event 2009, Infrastructure*, available at http://www.cfanetherlands.nl/page48/assets/6.%20Paul%20Moy_Infrastructure_Jun09.pdf, accessed on 25 October 2011.

Conclusion on Rate of Return

620. Based upon the above assessment of each of the WACC parameters, the point estimates that the Authority considers may reasonably be applied to parameters of the WACC in estimating the rate of return for the final decision for the proposed Access Arrangement are as follows:

Table 43 Authority's Required Amendments to DBNGP's Proposed Parameter Values for Determination of a Rate of Return (as at 30 September 2011)

Parameter	Value
Nominal Risk Free Rate $\left(R_f\right)$	3.80%
Real Risk Free Rate $\left(R_f^r\right)$	1.02%
Inflation Rate π_e	2.75%
Debt Proportion $\left(D\right)$	60%
Equity Proportion $\left(E\right)$	40%
Cost of Debt: Debt Risk Premium (DRP) (BBB+)	3.082%
Cost of Debt: Debt Issuing Cost (DIC)	0.125%
Cost of Debt: Risk Margin (RM)	3.207%
Australian Market Risk Premium (MRP)	6%
Equity Beta $\left(\beta_e\right)$	0.8
Corporate Tax Rate $\left(T_c\right)$	30%
Franking Credit $\left(\gamma\right)$	25%
Nominal Cost of Debt $\left(R_d^n\right)$	7.01%
Real Cost of Debt $\left(R_d^r\right)$	4.14%
Nominal Pre Tax Cost of Equity $\left(R_e^{n,\text{pre-tax}}\right)$	11.10%
Real Pre Tax Cost of Equity $\left(R_e^{r,\text{pre-tax}}\right)$	8.12%
Nominal After Tax Cost of Equity $\left(R_e^{n,\text{post-tax}}\right)$	8.60%
Real After Tax Cost of Equity $\left(R_e^{r,\text{post-tax}}\right)$	5.69%

Table 44 Authority's estimates of WACC

WACC	Value (Per cent)
Nominal Pre Tax WACC $\left(WACC_n^{\text{pre-tax}}\right)$	8.64
Real Pre Tax WACC $\left(WACC_r^{\text{pre-tax}}\right)$	5.74
Nominal After Tax WACC $\left(WACC_n^{\text{post-tax}}\right)$	7.64
Real After Tax WACC $\left(WACC_r^{\text{post-tax}}\right)$	4.76

621. The Authority does not approve DBP's proposal in relation to the rate of return.

622. The Authority requires the revised access arrangement proposal (including Table 22 of the proposed Access Arrangement Information) to be amended to reflect the values in Table 43 of the final decision.

Required Amendment 11

The revised access arrangement proposal (including Table 22 of the proposed Access Arrangement Information) must be amended to reflect the values in Table 43 of this final decision.

623. For the purpose of this final decision, the Authority adopts the point value, being a real pre-tax rate of return of 5.74 per cent.

Required Amendment 12

The revised access arrangement proposal must be amended to adopt a real pre-tax rate of return of 5.74 per cent.

Taxation

Regulatory Requirements

624. Rule 76(c) of the NGR provides for the estimated cost of corporate taxation as a building block for total revenue insofar as this is applicable.

Original Access Arrangement Proposal

625. Section 17.2 of the originally submitted access arrangement information indicated that there are no amounts included in the total revenue calculation for each year of the 2011 to 2015 access arrangement period for the estimated cost of corporate income tax.

626. Section 12 of the originally submitted access arrangement information specifies that an implicit allowance is made for the cost of corporate taxation through the use of a rate of return value that has been determined on a pre-tax basis.

Draft Decision

627. DBP proposed that costs of corporate income taxation be included in total revenue through use of a pre-tax rate of return in determining the values of returns on the capital base. The Authority concurred with this approach and determined that the requirement of rule 76(c) to include an explicit allowance for taxation in the building block calculation for total revenue is not applicable.

Submissions on the draft decision

628. None of the submissions made to the Authority on the draft decision and revised access arrangement proposal addressed the treatment of taxation costs.

Considerations of the Authority

629. The Authority maintains the determination in the draft decision that the approach adopted by DBP of including an allowance for costs of taxation in the rate of return means that the requirement of rule 76(c) to include an explicit allowance for taxation in the building block calculation for total revenue is not applicable.

Incentive Mechanism

Regulatory Requirements

630. Rule 98 of the NGR provides for a full access arrangement to include one or more incentive mechanisms:

> 98 Incentive mechanism
>
> (1) A full access arrangement may include (and the [ERA] may require it to include) one or more incentive mechanisms to encourage efficiency in the provision of services by the service provider.
>
> (2) An incentive mechanism may provide for carrying over increments for efficiency gains and decrements for losses of efficiency from one access arrangement period to the next.
>
> (3) An incentive mechanism must be consistent with the revenue and pricing principles.

631. Rule 72(d) provides for total revenue to include amounts (as an increment or decrement) resulting from the operation of the incentive mechanism. Rule 71(1)(i) requires that the access arrangement information include the proposed carryover of

the amounts and a demonstration of how allowance is to be made in the value of total revenue for the amounts.

Original Access Arrangement Proposal

632. The current access arrangement includes an incentive mechanism at clause 7.12. This incentive mechanism provides for an amount to be added to total revenue in each of the years of the 2011 to 2015 access arrangement period where DBP outperforms forecasts of operating expenditure in years of the 2005 to 2011 access arrangement period. The incentive mechanism is reproduced as follows.

7.12 Use of Incentive Mechanism

(a) The adoption of the 'price path' approach is intended to provide an incentive to develop the market and reduce costs.

(b) For the Access Arrangement Period commencing on 1 January 2011, the Total Revenue from which the Reference Tariff is to be determined is to include, in addition to the costs listed in clause 7.2(b) of this Access Arrangement, a share of any returns to Operator from the sale of Full Haul, Part Haul and Back Haul Services in the previous Access Arrangement Period that exceeded the level of returns that were expected during that previous Access Arrangement Period from the sale of such Services.

(c) The share of returns to Operator referred to in clause 7.12(b) of this Access Arrangement is to be calculated, for each year, as shown below:

Year	Share of returns
2011	$S_{2011} = E_{2006} + E_{2007} + E_{2008} + E_{2009}$
2012	$S_{2012} = E_{2007} + E_{2008} + E_{2009}$
2013	$S_{2013} = E_{2008} + E_{2009}$
2014	$S_{2014} = E_{2009}$
2015	$S_{2015} = 0$

where:

E_t = 0, if $[D_t - D_{t-1} \times (CPI_t/CPI_{t-1}) \times R_t] \times I_s \leq 0$, and
$[D_t - D_{t-1} \times (CPI_t/CPI_{t-1}) \times R_t] \times I_s$, if
$[D_t - D_{t-1} \times (CPI_t/CPI_{t-1}) \times R_t] \times I_s > 0$,
for year t, where t = 2006, 2007, 2008, and 2009;

D_t = 0, if $(F_t - A_t) \leq 0$, and $(F_t - A_t)$ if $(F_t - A_t) > 0$;

R_t = adjustment required for real escalation applied to labour costs in year t, as shown in the following table: t

t	2006	2007	2008	2009
R_t	1.0044	1.0039	1.0041	1.0042

I_s = inflation factor for year s, where s = 2011, 2012, 2013, 2014, 2015, which adjusts $[D_t - D_{t-1}) \times (CPI_t/CPI_{t-1}) \times R_t]$ for inflation from year t to year s;

F_t = the forecast of non-capital costs for year t made for the purpose of determining the Reference Tariff for the current period from 1 January 2005 until 31 December 2010;

A_t = actual non-capital costs for year t;

F_{t-1} = the forecast of non-capital costs for year t – 1 made for the purpose of determining the Reference Tariff for the current period from 1 January 2005 until 31 December 2010;

A_{t-1} = actual non-capital costs for year $_{t-1}$;

CPI_t = CPI for the quarter ending on 30 September of year t; and

CPI_{t-1} = CPI for the quarter ending on 30 September of year t – 1.

(e) For the purposes of this clause 7.12, non-capital costs for any year of the period from 1 January 2005 until 31 December 2010 do not include the costs associated with:

(i) Gas used as compressor fuel during the year;

(ii) Gas used as fuel in gas engine alternators and heaters;

(iii) Gas which is vented during maintenance activities;

(iv) Gas which is lost from the DBNGP; or

(v) Charges levied on Operator pursuant to the *Economic Regulation Authority (Gas Pipelines Access Funding) Regulations 2003*.

633. DBP's proposed amounts to be added to total revenue under the incentive mechanism of the current access arrangement arise from differences between forecast and operating expenditure. DBP's originally stated values of operating and forecast operating expenditure applied in the incentive mechanism are shown in Table 45.

Table 45 Values of forecast and actual operating expenditure for 2005 to 2009 originally applied by DBP to the incentive mechanism for the 2005 to 2010 access arrangement period (nominal $ million)[249]

Year	2005	2006	2007	2008	2009	Total
Forecast operating expenditure	41.728	41.121	55.578	54.874	53.181	246.481
Actual operating expenditure	36.270	39.410	44.400	52.460	65.597	238.137
Difference (forecast – actual)	**5.458**	**1.711**	**11.178**	**2.414**	**-12.416**	**8.344**

634. DBP proposed that amounts be included in total revenue for the 2011 to 2015 access arrangement period under the incentive mechanism of the current arrangement. These amounts were $10.470 million in 2011 and $10.215 million in 2012 (in dollar values of 2010).

635. The original access arrangement proposal did not include an incentive mechanism to apply in the 2011 to 2015 access arrangement period. DBP did not provide any reasons for removing the incentive mechanism from the access arrangement.

[249] DBP, 21 April 2010, tariff model .

Draft Decision

636. In the draft decision the Authority gave consideration to two matters in relation to an incentive mechanism under the access arrangement:

- the determination of the amounts proposed by DBP to be added to total revenue under the incentive mechanism of the current access arrangement; and
- the proposal by DBP to not include an incentive mechanism in the access arrangement for the 2011 to 2015 access arrangement period.

Additions to Total Revenue under the Existing Incentive Mechanism

637. In the draft decision the Authority addressed the determination by DBP of the amounts to be added to total revenue under the incentive mechanism of the current access arrangement. The Authority determined that the amounts had not been determined in accordance with the incentive mechanism due to:

- the CPI values applied by DBP were December quarter CPI values, rather than September quarter values as required under the incentive mechanism; and
- DBP not excluding from the forecast and actual operating expenditure the forecast and actual amounts of charges levied on DBP pursuant to the *Economic Regulation Authority (Gas Pipelines Access Funding) Regulations 2003*.

638. The Authority also observed that the CPI values applied by DBP were from the "all groups, Perth" CPI.

639. The Authority re-calculated amounts under the incentive mechanism applying September quarter CPI values from the "all groups, eight capital cities" CPI. This results in lower values of amounts to be added to total revenue of $9.932 million in each of 2011 and 2012, compared with the values proposed by DBP of $10.470 million in 2011 and $10.215 million in 2012 (in dollar values of 2010).

640. On the matter of exclusion from the forecast and actual operating expenditure of the forecast and actual amounts of charges levied on DBP pursuant to the *Economic Regulation Authority (Gas Pipelines Access Funding) Regulations 2003*, the Authority did not have information that would enable correction of the forecast values of operating expenditure for the amounts of charges included in this forecast. The amounts of these charges allowed for in the forecast of operating expenditure for the 2005 to 2010 access arrangement period were not separately specified in documentation for the proposed revisions to the access arrangement of 2005.

641. A further matter of relevance to the determination of carryover amounts under the incentive mechanism was that the Authority was not satisfied that DBP's determination of carryover values under the incentive mechanism was based on accurate and verified records of actual operating expenditure in the 2005 to 2010 access arrangement period. There were significant discrepancies in statements of operating expenditure provided to the Authority, in particular values stated by DBP in the revised access arrangement information and values provided by DBP to the Authority's expert technical advisor in more detailed breakdowns of operating costs for 2008 and 2009.

642. Taking into account the absence of verification of reported values of operating expenditure and deficiencies in DBP's calculation of amounts under the incentive mechanism, the Authority was not satisfied that the DBP's proposed increments to total revenue comply with the incentive mechanism that applied in the 2005 to 2010 access arrangement period. The Authority therefore required amendment of the proposed revised access arrangement to exclude the increments to total revenue under the incentive mechanism applying under the current access arrangement.

> Draft decision amendment 9
>
> The proposed revised access arrangement should be amended to exclude from total revenue the increment amounts determined under the incentive mechanism that applied in the 2005 to 2010 access arrangement period.

643. The Authority indicated in the draft decision that it would require verification of values and timing of actual operating expenditure by an independent audit and correction of calculations before including any increment to total revenue under the incentive mechanism.

Incentive Mechanism for the 2011 to 2015 Access Arrangement Period

644. The Authority considered in the draft decision whether it should require that the access arrangement for the 2011 to 2015 access arrangement period include an incentive mechanism to encourage efficiency in the provision of services by DBP.

645. Rule 98 of the NGR provides that a full access arrangement may include (and the Authority may require it to include) one or more incentive mechanisms to encourage efficiency in the provision of services by the service provider.

646. The Authority considered that the roles of an incentive mechanism in an access arrangement include the following:

- to promote incentives for the service provider to achieve efficiency gains to the ultimate benefit of pipeline users;
- to ensure that there is a continuous incentive to achieve efficiency gains, and in particular to ensure that there are incentives for efficiency gains in later years of an access arrangement period; and
- to increase the confidence that the Authority can place on values of actual costs as an indicator of efficient costs and a benchmark to apply in assessment of cost forecasts, particularly actual costs in the later years of an access arrangement period.

647. In considering the roles and benefits of an incentive mechanism, the Authority recognised that an incentive mechanism involving the carry-over of benefits of efficiency gains from one access arrangement period to the next may create undesirable incentives for the service provider, such as:

- incentives to inefficiently shift costs across years (particularly to later years in the access arrangement period) to create a benefit for the service provider under the incentive mechanism without there being a sustained reduction in costs that will benefit pipeline users; and
- where an incentive mechanism is applied only to operating expenditure, incentives to inefficiently substitute capital expenditure for operating expenditure.

648. In the draft decision the Authority expressed concern that, under the incentive mechanism applying under the access arrangement for the 2005 to 2010 access arrangement period, DBP has had an incentive to shift costs from early to later in the access arrangement period and that this may have been at least partly responsible for the trend of increasing operating costs over the period. The Authority expressed the view that differences between forecast and actual operating expenditure do not show evidence of sustained efficiency gains in operating costs that have resulted in benefits to users. Moreover, the Authority considered that the incentive mechanism has not served to increase the confidence of the Authority in interpreting the actual costs for the latter years of this period as a benchmark of efficient costs.

649. Taking into account the undesirable properties of the incentive mechanism under the access arrangement for the 2005 to 2010 access arrangement period, the Authority determined in the draft decision not to impose a requirement to maintain this incentive mechanism in the access arrangement for the 2011 to 2015 access arrangement period.

650. The Authority gave consideration to whether the incentive mechanism of the current access arrangement can be modified to negate the potential for undesirable incentives to be created by the mechanism. The Authority was of the view that it is not practical to impose an incentive mechanism that provides the necessary protections against adverse incentives and therefore did not require the proposed revised access arrangement to be amended to include an incentive mechanism.

Revised Access Arrangement Proposal

651. DBP has revised the access arrangement information to include (at section 13) the determination of increments to total revenue under the incentive mechanism applying for the 2005 to 2010 access arrangement period. DBP has also made revisions to the values of forecast and actual operating expenditure for the 2005 to 2010 access arrangement period and the amounts to be added to total revenue under the incentive mechanism.

652. The revised values of actual operating expenditure applied in the determination of amounts to be added to total revenue are indicated in Table 46.

Table 46 Revised values of the difference between forecast and actual operating expenditure for 2005 to 2009 applied by DBP to the incentive mechanism for the 2005 to 2010 access arrangement period (nominal $ million)[250]

Year	2005	2006	2007	2008	2009	Total
Forecast operating expenditure	41.728	41.121	55.578	54.874	53.181	246.481
Actual operating expenditure	37.596	39.364	42.689	55.882	80.063	255.593
Difference (forecast – actual)	**4.132**	**1.757**	**12.889**	**-1.008**	**-26.882**	**-9.113**

[250] DBP, 8 September 2011, Submission 70, tariff model.

653. DBP has revised the amounts to be added to total revenue under the incentive mechanism to $12.341 million in 2011 and $12.032 million in 2012 (in dollar values of 31 December 2010 as determined by DBP), as compared with the values of $9.932 million in each of 2011 and 2012 determined by the Authority in the draft decision.

654. In revising the amounts to be added to total revenue DBP has:

- maintained use of December rather than September CPI values; and
- maintained use of the all groups, Perth CPI rather than the all groups, eight capital cities CPI.

655. DBP has provided the Authority with a verification of values of operating expenditure comprising a reconciliation of stated values of operating expenditure with values of operating expenditure in audited financial statements. The verified values are indicated by DBP to be as follows.

Table 47 Values of actual operating expenditure for 2005 to 2010 that reconcile with audited financial statements (nominal $ million)[251]

Year	2005	2006	2007	2008	2009	2010	Total
Operating expenditure	37.432	39.525	42.691	56.721	80.063	55.158	311.590
Fuel gas	24.122	21.435	30.593	15.147	18.625	12.552	122.474
Total	**61.554**	**60.960**	**73.284**	**71.868**	**98.688**	**67.710**	**434.064**

Submissions

656. Two submissions made to the Authority supported the determination in the draft decision to exclude amounts from total revenue in respect of the incentive mechanism applying in the 2005 to 2010 access arrangement period.[252]

657. One submission indicated that the potential benefits of an incentive mechanism warrants further consideration for including an incentive mechanism in the access arrangement for the 2011 to 2015 access arrangement period.[253]

Considerations of the Authority

Additions to Total Revenue under the Existing Incentive Mechanism

658. In the draft decision the Authority required the exclusion from total revenue of the increment amounts determined under the incentive mechanism that applied in the 2005 to 2010 access arrangement period. This requirement reflected the Authority's lack of confidence in stated values of operating expenditure for the 2005 to 2010 access arrangement period due to inconsistent statements by DBP of values of actual operating expenditure and a lack of verification of the values.

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251 DBP, 20 May 2011, Submission 54 pp 15 to 20.

252 Alinta Pty Limited (20 May 2011 and 20 July 2011) and Verve Energy (20 May 2011 and 20 July 2011).

253 Office of Energy, 20 May 2011.

659. In supporting submissions to the revised access arrangement proposal, DBP has provided verification of stated values of actual operating expenditure in the form of reconciliation of stated values with values of operating expenses in audited financial statements. The Authority observes that this requirement for verification has resulted in DBP making significant revisions to the stated values of actual operating expenditure.

660. The Authority is satisfied that the procedure adopted by DBP provides verified values of actual operating expenditure for the 2005 to 2010 access arrangement period. Accordingly, the Authority accepts inclusion of an increment to total revenue under the incentive mechanism applying in the current access arrangement, albeit the Authority observes that there are small differences between DBP's stated and verified values of actual operating expenditure (refer to Table 46 and Table 47, above).

661. DBP has not made other corrections to the calculation of amounts under the incentive mechanism as addressed by the Authority in the draft decision and relating to the inflation escalation.

662. The Authority has assessed DBP's calculation of the increment to total revenue under the access arrangement and determines that the amounts to be added to total revenue should be revised to:

- correct for the small differences between DBP's stated and verified values of actual operating expenditure, applying the verified values in determination of amounts under the incentive mechanism;
- apply inflation escalation to the amount determined under the incentive mechanism using escalation factors derived from September quarter values of the all groups, eight capital cities CPI.

663. With use of verified values of actual operating expenditure and with the corrected treatment of inflation, the values of forecast and actual operating expenditure applied in determining amounts to be added to total revenue under the incentive mechanism are shown in Table 48.

Table 48 Values of forecast and actual operating expenditure for 2005 to 2009 applied by the Authority to the incentive mechanism for the 2005 to 2010 access arrangement period (nominal $ million)[254]

Year	2005	2006	2007	2008	2009	Total
Forecast operating expenditure	41.254	40.223	54.330	53.611	51.958	241.376
Actual operating expenditure	37.432	39.525	42.691	56.721	80.063	256.432
Difference (forecast – actual)	**3.822**	**0.698**	**11.639**	**-3.110**	**-28.105**	**-15.056**

664. The Authority has made these corrections to determine increments to total revenue under the incentive mechanism. This results in lower values of amounts to be added to total revenue of $11.938 million in each of 2011 and 2012, compared with

254 DBP, 8 September 2011, Submission 70, tariff model.

the revised values proposed by DBP of $12.341 million in 2011 and $12.032 million in 2012 (in dollar values of 2010).

Required Amendment 13

The revised access arrangement proposal should be amended so that the amounts added to total revenue under the incentive mechanism are $11.938 million in each of 2011 and 2012.

Incentive Mechanism for the 2011 to 2015 Access Arrangement Period

665. Having regard to the submission from the Office of Energy, the Authority has given further consideration to whether an incentive mechanism should be included in the access arrangement for the 2011 to 2015 access arrangement period.

666. The Authority remains concerned that an incentive mechanism of the same specification as applying in the current access arrangement may provide an inappropriate incentive for DBP to shift costs from early to later in the access arrangement period. For this reason, the Authority does not consider it appropriate to impose a requirement to maintain the same incentive mechanism in the access arrangement for the 2011 to 2015 period.

667. The problems with the incentive mechanism of the current access arrangement could be resolved by changing the mechanism so that the service provider is exposed to penalties for efficiency losses (actual costs exceeding forecast costs) as well as rewards for efficiency gains. However, this would cause the service provider to be exposed to penalties for unforeseen and uncontrollable cost increases. Given this, the Authority is not at this time satisfied that the benefits of such an incentive mechanism outweigh the potential costs of the greater cost risk to the service provider.

668. Taking these matters into account, the Authority has determined not to require the access arrangement to include an incentive mechanism for the 2011 to 2015 access arrangement period.

Operating Expenditure

Regulatory Requirements

669. Rule 91 of the NGR provides that operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.

670. Rule 71 of the NGR is relevant to the Authority's consideration of forecast operating expenditure against the requirements of rule 91, particularly in considering whether actual operating expenditure for the 2005 to 2010 access arrangement period provides a benchmark of an efficient level of operating expenditure. Rule 71 states that:

71 Assessment of compliance

(1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [ERA] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [ERA] considers appropriate.

(2) The [ERA] must, however, consider and give appropriate weight to, submissions and comments received when the question whether a relevant access arrangement proposal should be approved is submitted for public consultation.

Original Access Arrangement Proposal

671. DBP's originally submitted forecast of operating expenditure for the 2011 to 2015 access arrangement period is shown in Table 49 (expressed in dollar values of 31 December 2010).

Table 49 DBP's original forecast of operating expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[255]

Year ending 31 December	2011 F/cast	2012 F/cast	2013 F/cast	2014 F/cast	2015 F/cast	Total
Wages & Salaries	26.408	26.924	27.449	27.985	28.531	137.297
Non-Field Expense	18.000	18.000	18.000	18.557	18.557	91.114
Field Expense	19.869	19.870	19.871	19.870	19.870	99.350
Government Charges	19.574	20.274	20.502	21.084	21.643	103.077
Fuel gas	20.427	21.585	21.495	23.679	24.118	111.304
Total	**104.278**	**106.653**	**107.317**	**111.175**	**112.719**	**542.142**

Draft Decision

Approach to the Assessment of Forecast Operating Expenditure

672. The process adopted by the Authority in considering the forecast of operating expenditure was to:

- assess whether the actual operating expenditure in the 2005 to 2010 access arrangement period is consistent with the criteria of rule 91 of the NGR, hereafter referred to as the prudence and efficiency criteria of rule 91; and
- assess whether DBP has provided adequate justification for forecast trends and step changes in levels of capital expenditure over the term of the 2011 to 2015 access arrangement period.

[255] DBP, 1 April 2010, revised access arrangement information sections 4, 9.

Prudence and Efficiency of Operating Expenditure in the 2005 to 2010 Access Arrangement Period

673. The Authority assessed the consistency of operating expenditure in the 2005 to 2010 access arrangement with the prudence and efficiency criteria of rule 91 of the NGR by:

- consideration of the commercial incentives of DBP to be prudent and efficient in operating activities and expenditure;
- examination of differences between forecast and actual operating expenditure in the access arrangement period and reasons for these differences; and
- examination of reasons for some large increases in some cost line items of operating expenditure.

674. In undertaking this assessment, the Authority relied on advice of expert engineering advisors.[256]

675. Taking into account the commercial incentives faced by DBP for efficiencies in operating expenditure, the comparison of forecast and actual operating expenditure and the explanatory information made available by DBP for large increases in some cost line items of operating expenditure, the Authority determined that a benchmark of operating expenditure that is consistent with the prudence and efficiency requirements of rule 91 is provided by the actual operating expenditure in 2009 adjusted to exclude:

- $2 million in consulting expenses;
- $3 million in IT expenses; and
- $2.341 million in charges (in 2009) under the Operating Services Agreement.

Prudence and Efficiency of Forecast Operating Expenditure in the 2011 to 2015 Access Arrangement Period

676. The Authority assessed the forecast of operating expenditure for the 2011 to 2015 access arrangement period by assessment of step changes and trends in cost line items from the benchmark of efficient and prudent costs for 2009.

677. On the basis of this assessment, the Authority was not satisfied that DBP's forecast of operating expenditure is consistent with the prudence and efficiency criteria of rule 91. The Authority derived a lower forecast of operating expenditure based on the following adjustments to several cost line items (with all cost values being stated in dollar values of 31 December 2010).

256 Halcrow Pacific Pty Ltd and Zincara Pty Ltd, November 2010, Dampier to Bunbury Natural Gas Pipeline Access Arrangement Review – Technical Assessment.

678. In the draft decision the Authority required the proposed revised access arrangement to be amended to include a forecast of operating expenditure in accordance with the summary of adjusted cost line items in Table 50. The Authority's revised forecast of operating expenditure comprised a reduction from DBP's proposed forecast by $91.7 million (in dollar values of 31 December 2010), equivalent to 16.9 per cent of the proposed forecast of operating expenditure for the 2011 to 2015 access arrangement period.

Table 50 Authority's draft decision revised forecast of operating expenditure for the 2011 to 2015 access arrangement period, by cost category (real $ million at 31 December 2010)

Year ending 31 December	2011 F/cast	2012 F/cast	2013 F/cast	2014 F/cast	2015 F/cast	Total
Wages & Salaries	26.408	26.924	27.449	27.985	28.531	137.297
Non-Field Expense	13.765	13.765	13.765	14.222	14.221	69.738
Field Expense	17.026	17.027	17.027	17.027	17.027	85.134
Government Charges	10.974	10.974	10.974	10.974	10.974	54.870
Fuel gas	19.609	20.713	20.627	21.009	21.434	103.392
Total	**87.782**	**89.402**	**89.842**	**91.216**	**92.187**	**450.431**

679. The Authority required amendment of the proposed revised access arrangement to apply the revised forecast of operating expenditure in the determination of total revenue.

> Draft decision amendment 10
>
> The forecast of operating expenditure for the 2011 to 2015 access arrangement period must be amended to values as indicated in Table 50 of [the] draft decision.

Revised Access Arrangement Proposal

680. DBP has revised the access arrangement proposal to include changes to the statement of operating expenditure in the 2005 to 2010 access arrangement period. The statement of actual operating was subsequently further revised by DBP in accordance with the verification of actual costs by reconciliation with financial accounts (Table 51). The revised statement of actual operating expenditure is $1.29 million less in total than the original statement, although there are significant differences between the original and revised statements in the distribution of costs between fuel gas and other operating costs and between years.

Table 51 DBP's revised statement of actual operating expenditure for the 2005 to 2010 access arrangement period (real $ million at 31 December 2010)[257]

Year ending 31 December	2005 Actual	2006 Actual	2007 Actual	2008 Actual	2009 Actual	2010 F/cast	Total
Other operating expenditure	43.248	44.227	46.397	59.455	82.189	55.158	330.674
Fuel gas	27.870	23.985	33.249	15.877	19.119	12.552	132.653
Total	**71.118**	**68.212**	**79.647**	**75.332**	**101.308**	**67.710**	**463.327**

681. DBP has also revised the forecast of operating expenditure for the 2011 to 2015 access arrangement period (Table 52). The revised forecast of operating expenditure is $18.594 million less than the original forecast, but $73.118 million greater than the forecast determined by the Authority in the draft decision.

Table 52 DBP's revised forecast of operating expenditure for the 2011 to 2015 access arrangement period, by cost category (real $ million at 31 December 2010)[258]

Year ending 31 December	2011 F/cast	2012 F/cast	2013 F/cast	2014 F/cast	2015 F/cast	Total
Wages & Salaries	26.366	27.505	28.693	29.932	30.641	143.138
Non-Field Expense	17.971	17.971	17.971	18.526	18.525	90.965
Field Expense	19.837	19.837	19.837	19.836	19.837	99.184
Government Charges	10.956	14.491	17.850	17.918	17.948	79.165
Fuel gas	20.395	21.548	21.456	23.632	24.066	111.097
Total	95.526	101.353	105.807	109.844	111.018	523.548

682. DBP has reiterated in its revised access arrangement information its earlier submissions that actual operating expenditure for the 2005 to 2010 access arrangement period is of limited relevance to consideration of the assessment of forecast costs for the 2011 to 2015 access arrangement period. DBP makes the following statements.

> It is important to note that making reference to historical Operating Expenditure as a benchmark for assessing the appropriate level of forecast Operating Expenditure is particularly inappropriate in the case of the Current Access Arrangement Period for the DBNGP. This is so for the following key reasons:
>
> (a) There has been a significant and continued expansion program during the Prior Access Arrangement Period. The DBNGP is a much larger, but also a very different pipeline system to what it was in 2005. As at the commencement of the current access arrangement period, it has 50 per

257 DBP, 20 May 2011, Submission 54, p 19. Values have been adjusted to dollar values of 2010 using escalation factors derived from the all groups, eight capital cities CPI.

258 DBP, 8 September 2011, Submission 70, tariff model.

> cent more compressor units than in 2005 and has been almost 85 per cent looped since 2005. Accordingly, the Operating Expenditure required to operate the DBNGP as it is presently configured is very different to that required in 2005.
>
> (b) The DBNGP will be reaching half its assumed asset life (for regulatory purposes at least) during this Access Arrangement Period. This will mean that the maintenance requirements for the asset will increase and, accordingly, the costs associated with that increase will be more than were the case in 2005.[259]

and

> DBP is … concerned – and has previously indicated its concern to the ERA, and to its engineering advisor – that extrapolation of past efficient costs should not be solely or heavily relied on by the ERA in assessing the prudency and efficiency of forecast expenditure, particularly in circumstances of major changes in asset scale, asset configuration and in ownership and organisational arrangements.[260]

683. DBP further submits that the Authority is wrong to be considering that the costs incurred in any one year in the 2005 to 2010 period should be used as a benchmark of prudent and efficient costs.[261]

Submissions

684. Alinta Limited and Verve Energy have indicated support for the approach taken by the Authority for the draft decision to assessing the forecast of operating expenditure by reference to a benchmark of actual costs in the current access arrangement period, including indicating that this approach is a commonly used practice amongst regulators.[262]

685. Alinta Limited submits that the Authority should undertake analysis, or require DBP to undertake further analysis, of costs of the Federal Government's proposed carbon pollution reduction scheme for inclusion in operating expenditure, pursuant to the Government's released scheme and announced taxation levels.[263]

Considerations of the Authority

686. In this final decision the Authority has reconsidered the revisions made in the draft decision to the forecast of operating expenditure, having regard to additional information provided by DBP and further technical advice.[264]

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259 DBP, 18 April 2011, revised access arrangement information, section 4.2.

260 DBP, 20 May 2011, Submission 54, p 4.

261 DBP, 20 May 2011, Submission 54, p 9.

262 Alinta Limited, 20 May 2011 and 20 July 2011; Verve Energy, 20 May 2011 and 20 July 2011.

263 Alinta Limited, 20 July 2011.

264 Halcrow & Zincara (b).

687. As an initial matter, the Authority rejects DBP's submission that actual costs incurred in the 2005 to 2010 access arrangement period cannot be taken as being an indicator of prudent and efficient costs. The Authority maintains the view that a comparison of forecast costs with actual costs is an important element, but not the only element, of a rigorous assessment of the forecast.

688. The Authority's consideration of forecast operating expenditure is set out below for each of the line items of forecast operating expenditure for which the Authority determined did not satisfy the requirements of rule 91 and that contributed to the Authority's revised forecast.

Consultancy Expenses

689. In the draft decision the Authority derived a 2009 benchmark of consultancy costs of $4.916 million (reduced from $6.916 million of stated actual costs) and set the amount of consultancy costs equal to this benchmark in each year of the 2011 to 2015 period, compared with $5.801 million in each year proposed by DBP.

690. DBP has not amended its forecast of operating costs to reflect the Authority's determination on consultancy expenses.

691. DBP submits that the actual costs incurred in 2009 were prudent and efficient. DBP provides information on the consulting activities that were budgeted for the 2009/10 year and indicates that the consulting costs of 2009 are prudent "because they were derived from a bottom-up budgeting process controlled by DBP and using a cost categorization approach consistently across all divisions, where each division identified the external consultants required to undertake the activities of the division that were outlined in the annual Business Plan". DBP provides a breakdown of its consulting cost budget for 2009, which totals $5.871 million.[265]

692. DBP has not provided any further information to establish the prudence and efficiency of its forecast of consultancy costs for the 2011 to 2015 access arrangement period.

693. DBP has provided evidence of planning and budgeting for a level of consulting expenditure in 2009 that, although less than the stated actual expenditure for that year is similar in value to the forecast expenditure for each year of the 2011 to 2015 period. On this basis, the Authority accepts that $5.871 million of consulting costs in 2009 is indicative of efficient expenditure in that year and the Authority accepts that the similar original forecast of consulting expenditure in the 2011 to 2015 period ($5.801 million per annum) satisfies the prudence and efficiency requirements of rule 91. The Authority therefore is satisfied that the forecast of consulting expenses of $5.801 million per annum is consistent with the prudence and efficiency criteria of rule 91.

Entertainment Expenses

694. In the draft decision the Authority set the amount of entertainment costs at $0.129 million in each year of the 2011 to 2015 period, equal to the stated actual cost in 2010, compared with $0.189 million in each year proposed by DBP.

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[265] DBP, 20 May 2011, Submission 54, pp 9 to 12.

695. DBP has not amended its forecast of operating costs to reflect the Authority's determination on entertainment expenses.

696. DBP submits that the actual costs recorded for entertainment expenses in 2009 are not indicative of actual entertainment costs due to a mis-recording of costs in that year.[266]

697. DBP further submits that the annual forecast of $0.189 million comprises:

- the forecast of costs for each year of 2011 to 2015 (being an amount equal in real terms to actual costs in 2010); and
- the entertainment expenses.

698. In light of the additional information provided by DBP, the Authority accepts that the original forecast of costs for entertainment expenses is consistent with the prudence and efficiency requirements of rule 91 of the NGR.

IT Expenses

699. In the draft decision the Authority derived a 2009 benchmark of IT costs of $2.296 million (reduced from $5.696 million of stated actual costs) and set the amount of IT costs at $2.696 million in each year of the 2011 to 2015 period, compared with $5.759 million in each year proposed by DBP.

700. DBP has not amended its forecast of operating costs to reflect the Authority's determination on IT expenses.

701. DBP addresses the adjustments made by the Authority to actual operating costs in 2009 to derive a benchmark of prudent and efficient costs for that year, providing further information on the nature and justification of the substantial increases in costs that occurred in cost categories of consulting expenses and IT expenses.

702. For IT expenses, DBP indicates that the increased IT expenses in 2009 resulted from certain specific events including:

- a transfer of IT services from Alinta Asset Management to WestNet Energy Services, which resulted in correction of previous under-charging of DBP by Alinta Asset management for IT costs, a reduction in economies of scale and increases in costs relating to software licensing, data centre operation and costs for a disaster recovery site, albeit with WestNet Energy Services providing a significantly more reliable service than was provided by Alinta Asset Management; and
- upgrade of asset management software.

703. Having regard to the additional information provided by DBP, the Authority is satisfied that the actual IT costs of 2009 comprise a benchmark of efficient costs. Accordingly, the Authority accepts that the similar annual cost in each year of the 2011 to 2015 period as originally forecast by DBP is consistent with the prudence and efficiency requirements of rule 91 of the NGR.

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[266] DBP, 20 May 2011, Submission 54, p 23.

Repairs and Maintenance Expenses

704. In the draft decision the Authority derived an (effective) 2009 benchmark of repairs and maintenance costs of $6.234 million (equal to stated actual costs less an amount for a one-off adjustment to the value of inventories) and set the amount of repairs and maintenance costs at $6.234 million in each year of the 2011 to 2015 period, compared with $6.817 million in each year proposed by DBP (all amounts in dollar values of 31 December 2010).

705. DBP has not amended its forecast of operating costs to reflect the Authority's draft decision determination on repairs and maintenance expenses.

706. DBP submits that reasons for increases in repairs and maintenance costs over the level of actual costs for 2009 are:

- installation of rotating equipment and valves as a major component of pipeline expansion, which are high-maintenance items; and
- a 65 per cent increase in the number of assets requiring maintenance from 20,000 individual assets in 2008 to 33,000 assets.[267]

707. The Authority has received technical advice that the supporting information provided by DBP for the increase in costs is deficient in failing to quantitatively link the additional assets to maintenance activities.[268] On this basis, the Authority maintains the determination in the draft decision that the forecast of repairs and maintenance expenses is not consistent with the prudence and efficiency requirement of rule 91. The Authority requires that the forecast of operating expenditure be amended so that the total annual value of forecast repairs and maintenance expenses in each year of the 2011 to 2015 access arrangement period is $6.234 million in dollar values of 31 December 2010, a reduction of $0.583 million in each year.

*Carbon Pollution Reduction Scheme Costs (**CPRS**)*

708. In the draft decision the Authority removed annual costs of between $8.6 million and $10.669 million from the forecast of operating expenses on the basis that the prospect and nature of any CPRS scheme was too uncertain to be costed at the time of the draft decision.

709. DBP has not amended its forecast of operating costs to remove the costs associated with the CPRS, but rather indicates that it has re-estimated the costs based on the details of the carbon trading scheme announced by the Federal Government on 24 February 2011 and assuming an initial value of a carbon tax of $20/tonne in FY 2012/13 and that is fixed for the remainder of the 2011 to 2015 access arrangement period.

710. Pursuant to a request from the Authority, DBP has provided further information on the derivation of the revised forecast of costs.[269] This information indicates that the forecast of costs was derived by:

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267 DBP, 20 May 2011, Submission 54 pp 24, 25.

268 Halcrow & Zincara (b) p 47.

269 DBP, 17 August 2011, Submission 68.

- forecasting annual CO_2 emissions from the three sources of compressor fuel gas, fugitive CO_2 and diesel and gasoline consumption; and
- multiplication of the annual CO_2 emissions by a carbon tax value of $20 per tonne in each of the years 2012 (half year only) and 2013 to 2015.

711. The Authority observes that DBP's forecasts of CO_2 emissions are broadly consistent with amounts of CO_2 emissions for 2009/10 as reported to the Department of Climate Change and Energy Efficiency under the requirements of the National Greenhouse and Energy Report Act, allowing for expected increases in fuel gas use. DBP's reported amount of scope 1 emissions for 2009/10 is 355,676 tonnes of CO_2 equivalents,[270] which compares with DBP's forecast emissions of 352,274 tonnes in 2011 increasing to 396,875 tonnes in 2015.

712. The value of the carbon tax applied by DBP is out of date. Subsequent to DBP's submission of its revised access arrangement proposal, the Commonwealth Government's Clean Energy Bill has been passed by both houses of Parliament and received royal assent. This legislation defines a different value of the carbon tax than applied by DBP in deriving its forecast.

713. In addition, in this final decision the Authority is requiring changes to the cost of fuel gas, based on different assumptions of fuel gas use (paragraph 732 and following, below). The different assumptions of fuel gas use correspond to different forecasts of CO_2 emissions.

714. Accordingly, the Authority has revised DBP's own calculations of carbon-tax costs to take into account:

- a forecast of CO_2 emissions based on DBP's most recent forecast of fuel gas use and amendments to this forecast made by the Authority for the purpose of its assessment of fuel gas costs under this final decision; and
- a value of the carbon tax of $23 per tonne in financial year 2012/13 increasing annually by the rate of change in the CPI plus 2.5 percentage points.

715. The Authority invited submissions from interested parties on the Authority's proposal to change the forecast of carbon-tax costs to reflect the Clean Energy legislation.[271] DBP made a submission supporting this change.[272] Alinta made a submission requesting that the Authority analyse the basis for the estimated costs of carbon tax.[273]

716. The Authority's revised calculation of carbon-tax costs and the difference to DBP's forecast costs are shown in Table 53.

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270 Department of Climate Change and Energy Efficiency, 2011, national greenhouse and Energy Reporting, Greenhouse and Energy Information 2009-10, p. 8.

271 Economic Regulation Authority, Notice of 1 December 2011.

272 DBP, 14 December 2011, Submission 73.

273 Alinta Energy, submission of 16 December 2011.

Table 53 Authority's revised forecast of carbon-tax costs for the 2011 to 2015 access arrangement period

Year ending 31 December	2011	2012	2013	2014	2015	Total
Authority's forecast CO_2 emissions (tonnes per annum)	344,360	364,841	364,967	372,647	381,086	1,827,900
Carbon tax value ($/tonne nominal)	-	23.000	24.208	25.478	26.816	-
Authority's forecast carbon tax liability ($million nominal)	-	4.196	8.615	9.258	9.964	32.032
Authority's forecast carbon tax liability ($million at 31 December 2010)	-	4.083	8.160	8.534	8.940	29.717
DBP forecast cost ($million at 31 December 2010)	-	3.535	6.894	6.962	6.992	24.382
Difference ($million at 31 December 2010)	-	0.549	1.266	1.572	1.948	5.335

Self insurance expenses

717. In the draft decision the Authority removed annual allowance for $0.228 million in self insurance costs (dollar values of December 2010) on the basis that the estimate of these costs was not based on an actuarial assessment of risks and fair-value estimates of self insurance costs.

718. DBP has not amended its forecast of operating costs to reflect the Authority's determination on self insurance expenses. DBP has not provided any further information in support of these costs.

719. With no additional information provided by DBP, the Authority maintains its determination of the draft decision that DBP has not provided sufficient information to demonstrate that the forecast self insurance costs are consistent with the prudence and efficiency criteria of rule 91 of the NGR.

Compressor Overhaul Expenses

720. In the draft decision the Authority derived an amount of $6.529 million per year for compressor overhaul costs based on an observed unit cost for compressor overhauls in 2008. The value derived by the Authority compares with an annual amount of $8.788 million proposed by DBP.

721. DBP has not amended its forecast of operating costs to reflect the Authority's determination on compressor overhaul expenses and has provided further information on the derivation of forecast costs for compressor overhauls, including a detailed derivation of the budgeted unit cost of $2.592 million for overhaul of Solar Mars compressors.

722. On the basis of this information, the Authority is satisfied that DBP's budgeted unit cost for compressor overhauls is consistent with the criteria of rule 91 of the NGR. However, the Authority observes that $0.100 million of this budgeted unit cost is for internal DBP labour, which is included as a separate line item in DBP's forecast of operating costs. As such, the Authority considers that the unit cost that should be applied in a forecast of compressor overall expenses is $2.492 million. With three compressor overhauls per year, the total forecast cost is $7.476 million. This is still less than the amount of $8.788 million included by DBP in the original forecast.

723. The Authority therefore concludes that DBP's forecast compressor overhaul cost of $8.788 million per year is not consistent with the prudence and efficiency criteria of rule 91. This amount should be reduced to $7.476 million per year (in dollar values of 31 December 2010) based on a unit cost of $2.492 million and three compressor overhauls per year. The amount of $7.476 million per year is a decrease of $1.312 million per year from DBP's forecast.

Regulatory Expenses

724. In the draft decision the Authority derived a total value of $1.157 million over the 2011 to 2015 period for regulatory costs compared with $1.359 million proposed by DBP. The value derived for the Authority was based on DBP's forecast for the current access arrangement review given that DBP had not provided substantiating information for the forecast regulatory costs for 2011 to 2015.

725. DBP has not amended its forecast of operating costs to reflect the Authority's determination on regulatory expenses.

726. DBP has provided the following further information to substantiate its original forecast and justify a real increase in regulatory expenses over the amount forecast for 2005 to 2010.

> The ERA's draft decision fails to take into account the circumstances surrounding the access arrangement revisions for the 2016 to 2020 period. Given the fact that DBP's actual revenue will be impacted by that process, DBP needs to make sure that all possible information is submitted to the ERA in a way that convinces the regulator that the access arrangement should be approved. In addition, there is likely to be a significant increase in interest from stakeholders in that process, thereby requiring DBP to spend more time reviewing and responding to submissions.
>
> DBP has already incurred more for this current access arrangement approvals process than it had foreshadowed.

727. The Authority does not accept that DBP has provided evidence that justifies the forecast of regulatory costs. While DBP submits that the increase in costs will be necessary in the next review of the access arrangement to "make sure that all possible information is submitted to the Authority in a way that convinces the regulator that the access arrangement should be approved", this is not, or should not be, any different to the current review of the access arrangement. The Authority therefore maintains the determination in the draft decision to reduce regulatory costs to $1.157 million over the 2011 to 2015 period for regulatory costs compared with $1.359 million proposed by DBP. This amounts to a reduction of $0.1 million in each of the years 2014 and 2015.

Utilities, Rates & Taxes

728. In the draft decision the Authority determined that forecast costs in the expense category of "utilities, rates & taxes" are consistent with the prudence and efficiency requirements of rule 91 of the NGR. However, the Authority noted that DBP was engaging with the Department of Regional Development and Lands seeking relief from some fees, which would reduce the costs for the 2011 to 2015 access arrangement period. The Authority indicated in the draft decision that it would be seeking further information on the outcomes of this negotiation prior to the final decision.

729. DBP has indicated in a submission subsequent to the draft decision that the matter was unresolved as of 17 August 2011.[274] As such, the Authority accepts that the ultimate cost of the fees associated with the Department of Regional Development and Lands meets the requirement of rule 91 although there is a significant likelihood that the ultimate cost will vary from the value forecast by DBP.

730. DBP has advised that it has included a cost [redacted] for each year of the forecast period to recover the costs of the Department of Regional Development and Lands. However, the Authority notes DBP's advice that the matter is unresolved.[275] Further, the Authority understands that the methodology for determining the fee was re-evaluated in 2008, and that payment of the fee has subsequently been suspended subject to further negotiations about the methodology for calculating the fee. Therefore, significant uncertainty exists about the amount to be paid.

731. Given that the Authority accepts that the ultimate costs meets the requirement of rule 91, the Authority accepts the forecast amount included by DBP, but requires a cost pass through to be included in the reference tariff variation mechanism. The cost pass through should be symmetrical and reflect the difference between the forecast amount and the actual amount incurred.

Fuel Gas

732. In the draft decision the Authority derived a total value of $103.392 million over the 2011 to 2015 period for forecast costs of fuel gas compared with $111.304 million proposed by DBP. The reduction reflected a view of the Authority that inadequate justification had been provided for an increased allowance for fuel gas use under transient conditions and for an increase in fuel gas use for compressor station CS10.

733. DBP has not amended its forecast of operating costs to reflect the Authority's determination on forecast costs of fuel gas.

734. DBP has provided further information to substantiate its original forecast and respond to the Authority's required amendment of fuel gas costs.

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274 DBP, 17 August 2011, Submission 68.

275 DBP, 17 October 2011, Submission 72.

735. For the allowance for fuel gas use under transient conditions, DBP indicates that it initially estimated that transient conditions would increase steady-state fuel gas use by an average of five per cent after commissioning of the stage 3A and 4 expansions. This allowance was increased to ten per cent after commissioning of stages 5A and 5B, reflecting diminishing pressure at receipt points and deteriorating gas heating value.[276] DBP provides further detail in the justification of this estimate, addressing:

- gas turbine performance at part loads;
- pipeline utilisation; and
- impacts of gas higher heating value on fuel use.[277]

736. Having regard to the additional information provided by DBP, the Authority accepts that the increased allowance for fuel gas use under transient conditions is consistent with the prudence and efficiency criteria of rule 91 of the NGR.

737. DBP has not addressed the Authority's determination in the draft decision that inadequate justification has been provided for an increase in fuel gas use for compressor station CS10.

738. Therefore, the Authority remains of the view that DBP has not demonstrated the prudence and efficiency of the increase in forecast fuel gas use and costs for compressor station CS10 in 2014 and 2015.

739. In final modelling for total revenue, the Authority has made this change to DBP's proposed fuel gas costs, as well as two other changes:

- a change to the fuel gas calculation from that provided by DBP in its reference tariff model taking into account a more accurate specification of fuel-gas model parameters is a separate submission provided by DBP;[278] and
- a change to the fuel gas calculation from that provided by DBP reflecting a different assumption made by the Authority on forecast inflation for the access arrangement period and therefore the escalation of fuel gas prices paid by DBP.

740. The changes in forecast fuel gas costs are shown in Table 54.

276 DBP, 20 May 2011, Submission 54 p 28.

277 DBP, 20 May 2011, Submission 54 pp 28 to 30.

278 A more accurately specified model was provided by DBP in relation to its estimates of CPRS costs (DBP, 17 August 2011, Submission 68).

Table 54 Authority's revised forecast of fuel gas costs for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[279]

Year ending 31 December	2011	2012	2013	2014	2015	Total
Authority revised forecast	20.385	21.538	21.446	21.842	22.285	107.496
DBP forecast	20.395	21.548	21.456	23.632	24.066	111.097
Difference	**-0.010**	**-0.010**	**-0.010**	**-1.789**	**-1.782**	**-3.601**

Conclusion on Forecast Operating Expenditure

741. Having regard to DBP's submission subsequent to the draft decision, the Authority considers that DBP's revised forecast of operating expenditure is not consistent with the prudence and efficiency requirements of rule 91 of the NGR. The Authority requires amendments to this forecast as set out in Table 55.

Table 55 Authority's amended forecast of operating expenditure for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[280]

Year ending 31 December	2011	2012	2013	2014	2015	Total
DBP revised forecast	**95.526**	**101.353**	**105.807**	**109.844**	**111.018**	**523.548**
less						
Reduction in costs for compressor overhauls	1.312	1.312	1.312	1.312	1.312	6.560
Reduction in repairs and maintenance expenses	0.583	0.583	0.583	0.583	0.583	2.915
Self insurance expenses	0.228	0.228	0.228	0.228	0.228	1.140
Change in regulatory expenses				0.100	0.100	0.200
Change in fuel gas costs	0.010	0.010	0.010	1.789	1.782	3.601
plus						
Change in carbon tax costs	-	0.549	1.266	1.572	1.948	5.335
Authority's amended forecast	**93.393**	**99.769**	**104.940**	**107.404**	**108.961**	**514.467**

279 DBP, 8 September 2011, Submission 70, tariff model.

280 DBP, 8 September 2011, Submission 70, tariff model. (DBP revised forecast)

Required Amendment 14

The revised access arrangement proposal should be amended such that the forecast of operating expenditure for the 2011 to 2015 access arrangement period is as indicated in Table 55 of this final decision.

Total Revenue

Regulatory Requirements

742. Rule 76 of the NGR provides that total revenue is to be determined for each regulatory year of the access arrangement period using the building block approach, where the building blocks are:

- a return on the projected capital base for the year; and
- depreciation on the projected capital base for the year; and
- if applicable – the estimated cost of corporate income tax for the year; and
- increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in efficiency; and
- a forecast of operating expenditure for the year.

Original Access Arrangement Proposal

743. DBP's original proposed calculation of total revenue for each year of the 2011 to 2015 access arrangement period is shown in Table 56.

Table 56 DBP's originally proposed calculation of total revenue for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[281]

Year ending 31 December	2011	2012	2013	2014	2015
Return on capital base	366.124	363.773	355.445	346.790	338.011
Depreciation	93.818	95.840	96.231	96.618	97.020
Incentive mechanism	10.486	10.231	-	-	-
Operating expenditure	104.341	106.717	107.382	111.242	112.787
Total	**574.769**	**576.561**	**559.058**	**554.650**	**547.818**
Total for access arrangement period	**2,812.856**				

Draft Decision

744. In the draft decision the Authority calculated the total revenue for the 2011 to 2015 access arrangement period, taking into account the corrections to DBP's calculations and the amendments to components of the calculation as set out in relevant sections of the draft decision. Given DBP's proposed treatment of capital contributions (where the contributions are added to the capital base, but quarantined from determination of total revenue) the Authority calculated total revenue on the basis of a return on capital base and depreciation for the "DBP assets" component of the capital base.

745. The Authority's calculation of total revenue for the draft decision is set out in Table 57.

Table 57 Authority's draft decision calculation of total revenue for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010) [282]

Year ending 31 December	2011	2012	2013	2014	2015
Return on capital base	241.760	240.046	234.509	228.760	222.844
Depreciation	89.774	91.775	92.186	92.487	92.785
Incentive mechanism	-	-	-	-	-
Correction for over-depreciation	-6.445	-	-	-	-
Operating expenditure	87.782	89.403	89.842	91.216	92.188
Total	**412.871**	**421.224**	**416.538**	**412.463**	**407.817**
Total for access arrangement period	**2,070.913**				

281 DBP, 1 April 2010, revised access arrangement information, section 17.3 (Table 22). Values amended to be expressed in dollar values of 31 December 2010.

282 ERA Draft decision, reprinted 5 May 2011, table 75.

Revised Access Arrangement Proposal

746. In the revised access arrangement proposal DBP has revised the calculation of total revenue as shown in Table 58.

Table 58 DBP's revised calculation of total revenue for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)[283]

Year ending 31 December	2011	2012	2013	2014	2015
Return on capital base	336.838	344.014	336.137	327.950	319.698
Depreciation	90.479	95.464	95.931	96.275	96.679
Incentive mechanism	12.341	12.032	-	-	-
Operating expenditure	95.526	101.353	105.807	109.844	111.018
Total	535.250	552.927	537.894	534.042	527.322
Total for access arrangement period	**2,687.434**				

Submissions

747. No submissions made to the Authority addressed the calculation of total revenue (as opposed to individual cost parameters).

Considerations of the Authority

748. The Authority has calculated the total revenue for the 2011 to 2015 access arrangement period taking into account the corrections to DBP's calculations and amendments to components of the calculation as set out in preceding sections of this final decision.

749. Given DBP's proposed treatment of capital contributions (where capital expenditure financed by capital contributions is added to the capital base but quarantined from determination of total revenue), the Authority has calculated total revenue on the basis of a return on the capital base and depreciation for the "DBP assets" component of the capital base as shown in Table 59 of this final decision.

750. The Authority's corrected and amended calculation of total revenue is set out in Table 59.

283 DBP, 8 September 2011, Submission 70, tariff model.

Table 59 Authority's final decision calculation of total revenue for the 2011 to 2015 access arrangement period (real $ million at 31 December 2010)

Year ending 31 December	2011	2012	2013	2014	2015
Return on capital base	192.046	195.829	191.310	186.619	181.897
Depreciation	87.760	92.188	92.555	92.799	93.102
Incentive mechanism	11.938	11.938	-	-	-
Correction for over-depreciation	-34.543	-	-	-	-
Operating expenditure	93.393	99.769	104.940	107.404	108.961
Total	**350.594**	**399.724**	**388.805**	**386.822**	**383.960**
Total for access arrangement period	**1,909.905**				

Allocation of Total Revenue between Reference Services and Other Services

Regulatory Requirements

751. Rule 93 of the NGR requires that total revenue is allocated between reference services and other services on the basis of an allocation of costs. As an alternative to cost allocation, rule 93 provides for services other than reference services to be classed as rebateable services, with part of the revenue from sale of these services to be rebated or refunded to users of reference services. The particular requirements of rule 93 are as follows.

> 93 Allocation of total revenue and costs
>
> (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
>
> (2) Costs are to be allocated between reference and other services as follows:
>
> (a) costs directly attributable to reference services are to be allocated to those services; and
>
> (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
>
> (c) other costs are to be allocated between reference and other services on a basis (that must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
>
> (3) The [ERA] may, however, permit the allocation of the costs of rebateable services, in whole or in part, to reference services if:

(a) the [ERA] is satisfied that the service provider will apply an appropriate portion of the revenue generated from the sale of rebateable services to provide price rebates (or refunds) to the users of reference services; and

(b) any other conditions determined by the [ERA] are satisfied.

(4) A pipeline service is a rebateable service if:

(a) the service is not a reference service; and

(b) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and

(c) the market for the service is substantially different from the market for any reference service.

Original Access Arrangement Proposal

752. DBP did not propose any allocation of total revenue to services other than reference services (non-reference services) and did not propose that any service be a rebateable service.

Draft Decision

753. In the draft decision the Authority considered whether there should be an allocation of a part of forecast costs (and of total revenue) to the provision of services other than reference services, taking into account:

- the quantum and nature of the non-reference services that may reasonably be expected to be provided during the 2011 to 2015 access arrangement period; and
- whether part of the costs included in the total revenue can be attributed to provision of non-reference services and, hence, should be allocated to these services rather than allocated to reference services.

754. The Authority has also considered whether any non-reference services should be explicitly declared to be rebateable services and, if so, the terms of rebate mechanisms.

755. In a submission to the Authority subsequent to lodging the proposed revised access arrangement, DBP indicated that non-reference services may comprise:

- park & loan, storage and delivery services;
- spot services;
- interruptible services;
- co-mingling services;
- commissioning services;
- inlet swap services; and

- out of specification gas services.[284]

756. DBP did not forecast any utilisation of these pipeline services in the 2011 to 2015 access arrangement period.[285] Data on past sales of non-reference services supports DBP's contention of there being limited sales of non-reference services for the 2011 to 2015 access arrangement period.

757. Given a lack of information to make a reliable forecast of demand for non-reference services in the 2011 to 2015 access arrangement period, the Authority did not allocate any costs to non-reference services.

758. However, notwithstanding the absence of a lack of information to make a reliable forecast of demand for non-reference services, the Authority considered that there is a significant likelihood of demand for non-reference services emerging over the access arrangement period. For this reason, the Authority took the view that the access arrangement should make an explicit declaration that non-reference services for gas transportation are rebateable services.

759. The Authority further determined that the rebate mechanism should make provision for a share of revenue over and above the incremental cost of service provision to be rebated to users of services that are in the nature of reference services, with:

- the commodity charge of the reference tariff being a reasonable approximation of the incremental cost of service provision for non-reference services that are in the nature of transmission services; and
- 80 per cent of revenue in excess of the incremental cost of service provision to be rebated to users of services that are in the nature of reference services.

760. The Authority required the following amendment to the proposed revised access arrangement.

> Draft decision amendment 11
>
> The proposed revised access arrangement should be amended to include a statement that services for gas transportation that are other than services in the nature of reference services are rebateable services within the meaning of rule 93(4).
>
> The access arrangement should also include a rebate mechanism that provides for a share of revenue from rebateable services to be rebated to users of services that are in the nature of reference services. The rebate mechanism should provide for the share of revenue to be rebated as:
>
> Value of revenue to be rebated = 0.8 x (R – (C x Q))
>
> where
>
> R is the revenue from the rebateable service ($);
>
> C is the commodity tariff of the full haul, part haul or back haul reference service, as relevant ($/GJ); and

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284 DBP, 7 January 2011, Submission 35.

285 DBP, 7 January 2011, Submission 35 paragraph 5.2.

Q is the throughput quantity of the rebateable service.

Revised Access Arrangement Proposal

761. DBP has not made any revisions to the access arrangement proposal to allocate a part of total revenue to non-reference services or to include a rebate mechanism in accordance with the Authority's draft decision.

762. DBP has further submitted that the Authority cannot validly require inclusion in the access arrangement of a rebate mechanism as required under the draft decision.[286] DBP outlines four grounds for this position.

763. First, DBP states that the requirement is inconsistent with a fixed principle under paragraph 7.13(a)(ii) of the current access arrangement:

> 7.13 …
>
> (a) …
>
> (ii) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:
>
> (A) the revenue that would have been earned had any of those Services which were Full Haul Services been sold at the Reference Tariff; and
>
> (B) the revenue actually earned from the sale of those Services which were Services other than Full Haul Services,
>
> must not:
>
> (C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying the Reference Tariff Policy which applies on or after 1 January 2011; or
>
> (D) otherwise be taken into account directly or indirectly by the Relevant Regulator in performing any of its functions under the Code.

764. Secondly, DBP indicates that rule 93(3)(a) of the NGR provides for a rebate mechanism to allow rebates to be made only to users of reference services, not to users of services "in the nature of reference services", which was the requirement of the Authority under draft decision amendment 11.

765. Thirdly, DBP contends that the requirement for a rebate mechanism is inconsistent with the national gas objective and with the revenue and pricing principles in the NGL for the following reasons.

- The rebate mechanism would have the effect of fundamentally altering the arrangements struck between DBP and its shippers in 2004 as to the revenue DBP would be allowed to earn. It will provide shippers of these services with a gain in circumstances where their contract was negotiated under the express acknowledgement that it would sit outside the regulatory regime until at least 2016.

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[286] DBP, 20 May 2011, Submission 56 pp 3 – 5.

- There is no certainty that the mechanism would allow DBP with the opportunity to recover its incremental costs of providing the services.

766. Fourthly, DBP contends that the required rebate mechanism is uncertain and unworkable for the following reasons.

- It is unclear what is meant by "throughput quantity".
- What is the service for gas transportation that is otherwise in the nature of a reference service? Would this extend to the Alcoa exempt contract?
- It is not clear what is the basis for the 80 per cent rebate requirement. What analysis has been done to demonstrate that this will enable DBP to recover its incremental costs? DBP submits that this does not enable DBP to recover its incremental costs.

Submissions

767. In a submission made subsequent to the draft decision, Verve Energy supports the Authority's requirement for the rebate mechanism. Verve indicates disagreement with the arguments made by DBP that the requirement for the rebate mechanism is invalid, in particular:

- the rebate mechanism is not contrary to the fixed principle of clause 7.13(a)(ii) of the current access arrangement;
- the proposed rebate mechanism is practical and sensible in all the circumstances; and
- the rebate mechanism would not fundamentally alter the 2004 contractual arrangements between DBP and users.

Considerations of the Authority

768. The Authority has given further consideration to the requirement for a rebate mechanism in light of DBP's submissions.

769. The requirement for a rebate mechanism under the draft decision arose from concern of the Authority that DBP would provide a material quantity of non-reference transmission services over the course of the 2011 to 2015 access arrangement period, but there is insufficient information available to the Authority to establish a reasonable forecast for these services and allocate a corresponding share of total revenue to these services. In circumstances of uncertainty over demand for services other than reference services, rule 93 of the NGR explicitly contemplates a rebate mechanism as an alternative to an allocation of total revenue.

770. Notwithstanding this, the Authority determines under this final decision not to maintain the requirement for a rebate mechanism for the following reasons.

771. The Authority considers that there may be practical difficulties in implementing a rebate mechanism. The Authority accepts DBP's contention that rule 93(3)(a) of the NGR contemplates rebates or refunds under a rebate mechanism being provided only to users of reference services and not, necessarily, users of services "in the nature of reference services", as required by the Authority under the draft decision. There could be practical difficulties in applying a rebate mechanism that allows for rebates to be provided only to users of reference services in that there may be disputes over what comprises a reference service: for example, would a service that is of a very similar nature to a reference service still be classed as a reference service if there are minor differences in some terms and conditions from the terms and conditions set out in the access arrangement for the reference service.

772. Further, no submissions made to the Authority either prior to or subsequent to the draft decision have provided evidence of demand for non-reference services over the 2011 to 2015 access arrangement period sufficient to establish an imperative for the Authority to make an allocation of total revenue to these services or seek to have a rebate mechanism included in the access arrangement.

773. For the record, the Authority does not accept several other arguments made by DBP in opposing the requirement for the rebate mechanism.

774. The Authority does not accept DBP's contention that the requirement for a rebate mechanism is contrary to the fixed principle of clause 7.13(a)(ii) of the current access arrangement.

775. This fixed principle prevents the Authority from taking into account actual revenue from the sale of non-reference services only in the context of the Authority potentially taking into account, in any of its functions, an amount of actual revenue achieved by DBP that is in excess of the sum of:

- revenue that would have been earned from the sale of full haul services as reference services and at the reference tariff; and
- actual revenue earned from the sale of services other than full haul services.

776. There is nothing in this fixed principle that prevents the Authority from taking into account the revenue from non-reference services for the purposes of a rebate mechanism under rule 93(3) of the NGR.

777. The Authority also does not accept DBP's contention that the requirement for a rebate mechanism is inconsistent with the national gas objective and with the revenue and pricing principles in the NGL in that the mechanism would interfere with existing contractual arrangements between DBP and users, or that the requirement creates uncertainty over whether DBP would have the opportunity to recover its incremental costs of providing the services that are the subject of the mechanism.

- DBP and existing users of the DBNGP are subject to potential impacts from changes in the access arrangement regardless of existing contractual arrangements. This includes, for example, changes in the provisions of the access arrangement in relation to queuing requirements, capacity trading requirements, and extension and expansion requirements. Inclusion in the access arrangement of a rebate mechanism that may benefit existing users of reference services is one further example. The Authority notes, however, that (as addressed in paragraph 771, above) there may be some uncertainty in application of a rebate mechanism to existing users if the rebate mechanism only makes provision for rebates to users of reference services and existing users have contracted for services that are different in some respects from the reference service as described and specified in the access arrangement.
- A rebate mechanism need not limit DBP's opportunity to recover the incremental costs of providing services that are subject to the rebate mechanism. In specifying the requirement for the rebate mechanism in the draft decision, the Authority sought to ensure that the mechanism allowed DBP to retain revenue sufficient to recover incremental costs that arise from fuel gas consumption and field maintenance. This would have ensured that the share of revenue retained by DBP is sufficient to cover incremental costs of service provision.

Reference Tariffs

Regulatory Requirements

778. Rule 95 of the NGR sets out requirements for the determination of reference tariffs for transmission pipelines.

> 95 Tariffs – transmission pipelines
>
> (1) A tariff for a reference service provided by means of a transmission pipeline must be designed:
>
> (a) to generate from the provision of each reference service the portion of total revenue referable to that reference service; and
>
> (b) as far as is practicable consistently with paragraph (a), to generate from the user, or the class of users, to which the reference service is provided, the portion of total revenue referable to providing the reference service to the particular user or class of users.
>
> (2) The portion of total revenue referable to a particular reference service is determined as follows:
>
> (a) costs directly attributable to each reference service are to be allocated to that service; and
>
> (b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
>
> (3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:

(a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and

(b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].

(4) The [Authority's] discretion under this rule is limited.

Original Access Arrangement Proposal

779. DBP proposed a reference tariff for the single proposed reference service, the R1 Service.

780. Information provided in the revised access arrangement information indicated that the Reference Tariff for the R1 Service has been determined to recover 100 per cent of DBP's proposed value of total revenue (in present value terms).[287] This implied an assumption that all gas transportation in the DBNGP occurs under the R1 reference service.

781. The proposed reference tariff for the R1 Service comprised two tariff charges:

- the capacity reservation tariff, set to recover all costs except the cost of fuel gas and comprising approximately 96 per cent of the total tariff; and
- the commodity tariff, set to recover the cost of fuel gas and comprising approximately 4 per cent of the total tariff.[288]

782. The proposed values of these component tariffs were:

- capacity reservation tariff of $1.648018/GJ;
- commodity tariff of $0.079975/GJ.[289]

783. The total tariff for the R1 Service for gas transportation at 100 per cent load factor would be $1.727993/GJ.

784. The reference tariff values were calculated on the basis of a forecast of reserved capacity and pipeline throughput as shown in Table 60.

287 DBP, 1 April 2010, revised access arrangement information, pp 30 - 35.

288 DBP, 1 April 2010, revised access arrangement information, pp 28 - 30.

289 Proposed access arrangement revisions, clause 3.2. The tariff values stated in the proposed access arrangement have been escalated for inflation to the values that would apply in 2011.

Table 60 DBP forecasts of capacity and throughput applied in determination of the proposed reference tariff for the R1 Reference Service [290]

	2011	2012	2013	2014	2015
DBNGP forecast full haul contracted capacity (TJ/day)	851.310	860.310	860.310	860.310	860.310
DBP forecast full haul throughput (TJ/day)	703.074	718.817	719.717	725.846	732.521
Forecast load factor	0.826	0.836	0.837	0.844	0.851

Draft Decision

785. As an element of the draft decision, the Authority required amendment of the proposed revised access arrangement to remove the proposed R1 Service and include a full haul "T1 reference service", part haul "P1 reference service" and back haul "B1 reference service" in accordance with the reference services available under the access arrangement for the 2005 to 2010 access arrangement period. Accordingly, the Authority determined tariffs for the required reference services rather than undertaking an assessment of DBP's proposed reference tariff for the R1 Service.

786. The Authority considered that the general structure and specification of reference tariffs under the access arrangement for the 2005 to 2010 access arrangement period is consistent with the requirements of rule 95 of the NGR, that is:

- the reference tariffs should comprise two charges, a capacity reservation charge (in units of $/GJ MDQ) and a commodity charge (in units of $/GJ);
- the reference tariff charges for the T1 reference service should be independent of distance;
- the reference tariff charges for the P1 and B1 reference services should be specified as a distance-based function of the reference tariff for the T1 reference service –

$$F \times \frac{D}{1399}$$

where

F is the value of the charge that would apply if the service were the T1 reference service; and

D is the distance in kilometres of pipeline between the relevant receipt point and the relevant delivery point.

[290] DBP, 12 April 2010, tariff model.

787. Under the access arrangement for the 2005 to 2010 access arrangement period, the allocation of costs between the capacity reservation charge and the commodity charge was made on the basis of allocating fuel costs for recovery by the commodity charge and allocation of all other costs for recovery by the capacity reservation charge. The Authority considered this allocation of costs against the particular requirements of rule 95 and is of the view that this allocation does not result in an allocation of costs between reference services and between users that is consistent with the requirements of rule 95(2) and (3). The Authority considered that a substantial part of operating expenditure, particularly costs categorised by DBP as field expenses and reactive maintenance, is closely correlated with throughput and should be recovered through the commodity charge.

788. The Authority calculated the charges of the reference tariffs for the T1, P1 and B1 reference services based on:

- the value of total revenue determined in the draft decision;
- an allocation of fuel costs, field expenses and reactive maintenance costs to commodity charges; and
- forecasts of demand for firm full haul, part haul and back haul services as supplied by DBP.

789. A summary of the forecasts of demand applied in determination of amended reference tariffs are shown in Table 61.

Table 61 Summary of demand forecasts applied by the Authority in determination of amended reference tariffs

	2011	2012	2013	2014	2015
T1 reference service					
Capacity (TJ/day)	851.310	860.310	860.310	860.310	860.310
Throughput (TJ/day)	703.074	718.894	719.366	725.846	732.521
Average load factor	0.826	0.836	0.837	0.844	0.851
P1 reference service					
Capacity (TJ/day)	215.380	215.380	215.380	215.380	215.380
Throughput (TJ/day)	191.458	189.708	189.708	189.708	189.708
Average load factor	0.889	0.881	0.881	0.881	0.881
B1 reference service					
Capacity (TJ/day)	130.047	130.047	130.047	130.047	130.047
Throughput (TJ/day)	112.267	112.267	112.267	112.267	112.267
Average load factor	0.863	0.863	0.863	0.863	0.863

790. The Authority accepted the forecasts of demand provided by DBP taking into account that the Authority did not receive any substantive information from users or prospective users on prospects for additional demand.

791. In calculating the amended reference tariffs, the Authority had regard to more detailed forecasts of part haul and back haul contracted capacity and throughput and to distances of gas transportation for each delivery point. In information provided to the Authority by DBP, there were minor differences in stated distances of gas transmission to distances previously applied in tariff calculations, and also to distances specified in the DBNGP system description. The Authority corrected these distances in its financial model.

792. The reference tariffs derived by the Authority under the draft decision are set out in Table 62 and are the reference tariffs that would apply for 2011. The reference tariffs that would apply for subsequent years of the 2011 to 2015 access arrangement period would be the values indicated in Table 62 with escalation for inflation. The 100 per cent load factor tariffs determined by the Authority were 25.8 per cent lower than proposed by DBP.

Table 62 Draft decision reference tariff charges for the T1, P1 and B1 reference services (real dollar values at 31 December 2010)[291]

Reference Service and reference tariff charge	Units	DBP Proposed	DD Amended
T1 reference service			
Capacity reservation charge	$/GJ MDQ	1.648018	1.145584
Commodity charge	$/GJ	0.079975	0.136310
Total charge at 100% load factor	$/GJ	1.727993	1.281894
P1 and B1 reference services			
Capacity reservation charge	$/GJ MDQ*km	0.001178	0.000819
Commodity charge	$/GJ*km	0.000057	0.000097
Total charge at 100% load factor	$/GJ*km	0.001235	0.000916

793. The Authority required the following amendment to the access arrangement proposal to include the reference tariffs for the T1, P1 and B1 reference services.

> Draft decision amendment 12
>
> The proposed revised access arrangement should be amended to specify the reference tariff charges for the T1 reference service for the calendar year 2011 as:
>
> Capacity Reservation Charge: $1.145584/GJ MDQ
>
> Commodity Charge: $0.136310/GJ
>
> The proposed revised access arrangement should be amended to provide for determination of the corresponding reference tariff charges for the P1 and B1 reference services for the calendar year 2011 as:

[291] DBP did not propose reference tariffs for the T1, B1 and P1 Services. Tariffs indicated as "DBP Proposed" are as calculated from DBP's proposed total revenue.

Reference tariff charge = F × D/1399

where

F is the value of the charge that would apply if the service were the T1 reference service; and

D is the distance in kilometres of pipeline between the relevant receipt point and the relevant delivery point.

Revised Access Arrangement Proposal

794. DBP has maintained its proposal to have only the R1 Service as a reference service under the access arrangement. The proposed reference tariff for the R1 Service has been revised to reflect revisions made by DBP to the determination of total revenue.

795. The revised values of the component tariffs are:

- capacity reservation tariff of $1.569/GJ;
- commodity tariff of $0.080/GJ.[292]

796. The total tariff for the R1 Service for gas transportation at 100 per cent load factor would be $1.649/GJ.

797. DBP has made no changes to the reference tariff in response to the requirements of the draft decision for the access arrangement to include reference tariffs for other reference services (the T1, P1 and B1 Services) and to change the allocation of costs between the capacity reservation tariff and the commodity tariff.

798. On the matter of the allocation of costs between the capacity reservation tariff and commodity tariff, DBP submits:

- the Authority cannot require amendment of the tariff structure as the structure proposed by DBP complies with the relevant provisions of rule 95(3) of the NGR and the Authority's discretion in respect of rule 95(3) is limited; and
- in any case, there is no justification for the amendment of the tariff structure as the field expenses and reactive maintenance costs are unrelated to pipeline throughput.[293]

Submissions

799. In submissions on the draft decision, Alinta Limited and Verve Energy indicate support for a greater allocation of costs to the commodity charge of reference tariffs.

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292 DBP, 8 September 2011, Submission 70, tariff model.

293 DBP, 21 May 2011, Submission 56 pp 6, 7.

Considerations of the Authority

800. The Authority has given further consideration to the structure of the reference tariff having regard to DBP's submission, in particular DBP's description of the drivers of field expenses and reactive maintenance costs.

801. DBP submits that the maintenance activities classed as field services are not throughput-related, but are carried out in accordance with pre-specified schedules, which may be based on the recommendations of equipment manufacturers or on DBP's experience. Reactive maintenance is related to unplanned component failures.

802. On the basis of DBP's submission, the Authority accepts that the maintenance activities classed as field services and reactive maintenance may not be closely related to throughput. As such, the Authority accepts that the change in tariff structure required in the draft decision may overstep the bounds of the limited discretion that the Authority has under rule 95 of the NGR. The Authority has therefore determined not to maintain the requirement for the change in tariff structure.

803. The Authority has, however, determined that the part of forecast operating expenditure that comprises the cost of the carbon tax under the Federal Government's Clean Energy legislation should be recovered by the commodity charge of the reference tariff as this cost is, effectively, an increment to the cost of fuel gas and is therefore directly related to pipeline throughput.

804. The Authority has determined reference tariffs for the T1, P1 and B1 Reference Services with a commodity tariff set to recover costs of fuel gas and carbon-tax cost and capacity tariff set to recover all other costs. In determining these tariffs, the Authority has taken into account that revisions to the access arrangement are unlikely to commence before 1 January 2012. In accordance with rule 92(3) of the NGR, the Authority has determined reference tariffs on the basis that:

- the reference tariffs applying in 2010 under the current access arrangement continued in force and without variation through 2011; and
- the reference tariffs under the revised access arrangement will be in force from 1 January 2012; and
- the reference tariffs under the revised access arrangement have been set so as to recover the value of total revenue over the 2011 to 2015 access arrangement period, taking into account the delay in commencement of the revised access arrangement and the revised reference tariffs.

805. The values of reference tariffs determined by the Authority are shown in Table 63.

Table 63 Final decision reference tariff charges for the T1, P1 and B1 reference services (real dollar values at 31 December 2010)[294]

Reference tariff charge	Units	Current value	DBP Proposed value	Authority amended value
T1 reference service				
Capacity reservation charge	$/GJ MDQ	1.040491	1.569233	1.087228
Commodity charge	$/GJ	0.119233	0.079831	0.092402
Total charge at 100% load factor	$/GJ	1.159725	1.649065	1.179630
P1 and B1 reference services				
Capacity reservation charge	$/GJ MDQ*km	0.000744	0.001122	0.000777
Commodity charge	$/GJ*km	0.000085	0.000057	0.000066
Total charge at 100% load factor	$/GJ*km	0.000829	0.001179	0.000843

806. The Authority requires the following amendment to the revised access arrangement proposal to include the reference tariffs for the T1, P1 and B1 reference services.

294 DBP did not propose reference tariffs for the T1, B1 and P1 Services. Tariffs indicated as "DBP Proposed" are as calculated from DBP's proposed total revenue.

Required Amendment 15

The proposed revised access arrangement should be amended to specify the reference tariff charges for the T1 reference service for the calendar year 2012 as (in dollar values of 31 December 2010):

Capacity Reservation Charge: $1.087228

Commodity Charge: $0.092402

The proposed revised access arrangement should be amended to provide for determination of the corresponding reference tariff charges for the P1 and B1 reference services as:

Reference tariff charge = F × D/1399

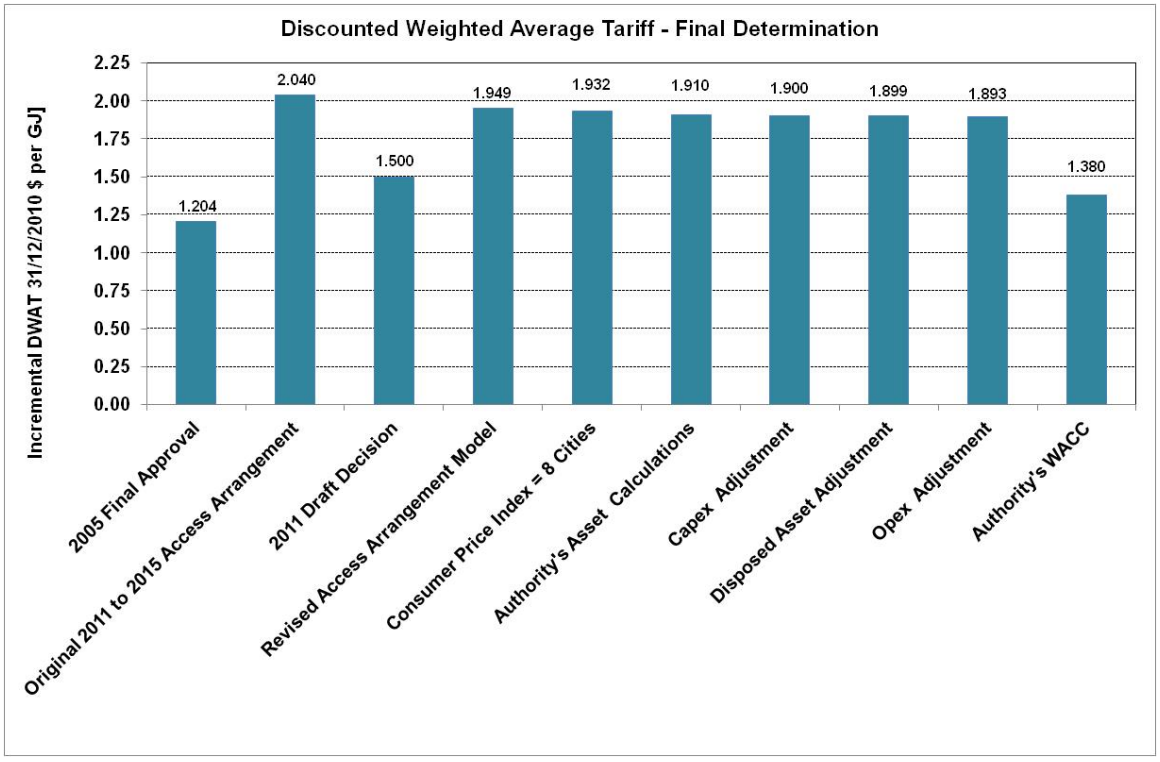
where

F is the value of the charge that would apply if the service were the T1 reference service; and

D is the distance in kilometres of pipeline between the relevant receipt point and the relevant delivery point.

807. The effect on the proposed revisions to the access arrangement and this final decision on reference tariffs is shown in the following figures:

- Figure 5, which shows the cumulative change in the discounted weighted average tariff that results from the Authority's determination on various elements of the determination of total revenue; and



- Figure 6, which shows the reference tariff path for full-haul gas transmission (T1 reference service) at 100 per cent load factor and which shows the revised reference tariff commencing in 2012.

Figure 5 Cumulative change in the discounted weighted average tariff that results from the Authority's determination on various elements of the determination of total revenue

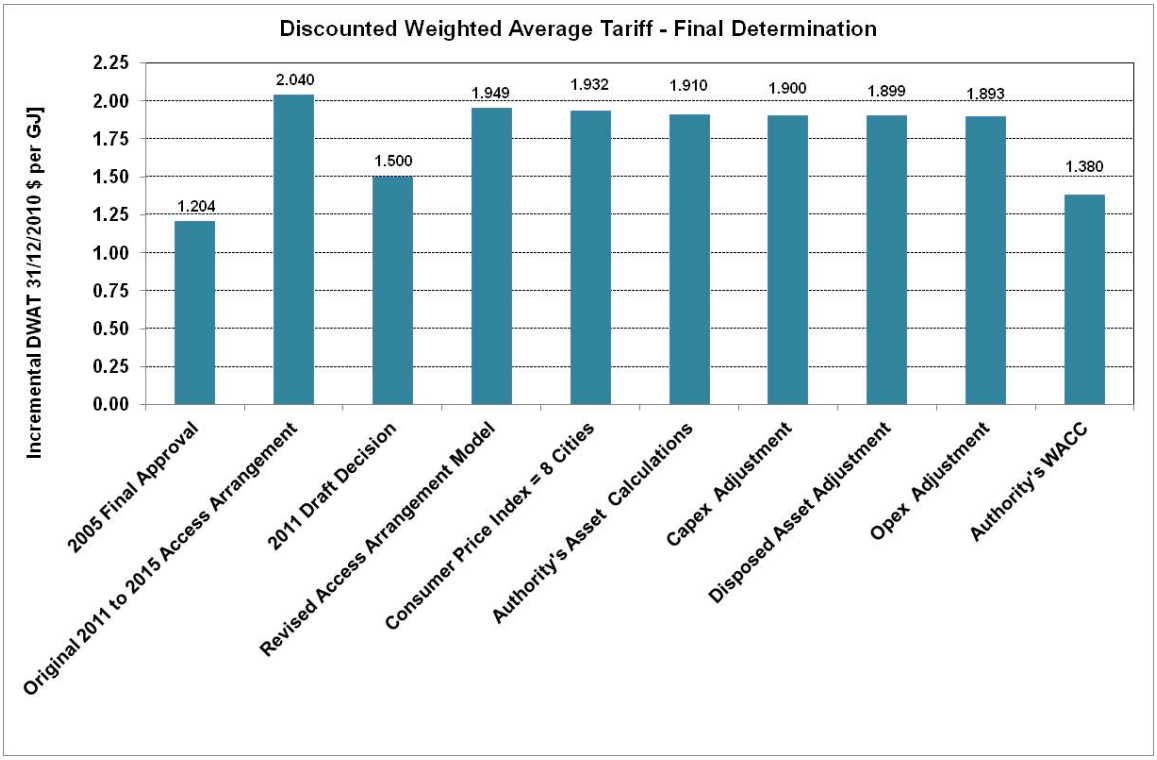
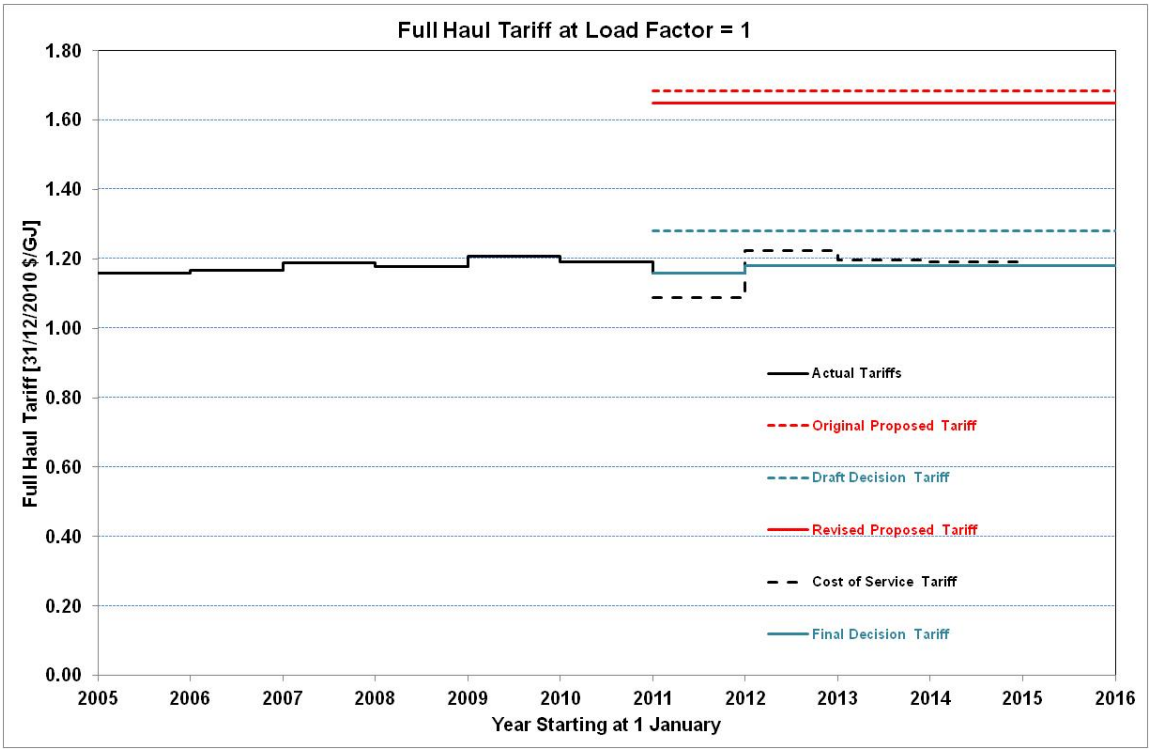


Figure 6 Reference tariff path resulting from this final decision



Tariff Variation Mechanism

Regulatory Requirements

808. Rules 92 and 97 of the NGR set out requirements for an access arrangement to include a mechanism for variation of reference tariffs during an access arrangement period.

92 Revenue equalisation

(1) A full access arrangement must include a mechanism (a reference tariff variation mechanism) for variation of a reference tariff over the course of an access arrangement period.

(2) The reference tariff variation mechanism must be designed to equalise (in terms of present values):

(a) forecast revenue from reference services over the access arrangement period; and

(b) the portion of total revenue allocated to reference services for the access arrangement period.

(3) However, if there is an interval (the interval of delay) between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence:

(a) reference tariffs, as in force at the end of the previous access arrangement period, continue without variation for the interval of delay; and

(b) the operation of this subrule may be taken into account in fixing reference tariffs for the new access arrangement period.

…

97 Mechanics of reference tariff variation

(1) A reference tariff variation mechanism may provide for variation of a reference tariff:

(a) in accordance with a schedule of fixed tariffs; or

(b) in accordance with a formula set out in the access arrangement; or

(c) as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax); or

(d) by the combined operation of 2 or more or the above.

(2) A formula for variation of a reference tariff may (for example) provide for:

(a) variable caps on the revenue to be derived from a particular combination of reference services; or

(b) tariff basket price control; or

(c) revenue yield control; or

(d) a combination of all or any of the above.

(3) In deciding whether a particular reference tariff variation mechanism is appropriate to a particular access arrangement, the [ERA] must have regard to:

(a) the need for efficient tariff structures; and

(b) the possible effects of the reference tariff variation mechanism on administrative costs of the [ERA], the service provider, and users or potential users; and

(c) the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed reference tariff variation mechanism; and

(d) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and

(e) any other relevant factor.

(4) A reference tariff variation mechanism must give the [ERA] adequate oversight or powers of approval over variation of the reference tariff.

(5) Except as provided by a reference tariff variation mechanism, a reference tariff is not to vary during the course of an access arrangement period.

Original Access Arrangement Proposal

809. DBP proposed a reference tariff variation mechanism that provides for the following variations of the reference tariff:

- annual inflation escalation, with the tariff charges escalated in accordance with changes in the "All Groups – Perth" consumer price index;
- pass through of changes in taxation costs and "carbon costs", which include "any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any law in relation to greenhouse gas emissions in so far as the obligation or liability is connected to the DBNGP"; and
- pass through of "new costs", comprising costs that are beyond the control of the DBNGP Operator or its related bodies corporate and that could not be predicted at the time the revisions to the access arrangement were approved and were not included in the total revenue for one or more years of the current access arrangement.[295]

810. The originally proposed reference tariff variation mechanism provides for the Authority to be notified of variations to the reference tariff and to be provided with supporting information and calculations for the variation. For a reference tariff variation by inflation escalation, the Authority would be notified no later than 10 days after a reference tariff variation has been bought into effect. For a reference tariff variation in respect of taxation costs, carbon costs or new costs, the Authority would be notified no later than 15 days before a variation to the reference tariff commences to have effect.

Draft Decision

811. The Authority considered the elements of the proposed reference tariff variation mechanism against the provisions of rules 92 and 97 with determinations that:

- annual inflation escalation of reference tariffs is consistent with the requirement of rule 92 and with the financial calculations used by DBP and by the Authority in determining the initial values of reference tariffs for 2011, but the CPI values applied in the determination of reference tariffs should consistently be the "all groups, eight capital cities" consumer price index;
- variation in reference tariffs for the pass through of costs of taxation changes and of carbon costs is consistent with the provision of rule 97(1)(c) for a reference tariff variation mechanism to provide for variation of a reference tariff "as a result of a cost pass through for a defined" event, but the scope in the reference tariff variation mechanism for the pass through of these costs is not sufficiently constrained and the pass through of the costs should be subject to the same regulatory assessment and approval as for forecasts of costs in the normal process of approval of proposed revisions to the access arrangement; and
- provision under the proposed reference tariff variation mechanism for the pass through of "new costs" is not permitted under rule 97 which (at rule 97(1)(3)) provides for a cost pass through only in respect of a defined event.

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295 DBP, 1 April 2010, proposed access arrangement, clause 11.

812. The Authority required the following amendments to the proposed revised access arrangement.

> Draft decision amendment 13
>
> The proposed revised access arrangement should be amended to change the definition of CPI in the reference tariff variation mechanism to "CPI means the Consumer Price Index, All Groups, Eight Capital Cities.
>
> Draft Decision Amendment 14
>
> The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a Tax Changes Variation:
>
> - is limited to costs of tax changes that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR; and
> - is subject to the Authority's approval of the variation.
>
> Draft Decision Amendment 15
>
> The proposed revised access arrangement should be amended to remove provision under the reference tariff variation mechanism for the variation of reference tariffs by way of a "new costs pass through variation".

Revised Access Arrangement Proposal

813. DBP has revised clause 11.4 of the proposed revised access arrangement dealing with the "new costs pass through variation". The revisions made by DBP have the effect of limiting the scope of the cost pass through events to specific events as defined in clause 11.4. The revisions to clause 11.4 are shown as follows.

> 11.4. New Costs Pass Through Variation means the following mechanism:
>
> (a) The Operator may recover certain expenses it or its Related Bodies Corporate incur or are to incur which are beyond its control, and which:
>
> (i) could not be predicted prior to the time at the revisions to the Access Arrangement were approved; and
>
> (ii) were not included in the Total Revenue for one or more years of the Current Access Arrangement (Cost Pass Through Event).
>
> (b) ~~Without limitation, examples of~~ Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause 11.4 are:
>
> (i) ~~A~~a Change in Law
>
> ~~(ii) unanticipated Tax Change that is not the subject of a variation to the Reference Tariff pursuant to the mechanism in clause 11.3(b) including the direct and indirect costs of action by agencies of government or other statutory agencies; and~~
>
> (ii) ~~(iii)~~ the additional costs not included in the forecast operating expenditure and which arise from ~~unanticipated increases in the price~~any new, or amendment to any, agreement that is entered into for the supply of System Use Gas purchased to meet the Operator's obligations under any Access Contract for the Reference Service which new agreement or amendment of an existing agreement has the effect of increasing the price of System Use Gas; and

(iii) additional costs not included in the forecast operating expenditure that arise from a change in the type or level of the fees payable to the Land Access Minister under any Access Right relating to the DBNGP and granted under the Dampier to Bunbury Pipeline Act 1998.

(c) Before the Operator varies the Reference Tariff under this clause 11.4, the Operator must provide a written notice to the Regulator (Cost Pass Through Event Notice) which:

(i) must include the substantiation for the Cost Pass Through Event justifying an increase to the operating expenditure that is used to calculate the Total Revenue for each year of the Current Access Arrangement Period;

(ii) provides evidence as to how the Cost Pass Through Event has increased the operating expenditure of the Operator or its Related Bodies Corporate in their roles as service providers on the DBNGP;

(iii) specifies the scope of the financial impact of the Cost Pass Through Event;

(iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event; and

(v) states the effective date for the variation to the Reference Tariff to take effect.

(d) The Operator may submit one or more Cost Pass Through Notices each Year. Each Cost Pass Through Notice may incorporate a number of claims relating to different Cost Pass Through Events.

(e) The minimum notice period for a Cost Pass Through Notice to be issued before a variation to the Reference Tariff commences to have effect is 15 Business Days.

814. DBP makes submissions on the amendments to the tariff variation mechanism required by the Authority under the draft decision, addressing the required amendments to provisions for pass through of the costs of tax changes and pass through of “new costs”.

815. On the pass through of costs of tax changes, DBP submits that as any tax change is mandated by law, DBP has no control over whether the change or the quantum of the change is prudent or efficient and the Authority’s required amendment would expose DBP to not being able to recover the costs of tax changes that are judged to be imprudent or inefficient. DBP also submits that a direct pass through of the costs of tax changes accords with a well-accepted principle that in a competitive environment all taxes are passed through to the end customer. Finally, DBP submits that a pass through of a tax change should not be subject to approval by the Authority as users of the DBP have already accepted a direct pass through of tax changes (under the standard shipper contracts) and there is no time limit on the Authority to make a determination on a tax pass through, which would expose DBP to a loss of revenue where there is a prolonged period for a determination.

816. On the pass through of new costs, DBP has responded to the Authority’s required amendment 15 by specifying defined events that would be covered by the new cost pass through variation mechanism. These defined events comprise a change in law, an increase in the price paid by DBP for system use gas, and a change in costs to DBP for land access under any access right granted to DBP under the *Dampier to Bunbury Pipeline Act 1998*.

Submissions

817. In submissions on the draft decision, Alinta Limited, Verve Energy and BHP Billiton indicate support for the amendments required by the Authority.

Considerations of the Authority

818. The Authority has given further consideration to each of the three elements of the tariff variation mechanism that were the subject of required amendments under the draft decision.

CPI measure to be applied in annual escalation of reference tariffs

819. Draft decision amendment 13 required that the proposed revised access arrangement be amended to change the definition of CPI in the reference tariff variation mechanism to "CPI means the Consumer Price Index, all groups, eight capital cities.

820. DBP has not incorporated this required amendment in the revised access arrangement proposal. DBP's reasons for not making the amendment and the Authority's further consideration of the CPI measure to apply in tariff escalation have been addressed earlier in this final decision (paragraphs 170 to 179). For the reasons set out by the Authority, the Authority has determined to maintain the required amendment.

Required Amendment 16

The proposed revised access arrangement should be amended to change the definition of CPI in the reference tariff variation mechanism to "CPI means the Consumer Price Index, all groups, eight capital cities".

Pass through of tax changes

821. Draft decision amendment 14 required that the proposed revised access arrangement be amended so that the variation of reference tariffs by way of a Tax Changes Variation is limited to costs of tax changes that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR and is subject to the Authority's approval of the variation.

822. DBP has not incorporated this required amendment in the revised access arrangement proposal but rather contends that there should be a direct pass through of costs of tax changes without the scrutiny or approval of the Authority. DBP submits that the requirement for approval by the Authority subjects DBP to a risk of not being able to recover the costs of a tax that is judged to be imprudent or inefficient.[296] DBP further submits that making the pass through of variations in carbon tax costs subject to an assessment by the Authority against the criteria of rule 91 of the NGR is inappropriate after the Authority has included a forecast of carbon tax costs in the forecast operating expenditure.[297]

823. The Authority does not accept DBP's arguments against draft decision amendment 14. For some taxes faced by DBP, DBP's tax liability is affected by decisions and practices of DBP in operation of the DBNGP. This is particularly the case, for example, with tax liabilities for the carbon tax intended by the Commonwealth Government to be introduced from 1 July 2012 and for which the liabilities of DBP will depend upon the practices of DBP in use of fuel gas, fugitive gas losses and use of other fossil fuels. As such, the cost pass through should be subject to the requirement of rule 91 of the NGR that the cost be such as would be incurred by a prudent service provider, acting efficiently, in accordance with good industry practice, to achieve the lowest sustainable cost of delivering pipeline services. Contrary to DBP's submission, the prudence and efficiency requirement of rule 91 refers to the actions of the service provider that affect the tax liability and not the character of the tax itself.

824. The Authority also notes that a requirement for any tax pass through to be subject to the scrutiny and approval of the Authority is consistent with the process for approval of revisions to the access arrangement, which involves consideration of taxes, rates and charges (other than corporate income tax) as an element of operating expenditure.

825. The Authority therefore maintains the requirement for a pass through of costs of a tax change to be subject to the Authority's approval.

Required Amendment 17

The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a Tax Changes Variation:

- is limited to costs of tax changes that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR; and
- is subject to the Authority's approval of the variation.

296 DBP, 20 May 2011, Submission 56,

297 DBP, 14 December 2011, Submission 73.

Pass through of "new costs"

826. Draft decision amendment 15 required that the proposed revised access arrangement be amended to remove provision under the reference tariff variation mechanism for the variation of reference tariffs by way of a "new costs pass through variation". The Authority's reason for this requirement was that the proposed general provision for DBP to pass through cost changes is inconsistent with rule 97(1)(c) that allows for cost pass throughs only in respect of defined events.

827. DBP has responded to the required amendment not by removing provision for the "new costs pass through variation", but rather by specifying defined events for which a cost pass through may occur, which comprise:

- costs arising from a change in law;
- costs arising from an increase in the price paid by DBP for system use gas; and
- a change in costs to DBP for land access under any access right granted to DBP under the *Dampier to Bunbury Pipeline Act 1998*.

828. The revisions to the access arrangement proposal address the reasons of the Authority for draft decision amendment 15 by specifying certain events that constitute defined events for the purpose of a new costs pass through variation.

829. The Authority has given consideration to the events specified by DBP and the operation of the new costs pass through variation.

830. The Authority accepts that the defined event of "costs arising from a change in law" is a reasonable cost pass through event.

831. The Authority does not accept that an increase in the price paid by DBP for system use gas is a reasonable cost pass through event. DBP has indicated to the Authority that the price it pays for system use gas is subject to renegotiation, with a renegotiated price to commence at some time during 2015.[298] The Authority considers that the prospect of renegotiation of a price of an input to pipeline operation is not justification for the cost of system use gas being treated differently to most other elements of operating expenditure in the determination of total revenue, that is, a forecast made of the cost and the service provider bearing cost risk for the access arrangement period. Rather, the Authority is of the view that a cost-pass through mechanism should only apply to cost items that are unilaterally imposed on DBP, such as changes in taxation.

[298] DBP, 17 October 2011, Submission 72.

832. The Authority accepts that the defined event of "a change in costs to DBP for land access under any access right granted to DBP under the *Dampier to Bunbury Pipeline Act 1998*" is a reasonable cost pass through event. In this final decision, the Authority has approved a forecast of operating expenditure that includes an allowance for these costs. This allowance comprises an amount [redacted] in each of the years 2011 to 2015. DBP has indicated to the Authority that it is in discussions with the Western Australian Government around a reduction in this cost. With a reduction in this cost possible during the 2011 to 2015 period, the Authority considers that the new cost pass through mechanism should allow for this by providing for pass through of both increases and decreases in costs that occur as a result of a defined event.

833. In regard to the mechanism of the new costs pass through variation, the Authority maintains the requirement for amendment of the proposed revised access arrangement so that any reference tariff variation in respect of a defined event is subject to the costs satisfying the criteria governing operating expenditure set out in rule 91 of the NGR and subject to the Authority's approval of the reference tariff variation.

834. The Authority has also had regard to the time period for the Authority to consider and make a determination on any proposal for a cost pass through. DBP's proposed mechanism provides for a minimum period of 15 business days (clause 11.4(e) of the proposed revised access arrangement). The Authority considers that this period is inadequate for assessment and approval of a proposal and determines that the period should be a minimum of 30 business days.

Required Amendment 18

The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a New Costs Pass Through Variation:

- excludes provision for a new costs pass through variation in respect of a change in cost of system use gas;
- is limited to costs that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR;
- is subject to the Authority's approval of the variation;
- provides for an adjustment of reference tariffs for either an increase or decrease in costs arising from the occurrence of a defined event; and
- provides that the minimum notice period for a cost pass through notice to be issued before a variation to the reference tariff commences to have effect is 30 business days.

Fixed Principles

Regulatory Requirements

835. Rule 99 of the NGR provides for an access arrangement to include fixed principles:

> 99 Fixed principles

(1) A full access arrangement may include a principle declared in the access arrangement to be fixed for a stated period.

(2) A principle may be fixed for a period extending over 2 or more access arrangement periods.

(3) A fixed principle approved before the commencement of these rules, or approved by the [ERA] under these rules, is binding on the [ERA] and the service provider for the period for which the principle is fixed.

(4) However:

(a) the [ERA] may vary or revoke a fixed principle at any time with the service provider's consent; and

(b) if a rule is inconsistent with a fixed principle, the rule operates to the exclusion of the fixed principle.

Original Access Arrangement Proposal

836. Clause 13 of the proposed revised access arrangement sets out the fixed principles to apply under the access arrangement:

13. FIXED PRINCIPLES [R.99]

(a) The following are Fixed Principles in accordance with rule 99 of the NGR:

(i) the method of determination of the Capital Base at the commencement of each year of each access arrangement period as set out in section 7 of the Current Access Arrangement Information;

(ii) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:

(A) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and

(B) the revenue actually earned from the sale of those services which were services other than Full Haul Services,

must not:

(C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or

(D) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.

(b) For the purposes of the Fixed Principles referred to in clause 13(a) of this Access Arrangement, the fixed period is until 31 December 2031.

837. These fixed principles are materially the same as the "reference tariff principles not subject to review" as set out in clause 7.13 of the access arrangement for the 2005 to 2010 access arrangement period, reproduced as follows.

> 7.13 Reference Tariff Principles Not Subject to Review
>
> (a) The following are Fixed Principles in accordance with section 8.47 of the Code:
>
> (i) the method of determination of the Capital Base at the commencement of each year of the Access Arrangement Period as set out in clause 7.3 of the Access Arrangement;
>
> (ii) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:
>
> (A) the revenue that would have been earned had any of those Services which were Full Haul Services been sold at the Reference Tariff; and
>
> (B) the revenue actually earned from the sale of those Services which were Services other than Full Haul Services,
>
> must not:
>
> (C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying the Reference Tariff Policy which applies on or after 1 January 2011; or
>
> (D) otherwise be taken into account directly or indirectly by the Relevant Regulator in performing any of its functions under the Code.
>
> (iii) [Deleted]
>
> (b) For the purposes of the Fixed Principles referred to in clause 7.13 of this Access Arrangement, the Fixed Period is until 31 December 2031.

Draft Decision

838. The Authority determined that the fixed principles set out in the proposed revised access arrangement are consistent with the provisions of the NGR dealing with determining the value of the capital base and with determining reference tariffs. As such, the Authority did not have any concerns with these fixed principles being included in the access arrangement.

Revised Access Arrangement Proposal

839. DBP has not made any revisions to clause 13 of the proposed revised access arrangement, which deals with the fixed principles.

Submissions

840. None of the submissions made to the Authority subsequent to the draft decision addressed the fixed principles of the access arrangement.

Considerations of the Authority

841. The Authority maintains the view set out in the draft decision that the fixed principles set out in the proposed revised access arrangement are consistent with the provisions of the NGR dealing with determining the value of the capital base and with determining reference tariffs.

Terms and Conditions for Reference Services

Regulatory Requirements

842. In addition to specifying the reference tariff for each reference service, a full access arrangement proposal must specify the other terms and conditions on which the reference service will be provided (rule 48(1)(d)).

843. The NGR do not specify particular requirements for the terms and conditions to apply for each reference service. However, the terms and conditions must be consistent with the national gas objective and rule 100 of NGR.

844. The Authority has a discretion to withhold its approval of the proposed terms and conditions if, in its opinion, a preferable alternative exists that:

- complies with applicable requirements of the Law; and
- is consistent with applicable criteria (if any) prescribed by the Law.

The Authority's Approach to Assessment of the Proposed Terms and Conditions

845. Consistent with its decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, part haul P1 Service and back haul B1 Service as reference services the Authority requires that the proposed revised access arrangement be amended to include relevant terms and conditions for these reference services.

846. Notwithstanding the required change in reference services, the Authority has considered the terms and conditions proposed by DBP for the R1 Service as a basis for terms and conditions of the T1, P1 and B1 Services. The Authority has undertaken an assessment of individual clauses of the proposed terms and conditions with a view to determining whether the clauses should be included in the terms and conditions for the T1, P1 and B1 Services, or whether amendments are required.

847. In its assessment of the proposed terms and conditions, the Authority has considered matters including :

- the rationale for variations to the proposed terms and conditions from those established under existing access contracts for pipeline services (i.e. full haul, part haul and back haul services) negotiated with shippers;
- issues raised by existing and prospective shippers with the existing terms and conditions and with proposed revisions to those terms and conditions;

- the relevance and appropriateness of the terms and conditions to the reference services required by the Authority (i.e. the T1, P1 and B1 Services);
- operational and practical considerations in the operation of the pipeline;
- a balancing of interests between DBP and users, including consideration of common principles and visual practice contracting; and
- whether changes in expression of certain terms achieve DBP's expressed intention and whether these changes may have other unintended consequences.

848. DBP has proposed numerous revisions to the proposed revised terms and conditions on the basis of "administrative/ drafting / grammatical" reasons.[299] Unless otherwise addressed in this final decision, the Authority is satisfied that these revisions are intended to and do improve the overall drafting of the terms and conditions and therefore accepts all the revisions made for these reasons, subject to the amendments specified in the following sections of this final decision.

Assessment of the proposed terms and conditions

Interpretation provisions (clause 1)

849. Clause 1 of the proposed revised terms and conditions sets out the definitions of terms used under the contract. DBP proposes changes to the definitions of terms and submits that the changes are either to simplify drafting, in response to practical experience, or are reflective of the type of service that is the proposed R1 Service.

850. The Authority's determinations on these changes to definitions are set out as follows.

"Access Request Form"

851. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has included a revision to the definition of "access request form" that is unrelated to any consideration or required amendment under the draft decision. The revised definition is as follows.

> ***Access Request Form*** means ~~the access request form in Schedule 1.~~the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.

852. No submissions made to the Authority have addressed this change to the proposed terms and conditions.

[299] DBP, 14 April 2010, Confidential supporting submission 5: Terms and Conditions Comparison, Explanation of Terms and Conditions for the R1 Service, pages 4 -21. A public version of this submission is available at: www.erawa.com.au

853. Elsewhere in this final decision the Authority has addressed the inclusion of the access request form as part of the terms and conditions and has determined not to oppose this (paragraph 1527 and following). The Authority does not oppose the access request form being part of the terms and conditions and therefore considers it appropriate that a definition of access request form be included in clause 1 of the terms and conditions.

"Associated"

854. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has included a revised definition of "associated" that is unrelated to any consideration or required amendment under the draft decision. The revised definition is as follows.

> ***Associated***, when used to describe the relationship between:
>
> ~~(a) a Gate Station and a Sub-network, means that the Gate Station is associated with a Sub-network;~~
>
> (a) ~~(b)~~ an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and
>
> (b) ~~(c)~~ an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point.

855. No submissions made to the Authority have addressed this change to the proposed terms and conditions.

856. In the proposed revised terms and conditions, DBP has removed reference to gate stations on the basis that there is no practical reason to differentiate between gate stations and other outlet points. The Authority has not taken issue with the removal of reference to gate stations (refer to paragraph 1074 and following of this final decision). Accordingly, the Authority does not take issue with removal of reference to gate stations from the definition of the term associated.

BEP

857. In the revised access arrangement, DBP has deleted definitions relating to the Burrup Extension Pipeline.

> ~~***BEP*** means the Burrup extension pipeline as described in pipeline licence number 38 issued under the Petroleum Pipelines Act 1969 (WA).~~
>
> ~~***BEP Inlet Point*** is the point where the BEP leaves the North-West Shelf Buffer Zone approximately at co-ordinates 477196.9ME and 7722017.2NM, with Datum AMG.~~
>
> ~~***BEP Inlet Point Capacity*** has the meaning given in clause 2.6.~~

858. The Authority observes that this is a consequential amendment to deletion of a clause of the proposed terms and conditions pursuant to the draft decision in which the BEP Capacity was referred to (paragraph 925 and following of this final decision).

"B1 Service"

859. In the original access arrangement proposal, DBP proposed to insert a new definition for the term "B1 Service" under clause 1 of the terms and conditions and submits that the proposed interpretation works better in practice than the previous interpretation.

> ***B1 Service*** means a Back Haul service which, under the terms of a contract for the Back Haul Service, is specified to rank equally to a R1 Service in the Curtailment Plan.

860. The Authority observed in the draft decision that the term "Back Haul Service" in this definition is not itself defined and, as such, the proposed definition of B1 Service does not make sense.

861. In the draft decision the Authority determined that, having regard to the Authority's decision to require amendments to the proposed revised access arrangement to include a full haul T1 Service, the definition of the B1 Service should be the same as, or cross-reference, the description of the B1 Service (as a reference service) in the access arrangement.

> Draft decision amendment 16
>
> The term "B1 Service", under clause 1 of the proposed revised terms and conditions should be amended to be the B1 Service described as a reference service in the access arrangement, amended as required by this draft decision.

862. In the revised access arrangement proposal, DBP has not revised the definition of "B1 Service" in accordance with draft decision amendment 16, but has made a minor change to indicate that the "Back Haul service" is not a defined term:

> ***B1 Service*** means a Back Haul service which, under the terms of a contract for the Back Haul ~~S~~service, is specified to rank equally to a R1 Service in the Curtailment Plan.

863. DBP has not changed the reference services in accordance with the required amendments indicated in the draft decision.

864. DBP submits that this revision is consistent with its position and reasons for retaining the R1 Service as the sole reference service under the access arrangement. DBP also states that:[300]

> The ERA's definition would mean that any existing B1 Service that is not a reference service would not be covered and so, for the purposes of the curtailment plan, there would be an inconsistency between the order of priority under the reference service contracts (which would provide for the negotiated B1 SSC service to be just an "other reserved service") and the order of priority under the existing SSCs (which provide for the B1 SSC service to have priority and the B1 reference service to be just an "other reserved service").

[300] DBP, 20 May 2011, Submission 51 p 3.

865. The definition of the B1 Service as a reference service negates the concerns of DBP over inconsistency between the order of priority under the reference service contracts. The B1 Service as a reference service has equal priority under the curtailment plan as the T1 Service. It would be open to DBP to negotiate different back haul services with particular users and with different levels of priority under the curtailment plan.

866. In this final decision, the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service as a reference service and the B1 Service as a back haul reference service. Accordingly, the Authority maintains the requirement for the definition of the B1 Service in the terms and conditions for the T1 Service to refer to the B1 Service as a reference service.

Required Amendment 19

The term "B1 Service", under clause 1 of the proposed revised terms and conditions should be amended to be the B1 Service described as a reference service in the access arrangement, amended as required by this final decision.

"Capital Cost of the Expansion"

867. In the original access arrangement proposal, DBP proposed to add a new term "capital cost of the expansion" to clause 1 of the proposed revised terms and conditions:

> ***Capital Cost of the Expansion*** means, in relation to any Expansion, the costs, including all consultants' fees of the design, engineering, procurement, construction, installation, pre-commissioning and commissioning, of the Expansion.

868. In the draft decision, the Authority determined that this term is redundant as it is not used in the proposed terms and conditions and required the following amendment.

> Draft decision amendment 17
>
> The term "Capital Cost of the Expansion" and the definition of this term should be deleted from clause 1 of the proposed revised terms and conditions**.**

869. In revisions to the access arrangement proposal, DBP has deleted the definition of "capital cost of the expansion" in accordance with draft decision amendment 17

"Contracted Firm Capacity"

870. In the original access arrangement proposal, DBP proposed changes to the term "contracted firm capacity" to delete references to the T1, B1 and P1 Services and to replace these references with a reference to the "R1 Contract or any contract for a firm service". The proposed changes to the definition were:

> ***Contracted Firm Capacity*** means Alcoa's Exempt Capacity and Capacity under ~~a T1 Service, P1 Service or R1 Service or~~ R1 Contract or any contract for a Firm Service.

871. The Authority required in its draft decision that the term "contracted firm capacity" should have the same meaning as the term "contracted firm capacity" in the existing terms and conditions, which is to refer to contracted capacity for the T1, P1 and B1 Services. This was consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include the T1 Service, P1 Service and B1 Service as reference services.

> Draft decision amendment 18
>
> Clause 1 of the proposed revised terms and conditions should be amended to include the term "Contracted Firm Capacity" with the same meaning as the term "Contracted Firm Capacity" in the existing terms and conditions.

872. In revisions to the access arrangement proposal, DBP has not revised the definition of "contracted firm capacity" in accordance with draft decision amendment 18.

873. DBP submits that maintaining the proposed change to the definition of contracted firm capacity is consistent with its position and reasons for retaining the R1 Service as the sole reference service under the access arrangement.[301]

874. In this final decision, the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service, P1 Service and B1 Service as reference services. Accordingly, the Authority maintains the requirement for the definition of contracted firm capacity to be the same as the definition under the current access arrangement.

Required Amendment 20

Clause 1 of the proposed revised terms and conditions should be amended to include the term "Contracted Firm Capacity" with the same meaning as the term "Contracted Firm Capacity" in the existing terms and conditions.

"Force Majeure"

875. In the original access arrangement proposal, DBP proposed changes to the term "Force Majeure" under clause 1 of the proposed revised terms and conditions. The changes comprise amendments to the definition of *force majeure* to:

- include *an 'insolvency event' occurring in relation to a third party supplier (as if the third party supplier were a party for the purpose of the definition of Insolvency Event) which materially affects the Operator's ability to perform its obligations under the contract*; and
- remove from the definition 'any other matters reasonably beyond the control of a party'.

876. In the draft decision the Authority determined that the principles of force majeure remain unchanged by DBP's proposed changes to the definition and the Authority did not take issue with the proposed changes in the definition.

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[301] DBP, 20 May 2011, Submission 51 p 4.

877. In submissions subsequent to the draft decision, Alinta Limited and Verve Energy submitted that the inclusion of an insolvency event in relation to a third party supplier should not be included within the scope of force majeure events as DBP should be able to, and should be required to, take steps in those circumstances to ensure its ability to perform its obligations under the contract is not affected.[302]

878. The proposed definition of force majeure states that the insolvency event must happen to a 'third party supplier' and must 'materially affect' the obligations of DBP. The Authority is not satisfied that this adequately constraints the use of force majeure provisions to events where the failure of a third party supplier renders DBP incapable of fulfilling its obligations under an access contract, and that DBP is not in a position to fully manage the risk of failure of the supplier and consequent disruptions to pipeline operations. Accordingly, the Authority requires that the definition of force majeure be amended to delete clause (i) that relates to insolvency events of a third party supplier.

Required Amendment 21

Clause 1 of the proposed revised terms and conditions should be amended to delete clause (i) under the definition of force majeure, which relates to insolvency events of a third party supplier.

"Gate Station"

879. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has deleted the definition of "gate station". This deletion is unrelated to any consideration or required amendment under the draft decision.

> ~~Gate Station means the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services.~~

880. In the proposed revised terms and conditions, DBP has removed reference to gate stations on the basis that there is no practical reason to differentiate between gate stations and other outlet points. The Authority has not taken issue with the removal of reference to gate stations (refer to paragraph 1074 and following of this final decision). Accordingly, the Authority does not take issue with removal of the definition.

"Major Works"

881. In the original access arrangement proposal, DBP proposed changes to the term "major works" under clause 1 of the proposed revised terms and conditions to include planned maintenance.

> Major Works means:

[302] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

(a) any Planned Maintenance; and

(b) any enhancement, expansion, connection, pigging or substantial work that the Operator needs to undertake on the DBNGP and that:

(i) cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and

(ii) by its nature or magnitude would require a Reasonable and Prudent Person to wholly or partially reduce Gas Transmission Capacity.

882. "Planned maintenance" is defined in clause 1 of the proposed terms and conditions as "maintenance of the DBNGP which is scheduled in advance and of which the shipper is given reasonable, and in any event not less than three gas days, written notice"; and remains unchanged from the interpretation in the existing 2005 to 2010 terms and conditions.

883. The Authority took the view in the draft decision that this change expands the scope of major works and, as a result, adds an additional exemption to the scope of curtailments for which the operator may not be liable under clause 17.3 of the proposed terms and conditions. The Authority determined that DBP has not provided adequate justification for the proposed change and required amendment of the terms and conditions to remove the proposed change from the definition of major works.

Draft decision amendment 19

The term "Major Works", under clause 1 of the proposed revised terms and conditions should be amended to exclude planned maintenance.

884. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has amended the definition of "major works" in accordance with draft decision amendment 19:

~~Major Works means:~~

~~(a) any Planned Maintenance; and~~

~~(b)~~ Major Works means any enhancement, expansion, connection, pigging or substantial work that the Operator needs to undertake on the DBNGP and that:

(a) ~~(i)~~cannot reasonably be scheduled at a time when it will not affect Gas Transmission Capacity; and

(b) ~~(ii)~~by its nature or magnitude would require a Reasonable and Prudent Person to wholly or partially reduce Gas Transmission Capacity.

"Option" and "Original Capacity"

885. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has deleted the definition of the terms "option" and "original capacity", both of which relate to provisions under clause 4.3 of the terms and conditions for a user to have an option to renew a gas transmission contract.

~~Option has the meaning given in clause 4.3.~~

~~Original Capacity has the meaning given in clause 4.3.~~

886. The deletion of these definitions is consequential to DBP proposing to remove provision from the terms and conditions for the shipper to have an option to renew a gas transmission contract.

887. In this final decision the Authority is requiring provisions for renewal of contracts to be maintained in the terms and conditions (paragraph 955 and following). Accordingly, the Authority requires that definitions of "option" and "original capacity" be maintained.

Required Amendment 22

Clause 1 of the proposed revised terms and conditions should be amended to restore definitions of "option" and "original capacity".

"Overrun Gas"

888. In the original access arrangement proposal, DBP proposed the following changes to the term "overrun gas".

> Overrun Gas means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including ~~T1 Services and any Capacity under Spot Transactions~~R1 Service) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

889. Consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority determined that the term overrun gas should remain the same as in the terms and conditions for the T1 Service in the current access arrangement.

> Draft decision amendment 20
>
> Clause 1 of the proposed revised terms and conditions should be amended to include the term "Overrun Gas" with the same meaning as the term "Overrun Gas" in the existing terms and conditions for the T1 Service.

890. In revisions to the access arrangement proposal, DBP has not revised the definition of overrun gas in accordance with draft decision amendment 20.

891. DBP submits that maintaining the proposed change to the definition of contracted firm capacity is consistent with its position and reasons for retaining the R1 Service as the sole reference service under the access arrangement.[303]

[303] DBP, 20 May 2011, Submission 51 p 4.

892. In this final decision, the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for the definition of overrun gas to be the same as the definition under the current access arrangement.

Required Amendment 23

Clause 1 of the proposed revised terms and conditions should be amended to include the term "Overrun Gas" with the same meaning as the term "Overrun Gas" in the current access arrangement terms and conditions for the T1 Service.

"Previous Verification"

893. In the original access arrangement proposal, DBP proposed changes to the term "previous verification" under clause 1 of the proposed revised terms and conditions by replacing the words "measuring the quantity of gas accurately" with the term "accurate":

> Previous Verification means the Verification at which the Primary Metering Equipment was last found to be ~~measuring the quantity of Gas accurately~~Accurate.

894. This change to the definition of previous verification introduces the term "accurate" as a defined term, but no definition was included in the proposed terms and conditions.

895. The Authority determined in the draft decision that excluding a definition of the term "accurate" from clause 1 of the proposed terms and conditions was an administrative oversight by DBP and required the following amendment to the proposed terms and conditions.

> Draft decision amendment 21
>
> Clause 1 of the proposed revised terms and conditions should be amended to include the term *"Accurate"* which means *"with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be"*.

896. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has included a new definition of "accurate" in the terms and conditions in accordance with draft decision amendment 21:

> Accurate means, with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be.

"Related Body Corporate" and "Related Entity"

897. In the original access arrangement proposal, DBP proposed changes to the term "related body corporate" under clause 1 of the proposed revised terms and conditions and added a new term "related entity".

> ***Related Body Corporate*** has the meaning given in the Corporations Act as at the Execution Date ~~to that expression in the Corporations Act~~.
>
> ***Related Entity*** has the meaning given to that expression in the Corporations Act as at the Execution Date.

898. The Authority determined in the draft decision that limiting the definitions to a point in time is potentially difficult to administer for the shipper and DBP and the standard convention in relation to definitions in contracts is to refer to legislation as being from time-to-time. The Authority required the following amendment to the terms and conditions.

> Draft decision amendment 22
>
> The terms "Related Body Corporate" and "Related Entity", under clause 1 of the proposed revised terms and conditions should be amended so as they apply to the definitions in the Corporations Act as defined from time-to-time, and not as limited to a point in time.

899. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any changes to the proposed definitions of related body corporate and related entity. DBP submits that:[304]

> The proposed amendment to the definitions of "Related Body Corporate" and "Related Entity" provides certainty to both DBP and the shipper by referring to a fixed definition of those terms as they appear in the Corporations Act as at the date of execution. The linking of the definitions to the Corporations Act, as amended from time to time, exposes each party to levels of risk which are uncertain as the legislature *(sic)* may change in a manner not contemplated by the parties at the time of execution. Certain rights of each party, such as assignment, may be adversely impacted as a result.

900. The Authority considers that there are potential merits in either approach to defining the terms 'related body corporate' and 'related entity'. Definitions that refer to the terms as they appear from time to time in the Corporations Act are more common in commercial agreements and may allow the terms and conditions for reference services to be flexibly applied if the definitions in the Corporations Act change. Conversely, locking in definitions at a particular time may provide some contractual certainty to parties to an access contract.

901. Neither DBP nor users have provided any evidence to indicate that the choice between the two approaches is of practical importance. As such, the Authority does not oppose the change in definitions proposed by DBP and does not maintain the requirement for draft decision amendment 22.

"Retail Market Rules"

902. In the original access arrangement proposal, DBP proposed changes to the term "Retail Market Rules" under clause 1 of the proposed revised terms and conditions:

> ***Retail Market Rules*** means the retail market rules that govern, or will govern when operative, the retail gas market in Western Australia.

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304 DBP, 20 May 2011, Submission 51 p 4.

903. The Authority required amendment of this definition to reflect that the Retail Market Rules are already operative.

> Draft decision amendment 23
>
> The term "Retail Market Rules", under clause 1 of the proposed revised terms and conditions should be amended to mean *"the retail market rules that govern the retail gas market in Western Australia"*.

904. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has revised the definition of retail market rules in accordance with draft decision amendment 23.

> Retail Market Rules means the retail market rules that govern~~, or will govern when operative,~~ the retail gas market in Western Australia.

"Standard Shipper Contract"

In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has inserted a definition of the "standard shipper contract":

> ***Standard Shipper Contract*** means the contract of that nature required to be made available on the Operator's website.

905. The Authority observes that, following amendments in accordance with this final decision, the term "standard shipper contract" will be used in the terms and conditions in relation to exceptions to confidentiality (clause 28.2). As such, the Authority considers it appropriate that the proposed definition of the term be included in clause 1.

"T1 Service"

906. In the original access arrangement proposal, DBP proposed to delete the term "T1 Service" from clause 1 of the proposed revised terms and conditions.

907. Consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority determined that the term T1 Service should be maintained in clause 1 of the proposed revised terms and conditions. The term T1 Service should have the same definition as the current terms and conditions, which includes both a T1 Service being provided under the Standard Shipper Contract and a T1 Service being provided under the terms of the access arrangement.

908. The Authority required the following amendment of the access arrangement proposal.

> Draft decision amendment 24
>
> Clause 1 of the proposed revised terms and conditions should be amended to have the same meaning as the term "T1 Service" in the existing terms and conditions.

909. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has included the following definition of the T1 Service.

> ***T1 Service*** means the service known as the T1 Service in the Standard Shipper Contract.

910. DBP submits that maintaining the proposed change to the definition of contracted firm capacity is consistent with its position and reasons for retaining the R1 Service as the sole reference service under the access arrangement.[305]

911. In this final decision, the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for the definition of T1 Service to be the same as the definition under the current access arrangement.

Required Amendment 24

Clause 1 of the proposed revised terms and conditions should be amended to have the same meaning as the term "T1 Service" in the terms and conditions for the T1 Service under the current access arrangement.

"Tax Change"

912. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has inserted definitions related to a "tax change" event:

> Tax Change means:
>
> (a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
>
> (b) any Carbon Cost is incurred in relation to the DBNGP by the Operator or any of its Related Bodies Corporate;
>
> (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or
>
> (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date.
>
> Tax Change Notice has the meaning given to it in clause 20.7(c).

913. This definition relates to provisions for variation of reference tariff charges under the access arrangement and clause 20.7. This definition is consistent with the definition applied in the access arrangement and, as such, the Authority considers it appropriate for the definition to be included in clause 1.

[305] DBP, 20 May 2011, Submission 51 p 6.

"Tp Service"

914. In the original access arrangement proposal, DBP proposed to add a new term "Tp Service" to clause 1 of the proposed revised terms and conditions, which was defined to mean "other reserved service".

915. DBP submitted that:

- a definition of the Tp Service is necessary as it is referenced in the curtailment plans that DBP has agreed to with shippers under existing contracts;
- DBP must have consistent curtailment plans for all of its shippers otherwise it will place itself in breach of contract; and
- a third party is not best placed to comment on whether the operator has contracted with other parties for firm services or other reserved services.

916. DBP submitted that a more detailed definition of "Tp Service" is not relevant or necessary for the purposes of administering or interpreting the proposed R1 Service. Moreover, the Tp Service is not available to prospective shippers. Hence, DBP submits that no further change is warranted.

917. The Authority determined in the draft decision that the Tp Service should be defined sufficiently to identify the characteristics of the service.

> Draft decision amendment 25
>
> The term "Tp Service", under clause 1 of the proposed revised terms and conditions should be amended to identify the characteristics of the service.

918. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any changes to the definition of Tp Service.

919. DBP submits that a more detailed definition of the Tp Service is not necessary as the only reason to refer to other services in the R1 Terms and Conditions is for the purposes of the curtailment plan. There is therefore no statutory requirement to include a more detailed definition of Tp Service than the definition set out in the proposed R1 Terms and Conditions.

920. The Authority has considered DBP's submission and concedes that, with the access arrangement being required to include the T1 Service, P1 Service and B1 Service as reference services, a detailed definition of Tp Service is not necessary for the effective operation of the terms and conditions for these services. As submitted by DBP, a definition of the Tp Service as part of the terms and conditions for reference services is only relevant in the curtailment plan as set out in Schedule 6 of the terms and conditions. Under Schedule 6, the Tp Service rates as a lower priority than the T1, P1 or B1 reference services and, as such, the character of the Tp Service and the extent of use of the Tp Service should not affect the curtailment of the reference services.

921. The Authority therefore does not maintain the requirement for draft decision amendment 25.

General provisions (clause 2)

922. Clause 2 of the proposed revised terms and conditions contains general provisions for the construction of the contract. Particular provisions of the clause are addressed as follows.

Ring fencing requirements

923. In the original access arrangement proposal, DBP proposed revisions to clause 2.5(e) of the terms and conditions, with the revised clause requiring the operator to ensure that the system operator complies with the ring fencing arrangements of section 4 of the National Third Party Access Code for Natural Gas Pipeline Systems. In the draft decision, the Authority required this clause to be amended to refer to the NGL and NGR.

> Draft decision amendment 26
>
> Clause 2.5(e) should be amended to make reference to "Part 2 of Chapter 4 of the National Gas Access (Western Australia) Law" instead of "section 4 of National Third Party Access Code for Natural Gas Pipeline Systems".

924. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has amended clause 2.5(e) in accordance with draft decision amendment 26.

Interpretation of inlet points

925. In the original access arrangement proposal DBP proposed inclusion of a new clause 2.6 to introduce a specific term that deems the quantity of gas delivered to the "BEP inlet point" to be no more than the "BEP inlet point capacity". DBP indicated that the new clause 2.6 was necessary to enable DBP to comply with contractual obligations relating to the lease of the BEP Capacity.

926. The Authority determined in the draft decision that it is not appropriate for gas deliveries made by or on behalf of users to be deemed to be of a certain amount irrespective of actual quantities just to enable DBP to meet its contractual obligations in respect of a lease of capacity in the BEP entered into in full knowledge of the current access arrangement. The Authority required deletion of the proposed clause 2.6.

> Draft decision amendment 27
>
> The proposed revised terms and conditions should be amended to delete clause 2.6.

927. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision DBP has deleted clause 2.6 of the terms and conditions in accordance with the requirements of draft decision amendment 27.

Access regime and regulator's requirements as laws

928. In the original access arrangement proposal, DBP proposed inclusion in the terms and conditions of a new clause 2.7 to clarify that the access regime and regulator's requirements are to be treated as laws under the contract.

2.7 To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract, but neither Party may seek to procure an amendment to an access arrangement under the Access Regime if the purpose for which such amendment is sought is to affect materially and adversely any of the other Party's rights and obligations under this Contract that are not general rights and obligations applicable to all shippers.

929. The Authority determined in the draft decision that the second part of the proposed new clause 2.7 of the terms and conditions dealing with amendments to an access arrangement is unnecessary as amendments to an access arrangement are dealt with under Divisions 10 or 11 of the NGR.

> Draft decision amendment 28
>
> Clause 2.7 of the proposed revised terms and conditions, in relation to the access regime and the regulator's requirements as laws should be amended to insert a full stop after 'Contract' in the 3rd line and delete the balance of the clause.

930. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has amended the relevant clause (now clause 2.6) in accordance with the requirements of draft decision amendment 28:

> 2.6 ~~2.7~~ Access Regime and Regulator's requirements as Laws
>
> To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract.~~, but neither Party may seek to procure an amendment to an access arrangement under the Access Regime if the purpose for which such amendment is sought is to affect materially and adversely any of the other Party's rights and obligations under this Contract that are not general rights and obligations applicable to all shippers.~~

Capacity Service (clause 3)

931. In the original access arrangement proposal, Clause 3 of the proposed revised terms and conditions establishes terms for a capacity service under the contract. Under clause 1 of the proposed terms and conditions, a "capacity service" is defined as any service offered by DBP on the DBNGP by which access to gas transmission capacity is provided.

932. DBP proposed several changes to clause 3 to make provision for the R1 Service to be provided under the access arrangement as the sole reference service. These changes included:

- the introduction of the R1 Service, to replace the T1 Service (proposed clause 3.1);
- a change in the characteristics of the reference service in respect of the reliability of the service, treatment under the curtailment plan, and treatment under the nominations plan (proposed clause 3.2); and
- removal of provisions for the use of spot capacity as part of the terms and conditions for the reference service (clause 3.5 of the 2005 to 2010 terms and conditions).

Capacity service

933. Clause 3.2 of the proposed revised terms and conditions defines the capacity service that is the subject of the terms and conditions.

934. In the original access arrangement proposal, DBP proposed changes to clause 3.2 change the relevant service from the T1 Service to the R1 Service, and the treatment of the service under the curtailment plan and nominations plan:

> **3.2 Capacity Service**
>
> (a) The ~~T~~ R1 Service is the ~~Full Haul~~ Gas transportation service ~~provided under this Contract~~ which gives the Shipper a right, ~~subject to the terms and conditions of this Contract, to~~ of access ~~capacity of the DBNGP~~ to Gas Transmission Capacity and which, (subject, in all cases, to clauses 8.15 and (sic?) 17.9):
>
> ~~(i) can only be Curtailed in the circumstances specified in clause 17.2;~~
>
> (i) is treated the same in the Curtailment Plan as all other shippers (?) with a ~~T~~ R1 Service, ~~including the T~~a P1 Service ~~under the Standard Shipper Contract~~ or a B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
>
> (ii) is treated the same in the Nominations Plan as all other shippers (?) with a ~~T~~ R1 Service, ~~including the T~~a P1 Service ~~under the Standard Shipper Contract~~or a B1 Service, and in the order of priority with respect to other Types of Capacity Service referred to in clause ~~8.~~9.8.8.
>
> (b) R1 Capacity is the average amount of Gas Transmission Capacity, estimated by the Operator in accordance with Good Gas Industry Practice, through Kwinana Junction on each Gas Day in the month of January of each year with the most critical compressor unit upstream of Kwinana Junction off-line. ~~Operator acknowledges and agrees:~~
>
> ~~(i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut off;~~
>
> ~~(ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP is 98 per cent for each Period of a Gas Year;~~
>
> ~~(iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator, acting as a Reasonable And Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and~~
>
> ~~(iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:~~
>
> ~~(A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and~~
>
> ~~(B) Alcoa's Exempt Capacity, does not materially exceed the amount of T1 Capacity in the DBNGP.~~
>
> ~~(c) Shipper acknowledges and agrees that, subject to clause 14, the T1 Service is a Full Haul Service and cannot be:~~

~~(i) Back Haul; or~~

~~(ii) Part Haul.~~

~~(d) In this clause 3.2 probability of supply means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level.~~

~~(e) For the avoidance of doubt, Alcoa's Exempt Capacity is provided by Operator out of Tranche 1 Capacity in the DBNGP.~~

935. For the draft decision, the Authority considered the changes to clause 3.2 in the context of the requirement under this draft decision for the proposed revised access arrangement to include the T1 Service, P1 Service and B1 Service as reference services. The Authority determined in the draft decision that, without the change in the reference service to the R1 Service, the changes proposed by DBP to clause 3.2 are unnecessary. Accordingly, the Authority required that clause 3.2 of the proposed revised terms and conditions be amended to be materially the same as clause 3.2 of the current terms and conditions.

> Draft decision amendment 29
>
> Clause 3.2 of the proposed revised terms and conditions should be amended to be materially the same as clause [3.2][306] of the current terms and conditions for the T1 Service.

936. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any amendment to clause 3.2.

937. DBP submits that maintaining clause 3.2 in the proposed form is consistent with its position and reasons for retaining the R1 Service as the sole reference service under the access arrangement.[307]

938. In this final decision the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for clause 3.2 of the terms and conditions to define Capacity in accordance with characteristics of the T1 Service.

Required Amendment 25

Clause 3.2 of the proposed revised terms and conditions should be amended to be materially the same as clause 3.2 of the current terms and conditions for the T1 Service.

306 In the draft decision document, draft decision amendment 29 referred to clause 2 of the current terms and conditions for the T1 Service. This was a typographical error and this amendment should have referenced clause *3.2* of the current terms and conditions for the T1 Service. This error does not appear to have affected DBP's response to the required amendment.

307 DBP, 20 May 2011, Submission 51 p 7.

Spot Capacity

939. In the original access arrangement proposal, DBP proposed deletion of clause 3.5 of the terms and conditions for the T1, B1 and P1 Services, which contains provisions for users of these services to have access to spot capacity. Spot capacity means any gas transmission capacity on a gas day for which gas transmission capacity, is, according to DBP, acting in good faith, available for purchase. Clause 3.5 of the current terms and conditions comprises principles and procedures for users to bid for spot capacity, for DBP to allocate spot capacity to bidding users and for the operator to establish rules governing the market for spot capacity. Clause 3.5 provides an implicit entitlement for the users of the T1, B1 and P1 Services to have access to spot capacity in accordance with the principles and procedures of clause 3.5 and rules established by DBP for the market for spot capacity. The deletion of clause 3.5 from the terms and conditions would remove the implicit entitlement of a user of the reference services to obtain spot capacity in accordance with the principles and processes set out in this clause.

940. In the draft decision, the Authority accepted the proposed deletion of clause 3.5, taking into account that:

- deletion of this clause from the terms and conditions does not materially affect the ability of users to obtain access to spot capacity;
- that the use of spot capacity through processes established by clause 3.5 of the existing terms and conditions is a separate service from the reference services; and
- the Authority did not have any evidence before it to suggest that access to spot capacity would be routinely required as part of the reference services or that access to spot capacity is a necessary or intrinsic element of the reference services.

941. The Authority maintains this position.

Duration of the Contract (clause 4)

942. Clause 4 of the current terms and conditions establishes the duration of the contract and includes provisions for the capacity start date, the term of the contract, the option for a shipper to renew a contract, and the ability for a shipper to give notice to DBP to exercise either the first option period or the second option period in relation to the term of the contract.

943. In the original access arrangement proposal, DBP proposed changes to clause 4 including:

- procedural matters in relation to the “capacity start date” under a contract;
- providing options for the shipper to renew the contract for two terms of 5 years, rather than two terms of 1 year under the current terms and conditions; and
- requiring shippers to give 30 months notice for renewal of contracts rather than the requirement for 3 months notice under the current terms and conditions.

Capacity start date

944. Clause 4.1 of the current terms and conditions establishes the capacity start date, which means the date specified in the contract as the date on which the shipper's access to the particular contracted capacity is to start or has started.

945. In the original access arrangement proposal, DBP proposed a provision in clause 4.1 that states that requests from the shipper for any amendment to the capacity start date will be considered by DBP, with terms and conditions for any such amendment to be agreed between the parties, having regard to DBP's circumstances at the time of the request.

946. DBP submits that the proposed changes to clause 4.1 are either changes due to what works in practice or are changes of an administrative/grammatical nature.

947. Alinta and Verve Energy submit that there are drafting problems with clause 4.1 of the proposed revised terms and conditions as:

- the terminology is inconsistent between clause 4 and the Access Request Form as the form refers to "Reference Services" and the clause refers to "Capacity";
- the defined term "Access Request Form", being the form in Schedule 1 of the terms and conditions, does not specify any dates or link the contract for the R1 Service with the Access Request Form; and
- the date in the Access Request Form, being the date on which the request is made, may not be the date agreed by the operator on which capacity starts.

948. In its response to third party submissions, DBP submitted that:

- the Access Request Form will, when completed include the dates on which the R1 Service is to start and end and also state that the R1 Shipper Contract terms and conditions apply to the Reference Service which is being requested;
- Part 8 of the Access Request Form provides the necessary link to the R1 shipper contract terms and conditions;
- to reduce any ambiguity about capacity start and end dates, the words "as the Requested Reference Service Start Date" could be added to the end of the sentence in clause 4.1(a); and
- the definition of "Access Request Form" in clause 1 of the proposed revised terms and conditions be amended to read "means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these R1 Terms and Conditions are appended".[308]

949. In the draft decision, the Authority accepted the proposed revisions to clause 4.1(a) subject to amendments consequent on the Authority's requirements to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, and subject to further minor clarifying amendments.

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[308] DBP, 6 August 2010, Confidential supporting submission 26: Response to 3rd Party Submissions. A public version of this submission is available at: www.erawa.com.au

Draft decision amendment 30

Clause 4.1(a) of proposed revised terms and conditions in relation to the capacity start date, should be amended to include the words “as the Requested Reference Service Start Date" at the end of the sentence.

The definition of “Access Request Form” in clause 1 of the proposed revised terms and conditions should be amended to read “means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended”.

950. In the revised access arrangement proposal DBP has made changes to the proposed terms and conditions in accordance with draft decision amendment 30.

Term of the contract

951. Clause 4.2 of the proposed revised terms and conditions (corresponding to clause 4.1 in the current terms and conditions) relates to the term of a shipper’s contract.

952. In the original access arrangement proposal, DBP proposed a minor change to clause 4.2:

4.2 Term

(a) Subject to the terms and conditions of this Contract, including clause 4.3, the Capacity End Date is 08:00 hours on the date specified in the Access Request Form ~~as the Capacity End Date~~.

(b) Subject to the terms and conditions of this Contract, this Contract ends on the last of the Capacity End Dates.

953. In the draft decision, the Authority accepted the proposed revisions to clause 4.2 subject to a minor clarifying amendment.

Draft decision amendment 31

Clause 4.2(b) of the proposed revised terms and conditions, in relation to the term (duration of the contract), should be amended to include the words "as the Requested Reference Service End Date" at the end of the sentence.

954. In the revised access arrangement proposal DBP has made changes to the proposed terms and conditions in accordance with draft decision amendment 31.

Options to renew contract

955. Clauses 4.3 to 4.7 of the current terms and conditions comprise provisions for a shipper to renew a contract.

956. In the original access arrangement proposal, DBP proposed changes to these clauses, comprising:

- changes to clauses 4.3 and 4.5 changing the options for the shipper to renew the contract from the option of two terms of one year to the option of two terms of five years; and
- changes to clause 4.5 to require that the shipper provide 30 months notice for the exercising of an option to renew its contract, rather than three months.

957. The Authority accepted these changes as reasonable with the exception of the requirement for 30 months notice for exercising an option to renew the contract. The Authority determined that 12 months notice is reasonable.

> Draft decision amendment 32
>
> Clause 4.5 of the proposed revised terms and conditions, in relation to a shipper exercising an option to renew its contract, should be amended to state "not later than 12 months before the capacity end date, a shipper may give written notice to the operator that it wishes to exercise an option".

958. In the revised access arrangement proposal DBP has made changes to the proposed terms and conditions to delete all of clauses 4.3 to 4.7 dealing with options for the shipper to renew the contract. With these changes, there is no option for a user to renew the contract under the proposed terms and conditions.

959. Prior to the draft decision, DBP submitted to the Authority that it would consider reducing the notice period to 12 months "as long as the shipper has not in the preceding 18 months rejected a request from DBP to relinquish capacity, so as to enable an expansion to occur".[309]

960. Subsequent to the draft decision DBP has adopted a different position, submitting that:[310]

> … the 30 month period was intended to prevent DBP being in a position where, half way through an expansion, it finds that a shipper does not want to take the requested expansion capacity.
>
> DBP was prepared to offer options to renew only on the basis of a 30 month advanced option renewal date. If the ERA insists on a 12 month option period, DBP must remove the options in the Reference Service because retaining the options with a significantly reduced option period could potentially expose DBP to unacceptable risks with respect to the funding of any additional expansion.

961. Verve Energy submits that:[311]

> … DBP's deletion of the option provisions is unacceptable and they should be reinstated in substantially the same form as the [current terms and conditions].
>
> The option provisions are integral for the shipper's long term planning. The deletion of the option provisions undermines the shipper's ability to manage its business and its commercial stability. This will deter investment and result in inefficiencies.
>
> Further, Verve submits that DBP has not provided any reasonable justification for a tenfold increase in the notice period. DBP is in a better position than the shipper to be able to estimate the total capacity requirements of the DBNGP when assessing the need for any expansions. The shipper should not have to bare the risks associated with having to commit to its capacity requirements 30 months out from the Capacity End Date.

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309 DBP, 6 August 2010, Submission 26.

310 DBP, 20 May 2011, Submission 51 p 8.

311 Verve Energy, 20 May 2011.

962. The Authority is of the view that it is unreasonable for the terms and conditions for reference services to not include options for a user to extend an access contract. The remaining issue is the required notice period for exercise of an option and any conditions attached to the exercise of an option.

963. DBP has claimed that a notice period of less than 30 months exposes DBP to risks that it engages in expansions of capacity that may not be required – presumably if a user that is contracting for capacity being made available for the expansion does not proceed.

964. The Authority does not accept this reason. DBP has to date only expanded the capacity of the DBNGP with the additional capacity substantially contracted in advance, thereby limiting its risk. Also, the Authority sees no reason why DBP should be sheltered from future-demand risk by requiring long notice periods from users exercising options to extend contracts.

965. The Authority also does not accept DBP has demonstrated any sound reason why the exercise by a user of an option to extend a contract should be conditional on interactions with DBP about expansions of the pipeline.

966. Accordingly, the Authority maintains the requirement that the terms and conditions as originally proposed should be amended to provide for a 12 month notice period for exercising an option to extend an access contract. As DBP has subsequently deleted the clauses providing users with an option to renew contracts, the Authority requires that these clauses be reinstated.

Required Amendment 26

The proposed revised terms and conditions should be amended to reinstate clauses 4.3 to 4.7 of the current terms and conditions and to incorporate a change to clause 4.5, in relation to a shipper exercising an option to renew its contract, so that the time limit for a user to provide notice to exercise an option is not later than 12 months before the capacity end date.

Receiving and Delivering Gas (clause 5)

967. Clause 5 of the proposed terms and conditions comprises provisions addressing the receipt and delivery of gas.

968. In the original access arrangement proposal, DBP proposed changes to clause 5, comprising:

- inclusion of an obligation on a shipper to pay capacity-related transmission charges in certain events where the operator refuses to deliver gas (clauses 5.6 and 5.9);
- inclusion of more detailed terms relating to the shipper's obligation to pay for system use gas (clause 5.10);
- inclusion of additional rights of the operator to refuse to deliver or receive gas in circumstances of emergencies (clause 5.11); and
- inclusion of obligations on the shipper to have gas installations and appliances inspected in accordance with the *Gas Standards Act 1972 (WA)* (clause 5.12).

Operator must receive and deliver gas

969. In the original access arrangement proposal, DBP proposed the following changes to clause 5.2 of the terms and conditions that establishes the obligation of the operator to receive and deliver gas.

> **5.2 Operator must Receive and Deliver Gas**
>
> ~~Subject to this Contract, if Shipper offers Gas for Delivery to Operator at inlet points on the DBNGP, Operator must Receive that Gas from Shipper up to Shipper's Contracted Capacity aggregated across all inlet points on the DBNGP (plus any Capacity under a Spot Transaction) and Operator must deliver Gas to Shipper at nominated outlet points up to its Contracted Capacity aggregated across all outlet points on the DBNGP (plus any Capacity under a Spot Transaction).~~
>
> Subject to any other provision of this Contract, the Operator, on each Gas Day during the Period of Supply:
>
> (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
>
> (b) must deliver to the Shipper at the Nominated Outlet Points a quantity of Gas up to the Shipper's Contracted Capacity aggregated across all Outlet Points on the DBNGP.

970. In the draft decision, the Authority determined that the changes to clause 5.2 remove an important obligation to deliver gas to each nominated outlet point as well as total delivery across all outlet points. The Authority required the following amendment.

> Draft decision amendment 33
>
> Clause 5.2(b) should be amended to require DBP to deliver gas at the nominated outlet points in the quantities required by the shipper at each point, up to a maximum across all points of the shipper's contracted capacity.

971. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 5.2(b) as follows.

> 5.2 Operator must Receive and Deliver Gas
>
> Subject to any other provision of this Contract, the Operator, on each Gas Day during the Period of Supply:
>
> (a) must Receive at the Nominated Inlet Points the quantity of Gas Delivered by the Shipper under clause 5.1(a); and
>
> (b) must Deliver to the Shipper at ~~the~~a Nominated Outlet ~~Points~~Point a quantity of Gas up to the Shipper's Contracted Capacity ~~aggregated across all~~at that Outlet ~~Points on the DBNGP~~Point.

972. DBP submits that it accepts the draft decision amendment 33, although the changes made to the new clause 5.2 have removed the provision for aggregation of gas deliveries across outlet points.[312] The Authority requires amendment of clause 5.2(b) to restore provision for aggregation, for the purposes of nominations, of the shipper's contracted capacity across all outlet points.

Required Amendment 27

Clause 5.2(b) of the terms and conditions should be amended to require DBP to deliver gas at the nominated outlet points in the quantities required by the shipper at each point, up to a maximum of the shipper's contracted capacity aggregated across all outlet points.

Operator may refuse to receive gas

973. Clause 5.3 of the terms and conditions deals with the circumstances in which the operator of the DBNGP may refuse to receive gas.

974. In the original access arrangement proposal, DBP proposed a new clause 5.3(e) and changes to an existing clause that is now clause 5.3(g).

975. The new clause 5.3(e) was:

> 5.3 In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:
>
> …
>
> (e) by reason of, or in response to, a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the shipper.

976. This clause was moved from clause 17.2(c) of the existing terms and conditions (Curtailment Generally). Unlike clause 17.2(c), the proposed clause 5.3(e) is not limited by a requirement for the Operator to be acting as a reasonable and prudent person.

977. The Authority determined in the draft decision that the proposed amendment to clause 5.3(e) unreasonably widens DBP's discretion by removing the requirement for a clear link between the misconduct and extent of the reduction in capacity. The Authority also determined that it would be more appropriate for the shipper misconduct to be dealt with by way of curtailment than a refusal to receive gas.

[312] DBP, 20 May 2011, Submission 51 pp 8, 9.

978. The proposed changes to clause 5.3(g) were:

> 5.3(g) [the operator may refuse to receive gas from the shipper at an inlet point] … to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of the following in respect of that Inlet Point for that Gas Day all of the Shipper's Contracted Capacity; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

979. The Authority determined in the draft decision that this clause does not make sense and should be amended to replace the words "the following" with "all of the shipper's contracted capacity".

980. The Authority required the following amendment.

> Draft decision amendment 34
>
> Clause 5.3(e) of the proposed revised terms and conditions should be deleted. Clause 17.2(c) of the existing terms and conditions should be reinstated.
>
> Clause 5.3(g) of the proposed revised terms and conditions, in relation to being able to refuse to receive gas, should be amended to read "to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity ".

981. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 34.[313]

982. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any change to the proposed clause 5.3(e). DBP submits that:[314]

> …"a refusal to deliver" and "curtailment" are two separate concepts which require separate treatment in the R1 Terms and Conditions.
>
> A Curtailment is a means for managing the integrity of the pipeline when there is an upset condition caused by unavailability of pipeline equipment resulting from either planned or unplanned outages. It covers events such as equipment failure, maintenance, construction activities, damage to pipeline equipment by third parties, etc.
>
> A Refusal to Receive and/or Deliver Gas is a means for managing the integrity of the pipeline when a shipper is in breach of its obligations and that breach results in an upset condition. This covers the failure of the shipper to deliver gas into the pipeline, such as during a producer outage, persistent exceedance of imbalance limits, continuing to take gas in excess of the quantities allowed by a Curtailment Notice, etc.

313 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

314 DBP, 20 May 2011, Submission 51 p 9.

983. In regard to the proposed clause 5.3(e), the Authority accepts DBP's position that it is reasonable for DBP to have the ability to refuse to receive gas from a shipper where the behaviour of the shipper is negligent, in breach of a contractual term or in some other way constitutes misconduct and this behaviour has resulted in a reduction in gas transmission capacity such that services to other pipeline users is potentially compromised. However, the Authority remains concerned that clause 5.3(e) provides for a wide discretion of DBP to refuse receipt of gas. The Authority considers that this discretion should be limited by a requirement for DBP to act as a reasonable and prudent pipeline operator.

Required Amendment 28

Clause 5.3(e) of the proposed terms and conditions should be amended to indicate that the assessment of the reduction of gas transmission capacity and the consequent decision of DBP to refuse to receive gas are subject to DBP acting as a reasonable and prudent pipeline operator.

984. DBP submits that it accepts the second part of draft decision amendment 34 and has made the following change to clause 5.3(g): [315]

> 5.3(g) [the operator may refuse to receive gas from the shipper at an inlet point] … to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of ~~the following~~all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day~~ all of the Shipper's Contracted Capacity~~; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

Notification of refusal to receive gas

985. Clause 5.4 of the proposed revised terms and conditions establishes the terms that DBP must comply with in providing a shipper with a notification of a refusal to receive gas.

986. In the original access arrangement proposal, DBP proposed changes to clause 5.4(c):

> 5.4(c) [Without affecting the Operator's rights under clause 5.3, the Operator must:] … notify the Shipper (in reasonable detail) of the reasons for a refusal to Receive Gas ~~as soon as practicable~~.

987. The Authority determined that it is reasonable that DBP should notify a shipper of its reasons to refuse to receive gas "as soon as practicable" and that these words should be reinstated in clause 5.4(c) of the proposed revised terms and conditions.

> Draft decision amendment 35
>
> Clause 5.4(c) of the proposed revised terms and conditions should be amended to include the words "as soon as practicable'" in relation to DBP providing a shipper with its reasons to refuse to receive gas.

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315 DBP, 20 May 2011, Submission 51 p 9.

988. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has amended clause 5.4(c) in accordance with draft decision amendment 35.

Refusal to receive or deliver gas is a curtailment in limited circumstances

989. In the original access arrangement proposal, DBP proposed deletion of clauses 5.5 and 5.9 from the current terms and conditions. These clauses provided that, in certain circumstances where DBP could have taken steps to avoid or minimise the magnitude and duration of a refusal to receive and/or deliver gas, such refusal constitutes a curtailment for the purposes of the contract. The extent of the deemed curtailment would then be taken into account in determining whether curtailments aggregated over a gas year cause the permissible curtailment limit to be exceeded.

990. In the context of the Authority's requirement for the access arrangement to include the T1 Service as a reference service, the Authority determined in the draft decision that clauses 5.5 and 5.9 of the existing terms and conditions establish reasonable protections for the shipper and these clauses should be retained.

> Draft decision amendment 36
>
> Clause 5 of the proposed revised terms and conditions should be amended to include terms and conditions that are materially the same as clause 5.5 and 5.9 of the existing terms and conditions for the T1 Service, which relates to refusal to receive or deliver gas as a curtailment in limited circumstances.

991. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 36.[316]

992. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any changes in accordance with the requirement of draft decision amendment 36. DBP submits:[317]

> Consistent with DBP's response to the draft decision on why the proposed R1 Service should be reinstated, DBP submits that clause 5 should be amended as per the proposed terms and conditions. In addition, DBP considers that the Authority is applying inconsistent reasoning by allowing the change to clause 5.5 (which means DBP is not liable for a refusal to receive) but then requiring that certain refusals to receive will constitute a curtailment.

993. Having regard to DBP's submission, the Authority notes that it is requiring that the T1 Service, and not the proposed R1 Service, be included in the access arrangement as a reference service. Accordingly, the Authority requires the terms and conditions to include provisions for curtailment and service reliability consistent with the existing terms and conditions for the T1 Service. The Authority therefore maintains the view that clauses 5.5 and 5.9 of the existing terms and conditions establish reasonable protections for the shipper and these clauses should be retained.

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316 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

317 DBP, 20 May 2011, Submission 51 p 10.

994. The Authority accepts DBP's submission that draft decision amendment 36 is inconsistent with the Authority accepting clause 5.5 of the proposed terms and conditions, which limits DBP's liability in respect of a refusal to receive gas. The Authority has addressed this inconsistency by a required amendment to this clause (see below).

Required Amendment 29

Clause 5 of the proposed revised terms and conditions should be amended to include terms and conditions that are materially the same as clause 5.5 and 5.9 of the existing terms and conditions for the T1 Service, which relates to refusal to receive or deliver gas as a curtailment in limited circumstances.

No liability for refusal to receive gas

995. In the original access arrangement proposal, DBP proposed changes to clause 5.6 of the current terms and conditions (clause 5.5 of the proposed revised terms and conditions) that provides that, subject to clause 23.2 (Liability for fraud), DBP is not liable for any direct or indirect damage caused by or arising out of any refusal to receive gas under clause 5.3 (Operator may refuse to receive gas). The proposed change to this clause was to remove liability for DBP's refusal to receive gas being subject to the liability under clause 17 (Curtailment) of the existing terms and conditions:

~~5.6~~5.5 No liability for refusal to Receive Gas

Subject to clause 23.2 ~~and subject to any liability under clause 17 arising from a refusal of a type referred to in clause 5.5~~, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Receive Gas under clause 5.3.

996. In the draft decision, the Authority determined that, subject to the required amendments to clause 5.3 of the proposed terms and conditions (draft decision amendment 34), it is reasonable for the operator to have no such liability for refusal to receive gas.

997. In a submission subsequent to the draft decision, DBP has highlighted an inconsistency of the Authority's position with a draft decision amendment 36 (as addressed above).[318] The Authority accepts this inconsistency and resolves it by requiring the following amendment.

[318] DBP, 20 May 2011, Submission 51 p 10.

Required Amendment 30

Clause 5 of the proposed revised terms and conditions should be amended so that the absence of liability for refusal to receive gas is subject to the provisions of the terms and conditions under which a refusal to receive gas may be deemed a curtailment and to clause 17 that deals with DBP's liability for curtailments.

Operator may refuse to deliver gas

998. Clause 5.6 of the original proposed revised terms and conditions set out the circumstances under which DBP may refuse to deliver gas to the shipper, including that DBP may refuse to deliver gas as a consequence of refusing to receive out of specification gas, or as a remedy for a breach of an imbalance limit, or DBP may refuse to deliver overrun gas.

999. In the original access arrangement proposal DBP made a change to clause 5.6(b) of the terms and conditions to provide that the operator may refuse to deliver gas in response to a reduction in gas transmission capacity by reason of, or in response to, a reduction in gas transmission capacity caused by the negligence, breach of contractual term or other misconduct of the shipper. This provision was been moved from clause 17.2 (Curtailment Generally) of the existing terms and conditions.

1000. The Authority determined that the proposed change to clause 5.6(b) unreasonably widens DBP's discretion considerably by removing the requirement for a clear link between the misconduct and the extent of the refusal to deliver.

> Draft decision amendment 37
>
> Clause 5.6(b) of the proposed revised terms and conditions, which provides that the operator may refuse to deliver gas in response to a reduction in gas transmission capacity by reason of, or in response to, a reduction in gas transmission capacity caused by the negligence, breach of contractual term or other misconduct of the shipper, should be deleted.

1001. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 37.[319]

1002. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any change to clause 5.6(b). DBP submits:[320]

> DBP disagrees with the Authority's contention that the use of the words "in response to" in any way breaks the "client link" between misconduct and the extent of the refusal to deliver. If DBP takes action "in response to" an action or inaction of a shipper, there is necessarily a causal link between the action taken and the misconduct which the action is in response to. Accordingly, DBP

319 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

320 DBP, 20 May 2011, Submission 51 p 10.

considers that clause 5.6(b) should be included as per the proposed terms and conditions.

1003. DBP's proposed clause 5.6(b) is similar to proposed clause 5.3(e) that deals with DBP having a right to refuse to receive gas in similar circumstances. The Authority takes the same view in relation to proposed clause 5.6(b) as with proposed clause 5.3(e). That is, the Authority accepts DBP's position that it is reasonable for DBP to have the ability to refuse to deliver gas to a shipper where the behaviour of the shipper is negligent, in breach of a contractual term or in some other way constitutes misconduct and this behaviour has resulted in a reduction in gas transmission capacity such that services to other pipeline users is potentially compromised. However, the Authority remains concerned that clause 5.6(b) provides for a wide discretion of DBP to refuse delivery of gas. The Authority considers that this discretion should be limited by a requirement for DBP to act as a reasonable and prudent pipeline operator.

Required Amendment 31

Clause 5.6(b) of the proposed terms and conditions should be amended to indicate that the assessment of the reduction of gas transmission capacity and the consequent decision of DBP to refuse to deliver gas are subject to DBP acting as a reasonable and prudent pipeline operator.

No liability for refusal to deliver gas

1004. In the original access arrangement proposal, DBP proposed changes to provisions that deal with liability for refusal to deliver gas. The proposed changes comprised deletion of clause 9 of the current terms and conditions and changes to clause 5.10 of the current terms and conditions (clause 5.8 of the proposed revised terms and conditions):

~~5.9 Refusal to Deliver Gas is a Curtailment in limited circumstances~~

~~To the extent that a refusal to Deliver such Gas under clause 5.7(c) would not have occurred if Operator had taken the steps which would be expected of a Reasonable And Prudent Person to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to Deliver Gas, a refusal to Deliver Gas under clause 5.7(c):~~

~~(a) is a Curtailment for the purposes of this Contract; and~~

~~(b) shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded.~~

~~5.10~~5.8 No liability for refusal to Deliver Gas

Subject to clause 23.2~~ and subject to any liability under clause 17 arising from a refusal of a type referred to in clause 5.9~~, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause ~~5.7.~~5.6.

1005. Subject to the required amendments to clause 5.6 (draft decision amendment 37), the Authority determined in the draft decision that it is reasonable for the operator to have no such liability for refusal to receive gas in the circumstances of clause 5.6.

1006. Subsequent to the draft decision the Authority has reconsidered this matter and is of the view that the obligations on DBP and potential liabilities when refusing to deliver gas should be the same as the obligations on DBP and potential liabilities when refusing to receive gas. Accordingly, the Authority requires the following amendments to the proposed terms and conditions.

Required Amendment 32

Clause 5 of the proposed revised terms and conditions should be amended so that the absence of liability for refusal to deliver gas is subject to the provisions of the terms and conditions under which a refusal to deliver gas may be deemed a curtailment and to clause 17 that deals with DBP's liability for curtailments.

No change to contracted capacity

1007. In the original access arrangement proposal, DBP proposed a new clause 5.9 relating to the calculation of charges for contracted capacity where a refusal to deliver gas occurs:

> 5.9 No change to Contracted Capacity
>
> (a) A refusal to Deliver Gas under clause 5.6 does not affect the calculation of the Charges payable by the Shipper under clause 20, for which purposes the Shipper's Contracted Capacity remains as specified in the Access Request Form.
>
> (b) When calculating the amount of Total Contracted Capacity (either generally or in respect of a specific Capacity Service, Inlet Point or Outlet Point) for a particular shipper, no reduction is to be made for any capacity not made available as a result of any refusal to Deliver Gas, either generally or in respect of any specific Capacity Service, Inlet Point or Outlet Point, under any of the shippers' contracts for Capacity Service pursuant to that clause which is the material equivalent of clause 5.6.

1008. The Authority determined in the draft decision that the new clause 5.9 should be subject to the provisions of clause 5.9 of the current terms and conditions (the refusal to deliver gas being a curtailment in certain circumstances as contemplated by clause 5.9 of the existing terms and conditions) and the new clause 5.9 should be amended to reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.

> Draft decision amendment 38
>
> Clause 5.9 of the proposed revised terms and conditions, in relation to no change in contracted capacity, should be amended to:
>
> - include provisions that are materially the same as those in clause 5.9 of the existing terms and conditions where the refusal to deliver gas is a curtailment in certain circumstances; and
> - be amended to reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.

1009. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 38.[321]

1010. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any change to the originally proposed new clause 5.9. DBP submits:[322]

> Consistent with DBP's response to the draft decision on why the proposed R1 Service should be reinstated and for the reasons outlined in DBP's Submission 3, DBP submits that clause 5.9 should be amended as per the proposed terms and conditions.

1011. Having regard to DBP's submission, the Authority notes that it is requiring that the T1 Service, and not the proposed R1 Service, be included in the access arrangement as a reference service. Accordingly, the Authority requires that the terms and conditions include provisions for curtailment and refund of charges consistent with the existing terms and conditions for the T1 Service.

Required Amendment 33

Clause 5.9 of the proposed revised terms and conditions, in relation to no change in contracted capacity, should be amended to:

- include provisions that are materially the same as those in clause 5.9 of the existing terms and conditions where the refusal to deliver gas is a curtailment in certain circumstances; and
- reflect situations where the capacity reservation charge must be refunded under clause 17.4 in the event of a curtailment.

System use gas

1012. Clause 5.11 of the current terms and conditions deals with system use gas and provides, simply, that the operator must supply the shipper's share of system use gas.

1013. In the original access arrangement proposal, DBP proposed substantial new terms for system use gas, now as clause 5.10:

> **5.10 System Use Gas**
>
> (a) The Operator must supply the Shipper's share of System Use Gas.
>
> (b) For the purposes of this clause 5.10, the Shipper's share of System Use Gas for a Gas Day is calculated by:

321 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

322 DBP, 20 May 2011, Submission 51 p 11.

(i) multiplying the total amount of all System Use Gas used on that Gas Day by the total quantity of Gas delivered on that Gas Day to the Shipper (under the R1 Service) downstream of CS7; and

(ii) dividing the result by the quantity of Gas delivered on that Gas Day to all shippers across all Capacity Services and Spot Capacity, downstream of CS7.

(c) The Shipper must indemnify the Operator in respect of the cost of additional Gas incurred by the Operator in supplying System Use Gas for the Dampier To Bunbury Natural Gas Pipeline in accordance with this Contract to the extent to which that System Use Gas is required to be supplied, in accordance with Good Gas Industry Practice, because of the Shipper taking Overrun Gas or breaching the Accumulated Imbalance Limit or the Hourly Peaking Limit on any Gas Day, aggregated over a Contract Year, but only if that cost is not recovered by the Operator during that Contract Year by Other Charges or Direct Damages paid by the Shipper.

(d) The Operator must provide, each quarter, an indicative report (Quarterly Report) (for the Shipper's information only) of the costs incurred by the Operator in supplying System Use Gas in the circumstances described in clause 5.10(c). The costs notified in the Quarterly Report are not final and are subject to the reconciliation at the end of each Contract Year of actual costs incurred and of any recovery of those costs by the Operator during the Contract Year by way of Other Charges or Direct Damages paid by the Shipper.

(e) Within 30 days after receipt of a Tax Invoice which includes an amount payable by the Shipper under clause 5.10(c), the Shipper may request an independent verification of the amount payable.

(f) If requested under clause 5.10(e), the independent verification must be undertaken by an auditor independent of the parties and agreed to by them or, failing agreement, by an auditor appointed as if he or she were to be an Expert for a Technical Matter under clause 24.

(g) The Operator must disclose all relevant information in relation to the calculation of the amount payable under clause 5.10(c) to the auditor agreed or appointed under clause 5.10(f). The auditor must not disclose that information to the Shipper, but must review the information provided by the Operator and such further information as the auditor may reasonably request from the Operator, and must then determine whether the amount included in the Operator's Tax Invoice is correct or, if not, the correct amount to be included.

(h) A determination of an auditor under clause 5.10(g) is final and binding upon the Parties.

1014. In the draft decision the Authority accepted provisions for the operator to provide system use gas. The Authority considered that there is insufficient demonstration of demand by shippers to supply system use gas, and insufficient evidence that current arrangements are resulting in inefficient outcomes, for the Authority to determine that the current requirement that the operator provides all system use gas is inconsistent with the National Gas Objective.

1015. The new provisions of clause 5.10 establish an indemnity by the shipper in favour of the operator in respect of the cost of additional gas incurred by the operator in supplying system use gas in circumstances where the shipper's conduct has resulted in the requirement for additional gas, to the extent that the costs are not recovered by the operator by other charges. An independent verification process is established to confirm the relevant costs.

1016. In the draft decision, the Authority addressed three particular provisions of the proposed clause 5.10:

- the purpose and operation of proposed clauses 5.10(a) and 5.10(b), indicating a method of determination of a shipper's "share" of system use gas;
- the provisions of clause 5.10(c) to (h) that have the effect that a shipper may potentially be required to pay for costs of additional system use gas that is required because of the shipper taking overrun gas or breaching the accumulated imbalance limit or the hourly peaking limit; and
- whether users should be able to supply system use gas rather than only the operator providing system use gas.

1017. The proposed clauses 5.10(a) and 5.10(b) required the operator to supply a shipper's share of system use gas, where that share is determined as the total amount of system use gas multiplied by the proportion of gas deliveries downstream of CS7 that is for the shipper. In the draft decision the Authority considered that the purpose of clauses 5.10(a) is that DBP will provide system use gas, which is consistent with the determination of reference tariffs, for which the cost of system use gas is an element of forecast operating expenditure that is recovered through the commodity tariff. However, the Authority took the view that the purpose of clause 5.10(b) and the determination of a user's "share of system use gas" is not obvious as the value of a shipper's share of system use gas is not applied in determining the operator's or shipper's obligations and liabilities under an access contract.

1018. The proposed clauses 5.10(c) to (h) provided for DBP to recover from a user the cost of any additional system use gas that is made necessary by a user taking overrun gas or breaching the accumulated imbalance limit or the hourly peaking limit. The rationale for this provision is that a user should bear the cost of any additional system use gas that is necessary as a result of the user failing to comply with requirements in the use of the service. In the draft decision the Authority considered that there would be practical difficulties in establishing a clear causal connection between an action of the user and the extent to which that action increased the amounts of system use gas required on any particular day. As a consequence, the Authority considered that there is a high probability that the provisions of clauses 5.10(c) to (h) would be inoperable and, as such, there is a high risk of disputes between the shipper and operator.

1019. Taking the above matters into account, the Authority determined that clause 5.10 of the proposed revised terms and conditions is inconsistent with the national gas objective because it creates unjustified complexity in the operation of the terms and conditions and is not likely to work in practice. The Authority required the following amendment.

> Draft decision amendment 39
>
> Clause 5.10 of the proposed revised terms and conditions, in relation to system use gas, should be amended to:
>
> - delete the proposed sub-clauses 5.10(a) and (b) and replace these with a clause to the effect that the operator will provide such system use gas as is reasonably necessary to provide the service; and
> - delete the proposed clauses 5.10(c) to (h).

1020. Alinta Limited and Verve Energy submit that further amendments could be made to clarify that the Operator must supply all System Use Gas for no additional charge.[323]

1021. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has changed clause 5.10 to a single provision:

> 5.10 System Use Gas
>
> The Operator must supply all system use gas which is reasonably necessary to supply services to the Shipper under this Contract.

1022. DBP submits that it accepts the first part of draft decision amendment 39. For the second part of draft decision amendment 39 DBP submits that if the Authority disallows these provisions it follows that it must then allow the 10 per cent transient value in the fuel gas costing assumptions.[324]

1023. The revision made by DBP to clause 5.10 of the proposed terms and conditions accords with the requirements of draft decision amendment 39.

1024. The Authority notes that in consideration of the forecast of operating expenditure for the 2011 to 2015 access arrangement period, it has allowed provision for the 10 per cent allowance for gas use in transient pipeline conditions, although for reasons unrelated to the required amendment of clause 5.10 of the terms and conditions (addressed by the Authority as an element of operating expenditure, see paragraph 1012 and following of this final decision).

1025. In response to the submissions from Alinta Limited and Verve Energy, the Authority observes that there are no requirements under the terms and conditions for users to make payments in addition to the reference tariff and in respect of system use gas except where any such payments are implicit in charges set out in clause 20 of the terms and conditions. As such, there is no need to include provisions in the terms and conditions to clarify that the Operator must supply all System Use Gas for no additional charge.

Additional rights to refuse to receive or deliver gas

1026. Clause 5.12 of the current terms and conditions deals with additional rights of DBP to refuse to receive or deliver gas.

1027. In the original access arrangement proposal, DBP proposed changes to the first part of this clause (now as clause 5.11):

> ~~5.12~~5.11 Additional Rights to Refuse to Receive or Deliver Gas
>
> (a) In addition to any other rights and remedies that may be available to it under ~~any Law or under~~ this Contract or ~~in equity~~under any Law, if:

[323] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

[324] DBP, 20 May 2011, Submission 51 p 11.

(i) the Governor or any other person, regulatory authority or body declares a state of emergency under the Fuel, Energy and Power Resources Act 1972 (WA) or any successor, supplementary or similar Law and the Governor or such other person, regulatory authority or body makes emergency regulations or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or

(ii) the Coordinator of Energy or any other person, regulatory authority or body declares a state of emergency under the Energy Coordination Act 1994 (WA) or any successor, supplementary or similar Law and makes emergency orders or similar which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP; or

(iii) the Minister or any other person, regulatory authority or body declares a state of emergency under the Emergency Management Act 2005 (WA) or any successor, supplementary or similar Law and the Minister or any other person, regulatory authority or body makes regulations or exercises any power under that act which, in the opinion of the Operator or the Pipeline Trustee acting reasonably in the context of the declaration, will affect or is likely to affect the operation of the DBNGP,

(any and all of these being a Declaration), then the Operator may, (with prior notice to the Shipper wherever practicable~~),~~ refuse to Receive Gas at an Inlet Point or refuse to Deliver Gas at an Outlet Point (or both) to the extent that the Operator in good faith believes it is necessary or desirable to comply with or deal with the Declaration and any associated emergency regulations, emergency orders, directions or advice received from any governmental or regulatory authority, person or body.

1028. The main proposed change to this clause was that under clause 5.11(a)(iii) the circumstances where DBP may refuse to deliver gas include where the Minister or any other person, regulatory authority or body, declares a state of emergency under the *Emergency Management Act 2005 (WA)*.

1029. In the draft decision, the Authority determined that the proposed provisions of clause 5.11(iii) are reasonable. No submissions made to the Authority addressed this element of the draft decision and the Authority maintains the same determination in this final decision.

Shipper's gas installations

1030. In the original access arrangement proposal, DBP proposed a new clause 5.12 requiring a shipper, at its cost, to have gas installations and appliances inspected in accordance with the *Gas Standards Act 1972 (WA).*

1031. The Authority determined that the inclusion of this clause may unreasonably cause shippers to incur additional costs. The Authority determined that the proposed clause 5.12 should be amended to be subject to DBP acting reasonably in making a request for inspections.

Draft decision amendment 40

Clause 5.12 of the proposed revised terms and conditions, in relation to shipper's gas installations, should be amended from it being mandatory for a

shipper, at its cost, to inspect its facilities to ensure it complies with applicable legislation to it being at the request of DBP acting reasonably.

1032. Alinta Limited and Verve Energy submit that DBP should only be able to require the inspection of gas installations to which Gas is supplied directly from the DBNGP.[325]

1033. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made the following changes to clause 5.12:

5.12 Shipper's gas installations

(a) The terms "inspector", "gas installation" and "Type B gas appliance" used in this clause 5.12 have the meanings given in the Gas Standards Act 1972 (WA) or other relevant Law.

(b) The Shipper must, at its cost:

(i) in accordance with the Gas Standards Act 1972 (WA) appoint an inspector to inspect:

(A) any gas installation installed by the Shipper after the Execution Date, prior to the commencement of any Delivery of Gas by the Operator; or

(B) any gas installation that has been altered by the Shipper after the Execution Date by the installation of a Type B gas appliance, prior to any Delivery of Gas by the Operator;

(ii) provide evidence of the completion of an inspection under clause 5.12(b)(i) to the Operator, including confirmation that the gas installation is compliant with the Gas Standards Act 1972 (WA); and

(iii) ensure that once installed its gas installations comply at all times with the requirements specified under all relevant Environmental and Safety Laws including the Gas Standards Act 1972 (WA) and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 (WA).

(c) If, on an inspection under clause 5.12(b)(i) , the inspector makes an order under section 18(2)(a) of the Energy Coordination Act 1994 (WA) or issues a notice under the Gas Standards Act 1972 (WA), the Shipper must provide a copy of such order or notice to the Operator within 10 days of the completion of the inspection.

(d) If any gas installation is installed by the Shipper after the Execution Date, the Operator is not obliged to commence Delivery of Gas until the gas installation is inspected in accordance with clause 5.12(b)(i) and evidence confirming compliance with the Gas Standards Act 1972 (WA) is provided to the Operator in accordance with clause 5.12(b)(ii).

1034. DBP submits:[326]

DBP has amended clause 5.12 to further clarify the shipper's responsibilities with respect to ensuring that any gas installation which is installed by the

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325 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

326 DBP, 20 May 2011, Submission 51 p 11.

> shipper must be certified before DBP will commence Delivery of Gas through that gas installation.
>
> DBP has only sought to impose an obligation on shippers that have down stream facilities that are regulated by the *Gas Standards Act* (that does not mean every shipper will have to comply with the *Gas Standards Act*). DBP is simply trying to make it clear that it is the shipper's responsibility to have its faculties certified where the *Gas Standards Act* applies to a facility and for DBP to not be obliged to deliver gas at an outlet point to such a regulated facility until evidence of the certification has been provided by the shipper.

1035. Having regard to DBP's submission, the Authority observes that section 13 of the *Gas Standards Act 1972* requires inspection of a "consumer gas installation" before DBP, as a pipeline service provider, can commence to supply gas to the consumer. On this basis, the Authority accepts that the requirements of the proposed clause 5.12 are reasonable and the Authority does not maintain the requirement of draft decision amendment 40.

Inlet and outlet points

1036. Clause 6 of the proposed terms and conditions relates to inlet and outlet points and establishes the terms for such matters as multi-shipper agreements, multi-shipper inlet points and multi-shipper outlet points, the allocation of gas at inlet and outlet points, and the design and installation of inlet and outlet stations.

1037. In the original access arrangement proposal DBP proposed changes to clause 6 of the terms and conditions. The changes comprised the inclusion of more detailed terms dealing with:

- the operation of multi-shipper agreements at inlet and outlet points (clauses 6.4 and 6.5);
- the design and installation of inlet stations, inlet point connection facilities, and outlet stations (clauses 6.6, 6.7, and 6.8);
- the treatment of notional gate points for delivery of gas to sub-networks, and the design and installation of gate stations (clause 6.10 and 6.11); and
- maintenance charges for inlet stations, outlet stations and gate stations (clause 6.12).

1038. These proposed changes are addressed separately below.

Allocation of gas at inlet points and outlet points

1039. Clause 6.4 of the terms and conditions deals with allocation of gas at inlet points between shippers (where multiple shippers deliver gas to the DBNGP at a single inlet point) and between services (where a shipper delivers gas to a single inlet point for multiple gas transmission services).

1040. In the original access arrangement proposal, DBP proposed changes to clause 6.4 of the terms and conditions to:

- include additional detail on the process for allocation of gas between shippers at inlet points used by multiple shippers (clauses 6.4(b) and 6.4(c)); and

- to alter a deemed "order" of receipt of gas for gas transmission services where a shipper delivers gas to an inlet point for multiple services, such that gas is deemed to be received first for any available R1 Service, as opposed to the T1 Service to which the current terms and conditions relate (clause 6.4(d).

1041. The actual changes to clause 6.4 are shown as follows.

6.4 Allocation of Gas at Inlet Points

(a) On any Gas Day when the Shipper is the only shipper Delivering Gas to the Operator at an Inlet Point, the Shipper ~~shall be~~is deemed to have Delivered all Gas Received by the Operator at the Inlet Point for that Gas Day and clauses 6.4(b) and 6.4(c) ~~shall~~do not apply.

(b) If the Shipper and any other shipper Delivers Gas to the Operator at an Inlet Point on a Gas Day~~, and:~~ then, unless the Operator duly receives written confirmation under clause 6.4(c) from or on behalf of the Shipper and every other shipper that so Delivers Gas of some other allocation of those Gas Deliveries:

(i) if there is a relevant Multi-shipper Agreement~~ then~~, the Shipper's proportional share of Gas Received by the Operator at the Inlet Point on that Gas Day will be as determined ~~by~~pursuant to that Multi-shipper Agreement; or

(ii) if there is no relevant Multi-shipper Agreement, the Operator (acting as a Reasonable And Prudent Person) must determine the Shipper's proportionate share of Gas Received by the Operator at that Inlet Point on that Gas Day which determination may be by (inter alia) reference to Daily Nominations at the Inlet Point for that Gas Day across all Capacity Services and Spot Transactions across all relevant shippers. The Shipper is deemed to have delivered the proportionate share so determined of the Gas Received by the Operator at that Inlet Point on that Gas Day at a constant rate over that Gas Day.

(c) If, by no later than 11:30 hours on the next Gas Day, the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper ~~which delivers~~that Delivers Gas to that Inlet Point on ~~that~~a Gas Day ~~by not later than 08:30 hours on the following Gas Day,~~ of the quantity of Gas supplied by those shippers at that Inlet Point~~, then (~~ on that Gas Day, then whether or not there is a relevant Multi-shipper Agreement, and in the absence of evidence to the contrary~~)~~, that confirmation ~~shall be~~is deemed to show the quantity of Gas Delivered by the Shipper~~ to Operator at that Inlet Point.~~ and each such other shipper to the Operator at that Inlet Point on that Gas Day and may be relied upon by the Operator accordingly.

~~(c) If there is no Multi-shipper Agreement in relation to an Inlet Point and Shipper or any other shipper Delivering Gas at such Inlet Point fails to provide such written confirmation by the time specified in clause 6.4(b), then Shipper's proportionate share of Gas Received at that Inlet Point may be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Inlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers and Shipper shall be deemed to have Delivered that proportionate share so determined of the Gas Received at that Inlet Point on that Gas Day.~~

(d) Gas Delivered by the Shipper to an Inlet Point ~~will be~~is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:

(i) first, Gas for any available ~~T1 Service which includes Gas for any available Aggregated T~~R1 Service;

(ii) second, Gas for any available Capacity Services (other than TR1 Service) in the order set out in clause ~~8.9~~8.8(a); and

(iii) third, ~~Gas for any available Capacity under any Spot Transaction; and~~other gas.

~~(iv) fourth, other Gas.~~

1042. The Authority determined in the draft decision that clauses 6.4(c) and (d) of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those in clause 6.4 of the existing terms and conditions, reflecting the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service as a reference service.

> Draft decision amendment 41
>
> Clause 6.4 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.4(c) and (d) of the existing terms and conditions.

1043. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 41.[327]

1044. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any changes to the proposed clause 6.4. DBP submits that maintaining clause 6.4(c) and (d) of the proposed revised terms and conditions is consistent with DBP's position of maintaining the proposed R1 Service as the sole reference service.[328]

1045. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 6.4(d) to relate specifically to the T1 Service.

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327 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

328 DBP, 20 May 2011, Submission 51 p 12.

1046. The Authority has reconsidered the need for amendment of the proposed terms and conditions to include provisions that are substantially the same as those in clause 6.4(c) of the existing terms and conditions. The Authority observes that the provisions of clause 6.4(c) of the existing terms and conditions are retained in the proposed terms and conditions, albeit moved to clause 6.4(b)(ii). As such, the Authority does not maintain the requirement for amendment of clause 6.4 to include provisions that are substantially the same as those in clause 6.4(c) of the existing terms and conditions.

Required Amendment 34

Clause 6.4 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.4(d) of the current terms and conditions.

1047. Clause 6.5 of the proposed revised terms and conditions contains similar provisions as clause 6.4 in relation to allocation of gas between users, but in this case dealing with allocation of gas at outlet points.

1048. The Authority did not address clause 6.5 in the draft decision but observes that DBP originally proposed (similarly to clause 6.4) changes to provisions dealing with the order in which gas is determined or deemed to be delivered for different services where the shipper has multiple services for delivery of gas to an outlet point (clause 6.5(d) of the current terms and conditions).

1049. The proposed changes to clause 6.5(d) are as follows:

> 6.5 Allocation of Gas at Outlet Points
>
> …
>
> (d) Gas Delivered by the Operator to an Outlet Point ~~will be~~is deemed ~~by this clause~~ to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:
>
> (i) first, Gas for any available ~~T~~R1 Service ~~(which shall include any available Aggregated T1 Service)~~;
>
> (ii) second, Gas for any available Capacity Services (other than ~~T~~R1 Service) in the order set out in clause ~~8.9~~8.8(a); and
>
> (iii) third, ~~Gas for any available Capacity under any Spot Transaction; and~~other gas.
>
> ~~(iv) fourth, other Gas.~~

1050. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 6.5(d) to relate specifically to the T1 Service.

Required Amendment 35

Clause 6.5 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.5(d) of the current terms and conditions.

Design, installation and operation and maintenance of inlet stations and outlet stations

1051. Clause 6.6 of the current terms and conditions sets out terms for the installation, operation and maintenance of inlet stations and outlet stations. In the original access arrangement proposal, DBP proposed splitting these terms between multiple clauses – clause 6.6 relating to inlet stations, clause 6.7 relating to inlet point connection facilities, clause 6.8 relating to outlet stations, clause 6.9 relating to general requirements for inlet and outlet stations, and clause 6.12 relating to maintenance charges for inlet stations, outlet stations and gate stations.

1052. The proposed new clauses 6.6 to 6.9 generally do not differ materially from clause 6.6(a)(1) and 6.6(b)(i) of the existing terms and conditions with a few exceptions, addressed as follows.

1053. Clause 6.7 of the originally proposed revised terms and conditions includes increased detail in relation to the design and installation of inlet point connection facilities, including payment of costs to the operator where the operator incurs costs in connection with design and installation of connection facilities. The Authority determined in the draft decision that this clause should be expressly subject to grandfathering provisions for existing inlet and outlet point facilities (as set out in clause 6.13 of the originally proposed terms and conditions).

1054. Also in relation to clause 6.7 of the originally proposed revised terms and conditions, the Authority observed in the draft decision that clause 6.7(d) refers to a right of access for the purpose of maintaining and operating an outlet station, and that this should be a reference to an inlet station.

> Draft decision amendment 42
>
> Clause 6.7 should be amended by inserting the words “Subject to clause 6.13” at the commencement of the second sentence in clause 6.7(a).
>
> Clause 6.7(d) should be amended to refer to an outlet, not inlet, station.

1055. The Authority notes that there is a typographical error in this required amendment. The second part of this required amendment should have read “Clause 6.7(d) should be amended to refer to an inlet, not outlet, station”. Notwithstanding this error, DBP appears to have interpreted the required amendment correctly.

1056. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 6.7 to:

- make the clause subject to the grandfathering provisions for existing inlet point connection facilities, now in clause 6.12; and

- change the reference to "outlet station" in clause 6.7(d) to "those inlet point connection facilities".

1057. The Authority is satisfied that these changes satisfy the requirements of draft decision amendment 42.

1058. Clause 6.8 of the originally proposed terms and conditions includes more detailed terms relating to the design and installation of outlet stations. It provides that DBP must, at the shipper's request, design and install or procure the design and installation of any required outlet station that is not a gate station and pay the costs incurred by DBP in designing and installing the outlet station.

1059. As with the proposed clause 6.7, the Authority determined in the draft decision that clause 6.8 should be subject to the grandfathering provisions for existing inlet and outlet point facilities of clause 6.13 of the proposed terms and conditions. The Authority also determined that provisions under clause 6.8 for the shipper to pay costs incurred by the operator should be limited to costs reasonably incurred.

> Draft decision amendment 43
>
> Clause 6.8(a) should be amended by:
>
> - inserting the words "Subject to clause 6.13" at the commencement of the second sentence; and
> - 6.8(a)(i) reading 'to pay the costs reasonably incurred by the Operator in accordance with good industry practice…"

1060. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 43.[329]

1061. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 6.8 to make the clause subject to the grandfathering provisions for existing connection facilities, now in clause 6.12.

1062. The Authority is satisfied that this change satisfies the first requirement under draft decision amendment 43.

1063. DBP has not made any change to clause 6.8(a)(i) in respect of the second requirement of draft decision amendment 43. DBP submits that the shipper should pay the actual costs incurred by DBP, not whatever the reasonable costs might be, particularly in circumstances where the shipper has input into the design and installation.[330]

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329 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

330 DBP, 20 May 2011, Submission 51 p 13.

1064. The Authority has further considered the requirement under draft decision amendment 43 for the costs payable by the shipper to be limited to costs reasonably incurred by DBP. The Authority observes that the design and installation by DBP of outlet facilities under clause 6.8 is subject to negotiation of an agreement in respect of the required works. The direct costs of design and installation are payable by the shipper, as well as reasonable additional amounts for the DBP's management time and overhead expenses. The Authority accepts that with the agreement being determined by negotiation and with the "reasonableness" limit on indirect costs payable by the shipper, that clause 6.8 of the proposed terms and conditions is reasonable. As such, the Authority does not maintain the requirement for the second element of draft decision amendment 43.

1065. Clause 6.12 of the originally proposed terms and conditions sets out terms for maintenance charges for inlet stations, outlet stations, and gate stations associated with a sub network. This clause provides that the maintenance charge is determined by DBP acting as a reasonable and prudent person as being sufficient to allow DBP to amortise, over the life of the relevant asset, the amount of construction costs net of the amount already paid by any shipper under clauses 6.6 (design and installation of inlet stations) or 6.8 (design and installation of outlet stations) of the terms and conditions.

1066. Changes from the corresponding terms under the current terms and conditions include:

- the shipper is liable to pay a charge for maintaining, operating, refurbishing, upgrading, replacing and decommissioning a relevant station, whereas under the existing terms and conditions the shipper is only liable to pay a charge for maintaining, operating and decommissioning a relevant station; and
- a provision allowing a shipper to request a breakdown of the maintenance charge has been deleted.

1067. The Authority determined in the draft decision that the terms of clause 12 are unreasonable by not placing some limit on the works and costs that may occur, by not allowing for shippers to be provided with a breakdown of costs, and not clearly defining the shippers amongst whom an allocation of costs occurs.

Draft decision amendment 45

Clause 6.12(a) should be amended to:

- include a mechanism to enable a shipper to ensure that only necessary refurbishments and upgrades are carried out;
- include a provision allowing a shipper to obtain a breakdown of the maintenance charge; and
- replace the words "pay a charge for substantially the same purpose" with "use the inlet station, outlet station or gate station associated with a sub-network" and by deleting sub-clauses (iii) and (iv).

1068. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 45.[331]

1069. DBP submits that it accepts draft decision amendment 45.[332] In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the clause dealing with maintenance charges (now clause 6.11) as follows.

> 6.11 ~~6.12~~ Maintenance Charge for Inlet Stations~~,~~ and Outlet Stations ~~and Gate Stations~~
>
> (a) For the purposes of this clause ~~6.12,~~6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station~~,~~ or Outlet Station ~~or Gate Station Associated with a Sub-network~~, a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who ~~pay a charge for substantially the same purpose~~use the Inlet station or Outlet station) to amortise, over the life of the Inlet Station~~,~~ or Outlet Station ~~or Gate Station~~ (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:
>
> (i) maintaining;
>
> (ii) operating;
>
> (iii) refurbishing;
>
> (iv) upgrading;
>
> (v) replacing; and
>
> (vi) decommissioning,
>
> the Inlet Station~~,~~ or Outlet ~~Station or Gate~~ Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station~~,~~ or Outlet Station or Gate Station.
>
> (b) The Operator may only include costs associated with refurbishing or upgrading an Inlet Station or Outlet Station in accordance with clause 6.11(a) if:
>
> (i) the Shipper requests the relevant refurbishment or upgrade; or
>
> (ii) the Operator determines, acting reasonably, that the refurbishment or upgrade is required in order to meet a statutory or contractual obligation.
>
> (c) ~~(b)~~ At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.

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331 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

332 DBP, 20 May 2011, Submission 51 p 14.

(d) ~~(c)~~ Subject to clause ~~6.13~~6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that:

(i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the Shipper's Contracted Capacity (across all Capacity Services) at that Outlet Point bears to the aggregate Contracted Capacity (across all Capacity Services) for all shippers at that Outlet Point, less any amount recovered under clause ~~6.12(c~~6.11(d)(ii); and

(ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper does not have Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month.

(d) ~~(e)~~ Subject to clause ~~6.13~~6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a ~~Gate~~Outlet Station that is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point for the time being bears to the sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at such Notional Gate Point for the time being.

(f) ~~(e) Without limiting the generality of clause 6.11(b), whenever a new Gate Station or~~Whenever a new Outlet Station is installed, or ~~a Gate Station or~~ Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the ~~Gate Station or~~ Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who receive Gas from the Operator at the Notional Gate Point or Outlet Station, including shippers with grants of Capacity at the Notional Gate Point or Outlet Station made before the date of installation or enhancement.

(g) ~~(f)~~ For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point or ~~a Gate~~an Outlet Station, the Operator may have regard to the likely impact of clause ~~6.12(e~~6.11(f).

1070. The revisions included by DBP in clause 6.11 address the first and last requirements of draft decision amendment 45, but do not address the second requirement for providing a breakdown of charges. The Authority observes that the proposed revised clause 6.11 already includes provision for the Operator to provide the shipper with a statement of the calculations used to determine a Maintenance Charge. On this basis, the Authority does not maintain the requirement for the second element of draft decision amendment 45.

Notional gate points

1071. The current terms and conditions include clause 6.10 that contains detailed terms in relation to notional gate points. It provides for a notional gate point for each sub-network, at which all outlet point contracted capacity in respect of that sub-network is taken to be located. Clause 6.10(c) provides for the operator to have absolute discretion in managing the actual physical transport of gas into the sub-network that is deemed to be delivered into the sub-network at the notional gate point.

1072. The Authority determined in the draft decision that the proposed clause 6.10(c) should not provide an absolute discretion for the operator to manage the actual physical transport of gas, but rather that this discretion should be subject to the operator acting reasonably and in accordance with good industry practice.

> Draft decision amendment 44
>
> Clause 6.10(c) about notional gate points should be amended to replace "absolute" with "reasonable" and to insert "in accordance with good industry practice" after "discretion".

1073. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 6.10(c) in accordance with the requirements of draft decision amendment 44.

Design and installation of gate stations

1074. The originally proposed terms and conditions included a new clause 6.11 relating to the design and installation of gate stations by the operator at the collective request of shippers who have contracted capacity at the notional gat station for the relevant sub-network, and for the operator to recover the costs incurred:

> 6.11 Design and installation of Gate Stations
>
> (a) The Operator must, at the collective request of all shippers who have Contracted Capacity at the Notional Gate Point for a Sub-network, procure the design and installation by a third party contractor or third party contractors engaged by the Operator of any required Gate Station associated with that Sub-network, other than an Existing Station.
>
> (b) The costs incurred by the Operator in connection with the design and installation of any Gate Station (which includes the capital cost of acquiring and installing all relevant components of the Gate Station, plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (Relevant Gate Station Construction Costs)), must be amortised as part of the Maintenance Charge relating to the Gate Station payable by all shippers who receive Gas from the Operator at the Notional Gate Point for that Sub-network.

1075. The Authority did not require any amendment of this clause in the draft decision.

1076. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has deleted this proposed clause. DBP indicates that this clause has been deleted as there is no practical reason to differentiate between gate stations and outlet stations.

1077. That Authority accepts DBP's justification for deletion of the originally proposed clause 6.11.

Operating Specifications (clause 7)

1078. Clause 7 of the current terms and conditions comprises terms relating to the quality of gas received into, or delivered from, the DBNGP. The Authority has addressed several of the terms of clause 7, as follows.

Gas to be free from certain substances

1079. Clause 7.2 of the current terms and conditions provides that gas delivered at an inlet or an outlet point must be free, by normal commercial standards from dust and certain other constituents. In the originally proposed terms and conditions, DBP revised clause 7.2 to so that the "normal commercial standards" are "as determined by the operator".

1080. In the draft decision, the Authority determined that the proposed revision to clause 7.2 was unreasonable in providing unfettered discretion to DBP to determine the "normal commercial standards". The Authority determined that clause 7.2 should be amended to require DBP to act reasonably in making its determination.

> Draft decision amendment 46
>
> Clause 7.2 of the proposed revised terms and conditions, in relation to the requirement for gas to be free from certain substances, should be amended to include the word "reasonably" between the words "as" and "determined by the operator".

1081. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 7.2 in accordance with the requirements of draft decision amendment 46.

Gas temperature and pressure

1082. Clause 7.4 of the current terms and conditions sets out provisions relating to gas temperature and pressure. In the originally proposed terms and conditions, DBP has revised clause 7.4 to include more detailed terms.

1083. In the draft decision the Authority took no issue with the proposed revisions to clause 7.4 but required correction of a typographical error.

> Draft decision amendment 47
>
> Clause 7.4(c) of the proposed revised terms and conditions, in relation to gas temperature and pressure, should amend the words "receive gas" to "receives gas".

1084. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 7.4 in accordance with the requirements of draft decision amendment 47.

Shipper may receive out of specification gas

1085. Clause 7.9 of the current terms and conditions deals with the receipt by a shipper of out-of-specification gas. Clause 7.9(a) provides for the shipper to receive out-of-specification gas at an outlet point subject to terms and conditions agreed between the shipper and the operator. Clause 7.9(b) sets out DBP's liability for delivery of out-of-specification gas other than as agreed with the shipper:

1086. No material changes to this clause were proposed by DBP in the originally proposed terms and conditions.

1087. In the draft decision, the Authority addressed clause 7.9(b):

7.9 Shipper may receive Out-of-Specification Gas

…

(b) If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9(a), then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas the Operator is liable to the Shipper for Direct Damage arising in respect of the Out-of-Specification Gas.

1088. The Authority determined in the draft decision that clause 7.9(b) should be amended to clarify that the exception to DBP's liability should be clarified as "except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas *by delivering out-of-specification gas to the inlet point*".

Draft decision amendment 48

Clause 7.9(b) of the proposed revised terms and conditions, in relation to the shipper being able to receive out-of-specification gas, should be amended to add the words "by delivering out-of-specification gas to the inlet point" after the words "to be out-of-specification gas".

1089. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made changes to the proposed clause 7.9(b) in accordance with the requirements of draft decision amendment 48.

Odorisation

1090. Clause 7.12 of the current terms and conditions relates to the odorisation of gas. In the original proposed access arrangement, DBP proposed changes to clause 7.12 as follows:

7.12 Odorisation

The Operator will Deliver Gas to ~~Shipper,~~the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004 odorised to the specification set out in the Gas Standards Regulations 1983 (WA)~~, at each Outlet Point:~~.

~~(a) at which odorising occurred as at the beginning of the Access Arrangement Period; and~~

~~(b) as required by the Law.~~

1091. In the draft decision the Authority considered whether the operator should also be required to deliver odorised gas at outlet points as agreed in writing with the shipper. The Authority took the view that it is not necessary for the terms and conditions of the reference service to anticipate any such agreement as it is open to DBP and a user to agree for DBP to odorise gas, and such an agreement will include the charges to be paid to DBP for this service. The Authority maintains this view.

Weighted average gas flow

1092. Clause 7.13 of the current terms and conditions sets out DBP's obligations to accept receipt of out-of-specification gas as part of a stream of blended gas at an inlet point.

1093. In the original access arrangement proposal, DBP proposed revisions to clause 7.13 to include a definition of "individual gas" which means gas delivered into a blended gas stream immediately prior to it becoming blended gas.

1094. The Authority determined in the draft decision that the proposed revision did not materially change the terms of clause 7.13 and the Authority took no issue with the proposed revision. The Authority maintains this determination.

Nominations (clause 8)

1095. Clause 8 of the current terms and conditions relates to a user's nominations of gas receipts and deliveries.

1096. Particular terms of clause 8 are addressed as follows.

Operator to make available bulletins of available capacity

1097. Clause 8.5 of the current terms and conditions provides that the operator must, on regular occasions during each gas day make available on the operator's electronic customer reporting system a bulletin specifying for at least that gas day and the following gas day, the amount of capacity available or anticipated to be available for nomination or renomination.

1098. In the original proposed access arrangement, DBP proposed revisions to clause 8.5 to extend the obligation of the operator to make any disclosures required by law.

1099. In the draft decision the Authority did not take issue with the proposed revisions to clause 8.5. The Authority maintains this position.

Shipper's initial nomination

1100. Clause 8.6 of the current terms and conditions sets out the terms for a shipper's initial nomination.

1101. In the original proposed access arrangement, DBP proposed revisions to clause 8.6 such that:

- it is mandatory, rather than optional, for the shipper to nominate no later than 14:00 hours on any gas day the gas deliveries to inlet points and gas receipts from outlet points; and
- the sum of nominations across inlet points must be equal to the sum of nominations across outlet points except to the extent the shipper seeks to reduce any accumulated imbalance.

1102. In the draft decision the Authority accepted that the proposed changes to clause 8.6 are reasonable. The Authority maintains this position.

Allocation of daily nominations

1103. Clause 8.7 of the current terms and conditions sets out terms for the operator to make allocations of gas receipts and deliveries across the shipper's inlet points and outlet points in response to the shipper's nominations and taking into account contracted capacities and contacts for spot capacity.

1104. In the original proposed access arrangement, DBP moved the terms of clause 8.7 of the current terms and conditions to form clause 8.9 of the proposed terms and conditions, but without material change to the terms of the clause. DBP also made revisions to the clause to change references to the T1 Service to the R1 Service.

1105. In the draft decision the Authority required that the terms of clause 8.9 of the proposed revised terms and conditions to be amended to refer to the T1 Service.

> Draft decision amendment 49
>
> Clause 8.9 of the proposed revised terms and conditions, in relation to the scheduling of daily nominations, should be amended to replace references to a R1 Service with references to a T1 Service.

1106. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 49.[333]

1107. In the revised access arrangement proposed submitted to the Authority subsequent to the draft decision, DBP has maintained the terms of clause 8.9 as originally proposed. DBP submits that this is consistent with its position of having the R1 Service as the sole reference service.[334]

1108. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 8.9 to relate specifically to the T1 Service.

Required Amendment 36

Clause 8.9 of the proposed revised terms and conditions, in relation to the scheduling of daily nominations, should be amended to replace references to a R1 Service with references to a T1 Service.

Default provision for daily nomination

1109. Clause 8.8 of the current terms and conditions sets out terms for a deemed nomination where a shipper does not make a nomination of gas deliveries to the pipeline and gas receipts from the pipeline in accordance with clause 8.6 of the terms and conditions. Under clause 8.8 of the current terms and conditions, where a shipper does not make nominations in accordance with clause 8.6, nominations are deemed to be equal to the shipper's contracted capacities at receipt points and delivery points.

1110. In the original proposed access arrangement, DBP made changes to this clause (now clause 8.7) such that where a shipper does not make nominations in accordance with clause 8.6, nominations are deemed to be equal to the shipper's nominations for the previous gas day.

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333 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

334 DBP, 20 May 2011, Submission 51 p 14.

1111. In the draft decision the Authority did not take issue with this proposed change. The Authority maintains this position.

Nominations priority

1112. Clause 8.9 of the current terms and conditions sets out the priority of allocations of nominations of capacity for capacity services and spot transactions, referring to a curtailment priority in schedule 9 of the terms and conditions.

1113. In the original proposed access arrangement, DBP proposed revisions to this clause (now clause 8.8) to remove reference to spot transactions and refer to curtailment priorities in the now schedule 6 of the terms and conditions. The now schedule 6 has been revised to include the R1 Service at a lower priority in the curtailment plan than the T1, P1 and B1 Services. Spot capacity is included in the curtailment plan of schedule 6 as the lowest priority of any service.

1114. In the draft decision the Authority accepted that the proposed revisions are reasonable. This was in the context of the Authority requiring other amendments to the terms and conditions (including to schedule 6) to remove the R1 Service as a reference service and to include the T1 Service as a reference service. The Authority maintains this position.

Scheduling where there is insufficient available capacity

1115. The originally proposed terms and conditions included a new clause 8.10 that provides for DBP to curtail services to amounts less than nominations in circumstances where there is insufficient capacity to provide all nominated services, and in accordance with priorities of curtailment established under clause 17.9 and schedule 6 of the proposed revised terms and conditions.

1116. In the draft decision the Authority determined that the proposed clause 8.10 should be amended to include a requirement that DBP use its best endeavours to minimise the extent of any curtailment.

> Draft decision amendment 50
>
> Clause 8.10 of the proposed revised terms and conditions, in relation to scheduling where there is insufficient available capacity, should be amended by inserting a new clause 8.10(c) to read "the operator shall use its best endeavours to minimise the extent of any curtailment required under clause 8.10(b)".

1117. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 45.[335]

1118. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has maintained the terms of the new clause 8.10 as originally proposed. DBP submits that the obligation to minimise the extent of curtailment already exists in clause 17 of the terms and conditions.

[335] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1119. Clause 17.1(a) of the proposed terms and conditions requires that the operator use its best endeavours to minimise the expected duration of any curtailment of the R1 Service. Subject to clause 17.1(a) being changed to refer to the T1 Service as part of inclusion of the T1 Service as a reference service under the access arrangement, the Authority accepts that the provisions of this clause make it unnecessary to include a similar obligation in clause 8.10. The Authority therefore does not maintain the requirement for draft decision amendment 50.

Aggregated T1 Service and nominations at inlet points and outlet points where the shipper does not have sufficient contracted capacity

1120. Clauses 8.15 and 8.16 of the current terms and conditions provide for contracted capacity for the T1 Service to be aggregated across inlet and outlet points, to form an "Aggregated T1 Service". A shipper may nominate gas deliveries at inlet and outlet points for an aggregated T1 Service up to the total contracted capacity for all of the shipper's inlet and outlet points, even though the nominated amount at any particular inlet or outlet point exceeds the shipper's contracted capacity at the particular point. An aggregated T1 Service ranks below the normal T1 Service in the curtailment plan.

1121. In the original access arrangement proposal, DBP proposed deletion of clauses 8.15 and 8.16 of the current terms and conditions. This would have the effect of removing (for the proposed R1 Service) the ability of a shipper to make short term relocations of capacity by nominating at a point where it does not have contracted capacity, or by nominating in excess of its contracted capacity at a point, provided it makes an equivalent reduction in its nominations elsewhere so that it does not in aggregate exceed its total contracted capacity.

1122. In the draft decision the Authority determined that clause 8 of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those in clauses 8.15 and 8.16 of the current terms and conditions, taking into account that the Authority is requiring that the access arrangement include the T1 Service as a reference service.

> Draft decision amendment 51
>
> Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.15 and 8.16 in the existing terms and conditions in relation to an aggregated T1 Service; and nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity.

1123. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 51.[336]

1124. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to the terms and conditions to address draft decision amendment 51. DBP submits that this is consistent with its position of having the R1 Service as the sole reference service.[337]

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336 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

337 DBP, 20 May 2011, Submission 51 p 15.

1125. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 8 to make provision for the aggregated T1 Service and nominations in accordance with the aggregation of capacity across inlet and outlet points.

Required Amendment 37

Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.15 and 8.16 in the existing terms and conditions in relation to an aggregated T1 Service and to nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity.

Use of full haul capacity for an aggregated service upstream of CS9

1126. Clause 8.18 of the current terms and conditions contemplates an aggregated T1 Service involving use of full-haul T1 capacity for delivery of gas to an outlet point upstream of compressor station 9, which would normally be a part haul service. Clause 8.18 provides for such an aggregated T1 Service to be regarded as a full haul service for the purposes of the contract and the determination of charges.

1127. In the original proposed access arrangement, DBP proposed deletion of clause 8.18 of the terms and conditions.

1128. In the draft decision the Authority determined that clause 8 of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those in clause 8.18 of the current terms and conditions, taking into account that the Authority is requiring that the access arrangement include the T1 Service as a reference service.

> Draft decision amendment 52
>
> Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.18 in the 2005 to 2010 terms and conditions in relation to full haul capacity upstream of CS9.

1129. In submissions to the Authority, Alinta Limited, Verve Energy and BHP Billiton indicate support for draft decision amendment 52.[338]

1130. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 52. DBP submits that this is consistent with its position of having the R1 Service as the sole reference service.[339]

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338 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

339 DBP, 20 May 2011, Submission 51 pp 15, 16.

1131. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 8 to make provision for the aggregated T1 Service to include delivery of gas to outlet points upstream of CS9.

Required Amendment 38

Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.18 in the 2005 to 2010 terms and conditions in relation to full haul capacity upstream of CS9.

Imbalances (clause 9)

1132. Clause 9 of the current terms and conditions deals with imbalances, imbalance limits and the resolution of imbalances.

1133. Particular terms of clause 9 are addressed as follows.

Notice of the Shipper's imbalances

1134. Clause 9.4 of the current terms and conditions requires DBP to provide the shipper with notice of accumulated imbalances at the end of each gas day.

1135. In the original proposed access arrangement, DBP proposed revisions to clause 9.4 of the terms and conditions to change the time that DBP must provide notice to the shipper from before 11:00 to before 13:30, and to add the words "…and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate" at the end of the clause.

1136. In the draft decision the Authority determined that the proposed changes are reasonable. The Authority maintains this position.

Accumulated imbalance limit

1137. Clause 9.5 and 9.6 of the current terms and conditions establish an accumulated imbalance limit and provide:

- that the shipper's accumulated imbalance limit for a gas day is 8 per cent of the shipper's contracted capacity across all of the shipper's capacity services for that gas day Clause 9.5(a);
- remedies for resolution of imbalances where imbalances are in excess of the accumulated imbalance limit and may compromise operation of the pipeline (clauses 9.5(b) and (c);
- for a shipper to pay an excess imbalance charge where the shipper does not use best endeavours to reduce an accumulated imbalance (clauses 9.5(d) and (e)), except in circumstances where the imbalance is caused by DBP, caused by factors outside of the shipper's control or DBP fails to provide the shipper with an accumulated imbalance notice (clause 9.6); and

- for limits on the ability of DBP to impose measures to reduce imbalances through requirements for DBP follow processes for issue of notices and to cooperate with the shipper (clause 9.5(f)).

1138. In the original proposed access arrangement, DBP proposed combining clauses 9.5 and 9.6 into a single clause (now clause 9.5) with revisions to the terms of the original clause 9.5 that:

- remove the threshold requirement for an adverse impact on the integrity of the operation of the DBNGP before the shipper may incur an excess imbalance charge; and
- remove the limits on the ability of DBP to impose measures to reduce imbalances through requirements for DBP to follow processes for issue of notices and to cooperate with the shipper.

1139. In the draft decision the Authority determined that clause 9 of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those in clause 9.5 of the current terms and conditions, taking into account that the Authority is requiring that the access arrangement include the T1 Service as a reference service.

> Draft decision amendment 53
>
> Clause 9 of the of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clause 9.5 of the existing terms and conditions in relation to accumulated imbalance limit.

1140. In submissions to the Authority, Alinta Limited, Verve Energy and BHP Billiton indicate support for draft decision amendment 53.[340]

1141. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 53. DBP submits that:[341]

> … its experience with the manner in which clause 9.5 of the existing terms and conditions works in practice is that it does not have the desired effect of ensuring that shippers comply with the behavioural regime. DBP's experience is that because the purpose of the imbalance regime is to protect the integrity of the pipeline, and that integrity can decline rapidly, it is not practical (or safe) for DBP to undertake the sort of analysis contemplated by [the current] clause 9.5.

1142. DBP also submits that the proposed changes are consistent with its position of having the R1 Service as the sole reference service.[342]

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340 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

341 DBP, 20 May 2011, Submission 51 p 16.

342 DBP, 20 May 2011, Submission 51 p 15.

1143. The Authority considers that the proposed change to the terms of clause 9.5 of the terms and conditions represents a substantial change to the terms of the T1 Service that may cause users to be exposed to significant liabilities to charges made in respect of imbalances. With such a substantial change to the terms and conditions, the Authority would expect that the proposal for the change would be supported by a clear demonstration that the benefits to the integrity of the pipeline (and hence to all pipeline users) justify the change and the additional cost to pipeline users that have gas imbalances. Despite the opportunity to do so, DBP has not provided such a demonstration. On this basis, the Authority maintains the requirement for amendment of clause 9 to allow excess imbalances charges to apply only where there is an adverse impact on the integrity of the operation.

Required Amendment 39

Clause 9 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clause 9.5 of the existing terms and conditions in relation to accumulated imbalance limits.

Balancing in particular circumstances

1144. Clause 9.7 of the current terms and conditions provides for the shipper and DBP to agree on measures to allow and manage imbalances to deal with circumstances where a shipper's gas supply is anticipated to wholly or partially fail, or actually fails.

1145. The original proposed access arrangement included a revision to this clause (now clause 9.6) that requires any such agreement between the shipper and DBP to be in writing (which may be contained in an email) and for it to be in place before the shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.

1146. In the draft decision the Authority took the view that it may not always be practicable to have the agreement in writing, for example, if the anticipated failure is due to such circumstances as an impending cyclone and there is limited notice of the impending failure of the shipper's gas supply. The Authority determined that clause 9.6 of the proposed revised terms and conditions should be revised to remove the requirement for the agreement to be in writing

> Draft decision amendment 54
>
> Clause 9.6(c) of the proposed revised terms and conditions, in relation to balancing in particular circumstances, should be amended to remove the requirement that the agreement be in writing.

1147. Verve Energy indicates support for draft decision amendment 54.[343]

[343] Verve Energy, 20 May 2011.

1148. Alinta Limited submits that the requirement that the agreement be in writing should remain, but indicates that it considers that, on balance, if agreement in writing includes by email then such agreement can be reached as easily as by other means (including telephone) and provides greater certainty for the Parties.[344]

1149. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 54. DBP submits that:

> … the ERA's reason for rejecting DBP's requirement for an agreement in writing is not valid. DBP submits that even in the event of an impending cyclone, an expedited agreement may be reached in writing via, for example, email. DBP highlights the heightened level of risk involved in communications not made in writing, particularly in circumstances of impending failure of a shipper's gas supply, and reiterates that an agreement in writing reduces the risk of miscommunication in such circumstances.

1150. The Authority has reconsidered the requirement for draft decision amendment 54 and, in light of the submissions from DBP and Alinta Limited, concurs that explicit provision for agreement to be by means of email provides a means of expediting agreement in writing. On this basis the Authority does not maintain the requirement for draft decision amendment 54.

Remedies for breach of imbalance limits

1151. Clause 9.8 of the current terms and conditions limits the rights and remedies of DBP against the shipper for the shipper exceeding the accumulated imbalance limit. The limits to the rights and remedies of DBP comprise:

- the recovery from the shipper of direct damages for failure of the shipper to comply with a notice from DBP to take action to reduce imbalances is to be reduced by the amount of any excess imbalance charge or excess imbalance charges paid by the shipper in respect of that failure;
- recovery of the excess imbalance charge or excess imbalance charges;
- refusal to receive gas from the shipper at an inlet point or refuse to deliver gas to the shipper at an outlet point so as to bring the shipper's accumulated imbalance within the accumulated imbalance limit; or
- any combination of the rights and remedies as set out above.

1152. In the original access arrangement proposal, DBP proposed to delete the first of these limits on the rights and remedies of DBP (clause 9.8(a) of the current terms and conditions). This potentially increases the cost of a shipper of liabilities for direct damages.

1153. In the draft decision the Authority did not take issue with this proposed revision to the now clause 9.7 of the proposed revised terms and conditions. The Authority maintains this position.

[344] Alinta Limited, 20 May 2011.

Cashing out imbalances

1154. Clause 9.10 of the current terms and conditions provides for the settlement of imbalances at the end of the contract term by cash payments between the operator and shipper based on a fair market price for the relevant amount of gas.

1155. In the original access arrangement proposal, DBP proposed changes to this clause (now clause 9.9) to require settlement of imbalances at the end of each month within the period of the contract.

1156. In the draft decision, the Authority took the view that DBP has not provided adequate substantiation of the proposed revision. The Authority determined that clause 9.9 of the proposed revised terms and conditions should be amended to be substantially the same as clause 9.10 of the current terms and conditions and provide only for settlement of imbalances at the end of the contract.[345]

> Draft decision amendment 55
>
> Clause 9.9 of the proposed revised terms and conditions, in relation to cashing out imbalances at the end of each gas month, should be amended to be substantially consistent with the existing terms and conditions.

1157. Alinta Limited, Verve Energy and BHP Billiton support the required amendment.[346]

1158. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 55. DBP submits that the proposed change is consistent with its position of having the R1 Service as the sole reference service.[347]

1159. The Authority considers that the proposed change to the terms of clause 9.9 of the terms and conditions represents a substantial change to the terms of the T1 Service that may cause users to be exposed to significant liabilities to charges made in respect of imbalances. With such a substantial change to the terms and conditions, the Authority expects that the proposal for the change would be supported by a clear demonstration that the benefits to the integrity of the pipeline (and hence to all pipeline users) justify the change and the additional cost to pipeline users that have gas imbalances. Despite the opportunity to do so, DBP has not provided such a demonstration. On this basis, the Authority maintains the requirement for amendment of clause 9.9 to remove the requirement for settlement of imbalances at the end of each month within the period of the contract.

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345 There was a drafting error in draft decision amendment 55, which should have referred to clause 9.9 of the proposed revised terms and conditions.

346 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

347 DBP, 20 May 2011, Submission 51 p 15.

Required Amendment 40

Clause 9.6 of the proposed revised terms and conditions, in relation to cashing out imbalances at the end of each gas month, should be amended to be substantially consistent with the existing terms and conditions.

Peaking (clause 10)

1160. Clause 10 of the current terms and conditions deals with limits on peak hourly deliveries of gas ("hourly peaking limit" and "outer hourly peaking limit"), prescribes hourly peaking limits, provides that a shipper must stay within hourly peaking limits, sets out the consequences of exceeding hourly peaking limits, and prescribes remedies for a breach of peaking limits.

1161. Particular terms of clause 10 are addressed as follows.

Consequences of exceeding the hourly peaking limit

1162. Clause 10.3 of the current terms and conditions sets out the consequences for a shipper exceeding the hourly peaking limit and provides for DBP to take action to address the exceedance where the integrity of pipeline operation is compromised or there is a potential impact on services to other users of the pipeline.

1163. In the original access arrangement proposal, DBP proposed revisions to clause 10.3 to:

- remove the constraint that DBP can only take action to address exceedance of hourly peaking limits where the integrity of pipeline operation is compromised or there is a potential impact on services to other users of the pipeline (deletion of clause 10.3(a) of the current terms and conditions); and
- remove a term that deems the shipper to be complying with a notice to address exceedance of an hourly peaking limit where the shippers hourly quantity of gas deliveries is decreasing (deletion of clause 10.3(c) of the current terms and conditions).

1164. In the draft decision the Authority determined that the terms of clause 10.3 should not be revised from the terms of clause 10.3 of the current terms and conditions on the basis of the Authority's determination to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service.

> Draft decision amendment 56
>
> Clause 10.3 of the proposed revised terms and conditions, in relation to consequences of exceeding hourly peaking limits, should be amended to be substantially consistent with clause 10.3 of the existing terms and conditions and the words "shipper must use best endeavours to comply with a notice issued under clause 10.3" reinstated.

1165. Alinta Limited, Verve Energy and BHP Billiton support the required amendment.[348]

1166. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 56. DBP submits that the proposed change is consistent with its position of having the R1 Service as the sole reference service.[349]

1167. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for amendment of clause 10.3 to be substantially consistent with clause 10.3 of the existing terms and conditions.

Required Amendment 41

Clause 10.3 of the proposed revised terms and conditions, in relation to consequences of exceeding hourly peaking limits, should be amended to be substantially consistent with clause 10.3 of the existing terms and conditions and the words "shipper must use best endeavours to comply with a notice issued under clause 10.3" reinstated.

Outer hourly peaking limit

1168. Clause 10.1 of the current and proposed terms and conditions sets hourly peaking limits for gas deliveries. The hourly peaking limits are established as a percentage of the aggregate maximum hourly quantity across all of the shipper's outlet points on the DBNGP and are 125 per cent in winter and 120 per cent in summer.

1169. Clause 10.4 of the current terms and conditions sets "outer hourly peaking limits" for the shipper's outlet points and provides for the shipper to pay an hourly peaking charge where this limit is exceeded and the shipper is served with a notice to this effect. The outer hourly peaking limits are set at 140 per cent of aggregate maximum hourly quantity.

1170. In the original proposed access arrangement, DBP proposed to delete clause 10.4 of the current terms and conditions. This would have the effect of removing an implicit ability of users to, without penalty, have hourly peaking above the hourly peaking limit but within the outer hourly peaking limit.

1171. The Authority determined that the terms of clause 10.4 should not be deleted from the terms of clause 10.4 of the current terms and conditions because DBP provided insufficient reason for the revision and in view of the Authority's determination to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service.

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348 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

349 DBP, 20 May 2011, Submission 51 p 17.

Draft decision amendment 57

The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.4 of the existing terms and conditions in relation to outer hourly peaking limit.

1172. Alinta Limited, Verve Energy and BHP Billiton support the required amendment.[350]

1173. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision DBP has not included any revisions to address draft decision amendment 57. DBP submits that if the rights of the current clause 10.4 are afforded to users it sterilises so much capacity that it is an inefficient allocation of resources.[351]

1174. In support of this submission, DBP provides results of pipeline simulation modelling purporting to show the effects of the outer hourly peaking limit rights in clause 10.4 being exercised on a mid-summer day and with the result of causing breaches of pressure requirements in the DBNGP and no pressure being available south of CS9.[352]

1175. The Authority has considered the results of simulation modelling provided by DBP, but considers that this modelling does not support DBP's proposal to reduce the peaking rights of users. The simulation modelling undertaken by DBP appears not to model the effect of excursion of hourly peaking limits, but instead models effects of large increases in daily throughput. While the large increases in daily throughput may cause problems for pipeline operations as a result of, for example, overrun of contracted capacity or gas imbalances, the effect shown by the modelling is not necessarily an effect of excursion of peaking limits. Further, the simulation modelling does not take into account that DBP has actions available to it to protect the integrity of the pipeline, and obligations as a prudent pipeline operator to implement these actions.

1176. The Authority therefore considers that the DBP has failed to substantiate its proposal to remove provisions relating to the outer hourly peaking limit. The Authority maintains the requirement of draft decision amendment 57 for these provisions to be retained in the terms and conditions.

Required Amendment 42

The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.4 of the existing terms and conditions in relation to outer hourly peaking limit.

350 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

351 DBP, 20 May 2011, Submission 51 pp 18, 19.

352 DBP, 20 May 2011, Submission 51 pp 18, 19. Attachments 1 and 2.

Permissible peaking excursion

1177. Clause 10.7 of the current terms and conditions limits the ability of DBP to refuse to deliver gas in circumstances where the shipper is exceeding its hourly peaking limit, but not exceeding its outer hourly peaking limit. DBP may not refuse to deliver gas if the shipper is not exceeding its outer hourly peaking limit and:

- the shipper is a distribution networks shipper and the cause of the shipper exceeding its hourly peaking limit is the quantity of gas received by the shipper at a notional gate point for a distribution network (clause 10.7(a)); or
- another shipper has recently had or has an absolute peak significantly greater than its outer hourly peaking limit or a distribution networks shipper has exceeded its hourly peaking limit in the manner permitted by clause 10.7(a), and this causes or contributes to the need for operator to propose to refuse to deliver gas to shipper at outlet points (clause 10.7(b)).

1178. In the original access arrangement proposal, DBP proposed deletion of clause 10.7 of the current terms and conditions. This would have the effect of removing an implicit ability of users to have hourly peaking above the hourly peaking limit but within the outer hourly peaking limit without DBP having the ability to refuse to deliver gas.

1179. In the draft decision, the Authority determined that the terms of clause 10.7 should not be deleted from the terms of clause 10.7 of the current terms and conditions, on the basis that DBP provided insufficient reason for the revision and the Authority's determination to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service.

> Draft decision amendment 58
>
> The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.7 of the existing terms and conditions in relation to permissible peaking excursion.

1180. Alinta Limited, Verve Energy and BHP Billiton support the required amendment.[353]

1181. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision DBP has not included any revisions to address draft decision amendment 58. DBP submits that the proposed change is consistent with its position of having the R1 Service as the sole reference service.[354] DBP also submits that:

- contrary to a submission from BHP Billiton, the changes to clause 10.7 would not give it an ability to selectively refuse to deliver gas in a manner that discriminates between shippers as this is prevented by obligations under the ACCC undertakings and the State Financial Assistance Agreement;
- there are other provisions of the terms and conditions that protect shippers from DBP selectively refusing to deliver gas;

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353 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

354 DBP, 20 May 2011, Submission 51 p 19.

- it would not be in DBP's interests to refuse to deliver gas as it would forgo revenue as a result; and
- requirements to include existing peaking rights would mean that DBP is exposed to significantly increased risks in providing a service that are not reflected in the current levels of the reference tariff.

1182. The Authority has given further consideration to DBP's proposed deletion of clause 10.7 of the terms and conditions in light of DBP's submission.

1183. The Authority observes that the current clause 10.7 has effect to continue to allow a shipper to have peak gas deliveries up to the outer hourly peaking limit without being subject to a refusal to deliver gas where DBP's proposal to refuse to deliver gas results from causes that are outside of the shipper's control. The deletion of clause 10.7 therefore increases the range of circumstances in which DBP may refuse to deliver gas to a shipper that is exceeding its hourly peaking limit (but not exceeding the outer hourly peaking limit).

1184. In its submission to the Authority, DBP sets out a range of factors that would limit any motivation of DBP to selectively refuse to deliver gas to the shipper, despite the greater discretion to do so.

1185. The Authority considers that, with the retention of the outer hourly peaking limit under clause 10.4 of the terms and conditions (as addressed above), shippers have considerable rights to exceed peaking limits. DBP's proposed deletion of clause 10.7 does not reduce these rights but increases DBP's discretion to take action to protect the integrity of the pipeline where these rights are exercised. The Authority accepts that it is reasonable that DBP has adequate discretion to take actions, where necessary, to protect the integrity of pipeline operations. On this basis the Authority does not maintain the requirement for draft decision amendment 58.

Overrun (clause 11)

1186. Clause 11 of the current terms and conditions relates to overrun and overrun charges.

1187. Particular terms of clause 11 are addressed as follows.

Overrun charge

1188. Clause 11.1 of the current terms and conditions establishes an overrun charge payable in respect of overrun gas. The overrun charge is set at the greater of 115 per cent of the T1 reference tariff or the highest *bona fide* bid for spot capacity on the relevant gas day.

1189. In the original proposed access arrangement, DBP proposed revisions to clause 11.1 to set the overrun charge at the greater of 500 per cent of the T1 reference tariff or the highest *bona fide* bid for spot capacity on the relevant gas day.

1190. In the draft decision the Authority determined that, without substantiation or justification, the four fold increase is too high. Further, given the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority determined that the proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the current terms and conditions.

> Draft decision amendment 59
>
> The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the existing terms and conditions in relation to the overrun charge.

1191. Alinta Limited, Verve Energy and BHP Billiton support the required amendment.[355]

1192. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 59. DBP submits that:[356]

> … the overrun right effectively consumes gas DBP would otherwise be using, and therefore DBP would need to purchase additional gas from a third party to replace that gas. Accordingly, the increase in the charge reflects the current market price for gas.

1193. DBP also submits that the proposed changes are consistent with its position of having the R1 Service as the sole reference service.[357]

1194. The Authority does not accept DBP's contention that an overrun by a user will cause DBP to bear the cost of purchasing gas to deliver the quantity of overrun gas. A user taking delivery of overrun gas may conceivably cause DBP to purchase additional gas as fuel gas and for the purposes of maintaining pipeline pressure. However, any additional cost of fuel gas would be covered by the throughput charge for the quantity of overrun and the user is ultimately required to maintain a gas balance and supply the quantity of gas that was taken as overrun. As such, the cost incurred by DBP would be substantially less than the cost of procuring the quantity of overrun gas.

1195. The Authority therefore considers that DBP has not substantiated or justified the increase in the overrun charge. The Authority therefore maintains the requirement for the overrun charge to be determined in the same manner as under the current terms and conditions.

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355 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

356 DBP, 20 May 2011, Submission 51 p 20.

357 DBP, 20 May 2011, Submission 51 p 20.

Required Amendment 43

The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the existing terms and conditions in relation to the overrun charge.

Unavailability notice

1196. Clause 11.2 of the current terms and conditions provides for issue to the shipper of an unavailability notice that has effect to make overrun gas unavailable to the shipper, or only available to the shipper to a limited extent, for one or more gas days. An unavailability notice to the shipper can only limit availability of overrun gas to the extent that the overrun for the shipper will impact or is likely to impact on another shipper's entitlement to its daily nomination for T1 capacity, firm service, any other reserved service or scheduled spot capacity.

1197. In the original proposed access arrangement, DBP proposed removing the provision that an unavailability notice may only be issued where the overrun for the shipper will impact or is likely to impact on another shipper's entitlement to its daily nomination for T1 capacity, firm service, any other reserved service or scheduled spot capacity. This would result in DBP being able to issue an unavailability notice to the shipper regardless of whether the shipper's overrun is affecting or is likely to affect the provision of services to other users.

1198. In the draft decision the Authority determined that, without substantiation or justification, the limit on the ability of DBP to issue an unavailability notice should not be deleted. Further, given the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority determined that the proposed terms and conditions should contain provisions that are substantially consistent with clause 11.2 of the current terms and conditions.

> Draft decision amendment 60
>
> The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.2 of the existing terms and conditions in relation to an unavailability notice.

1199. Alinta Limited and Verve Energy support the required amendment.[358]

1200. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 60. DBP submits that:[359]

> … because it is incentivised to encourage shippers to maximise their use of transportation services under the contract, DBP would only utilise clause 11.2 in extremely limited circumstances, such as where the integrity of the pipeline is at

358 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

359 DBP, 20 May 2011, Submission 51 p 21.

> risk. Given the current high price for gas and the limited availability for domestic gas generally, but particularly for short term supplies, DBP needs to have greater flexibility in relation to the issuing of unavailability notices.

1201. DBP also submits that the proposed changes are consistent with its position of having the R1 Service as the sole reference service.[360]

1202. In its submission to the Authority, DBP indicates that it would exercise its proposed greater ability to issue unavailability notices in limited circumstances, such as where the integrity of the pipeline is at risk. DBP's submission also implies that an unavailability notice may be issued where there is insufficient "domestic" gas available. The Authority considers that this submission indicates that DBP is only contemplating issuing unavailability notices in the circumstances already set out in clause 11.2 of the current terms and conditions. As such, the Authority considers that clause 11.2 should remain unchanged from the current terms and conditions.

Required Amendment 44

The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.2 of the existing terms and conditions in relation to an unavailability notice.

Compliance with unavailability notice

1203. Clause 11.4 of the current terms and conditions sets out the requirements for the shipper to comply with the requirements of an unavailability notice.

1204. In the original proposed access arrangement, DBP proposed revising clause 11.4 to include a requirement that, as soon as practicable after receipt of the unavailability notice, the shipper must provide notice to DBP advising of the measures being taken to ensure compliance.

1205. No submissions made to the Authority address the proposed change to clause 11.4.

1206. The Authority accepts that this revision is reasonable.

Saving and damages

1207. Clause 11.7 of the current terms and conditions comprises terms relating to the shipper's liability to DBP for the "unavailable overrun charge" and any direct damage suffered by DBP which is caused by, or arises out of, the shipper's failure to comply with an unavailability notice.

1208. In the original access arrangement proposal, DBP proposed the following change to clause 11.(c) of the terms and conditions:

> **Saving and damages**

[360] DBP, 20 May 2011, Submission 51 p 21.

(c) The Shipper is ~~not~~ liable to pay the Overrun Charge under clause 11.1 and the Unavailable Overrun Charge under clause 11.6 in respect of the same quantity of Overrun Gas.

1209. The effect of this change is that the shipper may be required to pay both the overrun charge and the unavailable overrun charge in respect of the same quantity of overrun gas. The unavailable overrun charge is the greater of an amount of 250 per cent of the reference tariff or the highest bona fide price bid for spot capacity for the relevant gas day.

1210. In the draft decision the Authority indicated that it was not convinced the proposed revision has been justified and substantiated by DBP. The Authority determined that the word "not" should be reinstated in clause 11.7(c) to avoid a shipper being charged twice for the same conduct.

> Draft decision amendment 61
>
> Clause 11.7(c) of the proposed terms and conditions, in relation to savings and damages, should be amended to reinstate the word "not".

1211. Alinta Limited and Verve Energy support the required amendment.[361]

1212. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 61. DBP submits that:[362]

> the overrun charge is a genuine estimate of the replacement cost of gas i.e. 500 per cent of the R1 tariff and therefore it is justified in seeking a behavioural charge in addition to the replacement cost of gas.

1213. For the reasons set out above (paragraph 1188 and following), the Authority does not accept that the overrun charge proposed by DBP constitutes a genuine pre-estimate of its costs. As such, the Authority considers that DBP's submission subsequent to the draft decision does not justify or substantiate the proposed change to clause 11.7(c).

1214. The Authority is of the view that it is reasonable that a shipper that is taking overrun gas in contravention of an unavailability notice faces a higher charge in respect of that overrun. This is the case under the current terms and conditions that establishes that unavailable overrun charge at a higher rate than the overrun charge. In the absence of justification and substantiation by DBP of the proposed change to make the shipper subject to both of these charges in respect of an amount of overrun, the Authority considers that the proposed change is unreasonable.

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361 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

362 DBP, 20 May 2011, Submission 51 p 21.

Required Amendment 45

Clause 11.7(c) of the proposed terms and conditions, in relation to savings and damages, should be amended to reinstate the word "not".

Additional rights and obligations of operator (clause 12)

1215. Clause 12 of current terms and conditions relates to additional rights and obligations of DBP for commingling of gas, gas processing, operation of the pipeline system, and the delivery of gas.

1216. Particular terms of clause 12 are addressed as follows.

Delivery of gas

1217. Clause 12.4 of the current terms and conditions provides that DBP may satisfy its obligation to enable gas to be delivered to the shipper by using a gas pipeline other than the DBNGP provided that DBP otherwise meets its obligations under the contract and there is no extra cost or risk to the shipper.

1218. In the original proposed access arrangement, DBP proposed revision of clause 12.4 of the terms and conditions as follows.

> 12.4 Delivery of Gas
>
> The Operator may (but only if the Operator chooses to do so) satisfy its obligation to ~~Deliver Gas to~~enable gas to be Delivered to the Shipper by ~~using a Gas pipeline~~using any means other than the DBNGP, provided~~:~~
>
> ~~(a) that Operator~~ that the Operator otherwise meets its obligations under this Contract.~~; and~~
>
> ~~(b) there is no extra cost or risk to Shipper in doing so.~~

1219. In the draft decision the Authority determined that DBP should be able to use any means other than the DBNGP for delivery only where there is no extra cost or risk to shipper in doing so.

> Draft decision amendment 62
>
> The proposed revised terms and conditions should be amended to include a provision that is substantially the same as clause 12.4(b) of the existing terms and conditions, in relation to the delivery of gas Clause 12 should therefore provide that the operator may satisfy its obligation to enable gas to be delivered to the shipper by using any means other than the DBNGP provided that it otherwise meets its obligations under the contract and only where there is no extra cost or risk to shipper in doing so.

1220. Alinta Limited and Verve Energy support the required amendment.[363]

1221. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 62. DBP submits that:[364]

> … it is impossible to know with certainty whether there will or will not be additional risk to DBP by using another pipeline to deliver contracted capacity to a shipper. The manner in which the clause was previously drafted was open to dispute among DBP and its shippers in circumstances where DBP used another pipeline. As previously drafted, it would also have meant that, if the use of another pipeline delivered a more cost effective outcome than would otherwise be the case but was a greater risk (or could not be demonstrated to be no more risky), then DBP would not have been able to use this option.
>
> DBP submits shippers are sufficiently protected against any risks to them associated with the clause in the proposed R1 Terms and Conditions by DBP's delivery obligations under other provisions of the contract.

1222. The Authority has reconsidered draft decision amendment 62 in light of DBP's submission. The Authority accepts DBP's submission that protections are provided to shippers under the terms and conditions. That is, the costs to shippers of services and the risks to shippers in receiving services are defined by the terms and conditions. The Authority considers that it is reasonable that DBP should be able to utilise other means to deliver gas subject to there being no change in obligations to shippers to deliver gas. Accordingly, the Authority accepts that the proposed revisions to clause 12.4 are reasonable and the Authority does not maintain its requirement for draft decision amendment 62.

Relocation of Capacity (clause 14)

1223. Clause 14 of the current terms and conditions comprises the terms for relocation of contracted capacity between inlet points and outlet points. This clause includes provisions for a request from the shipper for relocation of contracted capacity, an assessment by DBP of a requested relocation, provisions for when the operator is to notify the shipper of a request, and whether the requested relocation is an authorised relocation or not.

1224. Particular terms of clause 14 are addressed as follows.

Assessment of a requested relocation of an inlet point

1225. Clause 14.2 of the current terms and conditions sets out conditions for a requested relocation to be, or not to be, an authorised relocation.

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363 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

364 DBP, 20 May 2011, Submission 51 pp 21, 22.

1226. Clause 14.2(b) of the current revised terms and conditions sets out conditions under which a requested relocation of contracted capacity from an inlet point to a new inlet point will not be an authorised relocation. In the original access arrangement proposal, DBP proposed adding a condition to clause 14.2(b)(i)(A) that a requested relocation is not an authorised relocation if the contracted capacity exceeds "the safe operating capability of the part of the DBNGP at the point at which the new inlet point is located".

1227. In the draft decision, the Authority determined that the proposed new condition is unnecessary in light of the already broad and subjective test in clause 14.2(b)(ii) that provides that a requested relocation will not be an authorised relocation "if in the opinion of the operator, as a reasonable and prudent person, the requested relocation would not be operationally feasible".

> Draft decision amendment 63
>
> The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 14.2(d)(i) of the existing terms and conditions in relation to the assessment of requested relocation of contracted capacity.

1228. The Authority notes that there was a typing error in this required amendment that should have referred to clause 14.2(b)(i) rather than 14.2(d)(i). As a result of this typing error, DBP did not make a response to the intended requirement of draft decision amendment 63.

1229. Notwithstanding the absence of response from DBP to the intended requirement of draft decision amendment 63, the Authority has reconsidered the required amendment. Taking into account both the proposed terms of clause 14.2(b)(i) and 14.2(b)(ii), the Authority considers that the proposed change to clause 14.2(b)(i) does not materially change the designation of a requested relocation as an authorised relocation or not an authorised relocation. Rather, the proposed change clarifies that a relocation is not an authorised relocation if it would cause the safe operating capability of the relevant part of the DBNGP to be exceeded. As such, the Authority does not maintain the requirement of draft decision amendment 63.

Assessment of a requested relocation of an outlet point

1230. Clause 14.2(d) of the current revised terms and conditions sets out conditions under which a requested relocation of contracted capacity from an outlet point to a new outlet point will be an authorised relocation. In the original access arrangement proposal, DBP proposed:

- amending clause 14.2(d)(i) to remove provision for a relocation to be an authorised relocation if the requested relocation is to a new outlet point that is within two kilometres either upstream or downstream of the existing outlet point, leaving provision only for a relocation to be an authorised relocation if the requested relocation is to a new outlet point upstream of the existing outlet point; and
- adding a new clause 14.2(d)(ii) to indicate that a relocation will be an authorised relocation if the new inlet point is a proposed inlet point and that new inlet point satisfies the Operator's technical and operational requirements.

1231. In the draft decision the Authority did not take issue with the proposed revisions to clause 14.2(d).

Metering (clause 15)

1232. Clause 15 of the current terms and conditions sets out terms for metering.

1233. Particular terms of clause 15 are addressed as follows.

Shipper's responsibility

1234. Clause 15.1 of the current terms and conditions sets out the shipper's responsibilities for supplying, installing, operating and maintaining metering equipment at each inlet point.

1235. In the original access arrangement proposal, DBP proposed an amendment to clause 15.1(a) of the terms and conditions to indicate that these responsibilities must be met at the shipper's expense.

1236. In the draft decision the Authority did not take issue with this proposed revision. No submissions have been received on the proposed revision and the Authority accepts that the change is reasonable.

Clause Operator's responsibility

1237. Clause 15.2 of the current terms and conditions sets out the terms for DBP's responsibilities for supplying, installing, operating and maintaining metering equipment at each outlet point.

1238. In the original access arrangement proposal, DBP proposed an amendment to clause 15.2(a) of the terms and conditions to indicate that these responsibilities may be met by DBP procuring another party to undertake the necessary activities.

1239. In the decision the Authority did not take issue with this proposed revision. No submissions have been received on the proposed revision and the Authority accepts that the change is reasonable.

Metering uncertainty

1240. Clause 15.3 of the current terms and conditions sets out requirements for the accuracy of metering equipment.

1241. In the original access arrangement proposal, DBP proposed a change to clause 15.3(a)(i)(A) of the terms and conditions to reduce the maximum uncertainty of measurements for primary metering equipment from one per cent to 0.75 per cent of actual mass flow rate.

1242. In the draft decision the Authority determined that DBP has not established a benefit that may justify additional costs potentially being imposed on users by a more stringent metering uncertainty and required that the current maximum uncertainty of one per cent be maintained.

Draft decision amendment 64

Clause 15.3 of the proposed revised terms and conditions, in relation to metering uncertainty, should be amended to be substantially the same as the existing terms and conditions.

1243. Alinta Limited and Verve Energy support the required amendment.[365]

1244. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 64. DBP submits that the proposed revision to clause 15.3 should be allowed for the following reasons.[366]

- All current inlet and outlet meter stations currently comply with this reduction in mass uncertainty, in fact they have done so for the past 25 years.
- The reduction in mass uncertainty does not add additional cost to the provision of inlet or outlet meter stations by current DBNGP standards.
- Use of the less accurate measurement equipment has a detrimental effect on pipeline because of unaccounted for gas.
- The revised mass uncertainty is fully in line with industry best practice, equipment availability and the *National Measurement Act*.

1245. Having regard to DBP's submission, the Authority is satisfied that the proposed revisions to clause 15.3 are in accordance with industry standards and are unlikely to result in additional costs to pipeline users. On this basis the Authority does not maintain the requirement for draft decision amendment 64.

1246. In the original access arrangement proposal, DBP also proposed a change to clause 15.3 of the current terms and conditions to remove terms that set out less stringent requirements for accuracy for alternative metering equipment.

1247. In the draft decision the Authority did not take issue with this proposed revision. No submissions have been received on the proposed revision and the Authority accepts that this revision is reasonable.

Primary metering equipment

1248. Clause 15.4 of the current terms and conditions comprises terms for the specification of capabilities of primary metering equipment.

1249. In the original access arrangement proposal, DBP proposed revisions to clauses 15.4(a) and (c) of the terms and conditions to expand the list of primary measurements required of primary metering equipment, as follows:

15.4 Primary metering equipment

(a) Primary Metering Equipment must:

(i) continuously compute and record:

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365 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

366 DBP, 20 May 2011, Submission 51 p 23.

(A) (in the case of Inlet Metering Equipment) the quantity and quality of Gas Delivered by the Shipper to the Operator under this Contract; and

(B) (in the case of Outlet Metering Equipment) the quantity of Gas Delivered by the Operator to the Shipper under this Contract; and

(C) any information required by the Operator from time to time to assist the Operator to comply with any Law.

…

(c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:

(i) delivery and metering temperature;

(ii) delivery and metering pressure;

(iii) instantaneous energy flow rate in TJ/d;

(iv) instantaneous mass flow rate in Tonnes per day

(v) totalised energy flow in GJ;

(vi) totalised mass flow in Tonnes;

(vii) Relative Density;

(viii) Higher Heating Value in megajoules per cubic metre and megajoules per kilogram;

(ix) Wobbe Index;

(x) nitrogen content in mole percent;

(xi) carbon dioxide content in mole percent;

(xii) hydrocarbon content in mole percent for each of the fractions;

(xiii) sulphur content in milligrams per Cubic Metre;

(xiv) ~~LPG~~oxygen content in ~~tonnes per TJ of Gas~~mole percent;

(xv) moisture level in milligrams per Cubic Metre;

(xvi) instantaneous hydrocarbon dew point in degrees Celsius; and

(xvii) all primary measurements and Derived Variables used in any computation required by clauses 15.4(c)(i) to 15.4(c)(~~xi~~xvi).

1250. In the draft decision the Authority addressed the proposed revision to clause 15.4(a)(i)(C) and determined that this requirement should be limited to information *reasonably necessary* to enable DBP to comply with a Law.

Draft decision amendment 65

Clause 15.4(a)(i)(c) of the proposed revised terms and conditions should be amended to insert the word “reasonable” after the words “any information”.

1251. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has incorporated revisions to address draft decision amendment 65.

Provision of information to the shipper

1252. Clause 15.5 of the current terms and conditions sets out requirements for DBP to provide information to the shipper and sets out the circumstances under which DBP must, on request and at the expense and risk of the shipper, provide the shipper with access to certain information.

1253. In the original access arrangement proposal, DBP proposed deletion of clauses 15.5(e), (f) and (g) of the current terms and conditions, which relate to the availability of information for distribution network shippers. The clauses proposed for deletion are:

(e) Operator must make available to Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:

(i) Received by Shipper in a Gas Day at each Physical Gate Point; and

(ii) Received by Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.

(f) Operator must make available to Shipper via the CRS or a similar communications system within 5 hours after the end of a Gas Day the verified quantity of Gas:

(i) Received by Shipper in that Gas Day at each Physical Gate Point; and

(ii) Received by Shipper aggregated across all outlet points including all Physical Gate Points.

(g) Clauses 15.5(e) and (f) only apply for as long as Shipper is a Distribution Networks Shipper.

1254. In the absence of these provisions in the terms and conditions, a shipper seeking such information would be required to negotiate a data services agreement as a separate service with DBP.

1255. In the draft decision the Authority determined that it is not reasonable for, as suggested by DBP, individual shippers to be required to negotiate a data services agreement to obtain the relevant information set out in clause 15.5(e), (f) and (g) rather than have a right to obtain the information.

Draft decision amendment 66

Clause 15.5 of the proposed revised terms and conditions, in relation to the provision of information to shippers, should be amended to reinstate sub-clauses (e), (f) and (g).

1256. Alinta Limited and Verve Energy support the required amendment.[367]

1257. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 66. DBP submits that:[368]

> … in arriving at its decision in relation to Amendment 66, the ERA appears not to have considered:
>
> (a) the fact that there is no longer an operating agreement in place;
>
> (b) the Retail Market Rules; and
>
> (c) the fact that there are no aggregation rights under the R1 Terms and Conditions.

1258. The "operating agreement" referred to by DBP presumably refers to the "operating arrangement" as defined in the current terms and conditions as:

> Operating Arrangement means the instrument titled Operating Arrangement between Transmission Division and Distribution Division of the Gas Corporation under Regulation 199C and dated 9 January 1998 originally annexed to a memorandum of understanding between the Gas Corporation (in its capacity as the corporation's DBNGP business) and the Gas Corporation (in its capacity as the corporation's distribution business), now as a result of transfers under the DBP Act and the *Gas Corporation (Business Disposal) Act 1999 (WA)* having effect as a contract between Operator and Networks.

1259. DBP has deleted this definition from the proposed terms and conditions with its submission indicating that it is because this arrangement is no longer in place.

1260. While DBP refers in its submission to the Retail Market Rules no explanation is provided of the relevance of this reference. However, the Authority observes that the Retail Market Rules include requirements for:

- the owners of transmission pipelines that connect to the distribution network to provide the network operator with gate-point metering data for gas deliveries to the distribution network (rule 151 of the Retail Market Rules); and
- the network operator to provide gate point metering data to the retail market operator (rule 152 of the Retail Market Rules).

1261. There are no requirements under the retail market rules for the network operator to provide to gas shippers information in the nature of that contemplated by clauses 15.5(e), (f) and (g) of the current terms and conditions for the T1 Service.

1262. DBP refers in its submission to the absence aggregation rights under the R1 Terms and Conditions. The Authority does not consider this to be a matter relevant to this final decision as the Authority is requiring the R1 Service to be removed (as a reference service) from the proposed access arrangement and the T1 Service to be included as a reference service.

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367 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

368 DBP, 20 May 2011, Submission 51 p 24.

1263. Having regard to DBP's submission, the Authority considers that the obligations under clauses 15.5(e), (f) and (g) of the current terms and conditions for DBP to provide users with information on gas deliveries to the distribution network remain relevant as:

- there is no provision under the Retail Market Rules for a shipper to be provided with this information; and
- the Authority is requiring that the T1 Service be included in the access arrangement as a reference service, including aggregation rights.

1264. Accordingly, the Authority maintains the requirement for amendment of the proposed terms and conditions in accordance with draft decision amendment 66.

Required Amendment 46

Clause 15.5 of the proposed revised terms and conditions, in relation to the provision of information to shippers, should be amended to include requirements for DBP to provide information to shippers as required under clauses (e), (f) and (g) of the current terms and conditions.

Clause 15.16 – Unused outlet points

1265. Clause 15.16 of the current terms and conditions comprises terms establishing rights of DBP to decommission unused outlet points, or to agree with the shipper to defer decommissioning. Clause 15.16 also provides for the shipper to request recommissioning subsequent to commencement of decommissioning.

1266. In the original access arrangement proposal, DBP proposed adding a new clause 15.16(d) to the terms and conditions to indicate that an outlet point that is recommissioned at the request of the shipper after commencement of decommissioning is subject to charges (to be imposed on the shipper) in accordance with clause 6.12 of the proposed revised terms and conditions, which are charges for maintaining, operating, refurbishing, upgrading, replacing and decommissioning of the outlet point.

1267. In the draft decision the Authority determined this revision to be reasonable as it is reasonable that a recommissioned outlet or inlet station should be subject to the same maintenance charges as a new outlet station. The Authority maintains this determination.

Curtailment (clause 17)

1268. Clause 17 of the current terms and conditions comprises terms relating to curtailment.

1269. Particular terms of clause 17 are addressed as follows.

Curtailment generally

1270. Clause 17.2 of the current terms and conditions sets out the circumstances under which the service may be curtailed.

1271. In the original access arrangement proposal, DBP proposed the following revisions to clause 17.2 of the terms and conditions.

> 17.2 The Operator may curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:
>
> (a) if there is an event of Force Majeure where the Operator is the Affected Party;
>
> (b) whenever it needs to undertake any Major Works;
>
> ~~(c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;~~
>
> ~~(d) for any Planned Maintenance;~~ and
>
> ~~(e)~~(c) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

1272. Related revisions to the terms and conditions are a change in the definition of "major works" to include planned maintenance (addressed at paragraph 881 and following of this final decision).

1273. In the draft decision the Authority observed that the effect of these proposed revisions is to expand the scope of reasons for curtailments for which the curtailment can occur without liability for DBP (under clause 17.3 of the proposed revised terms and conditions). On this basis, and consistent with the Authority's determination to remove the R1 Service as a reference service and replace it with the T1, P1 and B1 Services as reference services, the Authority determined that the revisions to clause 17.2 are unreasonable.

> Draft decision amendment 67
>
> Clause 17.2, in relation to curtailment generally, should be amended to reinstate sub-clauses (c) and (d) in the existing terms and conditions.

1274. Alinta Limited and Verve Energy support the required amendment.[369]

1275. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 67. DBP has not responded to the required amendment other than to re-state the meaning of a curtailment as "a means for managing the integrity of the pipeline when there is an upset condition caused by unavailability of pipeline equipment resulting from either planned or unplanned outages. It covers events such as equipment failure, maintenance, construction activities, damage to pipeline equipment by third parties, etc."[370]

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369 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

370 DBP, 20 May 2011, Submission 51 pp 9, 24.

1276. In view of the lack of a substantive submission from DBP on draft decision amendment 67, and for the reasons expressed above, the Authority maintains the requirement for amendment of the proposed terms and conditions.

Required Amendment 47

Clause 17.2 of the proposed terms and conditions, in relation to curtailment generally, should be amended to reinstate sub-clauses (c) and (d) in the existing terms and conditions.

Curtailment without liability

1277. Clause 17.3 of the current terms and conditions outlines the circumstances where curtailment is to occur without liability. In particular, clause 17.3(b) provides that the operator has no liability to the shipper for a curtailment under clause 17.2 in any of the following circumstances:

- where the duration of the curtailment, together with the aggregate duration of all other curtailments during the gas year does not cause the permissible curtailment limit to be exceeded (clause 17.3(b)(i) of the current terms and conditions);
- where the curtailment is in accordance with clauses 17.2(a), (b) or (c) (clause 17.3(b)(ii) of the current terms and conditions); or
- where clause 17.5 ("Operator's rights to refuse to Receive or Deliver Gas") provides that the circumstance is not to be regarded as a curtailment (clause 17.3(b)(iii) of the current terms and conditions).

1278. In the original access arrangement proposal, DBP proposed revisions to clause 17.3(b) of the terms and conditions as follows.

17.3 Curtailment without liability

(a) Subject to clause 17.3(b), the Operator is ~~to be~~ liable to the Shipper only for Direct Damage caused by or arising out of a Curtailment or interruption of the Shipper's ~~T~~R1 Service. For the avoidance of doubt, the giving of a Curtailment Notice constitutes a Curtailment and the provision by the Operator of Capacity equal to the Shipper's reduced Contracted Capacity under clause 17.7(~~d~~e) during the currency of the Curtailment Notice which gave effect to that reduced Contracted Capacity is a Curtailment for the purposes of this clause 17.3(a).

(b) The Operator has no liability to the Shipper whatsoever under clause 17.3(a) or otherwise, except as may be provided in clause 17.4, for a Curtailment ~~under clause 17.2~~ in any of the following circumstances:

(i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the ~~T~~R1 Service during the Gas Year does not cause the ~~T~~R1 Permissible Curtailment Limit to be exceeded;

(ii) where the Curtailment is in accordance with any of clauses 17.2(a)~~, (b)~~ or ~~(c~~17.2(b); or

(iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

1279. In combination with the proposed revisions to clause 17.2 of the proposed revised terms and conditions (addressed above), the effect of the proposed revisions to clause 17.3 are to exclude curtailments for planned maintenance from curtailments for which DBP is liable.

1280. In accordance with the Authority's determination on proposed revisions to clause 17.2, the Authority determined in the draft decision that planned maintenance should not be included in curtailment without liability and, hence, that there should not be any change to clause 17.3.

Draft decision amendment 68

Clause 17.3(b) of the proposed revised terms and conditions, in relation to curtailment without liability, should be amended to be substantially the same terms as clause 17.3(b) in the existing terms and conditions.

1281. Alinta Limited and Verve Energy support the required amendment.[371]

1282. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 68. DBP has not responded to the required amendment other than to re-state the meaning of a curtailment as "a means for managing the integrity of the pipeline when there is an upset condition caused by unavailability of pipeline equipment resulting from either planned or unplanned outages. It covers events such as equipment failure, maintenance, construction activities, damage to pipeline equipment by third parties, etc."[372]

1283. In view of the lack of a substantive submission from DBP on draft decision amendment 68, the Authority maintains the requirement for amendment of the proposed terms and conditions.

Required Amendment 48

Clause 17.3(b) of the proposed revised terms and conditions, in relation to curtailment without liability, should be amended to be substantially the same terms as clause 17.3(b) in the existing terms and conditions.

371 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

372 DBP, 20 May 2011, Submission 51 pp 9, 24.

Operator's right to refuse to receive or deliver gas

1284. Clause 17.5 of the current terms and conditions provides that a refusal by the operator to receive or deliver gas is not a curtailment where the operator exercises rights to receive or deliver gas under clauses 5.3 and 5.7 of the current terms and conditions, and subject to clauses 5.5 and 5.9. Clauses 5.5 and 5.9 of the current terms and conditions provide that refusal to receive or deliver gas is a curtailment where the need for the refusal arises from the operator not having taken steps that would be expected of a reasonable and prudent person.

1285. In the original access arrangement proposal, DBP proposed revising clause 17.5 of the terms and conditions so that the rights of the operator under clause 17.5 are not subject to clauses 5.5 and 5.9 of the current terms and conditions. DBP also proposed deleting clauses 5.5 and 5.9 (addressed at paragraph 989 and following of this final decision).

1286. In the draft decision the Authority required amendments to the proposed terms and conditions to reinstate clauses 5.5 and 5.9 of the current revised terms and conditions (paragraph 989 and following of this final decision). Accordingly, the Authority also required clause 17.5 to remain subject to clauses 5.5 and 5.9.

> Draft decision amendment 69
>
> Clause 17.5 of the proposed revised terms and conditions, in relation to the operator's right to refuse to receive or deliver gas, should be amended so that the words "Subject to clauses 5.5 and 5.9,…" are reinstated at the beginning of clause 17.5.

1287. Alinta Limited and Verve Energy support the required amendment.[373]

1288. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has not included any revisions to address draft decision amendment 69. DBP has not responded to the required amendment other than to re-state the meaning of a curtailment as "a means for managing the integrity of the pipeline when there is an upset condition caused by unavailability of pipeline equipment resulting from either planned or unplanned outages. It covers events such as equipment failure, maintenance, construction activities, damage to pipeline equipment by third parties, etc."[374]

1289. In view of the lack of a substantive submission from DBP on draft decision amendment 69, the Authority maintains the requirement for amendment of the proposed terms and conditions.

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373 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

374 DBP, 20 May 2011, Submission 51 pp 9, 24.

Required Amendment 49

Clause 17.5 of the proposed revised terms and conditions, in relation to the operator's right to refuse to receive or deliver gas, should be amended so that the words "Subject to clauses 5.5 and 5.9,…" are reinstated at the beginning of clause 17.5.

Curtailment notice

1290. Clause 17.6 of the current terms and conditions sets out terms for the provision of a curtailment notice by DBP to the shipper.

1291. In the original access arrangement proposal, DBP proposed to revise and include additional terms under clause 17.6(b) of the terms and conditions, as follows:

> 17.6 Curtailment Notice
>
> …
>
> (b) (i) Where the reason for the Curtailment is Major Works, the Operator must give the Shipper:
>
> (A) an initial notice (Initial Notice) at least 60 days in advance of the starting time of the Curtailment; and
>
> (B) a Curtailment Notice no later than one Gas Day before the Gas Day on which the Curtailment commences.
>
> (ii) In any case other than one described in clause 17.6(b)(i):
>
> (A) subject to clause 17.6(b)(ii)(B), the Operator must give the Shipper a Curtailment Notice at least one hour in advance of the starting time of the Curtailment; and
>
> (B) ~~Operator must use reasonable endeavours to give Shipper a Curtailment Notice a reasonable period in advance of the starting time of the Curtailment, and in any event (other than when due to~~where as a result of Force Majeure or by reason of an emergency it is ~~unable to do so) must give the~~not reasonably possible to give a Curtailment Notice at least one hour ~~before~~in advance of the starting time of the Curtailment, the Operator must give the Shipper a Curtailment Notice as soon as it is practicable to do so, whether that is before or after the starting time of the Curtailment. ~~In the case of Major Works, reasonable notice is 90 days notice.~~

1292. In the draft decision the Authority considered the particular proposed revision that the former requirement of "a reasonable period in advance", in addition to the minimum one hour, had not been included in proposed clause 17.6(b)(ii)(A). The Authority determined that DBP should be required to provide reasonable notice but, in any event for certainty, at least one hour's notice in advance of the curtailment.

Draft decision amendment 70

Clause 17.6(b)(ii)(A) of the proposed revised terms and conditions should be amended to insert after the word "must" the words "use its best endeavours to" and after the word "Notice", the words "a reasonable period in advance of the stating time of the curtailment but in any event".

1293. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has made revisions to clause 17.6(b)(ii)(A) in accordance with draft decision amendment 70.

Content of a curtailment notice and initial notice

1294. Clause 17.7 of the current terms and conditions establishes requirements for the content of a "curtailment notice" and "initial notice".

1295. In the original access arrangement proposal, DBP proposed a new clause 17.7(b) of the terms and conditions requiring an initial notice to specify the operator's estimate of the starting time of the curtailment and the portion of the shipper's contracted capacity that is to be curtailed. An "initial notice" relates to a curtailment arising from the operator undertaking "major works".

1296. In the draft decision the Authority determined that an initial notice should also provide information related to the major works that triggers the need for the initial notice.

Draft decision amendment 71

Clause 17.7(b) of the proposed revised terms and conditions, in relation to the content of a curtailment notice and initial notice, should be amended to require an initial notice to specify the operator's reasons for, and a description of, the major works that has initiated the need for an initial notice to be issued under clause 17.6(b)(i)(A).

1297. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has made revisions to clause 17.7(b) to indicate that the initial notice must specify the reasons for the curtailment. This accords with the requirements of draft decision amendment 71.

Compliance with a curtailment notice

1298. Clause 17.8 of the current terms and conditions sets out requirements for compliance with the curtailment notice.

1299. In the original access arrangement proposal, DBP proposed to delete clause 17.8(f) of the current terms and conditions:

17.8 Compliance with curtailment notice

…

~~(f) Other than when due to Force Majeure or by reason of an emergency it is unable to do so, Operator is to give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c).~~

1300. In the draft decision, the Authority determined that clause 17.8 should be substantially the same as clause 17.8 of the current terms and conditions for the T1 Service, consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the R1 Service as a reference service and to include a full haul T1 Service.

> Draft decision amendment 72
>
> Clause 17.8 of the proposed revised terms and conditions, in relation to compliance with a curtailment notice, should be amended to be substantially the same as clause 17.8 of the existing terms and conditions.

1301. In the revised proposed access arrangement submitted to the Authority subsequent to the draft decision, DBP has reinstated clause 17.8(f) of the current terms and conditions in accordance with draft decision amendment 72.

Clause 17.9 – Priority of curtailment

1302. Clause 17.9 of the current terms and conditions requires curtailment of services in accordance with the curtailment plan for the DBNGP that determines the priority of services. Clause 17.9 also sets out other principles for curtailment of services.

1303. In the original access arrangement proposal, DBP proposed deleting the provisions from clause 17.9 of the current terms and conditions that relate to the ability that exists under the current terms and conditions for a shipper to aggregate capacity across contracted delivery points:

> 17.9 Priority of curtailment
>
> …
>
> (b) The general principle in clause 17.9(a) is subject to the following:
>
> …
>
> ~~(iii) Any Point Specific Curtailment of the Aggregated T1 Service is not a Curtailment for the purposes of this Contract and is not to be taken into account in determining whether Curtailments aggregated for a Gas Year cause the T1 Permissible Curtailment Limit to be exceeded to the extent that Shipper is entitled to give a Renomination Notice in respect of either of the following:~~
>
> ~~(A) (subject to clause 17.9(b)(iii)(B)) one or more inlet points or outlet points (as the case may be) where Shipper has unutilised Contracted Capacity for the T1 Service at that point , in which case the Curtailment will not be taken into account in respect of an amount of capacity up to Shipper's unutilised Contracted Capacity for the T1 Service at that or those inlet points or outlet points (as the case may be);~~
>
> ~~(B) one or more inlet points or outlet points (which may be points referred to in clause 17.9(b)(iii)(A) above) where Shipper can otherwise utilise Capacity.~~
>
> …

(vi) ~~In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, Shipper's:~~

~~(A) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at the Outlet Points located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:~~

~~(1) not be included in the Aggregated T1 Service; and~~

~~(2) be included in the T1 Service,~~

~~available to Shipper in the Curtailment Area; and~~

~~(B) Aggregated T1 Service which derives from Contracted Capacity for T1 Services at any Outlet Point located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:~~

~~(1) be included in the Aggregated T1 Service;~~

~~(2) not be included in the T1 Service,~~

~~available to Shipper in the Curtailment Area.~~

~~However, nothing in this clause 17.9(b)(vi) affects a Stage 2 Curtailment of any incumbent Contracted Capacity remaining after a Stage 1 Curtailment.~~

1304. The deletion of these clauses relates to the proposed deletion from the terms and conditions of provisions for aggregation of contracted capacity (clauses 5.1, 5.2, 8.15 and 8.16 of the current terms and conditions).

1305. In the draft decision, the Authority required amendments to the proposed revised terms and conditions to reinstate the ability of shippers to aggregate capacity across inlet points and outlet points (see paragraphs 969 and following and 1120 and following of this final decision). Consistent with these required amendments, and the Authority's decision to require the R1 Service to be replaced with the T1 Service, the Authority determined the terms of clause 17.9 relating to aggregation should be reinstated.

> Draft decision amendment 73
>
> Clause 17.9 of the proposed revised terms and conditions, in relation to priority of curtailment, should be amended to be substantially the same as clause 17.9 of the existing terms and conditions.

1306. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 73.[375]

[375] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1307. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not included revisions in accordance with draft decision amendment 73. DBP submits that the proposed revisions to clause 17.9 consistent with DBP's position of maintaining the proposed R1 Service as the sole reference service.[376]

1308. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for restoration of clause 17.9 as per the current terms and conditions.

Required Amendment 50

Clause 17.9 of the proposed revised terms and conditions, in relation to priority of curtailment, should be amended to be substantially the same as clause 17.9 of the current terms and conditions.

Apportionment of shipper's curtailments

1309. Clause 17.10 of the current terms and conditions set out terms for the apportionment of shipper's curtailments across inlet points and outlet points.

1310. In the original access arrangement proposal, DBP proposed several changes to clause 17.10 of the terms and conditions to:

- provide that the operator may exercise discretion in apportioning curtailments, rather than the operator being required to apportion curtailments in the manner required by the shipper (proposed clause 17.10(a));
- delete clause 17.10(b) of the current terms and conditions that specify circumstances in which the operator is not required to make the apportionment referred to in clause 17.10(a); and
- include new terms that provide for the operator to make apportionments where no apportionment mechanism has been proposed by the shipper and it becomes necessary to effect an apportionment (proposed clause 17.10(e)).

1311. DBP claimed that these revisions are necessary to deal with shippers' non-cooperation with curtailments. In the draft decision, the Authority determined that DBP has not provided adequate justification for the revisions to clause 17.10. Given the Authority's decision to require the R1 Service to be replaced with the T1 Service, the Authority determined that clause 17.10 of the proposed revised terms and conditions should be amended to be substantially consistent with clause 17.10 of the current terms and conditions and to address concerns raised by shippers, also include an additional requirement for DBP to notify the shipper of apportionment as soon as practicable after the end of relevant gas day.

[376] DBP, 20 May 2011, Submission 51 p 25.

Draft decision amendment 74

Clause 17.10 of the proposed revised terms and conditions, in relation to the apportionment of a shipper's curtailments should be amended to be substantially consistent with clause 17.10 of the existing terms and conditions and an additional requirement for DBP to notify the shipper of apportionment as soon as practicable after the end of the relevant gas day be included.

1312. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 74.[377]

1313. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions in accordance with draft decision amendment 74. DBP submits that the proposed revisions to clause 17.9 are consistent with DBP's position of maintaining the proposed R1 Service as the sole reference service. In addition, DBP queries why theAuthorityconsiders that the additional requirement for DBP to notify the shipper of apportionment is necessary when no shipper has raised an issue or requested this.[378]

1314. In this final decision the Authority is maintaining the requirement for the revised access arrangement proposal to be amended to exclude the R1 Service as a reference service and include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for restoration of clause 17.10 as per the current terms and conditions.

1315. The Authority also maintains the requirement for clause 17.10 to include a requirement for DBP to notify the shipper of apportionment as soon as practicable after the end of the relevant gas day. This is in accordance with the new clause 17.10(e) that was included by DBP in the revised terms and conditions.

Required Amendment 51

Clause 17.10 of the proposed revised terms and conditions, in relation to the apportionment of a shipper's curtailments, should be amended to be substantially consistent with clause 17.10 of the current terms and conditions and to maintain the requirement of the proposed clause 17.10(e) for DBP to notify the shipper of apportionment as soon as practicable after the end of the relevant gas day be included.

Maintenance and major works (clause 18)

1316. Clause 18 of the current terms and conditions establishes terms for the notification of the shipper of details of disruptions to services that may occur as a result of maintenance and major works on the DBNGP.

1317. In the original access arrangement proposal, DBP proposed changes to clause 18 of the terms and conditions, including:

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377 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

378 DBP, 20 May 2011, Submission 51 p 25.

- the removal of terms that require the operator to notify the shipper, to the extent practicable, of changes to its schedule of major works and planned maintenance issued to shippers under clause 18(c) of the terms and conditions (clause 18(e) of the current terms and conditions); and
- the inclusion of additional terms to clause 18(e) of the proposed revised terms and conditions to indicate that, where the operator endeavours to give the shipper notice of any material departure from the "annual DBNGP maintenance schedule" that is likely to affect the shipper, the operator will not be bound by any notification it provides.

1318. In the draft decision the Authority determined that a requirement for the operator to notify the shipper of changes to the schedule of works is reasonable and clause 18(e) of the current terms and conditions should be maintained in the revised terms and conditions.

1319. The Authority also determined that it should be explicit in clause 18 that the timing and extent of curtailment of a service for reasons of major works should be subject to the terms of curtailments under clause 17.6(b)(i)(A) of the proposed revised terms and conditions.

> Draft decision amendment 75
>
> Clause 18 of the proposed revised terms and conditions, in relation to maintenance and major works should be amended as follows.
>
> - Clause 18(d) should be amended to insert "17.6(b)(i)(A)" after "clauses".
> - Clause 18 should be amended to include terms that are substantially the same as clause 18(e) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the operator to notify the shipper of changes to its schedule of major works and planned maintenance issued to shippers under clause 18(c) of the terms and conditions.

1320. The Authority notes that there was a typographical error in draft decision amendment 75. The first part of this required amendment should have referred to clause 18(g) not clause 18(d). DBP detected this error and responded to draft decision amendment 75 as if it referred correctly to clause 18(g).

1321. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 75.[379]

1322. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made a revision to address the first requirement of draft decision amendment 75: under clause 18(g) making the exercise of discretion in the timing and extent of curtailments necessitated by major works subject to clause 17.6(b)(i)(A).

1323. DBP has not made revisions in accordance with the second requirement of draft decision amendment 75 (reinsertion of clause 18(e) of the current terms and conditions). DBP has not addressed this requirement in its submissions on the draft decision.

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[379] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1324. In view of the lack of a submission from DBP on the second requirement of draft decision amendment 75, the Authority maintains this requirement for amendment of the proposed terms and conditions.

Required Amendment 52

Clause 18 of the proposed revised terms and conditions, in relation to maintenance and major works should be amended to include terms that are substantially the same as clause 18(e) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the operator to notify the shipper of changes to its schedule of major works and planned maintenance issued to shippers under clause 18(c) of the terms and conditions.

Force majeure (clause 19)

1325. Clause 19 of the current terms and conditions establishes terms for force majeure under the contract.

1326. In the original access arrangement proposal, clause 19 is materially the same as in the current terms and conditions.

1327. DBP proposed changes to the definition of "force majeure" under clause 1 ("Interpretation") of the proposed terms and conditions. The Authority has addressed DBP's proposed changes to the definition of force majeure at paragraph 875 and following of this final decision.

Charges (clause 20)

1328. Clause 20 of the current terms and conditions establishes terms relating to charges.

1329. Particular terms of clause 20 are addressed as follows.

Other charges

1330. Clause 20.4(a) of the current terms and conditions sets out terms relating to charges other than the capacity reservation charge and commodity charge. These "other charges" comprise:

- the excess imbalance charge under clause 9;
- the hourly peaking charge under clause 10;
- the overrun charge under clause 11;
- the unavailable overrun charge under clause 11 and 17.8; and
- any other charges or sums payable under other clauses in the contract.

1331. Under clause 20.4(b):

> The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be

> incurred by the Operator or is otherwise a penalty or constitutes penal damages.

1332. DBP did not make material revisions to this clause in the original access arrangement proposal.

1333. Notwithstanding the absence of proposed revisions to clause 20.4, the Authority gave attention in the draft decision to clause 20.4(b) and whether revenues from the charges under clause 20.4 should be rebateable to users. The Authority determined that clause 20.4 of the proposed revised terms and conditions should be amended to be substantially consistent with clause 17.10 of the current terms and conditions. The Authority also determined that all of the charges listed above on clause 20.4 should be rebateable to shippers.

> Draft decision amendment 76
>
> Clause 20.4 of the proposed revised terms and conditions, in relation to other charges, should be amended to be substantially consistent with clause 17.10 of the existing terms and conditions and to include a provision for all of the other charges to be rebateable to shippers.

1334. In submissions to the Authority, Alinta Limited, Verve Energy and BHP Billiton indicate support for draft decision amendment 76.[380]

1335. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not included revisions to clause 20.4 to address the requirements of draft decision amendment 76. DBP has made a revision to clause 20.4(a)(v) so that charges payable by the shipper do not include charges payable under an originally proposed clause 5.10(c), which has been deleted from the proposed revised terms and conditions in accordance with another amendment required by the Authority under the draft decision (paragraph 1012 and following of this final decision).

1336. In relation to the requirement under draft decision amendment 76 for all of the "other charges" to be rebateable to shippers, DBP submits that:[381]

> … this is an unacceptable amendment because the current building block total revenue proposed by DBP does not include an assumption that shippers will behave in a manner which triggers these behavioural charges. Further, as is provided for in clause 20.4(b), the charges are required to recover costs which DBP incurs as a result of shipper's behaviour. As a consequence, there would be no "revenue" to rebate.

380 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

381 DBP, 20 May 2011, Submission 51 pp 26, 27.

1337. The Authority is of the view that the behaviours of users that give rise to the "other charges" being imposed (imbalances, peaking and overrun) would not normally give rise to additional costs for DBP that are over and above costs that would be recoverable by the reference tariff charges. This is despite the terms of clause 20.4(b) that the parties agree that the other charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the operator will incur as a result of the conduct entitling such charges to be levied. As such, the Authority considers that the revenues from these charges should be rebateable to shippers.

Required Amendment 53

Clause 20.4 of the proposed revised terms and conditions, in relation to other charges, should be amended to include provision for all of the "other charges" to be rebateable to shippers.

Adjustment to R1 tariff

1338. Clause 20.5 of the current terms and conditions set out the circumstances under which the tariff for the T1 Service can be adjusted under the contract.

1339. In the original access arrangement proposal, clause 20.5 has been revised to provide for adjustments to the tariff for the R1 Service. Explicit specification of annual adjustment for inflation has been removed from the clause and reference instead made to the reference tariff variation mechanism under the access arrangement.

> 20.5 Adjustment to R1 Tariff
>
> (a) The Parties acknowledge that:
>
> (i) as at the commencement of this Contract, the R1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism; and
>
> (ii) any adjustment of the R1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.

1340. In the draft decision the Authority did not take issue with specifying adjustments to the reference tariff by cross reference to the reference tariff variation mechanism in the access arrangement. This Authority did require amendment of the proposed clause 20.5 to be consistent with the structure of the reference tariff and reference tariff variation mechanism of the proposed revised access arrangement as required to be amended under the draft decision.

> Draft decision amendment 77
>
> Clause 20.5 of the proposed revised terms and conditions should be amended to be consistent with the structure of the reference tariff and reference tariff variation mechanism of the proposed revised access arrangement as required to be amended under this draft decision.

1341. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 77.[382]

1342. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made any material revisions to clause 20.5. DBP submits that:[383]

> DBP queries what actually needs to be changed in the proposed R1 Terms and Conditions under Amendment 77 because clause 20.5 of the proposed R1 Terms and Conditions appears to already be drafted in a manner which is consistent with the required amendment. Accordingly, DBP submits that clause 20.5 should be retained as per the proposed R1 Terms and Conditions

1343. In this final decision the Authority is maintaining the requirement of the draft decision for removing the R1 Service as a reference service and including the T1 Service as a reference service. Accordingly, clause 20.5 should refer to the tariff for the T1 Service.

1344. In regard to the operation of clause 20.5, the Authority observes that, with amendments made in accordance with this final decision, section 3 of the access arrangement will set out the reference tariff for the T1 Service. Accordingly, the Authority considers that the only change to clause 20.5 that is necessary is to refer to the T1 Service rather than the R1 Service.

Required Amendment 54

Clause 20.5 of the proposed revised terms and conditions should be amended to refer to the T1 Service rather than the R1 Service.

Other taxes

1345. Clause 20.7 of the current terms and conditions sets out terms for charges to be varied where are change in taxation occurs during the access arrangement period that changes costs incurred by the operator in performing obligations under the contract or otherwise affects the amounts payable under the contract.

1346. In the original access arrangement proposal, DBP proposed to remove this clause from the terms and conditions.

1347. In the draft decision the Authority required that clause 20.7 of the current terms and conditions be reinstated into the revised terms and conditions.

> Draft decision amendment 78
>
> Clause 20.7 of the existing terms and conditions, in relation to other taxes, should be reinstated into the proposed terms and conditions.

382 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

383 DBP, 20 May 2011, Submission 51 p 27.

1348. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 78.[384]

1349. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has reinserted a clause 20.7 into the terms and conditions that sets out terms for a change in charges in response to a tax change. This clause is more detailed than clause 20.7 of the current terms and conditions, but is materially the same as the mechanism for a "tax changes variation" set out in section 11.3 of the revised proposed access arrangement. On this basis, the Authority considers that clause 20.7 of the revised terms and conditions is reasonable. The only amendment necessary for this clause is to change reference to the "R1 Tariff" to "T1 Tariff".

Required Amendment 55

Clause 20.7 of the revised terms and conditions, in relation to other taxes, should be amended to replace references to the R1 Service with references to the T1 Service.

Invoicing and payment (clause 21)

1350. Clause 21 of the current terms and conditions sets out terms for invoicing and payment.

1351. Particular terms of clause 21 are addressed as follows.

Monthly payment and invoicing

1352. Clause 21.1 of the current terms and conditions comprises terms for monthly payment of the capacity reservation charge.

1353. In the original access arrangement proposal, DBP proposed changes to clause 21.1 of the terms and conditions to make it explicit that the tax invoice, provided by the operator to the shipper in respect of the capacity reservation charges payable for the month, must separately show the capacity reservation charges for each capacity service.

1354. DBP proposed similar changes to clause 21.2 of the terms and conditions, which details the terms for monthly invoicing. The changes make it an explicit requirement that the tax invoice to show for each capacity service:

- the quantity of gas delivered by the shipper at each inlet point and the quantity of gas delivered by the operator at each outlet point on each gas day in the month;
- the commodity charges for the month; and
- all other charges payable for the month.

[384] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1355. In the draft decision the Authority did not take issue with these proposed revisions. The Authority maintains that the changes are reasonable.

Default in payment and correction of payment errors

1356. Clause 21.4 of the current terms and conditions comprises terms for the payment of interest where the shipper or operator defaults in the payment of any charges or rebates. Clause 21.6 establishes terms for the payment of interest where a payment error (underpayment or overpayment) occurs.

1357. In the original access arrangement proposal, DBP proposed changes to both these clauses to make the calculation of the daily interest payable subject to compounding.

1358. In the absence of any detailed reasoning from DBP in support of these revisions, the Authority determined in the draft decision that the terms and conditions should not be revised to allow for compounding in interest calculations.

> Draft decision amendment 79
>
> Clauses 21.4 and 21.6 of the proposed revised terms and conditions should be amended to remove the words "and compounded" in relation to the interest payable for a default in payment or correction of payment errors by a shipper.

1359. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 79.[385]

1360. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions in accordance with draft decision amendment 79. DBP submits that:[386]

> … its recent experience with a shipper supports its view that compounding interest would act as an incentive to pay and assists DBP to minimise the risk that shippers deliberately short-pay accounts.

1361. The Authority has reconsidered the requirement for draft decision amendment 79. The Authority is of the view that the guiding principle for charging interest on outstanding amount payable to DBP is that the interest charged should provide compensation for costs notionally incurred by DBP in financing the late payment. The Authority accepts that a daily calculation and compounding of interest payments is consistent with this principle. As such, the Authority does not maintain the requirement for draft decision amendment 79.

Default and termination (clause 22)

1362. Clause 22 of the current terms and conditions sets out default and termination provisions.

1363. Particular terms of clause 22 are addressed as follows.

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385 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

386 DBP, 20 May 2011, Submission 51 p 28.

Default by shipper

1364. Clause 22.1 of the current terms and conditions sets out the circumstances where the shipper is considered to be in default under the contract.

1365. In the original access arrangement proposal, DBP proposed changes to clauses 22.1(a) and (c) to clarify the default positions of the shipper.

> 22.1 Default by Shipper
>
> The Shipper is in default under this Contract only if:
>
> (a) the Shipper defaults in the due and punctual payment, at the time and in the manner prescribed for payment by this Contract, of any amount payable under this Contract. For the avoidance of doubt, withholding of a disputed amount in accordance with clause 21.5 is not considered a default;
>
> …
>
> (c) without the Operator's prior consent, the Shipper sells, parts with Possession of or attempts to sell or part with Possession of, the whole or a substantial part of its undertaking, so far as that undertaking relates to the use of Gas Delivered under this Contract; …

1366. In the draft decision the Authority did not take issue with the proposed changes to clause 22.1. The Authority maintains that the changes are reasonable.

Notice of shipper's default and notice of operator's default

1367. Clause 22.2 of the current terms and conditions establishes how the operator is to notify the shipper of a default ("shipper default notice"). Clause 22.6 establishes how the shipper is to notify the operator of a default ("operator default notice"). In both cases notice is to be given in writing by certified mail.

1368. In the original access arrangement proposal, DBP proposed changes to these clauses to remove requirements for the respective default notices to be delivered by certified mail.

1369. In the draft decision the Authority did not take issue with these proposed changes, noting that for reasons of importance, timeliness and practicality, alternative transmittal options to that of certified mail may be warranted.

When the operator may exercise remedy

1370. Clause 22.3 of the current terms and conditions comprises terms indicating that events do not constitute a default until specified periods have elapsed after a shipper receives a shipper default notice, and indicating that once a default occurs the operator may exercise a remedy for that default at any time that the shipper remains in default.

1371. In the original access arrangement proposal, DBP proposed a change to clause 22.3(b)(ii) to indicate that, in respect of some default events, a shipper is determined in default after 20 days, rather than 40 days, have elapsed after the shipper received the default notice.

1372. In the draft decision the Authority determined that the change in this period results in inconsistent terms applying for events where the shipper is in default and events where the operator is in default (and the operator has a 40 day period before action can be taken by the shipper in respect of that default, under clause 22.7(b)(i)).

> Draft decision amendment 80
>
> Clause 22.3 of the proposed revised terms and conditions, in relation when the operator may exercise a remedy, should be amended to replace the reference to "20 Working Days" with a reference to "40 Working Days".

1373. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 80.[387]

1374. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions in accordance with draft decision amendment 80. Notwithstanding this, DBP submits that it accepts the required amendment.[388]

1375. Taking DBP's submission into account, the Authority maintains the requirement for amendment of the terms and conditions in accordance with draft decision amendment 80.

Required Amendment 56

Clause 22.3 of the proposed revised terms and conditions, in relation when the operator may exercise a remedy, should be amended to replace the reference to "20 Working Days" with a reference to "40 Working Days".

No indirect damages

1376. In the original access arrangement proposal, DBP proposed to add a new clause 22.9 ("No Indirect Damages") to the terms and conditions:

> 22.9 No Indirect Damages
>
> The right of termination (with the right to recover Direct Damages) under the preceding clauses are the Shipper's sole and exclusive remedy in respect of a repudiation or disclaimer and the Operator (despite any provision of clause 23) is not liable to the Shipper for any other Indirect Damage arising in respect of a repudiation or disclaimer.

1377. In the draft decision the Authority determined that the proposed new clause 22.9 is not reasonable as clauses 23.2 and 23.3(c) of the terms and conditions already provide an indemnity in favour of DBP against a claim for indirect damages save in circumstances of fraud. The Authority took the view that there is no reasonable justification for extending the indemnity against indirect damages to circumstances of a repudiation or disclaimer of the contract by the Operator.

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387 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

388 DBP, 20 May 2011, Submission 51 p 28.

Draft decision amendment 81

Clause 22.9 of the proposed revised terms and conditions, in relation to no indirect damages, should be deleted.

1378. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 81.[389]

1379. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions in accordance with draft decision amendment 81. DBP submits that the fact that clause 23.3(a) provides an indemnity in favour of DBP should not preclude DBP expressly clarifying its rights.[390]

1380. The Authority is of the view that Clause 22.9 represents an extension of the rights of DBP (extending the indemnity against indirect damages to circumstances of a repudiation or disclaimer of the contract by the Operator) and is not solely a clarification. DBP has provided no reasonable justification to extend the protection against a claim for indirect damages beyond that provided in clauses 23.2 and 23.3(c).

Required Amendment 57

Clause 22.9 of the proposed revised terms and conditions, in relation to no indirect damages, should be deleted.

Liability (clause 23)

1381. Clause 23 of the current terms and conditions comprises terms for liability.

1382. In the original access arrangement proposal, DBP proposed changes to clauses 23.6 and 23.7 that establish that the shipper and operator are each responsible for their own contractors' personnel and property. DBP proposed changes to these clauses to remove an exception to the sole liability where the liability was contributed to by an act or omission of the other party. DBP submitted that these proposed changes reflect that a 'knock-for-knock' insurance regime is more efficient than a fault-based regime and that knock-for-knock insurance is commonplace in the oil and gas industry.

1383. In the draft decision the Authority determined that it had insufficient information to assess whether the proposed change to the allocation of risk is appropriate on the basis that 'knock for knock' insurance regime is more efficient than a fault-based regime. The Authority took the view that the exception to liability for death or injury to a party's personnel or damage to a party's property is a fair and appropriate allocation of liability and should be reinstated.

389 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

390 DBP, 20 May 2011, Submission 51 p 28.

Draft decision amendment 82

Clauses 23.6 and 23.7 of the proposed revised terms and conditions, which establish the shipper's and operator's responsibility for contractors' personnel and property respectively, should be amended to reinstate the liability for death or injury to a party's personnel or damage to a party's property.

1384. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 82.[391]

1385. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions in accordance with draft decision amendment 82. DBP submits that, consistent with DBP's prior submissions, clause 23.6 and 23.7 should not be amended as the change was proposed to align with current practice.[392]

1386. The Authority is of the view that a 'knock-for-knock' insurance regime can increase efficiency by clarifying liability, reducing litigation and facilitating insurance arrangements. However, these efficiency gains are dependent on the delineation of the party's property, the nature of the relationship between the parties and the extent of the party's group. Further, they represent a departure from the common law approach to the allocation of risk.

1387. The Authority considers that the proposed changes to the terms of clauses 23.6 and 23.7 of the terms and conditions represent a substantial change to the terms of the T1 Service and the allocation of risk. With such a substantial change to the terms and conditions, the Authority expects that the proposal for the change would be supported by a clear demonstration that the benefits to the shippers and operator justify the change and the reallocation of risk. Despite the opportunity to do so, DBP has not provided such a demonstration. On this basis, the Authority maintains the requirement for amendment of clauses 23.6 and 23.7 to reinstate the liability for death or injury to a party's personnel or damage to a party's property.

Required Amendment 58

Clauses 23.6 and 23.7 of the proposed revised terms and conditions, which establish the shipper's and operator's responsibility for contractors' personnel and property respectively, should be amended to reinstate the liability for death or injury to a party's personnel or damage to a party's property.

Dispute Resolution and Independent Experts (clause 24)

1388. Clause 24 of the current terms and conditions comprises terms for dispute resolution, including the selection and appointment of independent experts for roles in dispute resolution.

391 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

392 DBP, 20 May 2011, Submission 51 pp 28, 29.

1389. In the original access arrangement proposal, DBP did not propose any material changes to clause 24 and the Authority did not address the terms of this clause.

1390. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has included changes to clause 24.8 (dealing with the appointment of an independent expert) as follows.

> 24.8 Appointment of Independent Expert
>
> (a) The Party wishing to have the Dispute determined by an Independent Expert will give written notice to that effect to the other Party.
>
> (b) The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 10 Working Days of the notice, then, in relation to a Technical or Financial Matter, either Party may refer the matter~~:~~ to the Australian Commercial Disputes Centre and request that a suitably qualified person be nominated by the Australian Commercial Disputes Centre, in accordance with the Rules of Expert Determination of the Australian Commercial Disputes Centre as amended from time to time, to act as Independent Expert to determine the Dispute.
>
> ~~(i) if it is a Technical Matter, to the President for the time being of the Institute of Engineers, Australia;~~
>
> ~~(ii) if it is a Financial Matter, to the President for the time being of the Institute of Chartered Accountants in Australia; or~~
>
> ~~(iii) in either case, if the relevant body referred to in clause 24.8(b)(i) or 24.8(b)(ii) no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the relevant body, or, if there is no successor body or association:~~
>
> ~~(A) in the case of a Technical Matter, to the President or Chairman for the time being or his or her nominee of a body representing engineers in the State; and~~
>
> ~~(B) in the case of a Financial Matter, to the President or Chairman for the time being or his or her nominee of a body representing chartered accountants in the State,~~
>
> ~~who will nominate a suitably qualified person to act as the Independent Expert to determine the Dispute.~~
>
> (c) If the Australian Commercial Disputes Centre ceases to exist or otherwise ceases to provide the relevant expert nomination service, then the Institute of Arbitration and Mediation Australia is to substitute for the Australian Commercial Disputes Centre as the nominating body and nomination is to occur in accordance with the Expert Determination Rules of the Institute of Arbitrators and Mediators Australia as amended from time to time.

1391. No submissions were made on this revision to the proposed terms and conditions.

1392. The Authority considers that the changes to clause 24.8 do not represent a material change to the terms and conditions. Clause 24.8 continues to provide a process for appointing an independent expert for dispute resolution. As such, the Authority does not oppose the change proposed by DBP.

Assignment (clause 25)

1393. Clause 25 of the current terms and conditions comprises terms relating to the assignment of rights, interests or obligations under the contract.

1394. Particular terms of clause 25 are addressed as follows.

No assignment except under this clause

1395. Clause 25 of the current terms and conditions provides that neither party to the contract can assign rights under the contract except in accordance with the terms of clause 25 and except for a "bare transfer".

1396. In the original access arrangement proposal, DBP proposed a change to clause 25.1 dealing with the exception of an assignment of rights by means of a bare transfer:

> 25.1 No assignment except under this clause
>
> Subject to this clause 25 and to clause ~~27.1,~~27, neither Party may assign any right, interest or obligation under this Contract ~~other than by way of a Bare Transfer in accordance with clause 27.1.~~(but this clause 25 does not prevent the creation of an interest for the Shipper. *[sic]*

1397. In the draft decision, the Authority determined that the phrase "but this clause 25 does not prevent the creation of an interest for the shipper" is unnecessary as the matter of bare transfers and like assignments of rights are dealt with fully under clause 27 of the proposed revised terms and conditions. Accordingly, the Authority required clause 25.1 of the proposed revised terms and conditions to be amended to remove this phrase.

> Draft decision amendment 83
>
> Clause 25.1 should be amended to read: *"Subject to this clause 25 and clause 27, neither Party may assign any right, interest or obligation under this Contract"*.

1398. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made revisions to clause 25.1 in accordance with draft decision amendment 83.

Charges

1399. Clause 25.2 of the current terms and conditions comprises terms for either the operator or the shipper to charge any part of its rights or interests under the contract in favour of any recognised bank or financial institution or a related body corporate of the party subject to all parties entering into a tripartite deed in the form set out in schedule 7 of the terms and conditions.

1400. In the original access arrangement proposal, DBP proposed a change to clause 25.2 to remove reference to a *pro forma* tripartite agreement in Schedule 7 of the terms and conditions and instead require the tripartite agreement to be in the form of a tripartite deed that is published on the operator's website from time-to-time.

1401. In the draft decision the Authority determined that it is reasonable for the terms and conditions to specify the tripartite deed and that the deed should continue to form part of the terms and conditions.

> Draft decision amendment 84
>
> Clause 25.2(a) should be amended to include terms that are substantially the same as clause 25.2(a) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the form of tripartite deed to be annexed in a schedule to the terms and conditions.

1402. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has made revisions to clause 25.2 in accordance with draft decision amendment 84.

Assignment

1403. Clause 25.3 of the current terms and conditions establishes terms for a party to assign all or part of its rights and interests under the contract.

1404. In the original access arrangement proposal, DBP proposed changes to this clause to alter the criteria for a party to be able to assign its rights or interests without obtaining the consent of the other party where the assignment is to a related corporate body (clause 25.3(a)).

25.3 Assignment

(a) A Party may assign all or part of its rights and interests under this Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that:

(i) where the assignor is the Shipper, such assignment does not release the assignor from liability;

(ii) where the assignor is the Operator, such assignment does not release the assignor prior to the assignment date;

(iii) where the assignor is the Shipper, if the Operator reasonably considers that the proposed assignee is not likely to meet the Shipper's obligations under this Contract, the proposed assignee provides, or undertakes to provide security for those obligations on terms and conditions acceptable to the Operator; and

~~(ii)~~(iv) upon the assignee ceasing to be a Related Body Corporate of the assignor, the assignee must immediately transfer all of its rights and interests, under this Contract to the assignor.

(b) Subject to clauses 25.3(c)~~, 25.3(d),~~ and 25.4, either Party may, with the prior written consent of the other Party, which ~~may~~must not be unreasonably withheld or delayed, assign all or part of its rights, interests and obligations under this Contract to any person.

(c) Without limitation, the Operator may withhold its consent to an assignment by the Shipper if the Operator reasonably considers that the proposed assignee is not in a position to meet the Shipper's obligations under this Contract and will not provide, or undertake to provide, security for those obligations on terms and conditions acceptable to the Operator, acting reasonably.

(d) Without limitation, the Shipper may withhold its consent to an assignment of the Operator's obligations under this Contract if ~~Shipper reasonably considers that~~ the proposed assignee does not have~~:~~ the necessary contractual, statutory or ownership rights for the purposes of performing all of the Operator's obligations under this Contract.

~~(i) contractual or ownership rights to access the DBNGP for the purposes of performing all of Operator's obligations under this Contract; or~~

~~(ii) financial capability and technical expertise to enable the assignee to effectively operate the DBNGP and to perform all of Operator's obligations under this Contract.~~

1405. In the draft decision, the Authority determined that clause 25.3 should not be changed as proposed by DBP as there is no reason for the treatment of liability, following assignment, to be different between the shipper and the operator.

> Draft decision amendment 85
>
> Clause 25.3 of the proposed revised terms and conditions, in relation to assignment, should be amended to be substantially the same as the existing terms and conditions.

1406. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 85.[393]

1407. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions to clause 25.3 in accordance with draft decision amendment 85. DBP submits that the revised clause 25.3 protects DBP against the potential for assignment to a non-creditworthy shipper.[394]

1408. The Authority is of the view that that the existing clause 25.3(c) provides protection for DBP against assignment to a non-creditworthy party by allowing the operator to withhold its consent to an assignment by the shipper to a party that that DBP reasonably considers is not in a position to meet the obligations of the shipper. Further, clause 25.3(c) allows security to be required on reasonable terms.

1409. The Authority is of the view that there is no justification for treatment of liability following assignment to be different between the shipper and the operator. DBP has provided no basis for this distinction.

1410. The Authority considers that the proposed changes to the terms of clauses 25.3(d) represent a substantial change to the terms of the T1 Service through a weakening of the capability and expertise requirements for an assignee of the Operator. With such a substantial change to the terms and conditions, the Authority expects that the proposal for the change would be supported by a clear demonstration that the benefits to the shippers and operator justify the change. Despite the opportunity to do so, DBP has not provided such a demonstration.

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393 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011, BHP Billiton, 20 May 2011.

394 DBP, 20 May 2011, Submission 51 p 29.

1411. On this basis, the Authority maintains the requirement for amendment of clauses 25.3 to be substantially the same as the existing terms and conditions.

Required Amendment 59

Clause 25.3 of the proposed revised terms and conditions, in relation to assignment, should be amended to be substantially the same as the existing terms and conditions.

Assignment: deed of assumption

1412. Clause 25.4 of the current terms and conditions establishes terms for the assignment of rights and interests.

1413. In the original access arrangement proposal, DBP proposed to add new terms 25.4(b) and (c) to this clause as follows.

> 25.4 Assignment: deed of assumption
>
> …
>
> (b) The Shipper must not assign all or part of its rights and interest under this Contract unless:
>
> (i) the Operator is satisfied that the proposed assignee is likely to meet the Shipper's obligations under this Contract; or
>
> (ii) the proposed assignee provides, or undertakes to provide security for those obligations on terms and conditions acceptable to the Operator.
>
> (c) The Operator must not assign all or part of its rights and interest under this Contract, or title or interest in the DBNGP without requiring the assignee to enter into a deed of assumption with the Shipper under which it:
>
> (i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of the Shipper (and the Shipper agrees that the Pipeline Trustee is released to the extent that the Pipeline Trustee's obligations are assumed); and
>
> (ii) acknowledges that its obligations under such assumption of obligations extend to the Operator's obligations under the Relevant Agreements.

1414. In the draft decision the Authority determined that the requirements under the proposed clauses 25.4(b) and (c) should apply equally to both the operator and the shipper when the other party seeks to assign its rights under the contract.

> Draft decision amendment 86
>
> Clause 25.4 of the proposed revised terms and conditions, in relation to a deed of assumption, should be amended to be substantially consistent with the existing terms and conditions.

1415. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 86.[395]

1416. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions to clause 25.4 in accordance with draft decision amendment 86. DBP submits that the proposed clauses 25.4(b) and 25.4(c) protect DBP against the potential for assignment to a non-creditworthy shipper.[396]

1417. The Authority is of the view that the protection sought by DBP under the proposed clauses 25.4(b) and 25.4(c) is satisfactorily provided by clause 25.3.

1418. Further, the Authority maintains the view that the protections where an assignment occurs should apply equally to both the operator and the shipper when the other party seeks to assign its rights under the contract. This is not the case under the proposed clauses 25.4(b) and 25.4(c).

1419. Accordingly, the Authority maintains its determination that the proposed clauses 25.4(b) and 25.4(c) are unreasonable.

Required Amendment 60

Clause 25.4 of the proposed revised terms and conditions, in relation to a deed of assumption, should be amended to be substantially consistent with the existing terms and conditions.

Pipeline Trustee's acknowledgement and undertakings

1420. Clauses 25.5 and 25.6 of the current terms and conditions establish acknowledgements and undertakings of the Pipeline Trustee (in its capacity as trustee of the DBNGP Pipeline Trust) in regard to an assignment of an interest in the DBNGP to another party.

1421. In the original access arrangement proposal, DBP proposed changes to clause 25.5 and 25.6 that vary the acknowledgements and undertakings required of the DBNGP Pipeline Trust from those in the current terms and conditions.

395 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

396 DBP, 20 May 2011, Submission 51 p 30.

1422. DBP indicated to the Authority that the changes made in relation to clauses 25.5 and 25.6 are the deletion of paragraphs (e) - (g) relating to entering a into an assignment/assumption deed if the Pipeline Trustee disposes of its interest in the DBNGP. However, DBP submitted that there has been no change to the acknowledgment and undertakings that the Pipeline Trustee is providing in this regard because the obligations relating to entering into a deed for the disposal/assignment of the DBNGP have been relocated to clause 25.4(c). DBP also submitted that the reason that the DBNGP Trustee's acknowledgements have been deleted is that the DBNGP Trustee is not a party to a contract for the proposed R1 Service.[397]

1423. In the draft decision the Authority required restoration of clauses 25.5 and 25.6 in the terms and conditions in a form materially the same as in the current terms and conditions, taking into account the Authority's requirement for the access arrangement to include the T1 Service as a reference service.

> Draft decision amendment 87
>
> Clause 25 the proposed revised terms and conditions should be amended to include terms and conditions that are substantially the same as clauses 25.5 and 25.6 of the existing terms and conditions for the T1 Service, which set out the acknowledgements and undertakings of the Pipeline Trustee and DBNGP Trustee respectively.

1424. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 87.[398]

1425. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions to clause 25.4 in accordance with draft decision amendment 87. DBP submits that it is inappropriate to include the DBNGP Trustee in the terms and conditions as it is not the licensee under the DBNGP licences and there is no statutory basis for requiring the DBNGP Trustee to be a party to the reference service.[399]

1426. Having regard to DBP submission, the Authority accepts that it is appropriate to remove from the terms and conditions the obligations on the DBNGP Trustee as the DBNGP Trustee is not a party to the contract for the T1 Service.

1427. The Authority is of the view that the deletion of paragraphs (e) to (g) of clause 25.5 represents a substantial change to the terms of the T1 Service through a reduction in the obligations of the Pipeline Trustee if it seeks to dispose of any of its rights, title or interest in the Pipeline Trust. The Authority's decision to revise clause 25.4 to be substantially consistent with the existing terms and conditions (Required Amendment 60 under this final decision) means that paragraphs (e) to (g) of clause 25.5 of the existing terms and conditions are not reflected elsewhere in the document and should be restored.

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397 DBP, 8 December 2010, Submission 36: Response to ERA Information Request 17 November 2010, Confidential.

398 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

399 DBP, 20 May 2011, Submission 51 pp 30, 31.

Required Amendment 61

Clause 25.5 of the proposed revised terms and conditions should be amended to include terms and conditions that are substantially consistent with clause 25.5 of the existing terms and conditions.

Clause 25.6 – Utilising other shipper's daily nominations

1428. Clause 25.8 of the current terms and conditions establishes terms for the shipper to utilise other shippers' daily nominations.

1429. In the original access arrangement proposal, DBP proposed changes to this clause (now clause 25.6 in the proposed revised terms and conditions) to make the shipper's agreement to utilise its daily nominations on behalf of another shipper, or another shipper agreeing to utilise its daily nominations on the behalf of the shipper, subject to the shipper entering into an inlet sales agreement.

1430. In the draft decision the Authority determined that the proposed amendments should not be allowed, having regard to competition and efficiency issues raised by interested parties and the Authority's decision to remove the R1 Service and retain the T1 Service in the access arrangement.

> Draft decision amendment 88
>
> Clause 25.6 of the proposed revised terms and conditions should be amended to include terms and conditions substantially the same as clause 25.8 of the existing terms and conditions. [400]

1431. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 88.[401] Alinta Limited and Verve Energy submit that the form of any agreement on the utilisation of another shipper's daily nomination should be determined by the shippers and there is no justification for the operator to be able to dictate the form of the agreement.

1432. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions to clause 25.6 in accordance with draft decision amendment 88. DBP submits that an inlet sales agreement streamlines the administration of the contract and that without it, shippers run the risk of significant imbalances where a multi-shipper agreement is not in place and a third party undertakes the allocation.[402]

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400 In the draft decision, this required amendment mistakenly indicated a requirement to include terms and conditions substantially the same as clause 25.6 of the existing terms and conditions, when this should have referred to clause 25.8 of the existing terms and conditions.

401 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

402 DBP, 20 May 2011, Submission 51 p 31.

1433. The Authority considers that DBP has not adequately demonstrated that an inlet sales agreement streamlines the administration of the contract and reduces risks to shippers. Accordingly, the Authority is of the view that the requirement of an inlet sales agreement, of which the Operator has control of the terms, represents an overly restrictive exercise of control by the Operator which may reduce competition and efficiency. The Authority therefore maintains the determination under the draft decision that clause 25.6 should be amended to be substantially the same as clause 25.8 of the existing terms and conditions.

Required Amendment 62

Clause 25.6 of the proposed revised terms and conditions should be amended to include terms and conditions substantially the same as clause 25.8 of the existing terms and conditions.

Non-complying assignment

1434. Clause 25.7 of the current terms and conditions provides that any purported sale, transfer or assignment that was in breach of the requirements of any of the provisions of this clause 25 is not legally binding.

1435. In the original access arrangement proposal, DBP proposed deleting this clause.

1436. In the draft decision the Authority did not take issue with this deletion. In this final decision the Authority maintains a view that the deletion does not materially affect the rights of either DBP or users under the contract.

General right of relinquishment (clause 26)

1437. Clause 26 of the current terms and conditions sets out the rights of the shipper to relinquish contracted capacity.

1438. In the original access arrangement proposal, DBP proposed deletion of clause 26.

1439. In the draft decision the Authority required reinstatement of clause 26 of the current terms and conditions, taking into account the Authority's requirement for the access arrangement to include the T1 Service as a reference service.

> Draft decision amendment 89
>
> Clause 26 of the proposed revised terms and conditions should be amended to be substantially the same as clause 26 of the 2005 to 2010 terms and conditions for the T1 Service, which establishes terms for a general right of relinquishment by a shipper.

1440. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 89.[403] Alinta Limited and Verve Energy submitted that allowing relinquishments will better utilise capacity by allowing unutilised capacity to be utilised.

1441. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not reinstated clause 26 in accordance with draft decision amendment 89. DBP submits that the right of relinquishment does not promote efficient use of the DBNGP and is not appropriate for a reference service.[404]

1442. The Authority is of the view that the right of relinquishment improves the efficiency of the service by better allowing the utilisation of unutilised capacity. DBP has not provided justification as to how it could reduce efficiency.

1443. The Authority is also of the view that deletion of clause 26 represents a substantial change to the terms of the T1 Service through a restriction on the right of relinquishment. With such a substantial change to the terms and conditions, the Authority expects that the proposal for the change would be supported by a clear demonstration that an improvement in efficiency would justify the change. Despite the opportunity to do so, DBP has not provided such a demonstration.

Required Amendment 63

Clause 26 of the proposed revised terms and conditions should be amended to be substantially the same as clause 26 of the 2005 to 2010 terms and conditions for the T1 Service, which establishes terms for a general right of relinquishment by a shipper.

Trading or transferring contract capacity (clause 27)

1444. Clause 27 of the current terms and conditions comprises terms for the trading or transferring of contracted capacity.

1445. Particular terms of clause 27 are addressed as follows.

No transfer of contracted capacity other than by this clause

1446. Clause 27.1 of the current terms and conditions allows for transfers of capacity that are “bare transfers” to occur in accordance with provisions of the Code and without being subject to other terms and conditions for reference services. Clause 27.2 of the current terms and conditions limits transfers of capacity (other than bare transfers) to transfers in accordance with the terms of clause 27 and indicates that daily use of nominations of another shipper are not transfers for the purpose of clause 27.

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403 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

404 DBP, 20 May 2011, Submission 51, p 31.

1447. In the original access arrangement proposal, DBP proposed deletion of clause 27.1 and revision of clause 27.2 (which becomes clause 27,1) to:

- remove reference to bare transfers and to provide a general provision that a transfer cannot occur other than in accordance with clause 27; and
- to indicate that the exception of use of another shipper's daily nominations from terms for a transfer of capacity is subject to clause 25.6, which relates to use of another shipper's nominations.

1448. DBP also proposes a new clause 27.2 that provides for a shipper to transfer contracted capacity by way of sub-contract without notice to DBP, but requires that information on the sub-contract arrangement be provided to DBP.

1449. In the draft decision the Authority did not take issue with these revisions, noting consistency with the requirements of the NGR for capacity trading and relevant provisions of the proposed revised access arrangement.

1450. In submissions to the Authority subsequent to the draft decision, Alinta Limited and Verve Energy submitted that the reference to clause 25.6 in the amended clause 27.1(b) should be removed.[405]

1451. As the Authority requires that clause 25.6 be restored to the form of that clause in the existing terms and conditions (paragraphs 1428 to 1433), the inclusion of the reference to clause 25.6 adds no value to clause 27.1(b) and the reference could be removed. However, the Authority is also of the view that as the terms of clauses 25.6 and 27.1(b) are near identical, the reference to clause 25.6 is not material and the Authority considers that an amendment to the revised terms and conditions is unnecessary.

Transfer of capacity by shipper - approval of transfer terms

1452. Clause 27.4 of the current terms and conditions comprises terms for the processing and approval of the transfer of capacity other than by way of sub-contract, including the extent of DBP's obligation to allow the transfer of capacity.

1453. In the original access arrangement proposal, DBP proposed changes to clause 27.4(a) to remove terms that allow the shipper to request that the transfer of all or part of its contracted capacity be "for a duration less than or equal to the remaining duration of the period of supply". Despite this change, provisions of clauses 27.4(b) and (c) contemplate a transfer being for a particular duration or being temporary in nature.

1454. In the draft decision the Authority determined that the proposed change to clause 27.4 creates ambiguity and in the interests of clarity it is preferable that the existing wording is retained to expressly state that the transfer may be less than or equal to the remaining period of supply.

[405] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

Draft decision amendment 90

Clause 27.4 of the proposed revised terms and conditions, in relation to transfer of capacity, should be amended to be substantially consistent with the existing terms and conditions.

1455. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 86.[406]

1456. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not made revisions to clause 25.4 in accordance with draft decision amendment 90. DBP submits that the proposed change does not create ambiguity, with the duration of any transfer determined between the parties.[407]

1457. Having regard to DBP's submission, the Authority accepts that the changes to clause 27.4 does not create ambiguity as the duration of the transfer is subject to determination by the parties to the transfer and the duration of the transfer must necessarily be limited to the term of the original contract for capacity. As such, the Authority does not maintain the requirement for draft decision amendment 90.

Posting of tradable capacity

1458. Clause 27.5 of the current terms and conditions establishes an obligation for DBP to inform shippers of capacity that is available to be traded.

1459. In the original access arrangement proposal, DBP proposed changes to clause 27.5 to provide that the operator *may* (as opposed to *must*) provide information on capacity that is available to be traded.

1460. In the draft decision the Authority did not take issue with the proposed changes to clause 27.5. The Authority is of the view that there are no grounds under the NGR for such an obligation of DBP to be imposed through the terms and conditions for reference services. As such, the Authority does not oppose the change to clause 27.5.

Operator facilitating transfers of capacity

1461. Clauses 27.11 and 27.12 of the current terms and conditions make provision for the operator to elect to assume roles in facilitating transfers of capacity by:

- operating as a broker of capacity (clause 27.11); and
- providing for capacity that is to be relinquished by one shipper to be transferred to another shipper (clause 27.12).

1462. In the original access arrangement proposal, DBP proposed deleting these clauses from the terms and conditions.

406 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

407 DBP, 20 May 2011, Submission 51 p 32.

1463. In the draft decision the Authority observed that clauses 27.11 and 27.12 of the current terms and condition provide only a general discretion for DBP to undertake the specified functions in facilitating the transfer of capacity. Accordingly, the Authority took the view that the removal of these clauses does not affect the substantive rights of shippers under the terms and conditions. The Authority maintains this view.

Confidentiality (clause 28)

1464. Clause 28 of the current terms and conditions comprises terms relating to confidentiality of information under the contract.

1465. Particular terms of clause 28 are addressed as follows.

Exceptions to confidentiality

1466. Clause 28.2 of the current terms and conditions specifies rights of either party to disclose confidential information.

1467. In the original access arrangement proposal, DBP proposed changes to clause 28.2 to indicate two additional circumstances in which a party may disclose confidential information:

- where the information is requested by an operator of a pipeline which is interconnected with the DBNGP (proposed clause 28.2(j)); and
- where the information is required by law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the DBNGP proposed (clause 28.2(k)).

1468. In the draft decision the Authority determined that the disclosure of confidential information to an operator of an interconnected pipeline, under clause 28.2(j), should be limited to circumstances where the information relates to, and is necessary for, the operation of the interconnected pipeline.

> Draft decision amendment 91
>
> Clause 28.2 of the proposed revised terms and conditions should be amended as follows:
>
> - Clause 28.2(j) should be amended so that the exception to confidentiality, where the information is requested by an operator of a pipeline which is interconnected with the DBNGP, is subject to the confidential information being relevant to and necessary for the operation of the interconnected pipeline.

1469. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has revised clause 28.2(j) in accordance with draft decision amendment 91.

Permitted disclosure

1470. Clause 28.3 of the current terms and conditions comprises terms for the permitted disclosure of confidential information by either party to related bodies corporate.

1471. In the original access arrangement proposal, DBP did not propose any material changes to clause 28.3.

1472. In response to a submission from an interested party, the Authority gave attention in the draft decision to clause 28.3(a)(i) that indicates Alcoa, WestNet and the System Operator to be considered Related Bodies Corporate of the Operator. Taking into account that Alcoa is also a shipper on the DBNGP, the Authority determined that clause 28.3 should be amended to expressly incorporate the operator's obligations to comply with ring fencing provisions under the NGL and NGR.

> Draft decision amendment 92
>
> Clause 28.3 of the proposed revised terms and conditions, in relation to permitted disclosure, should be amended to expressly incorporate the operator's obligations to comply with ring fencing provisions under the NGL and NGR.

1473. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 92.[408] BHP Billiton submitted that the Authority should ensure that ring fencing obligations prohibit the disclosure of confidential information to a third party shipper who is also an owner.

1474. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised clause 28.3 in accordance with draft decision amendment 92. DBP submits that draft decision amendment 92 is unclear and that if it means that confidential information cannot be disclosed to another shipper, it will be unworkable.[409]

1475. The Authority is of the view that the ring fencing provisions under the NGL and NGR do not prohibit confidential information being provided to another shipper. Rather, they require that the pipeline service provider treat another part of the business which receives pipeline services as if it were a separate unrelated entity. The Authority therefore maintains the view that incorporating the ring fencing provisions into clause 28.3 will make explicit the obligations of the operator under the NGL and NGR without affecting necessary disclosure of information.

Required Amendment 64

Clause 28.3 of the proposed revised terms and conditions, in relation to permitted disclosure, should be amended to expressly incorporate the operator's obligations to comply with ring fencing provisions under the NGL and NGR.

Audit of compliance with ACCC undertakings

1476. Clause 28.10 of the current terms and conditions comprises a requirement for DBP to procure an independent audit in relation to compliance with undertakings to the ACCC under section 87B of the then *Trade Practice Act 1974*.

1477. In the original access arrangement proposal, DBP proposed to delete clause 28.10.

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408 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011.

409 DBP, 20 May 2011, Submission 51 p 32.

1478. In the draft decision the Authority did not take issue with the deletion of clause 28.10 of the current terms and conditions, observing that a requirement to undertake the audit is an obligation that exists in the ACCC Undertaking and a failure of DBP to meet the obligation should be dealt with according to the undertaking and the provisions of the Australian Consumer Law. The Authority maintains this view.

Representations and warranties (clause 30)

1479. Clause 30 of the proposed revised terms and conditions establishes certain representations and warranties for the operator, shippers and trustees.

1480. Particular terms of clause 30 are addressed as follows.

Operator's representations and warranties

1481. Clause 30.1 of the current terms and conditions comprises the operator's representations and warranties to the shipper.

1482. In the original access arrangement proposal, DBP proposed to remove terms that require the operator to warrant to the shipper that it has duly complied and will continuously comply with all environmental and safety laws with respect to any of its obligations connected with, arising out of, or in relation to, the contract (clause 30.1(a)(i) of the current terms and conditions).

1483. In the draft decision the Authority determined that DBP's warranty in clause 30.1(a)(i) in respect of past and continuous compliance with environmental and safety laws should be retained in the terms and conditions and shippers should not have to rely on the operator's compliance obligations outside of the contract.

> Draft decision amendment 93
>
> Clause 30.1 of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.

1484. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 93.[410]

1485. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised clause 30.1 in accordance with draft decision amendment 93. DBP submits that it is not necessary to include a warranty with respect to laws that DBP is required to comply with. Further, DBP submitted that shippers generally do not have the same statutory obligations as the operator.[411]

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410 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011, BHP Billiton, 20 May 2011.

411 DBP, 20 May 2011, Submission 51 p 33.

1486. The Authority is of the view that DBP should offer warranties to shippers that DBP will comply with Environmental and Safety Laws. Inclusion of this warranty in the terms and conditions gives the shipper standing to seek redress in circumstances where the shipper suffers loss as a consequence of failure to comply with relevant laws.

Required Amendment 65

Clause 30.1 of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.

Shipper's representations and warranties

1487. Clause 30.2 of the current terms and conditions comprises the shipper's representations and warranties to the operator.

1488. In the original access arrangement proposal, DBP proposed changes to clause 30.2(a)(ii) to narrow the shipper's representations and warranties with respect to environmental and safety laws by removing references to "licences, permits, consents, certificates, authorities and approvals":

> (a) Subject to clause 30.2(b), the Shipper represents and warrants to the Operator that:
>
> …
>
> (ii) it has in full force and effect all authorisations~~, licences, permits, consents, certificates, authorities and approvals~~ necessary under all Environmental And Safety Laws and all other Laws to enter into this Contract, to observe its obligations under this Contract, and to allow those obligations to be enforced;

1489. In the draft decision the Authority determined that the proposed change to clause 30.2(a)(ii) may result in the clause not capturing all of the shipper's obligations with respect to environmental and safety laws (which may vary) and it is reasonable to require the shipper to warrant compliance with those legal instruments that are relevant to their obligations.

> Draft decision amendment 94
>
> Clause 30.2 of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.

1490. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 94.[412]

[412] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1491. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised clause 30.2 in accordance with draft decision amendment 94. DBP submits that draft decision amendment 94 should have referred to the shipper and not the operator. DBP also submits that, as "authorisation" is defined to encompass all types of authorisation previously set out in clause 30.2, the drafting should use this definition.[413]

1492. The Authority agrees with DBP that the draft decision amendment should have referred to the shipper.

1493. The Authority is of the view that as "authorisation" is defined in clause 1 of the terms and conditions, it is appropriate to draft clause 30.2(b) using this definition. In this circumstance, DBP's proposed change to clause 30.2 is appropriate, but this change should also be reflected in clause 30.1(a)(i) of the proposed terms and conditions, which describes the operator's obligations.

Required Amendment 66

Clause 30.1(a)(i) of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to use the definition of "authorisation" provided in clause 1.

Pipeline Trustee's representations and warranties

1494. Clause 30.3 of the current terms and conditions comprises the Pipeline Trustee's representations and warranties to the shipper.

1495. In the original access arrangement proposal, DBP proposed changes to clause 30.3 to remove the following warranties of the Pipeline Trustee to the shipper:

- that the Pipeline Trust is registered under s601EB of the *Corporations Act 2001 (Cth)* (clause 30.3(a)(vii) of the current terms and conditions); and
- that the Pipeline Trust holds a dealer's licence authorising it to operate the Pipeline Trust (clause 30.3(a)(viii) of the current terms and conditions).

1496. In the draft decision the Authority did not take issue with these changes, accepting that the removal of clauses 30.3(a)(vii) and (viii) in relation to the Pipeline Trust is reasonable on the basis the Trust is not registered as described in these clauses. The Authority maintains this view.

DBNGP Trustee's representation and warranties

1497. Clause 30.4 of the current terms and conditions comprises the DBNGP Trustee's representations and warranties to the shipper.

1498. In the original access arrangement proposal, DBP proposed to delete clause 30.4 on the basis that the DBNGP Trustee is not a party to the R1 Service terms and conditions.

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413 DBP, 20 May 2011, Submission 51 p 33.

1499. In the draft decision the Authority determined that clause 30.4 of the current terms and conditions should be reinstated in the terms and conditions given the Authority's requirement for the access arrangement to include a T1 Service as a reference service.

> Draft decision amendment 95
>
> Clause 30 the proposed revised terms and conditions, in relation to representations and warranties of the DBNGP Trustee to a shipper, should be amended to be substantially the same as the existing terms and conditions.

1500. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 95.[414]

1501. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 95. DBP submits that it is inappropriate to include the DBNGP Trustee in the terms and conditions as it is not the licensee under the DBNGP licences and there is no statutory basis for requiring the DBNGP Trustee to be a party to the reference service.[415]

1502. The Authority accepts the submission of DBP that, as the DBNGP Trustee is not a party to the T1 Service, it is not appropriate that it be subject to obligations under the terms and conditions. As such, the Authority does not oppose the deletion of clause 30.4 and does not maintain the requirement for draft decision amendment 95.

Records and information (clause 31)

1503. Clause 31 of the current terms and conditions comprises terms for the preparation and maintenance of records and information.

1504. In the original access arrangement proposal, DBP proposed a change to clause 31 to remove a provision for the shipper to require the operator to provide information on planned expansions in capacity of the DBNGP for the following five years (clause 31(b) of the current terms and conditions). DBP indicated that the removal of this provision reflects that the terms for the proposed R1 Service did not include a right to expand the capacity of the DBNGP.

1505. In the draft decision the Authority determined that clause 31 of the current terms and conditions should be reinstated in the terms and conditions, taking into account the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service.

> Draft decision amendment 96
>
> Clause 31 of the proposed revised terms and conditions, in relation to the preparation and maintenance of records and information, should be amended to be substantially the same as the existing terms and conditions.

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414 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

415 DBP, 20 May 2011, Submission 51 pp 30, 31, 33.

1506. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 96.[416]

1507. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 96. DBP submits that DBP's proposed plans for expansion are contained in the Revised Amended Access Arrangement and that is the appropriate place for these plans. Further, DBP submits that the need for amendment to include a T1 Service does not apply as the terms and conditions do not relate to the T1 Service.[417]

1508. The Authority considers that the proposed change to the terms of clause 31 of the terms and conditions represents a substantial change to the terms of the T1 Service that may reduce the ability of shippers to scope their own future gas consumption and operations. The Authority is of the view that the plans for expansion contained in the Revised Amended Access Arrangement will have lower currency than the information that would be available to users under clause 31(b). On this basis, the Authority maintains the requirement for clause 31(b) to be substantially the same as the existing terms and conditions.

Required Amendment 67

Clause 31 of the proposed revised terms and conditions, in relation to the preparation and maintenance of records and information, should be amended to be substantially the same as the existing terms and conditions.

Entire agreement (clause 34)

1509. Clause 34 of the current terms and conditions provides that the contract and the access arrangement collectively comprise the entire agreement between the operator and shipper.

1510. In the original access arrangement proposal, DBP proposed revision of clause 34 to remove reference to the access arrangement comprising part of the agreement between the operator and shipper.

1511. In the draft decision the Authority did not take issue with the proposed revision to clause 34, accepting that the access arrangement is not part of the agreement between the parties and therefore not part of the contract. The Authority maintains this view.

Revocation, substitution and amendment (clause 38)

1512. Clause 38 of the current terms and conditions contains provisions for the operator and the shipper to agree to revoke, substitute or amend terms of the contract.

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416 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiton, 20 May 2011

417 DBP, 20 May 2011, Submission 51 p 34.

1513. In the original access arrangement proposal, DBP proposed inserting a new provision (proposed clause 38(b)) that prohibits amendments to the contract to increase the shipper's contracted capacity under the contract, except in circumstances where the shipper is entitled to additional contracted capacity under the access arrangement.

1514. In the draft decision the Authority determined that the proposed change to clause 38 should not be made taking into account the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service.

> Draft decision amendment 97
>
> Clause 38 of the proposed revised terms and conditions, in relation to revocation, substitution and amendment, should be amended to be substantially the same as the existing terms and conditions.

1515. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 97.[418].

1516. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 97. DBP submits that:[419]

> … the ERA's reason for requiring the amendment appears to be flawed in that the ERA appears to be arguing that the inclusion of a T1 Service necessarily requires that clause 38 be drafted as per the existing terms and condition but as this clause does not describe the nature of a T1 Service the ERA's reason is not substantiated. Therefore, consistent with DBP's response to the draft decision on why the proposed R1 Service should be reinstated, DBP submits that clause 38 should be retained as per the proposed R1 Terms and Conditions.

1517. The Authority is of the view that the wording of Clause 38(b) of the proposed terms and conditions may be restrictive in that it is unclear when a shipper would be "entitled to additional capacity". As such, any revised clause should be framed in the negative, noting that increased capacity should not be contracted for if it would be inconsistent with the Access Arrangement. However, the Authority is of the view that it is not necessary to expressly state this requirement and, as such, the Authority considers that clause 38 should be substantially the same as the existing terms and conditions.

Required Amendment 68

Clause 38 of the proposed revised terms and conditions, in relation to revocation, substitution and amendment, should be amended to be substantially the same as the existing terms and conditions.

418 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

419 DBP, 20 May 2011, Submission 51 p 34.

Non-discrimination clause (clause 45)

1518. Clause 45 of the current terms and conditions comprises a non-discrimination clause relating to the provision of information by the operator to shippers (clause 45.1) and the treatment of all shippers on an arms' length basis (clause 45.2).

1519. In the original access arrangement proposal, DBP proposed deleting this clause.

1520. In the draft decision the Authority determined that clause 45 of the current terms and conditions is reasonable and consistent with the National Gas Objective and should be maintained in the revised terms and conditions.

> Draft decision amendment 98
>
> Clause 45 of the proposed revised terms and conditions should be amended to be substantially the same as clause 45 of the existing terms and conditions, which establish terms for non-discrimination.

1521. In submissions to the Authority, Alinta Limited, BHP Billiton and Verve Energy indicate support for draft decision amendment 98.[420]

1522. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 98. DBP submits that the Authority is incorrect in its statement that non-discrimination clauses are reasonable and consistent with the NGL. DBP states that the existing owner which is a shipper has a different contract to all other shippers and that the NGL does not enshrine non-discrimination.[421]

1523. The Authority is of the view that the obligation to share information and deal with shippers on an arms' length basis encourages competition, particularly given the relationship between shippers on the DBNGP and the DBNGP owners. As such, the Authority considers that clause 45 should be included in the terms and conditions in substantially the same form as in the existing terms and conditions for the T1 Service.

Required Amendment 69

Clause 45 of the proposed revised terms and conditions should be amended to be substantially the same as clause 45 of the existing terms and conditions, which establish terms for non-discrimination.

DBNGP Trustee's limitation of liability (clause 47)

1524. Clause 47 of the current terms and conditions provides a limitation of liability for the DBNGP Trustee.

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420 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011; BHP Billiotn, 20 May 2011.

421 DBP, 20 May 2011, Submission 51 p 35.

1525. In the original access arrangement proposal, DBP proposed to delete clause 47 on the basis that the DBNGP Trustee is not a party to the R1 Service terms and conditions.

1526. In the draft decision the Authority did not take issue with the proposed deletion of clause 47. As the DBNGP trustee is not a party to the contract, the Authority does not oppose the deletion of clause 47.

Schedule 1 – Access Request Form

1527. The current terms and conditions include provision for attachment of an access request form as schedule 1 of the terms and conditions, but the access request form does not itself comprise part of the terms and conditions approved as part of the access arrangement.

1528. In the original access arrangement proposal, DBP proposed inserting, at Schedule 1, the "access request form" so that it forms part of the terms and conditions.

1529. In the draft decision the Authority did not take issue with this proposed revision to the terms and conditions. As the effect of including the access request form into the terms and conditions is to include user-specific information in the contract that is necessary for operation of the contract, the Authority considers that it is reasonable that the form be part of the terms and conditions.

Schedule 2 – Charges

1530. Schedule 2 of the current terms and conditions sets out the charges payable under the contract, including the charges of the reference tariff and other charges payable under the terms and conditions.

1531. In the original access arrangement proposal, DBP proposed revisions to schedule 2 so that this schedule does not include the reference tariff charges but is limited to other charges payable under the proposed revised terms and conditions.

1532. Consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority determined that schedule 2 of the terms and conditions should detail the tariff charges applicable to the T1 Service.

1533. With respect to the other charges that are detailed in Schedule 2 (i.e. the excess imbalance charge, hourly peaking charge, overrun charge and unavailable overrun charge) the Authority determined in the draft decision that the rates at which the other charges are determined should be as follows:

- The "excess imbalance charge", of proposed clause 9.5(c), is to be determined at 200 per cent of the T1 reference tariff.
- The "hourly peaking charge", of proposed clause 10.3, is to be determined at 200 per cent of the T1 reference tariff.
- The "overrun charge", of proposed clause 11.1(a), is to be determined at the rate specified in clause 11.1(b).

- The "unavailable overrun rate", of proposed clause 11.6 and 17.8(e), is to be the greater of:
  - 250 per cent of the T1 reference tariff; and
  - the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

1534. The Authority required the following amendment to schedule 2 of the proposed revised terms and conditions.

> Draft decision amendment 99
>
> Schedule 2 of the proposed revised terms and conditions should be amended to detail:
>
> - the "T1 capacity reservation tariff" and "T1 commodity tariff", as determined under this draft decision; and
> - the rates at which other charges are determined under the proposed terms and conditions, being the:
>   - "excess imbalance charge" at 200 per cent of the T1 reference tariff;
>   - "hourly peaking charge" at 200 per cent of the T1 reference tariff;
>   - "overrun charge" at the rate specified in clause 11.1(b); and
>   - "unavailable overrun charge" at the greater of:
>   - 250 per cent of the T1 reference tariff; and
>   - the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

1535. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 97.[422]

1536. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 99. DBP submits that Schedule 2 should be retained as per their proposed R1 Terms and Conditions.[423]

1537. The Authority remains of the view that to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, Schedule 2 of the terms and conditions should detail the tariff charges applicable to the T1 Service.

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422 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

423 DBP, 20 May 2011, Submission 51 p 36.

Required Amendment 70

Schedule 2 of the proposed revised terms and conditions should be amended to detail

- the "T1 capacity reservation tariff" and "T1 commodity tariff", as determined under this draft decision; and
- the rates at which other charges are determined under the proposed terms and conditions, being the:
  - "excess imbalance charge" at 200 per cent of the T1 reference tariff;
  - "hourly peaking charge" at 200 per cent of the T1 reference tariff;
  - "overrun charge" at the rate specified in clause 11.1(b); and
  - "unavailable overrun charge" at the greater of:
    - 250 per cent of the T1 reference tariff; and
    - the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

Schedule 3 – Operating Specifications

1538. Schedule 3 of the current terms and conditions comprises operating specifications for the DBNGP, such as the gas specifications.

1539. In the original access arrangement proposal, DBP proposed changes to schedule 3, comprising:

- the addition of a definition for the term "extractable LPG", which means "LPG that that can be extracted from gas without causing the gas to fail to comply with the operating specifications for outlet points";
- the addition of gas temperature and pressure specifications (minimum and maximum) for inlet and outlet points; and
- amending item 2 of schedule 3 (the maximum temperature for inlet points) to specify 45 degrees Celsius for all inlet points except 1-01 at which it is 60 degrees Celsius.

1540. In the draft decision the Authority observed that subsequent to the access arrangement proposal being submitted, the *Gas Supply (Gas Quality Specifications) Regulations 2010* have come into effect. Accordingly, the Authority required that schedule 3 be amended to indicate that the Operating Specifications are those as specified in the *Gas Supply (Gas Quality Specifications) Regulations 2010*.

1541. The Authority also determined that, in the absence of evidence to the contrary, the maximum temperature for inlet points should be the same for all inlet points so there is no discrimination between shippers (whether that is 45 or 60 degree Celsius).

Draft decision amendment 100

Schedule 3 in relation to Operating Specifications should be amended to:

- delete the table at item 1 – Gas Specifications, and instead provide that the Operating Specifications are those as specified in the Gas Supply (Gas Quality Specifications) Regulations 2010; and
- amend Item 2 – Gas Temperature and Pressure so that it is the one measurement applying to all inlet points.

1542. In submissions to the Authority, Alinta Limited and Verve Energy stated that they have no objection to the gas temperature at Inlet Point I1-01 being at 60 degrees Celsius.[424]

1543. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has revised schedule 3 in accordance with the first requirement of draft decision amendment 100, but not the second requirement. DBP submits that the location of aftercoolers and wall thickness specifications allows gas to be received at Inlet Point I1-01 at 60 degrees Celsius, but the absence of such aftercoolers and lower wall thickness means that other inlet points cannot tolerate a temperature above 45 degrees Celsius.[425]

1544. Having regard to the information provided by DBP, the Authority is satisfied that the technical characteristics of the Inlet Points justify the variation in temperature. The Authority therefore does not maintain the requirement for draft decision amendment 100.

Schedule 4 – Pipeline Description

1545. Schedule 4 of the proposed revised terms and conditions a URL link to a pipeline description document on the Authority's website.[426] The pipeline description document is the document contained in Annexure A of DBP's 2005 proposed revised access arrangement information (21 January 2005) – "Description of the Gas Transmission System". There is no corresponding schedule in the current terms and conditions.

1546. In the draft decision, the Authority determined that the access arrangement should include a description of the pipeline. Consistent with this determination, the Authority determined that Schedule 4 of the proposed terms and conditions should include a pipeline description that is referenced in and appended to the proposed revised access arrangement.

Draft decision amendment 101

Schedule 4 of the proposed revised terms and conditions should be amended to include the pipeline description that is referenced in and appended to the proposed revised access arrangement.

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424 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

425 DBP, 20 May 2011, Submission 51 pp 36, 37.

426 The URL indicated by DBP cannot be found on the Authority's website. The Authority believes that the document that is intended to be referenced is the document located at: http://www.erawa.com.au/cproot/3471/2/AAI_Annex_1_Description_of_Gas_Transmission_System.pdf

1547. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 101.[427]

1548. DBP has not revised the proposed revised terms and conditions in accordance with draft decision amendment 101. DBP submits that as the pipeline description will be included in the Access Agreement, a corresponding schedule is not required for the terms and conditions.[428]

1549. In this final decision the Authority has addressed the requirement for an access arrangement to identify the pipeline to which the access arrangement relates and to include a description of the pipeline (paragraph 32 and following of this final decision). DBP's revised proposed access arrangement includes a new Attachment 2 that comprises a detailed description of the DBNGP.

1550. The Authority is of the view that it is not necessary to duplicate the description of the pipeline in the T1 Service terms and conditions. The Authority therefore does not maintain the requirement for draft decision amendment 101.

Schedule 5 – Existing Stations

1551. DBP proposes to include at Schedule 5 of the proposed revised terms and conditions a list of existing stations and their designations. There is no corresponding schedule in the current terms and conditions.

1552. An "existing station", under clause 1 of the proposed terms and conditions, is indicated to mean an inlet station associated with an inlet point or an outlet station associated with an outlet point that:

- was installed and commissioned on or before 1 January 1995; or
- is the subject of a Facility Agreement (under clause 6.15) or similar agreement as at the capacity start date.

1553. In the draft decision the Authority did not take issue with the proposed schedule 5, noting that the inclusion of Schedule 5 serves to clarify what the existing stations are and accordingly approves the inclusion of schedule 5 in the proposed revised terms and conditions. The Authority maintains this position.

Schedule 6 – Curtailment Plan

1554. Schedule 6 of the proposed revised terms and conditions sets out the curtailment plan for both system curtailment and point specific curtailment. The curtailment plan is currently set out at clause 8 in the current terms and conditions.

1555. DBP proposed various changes to the curtailment plan; indicating that the changes are in recognition of the type of service that is the R1 Service. The changes comprised changes to:

- remove reference to the "aggregated T1 Service";

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427 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

428 DBP, 20 May 2011, Submission 51 pp 36, 37.

- include references to the "P1 Service" and "B1 Service" under certain sections of the curtailment plan;
- include the "Tp Service" as part of the curtailment plan, with a priority order of six (6) for both system curtailment and point specific curtailment;
- make it explicit that the "other reserved service" is other than the "Tp service" or "Tx service"

1556. In the draft decision the Authority determined that Schedule 6 of the proposed revised terms and conditions should be amended to be substantially consistent with Schedule 8 of the existing terms and conditions, taking into account the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service.

> Draft decision amendment 102
>
> Schedule 6 of the proposed revised terms and conditions, which sets out the curtailment plan, should be amended to be substantially consistent with Schedule 8 of the 2005 to 2010 terms and conditions for the T1 Service.

1557. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 102.[429]

1558. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not included revisions meeting the requirement of draft decision amendment 102. DBP submits that, consistent with its position that the R1 Service should be reinstated, Schedule 6 should be retained as per the R1 Terms and Conditions.[430]

1559. In this final decision the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the T1 Service as a reference service. Accordingly, the Authority maintains the requirement for schedule 6 of the terms and conditions should be substantially consistent with Schedule 8 of the 2005 to 2010 terms and conditions for the T1 Service.

Required Amendment 71

Schedule 6 of the proposed revised terms and conditions, which sets out the curtailment plan, should be amended to be substantially consistent with Schedule 8 of the 2005 to 2010 terms and conditions for the T1 Service.

429 Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

430 DBP, 20 May 2011, Submission 51 p 37.

Tripartite Deed (Schedule 7 of the current terms and conditions)

1560. Schedule 7 of the current terms and conditions comprises a tripartite deed that would need to be executed for either the operator or the shipper to charge any part of its rights or interests under the contract in favour of any recognised bank or financial institution or a related body corporate of the party in accordance with clause 25.2 of the current terms and conditions.

1561. In the original access arrangement proposal, DBP proposed to delete Schedule 7 from the terms and conditions. This deletion is a consequential change resulting from DBP's proposed changes to clause 25.2 ("Charges") of the proposed revised terms and conditions (paragraph 1399 and following of this final decision).

1562. In the draft decision, the Authority determined that it is reasonable for the terms and conditions to specify the tripartite deed and that the deed should continue to form part of the terms and conditions. Accordingly, the Authority also required Schedule 7 of the current terms and conditions to be retained.

> Draft decision amendment 103
>
> The proposed revised access arrangement should be amended to include a Schedule 7 that sets out the form of the tripartite deed that is entered into under clause 25.2 of the contract.

1563. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has reinstated Schedule 7 of the terms and conditions in accordance with draft decision amendment 103.

Terms and conditions for reference services other than the T1 Service

1564. In the draft decision the Authority determined that the proposed revised access arrangement should be amended to include the P1 Service and B1 Service (as defined under the current access arrangement) as reference services. Consistent with this determination, the Authority also determined that the proposed revised access arrangement should be amended to include terms and conditions for these services which are substantially the same as the terms and conditions established under existing access contracts for part haul and back haul pipeline services negotiated with shippers.

> Draft decision amendment 104
>
> The proposed revised access arrangement should be amended to include terms and conditions for the part haul service (i.e. the P1 Service) and back haul service (i.e. the B1 Service), as reference services, that are substantially the same as the terms and conditions established under existing contracts for part haul and back haul pipeline services negotiated with shippers.

1565. In submissions to the Authority, Alinta Limited and Verve Energy indicate support for draft decision amendment 104.[431]

[431] Alinta Limited, 20 May 2011 and 20 July11; Verve Energy, 20 May 2011 and 20 July 2011.

1566. In the revised access arrangement proposal submitted to the Authority subsequent to the draft decision, DBP has not included the P1 and B1 Services as references services and has not included terms and conditions for these services in accordance with draft decision amendment 104. DBP submits that there is no single set of terms and conditions for either part haul or back haul services and that it is not appropriate to use terms and conditions negotiated outside of a regulatory framework as the basis for terms and conditions of a reference service. DBP also submitted that the R1 Service should be the only service available as a reference service.[432]

1567. In this final decision the Authority has maintained the requirement for amendment of the proposed revised access arrangement to include the P1 and B1 Services as reference services. Accordingly, the Authority maintains the requirement for the terms and conditions of the P1 Service and B1 Service to be included in the access arrangement and for these to be based on those established for the T1 Service under this final decision.

Required Amendment 72

The proposed revised access arrangement should be amended to include terms and conditions for the part haul service (i.e. the P1 Service) and back haul service (i.e. the B1 Service), as reference services, that are substantially the same as for the T1 Service as established by the Authority under the final decision.

Queuing Requirements and Access Requests

Regulatory Requirements

1568. Under section 2 of the NGL(WA), 'queuing requirements' mean the "terms and conditions providing for the priority that a prospective user has to obtain access to spare capacity and developable capacity".

1569. The requirement for an access arrangement to include queuing requirements is established in rule 103 of the NGR.

> 103 Queuing requirements
>
> (1) An access arrangement must contain queuing requirements if:
>
> (a) the access arrangement is for a transmission pipeline; or
>
> (b) the access arrangement is for a distribution pipeline and the [ERA] notifies the service provider that the access arrangement must contain queuing requirements.

[432] DBP, 20 May 2011, Submission 51 p 38.

(2) If the [ERA] gives a notification under subrule (1), the access arrangement must contain queuing requirements as from the commencement of the first access arrangement period to commence after the date of the notification (but this requirement lapses if the [ERA] by notice to the service provider, withdraws the notification).

(3) Queuing requirements must establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.

(4) Queuing requirements might (for example) provide that the order of priority is to be determined:

(a) on a first-come-first-served basis; or

(b) on the basis of a publicly notified auction in which all prospective users of the relevant spare capacity or developable capacity are able to participate.

(5) Queuing requirements must be sufficiently detailed to enable prospective users:

(a) to understand the basis on which an order of priority between them has been, or will be, determined; and

(b) if an order of priority has been determined – to determine the prospective user's position in the queue.

1570. The Authority has full discretion in relation to queuing requirements.[433]

1571. Rule 112 of the NGR describes the processes for access requests which include the following.

- The request must be made in writing and must:
  - state the time or times when the pipeline service will be required and the capacity that is to be utilised; and
  - identify the entry point where the user proposes to introduce natural gas to the pipeline or the exit point where the user proposes to take natural gas from the pipeline; and
  - state the relevant technical details for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to or from the pipeline.
- The service provider must, within 20 business days after the date of the request, respond to the request by informing the prospective user:
  - whether the service provider can provide the requested pipeline service; and
  - if so, the terms and conditions on which the service provider is prepared to provide the requested pipeline service; or
  - that the service provider needs to carry out further investigation to determine whether it can provide the requested pipeline service and set out a proposal for carrying out the further investigation.

[433] Refer to r. 40(3) of the NGR.

DBP's Original Proposed Revisions

1572. Clause 5 of the proposed revised access arrangement deals with the submission and consideration of access requests and queuing requirements, including:

- provision for shippers and prospective shippers to consult with the operator of the DBP prior to making an access request (clause 5.1);
- the process and requirements for submission of an access request (clause 5.2);
- the process of assessment of access requests (clause 5.3); and
- queuing requirements (clause 5.4).

1573. DBP proposed several revisions to the provisions of the access arrangement dealing with the submission and consideration of access requests and queuing requirements. Material revisions comprise:

- outlining the circumstances when an access request must be lodged by a prospective shipper (clause 5.2(b) of the proposed revised access arrangement);
- requiring an access request to state relevant technical details for connection to the pipeline and for ensuring safety and reliability of the supply of gas to or from the pipeline (clause 5.2(c)(v) of the proposed revisions);
- when more information is required to assess an access request, establishing a requirement for the operator to request the information within 20 business days of receiving the access request and to provide a proposal for further investigations (clause 5.3(b) of the proposed revisions); and
- amendments to the provisions that allow the operator to reject an access request (clauses 5.3(f) and (g) of the proposed revisions).

1574. The queuing requirements of clause 5.4 of the proposed revised access arrangement are materially the same with the queuing policy under the current access arrangement and provide for:

- a single queue for all services, both reference and non-reference services; and
- a priority of access in accordance with the time that an access request is received or deemed to be received by DBP.

Draft Decision

1575. The Authority considered separately the parts of clause 5 of the proposed revised access arrangement that deal with the submission and consideration of access requests (clauses 5.1 to 5.3) and the parts that deal with the queuing of access requests (clause 5.4).

1576. The NGR do not require a full access arrangement proposal to include information about the processes for access requests. However, as DBP has included this information in its proposed revisions, the Authority gave consideration to whether the information is consistent with the provisions of rule 112 of the NGR and with the national gas objective.

1577. DBP's proposed revisions to clauses 5.1 to 5.3 effectively reproduce the provisions under rule 112 of the NGR. With one exception (as below) the Authority was satisfied that clauses 5.1 to 5.3 of the proposed revised access arrangement are consistent with rule 112 of the NGR and the national gas objective.

1578. The Authority gave particular consideration to clause 5.3(d) of the proposed revised access arrangement which set out the process for DBP to accept an access request and involving:

- where the access request is for a reference service or spot service, DBP executing the access request form and returning a copy of the executed form to the prospective shipper (clause 5.3(d)(i)); and
- where the access request is for a non-reference service, agreement of the terms and conditions for the service, DBP submitting an access contract in the form agreed to the prospective shipper, and the prospective shipper executing the access contract within 10 business days (clause 5.3(d)(ii)).

1579. The Authority determined that it would be reasonable for the access arrangement to make provision, under clause 5.3(d)(i), for a user to make a non-refundable deposit with an access request rather than executing the access request before submission to DBP.

> Draft decision amendment 105
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> Cause 5.3(d) of the proposed revised access arrangement should be amended to include the option for a user to choose between a non-refundable deposit for the submission of an access request or an executed application form.

1580. On the matter of the queuing requirements of clause 5.4 of the proposed revised access arrangement, the Authority determined that the provisions of this clause satisfy the requirements of rule 103 of the NGR with the exception of provisions for an access arrangement application in a queue to be bypassed in certain circumstances.

1581. Clause 5.4(g) of the proposed revised access arrangement provides that the operator may deal with an access request out of order provided that the access request being dealt with is "materially" different to the access requests which have the same or earlier priority dates. The Authority determined that this clause should more specifically provide for applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do.

> Draft decision amendment 106
>
> Cause 5.4(g) of the proposed revised access arrangement dealing with the processing of access requests in the queue, should be amended to include explicit bypass provisions to allow applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do.

Revised Access Arrangement Proposal

1582. DBP has made no substantive revisions to clause 5 of the proposed revised access arrangement dealing with access requests and queuing requirements.

1583. DBP submits the following reasons for not revising the access arrangement proposal in accordance with draft decision amendment 105.[434]

> Firstly, DBP can not see how it is difficult for a corporation (regardless of its size) to obtain internal approvals for an access request for a reference service for the following reasons:
>
> (a) The nature of a reference service is that there is no negotiation required between operator and the prospective shipper. When a prospective shipper makes a request for a reference service, the service provider has no ability to refuse to provide the reference service if there is spare capacity. So, the prospective shipper knows that by lodging an access request for a reference service, it will be accepted by the service provider unless there is no spare capacity. Accordingly, there does not appear to be any practical difference from a commercial perspective whether a prospective shipper signs an access request capable of immediate acceptance before the request is lodged or after the service provider responds to the lodged request.
>
> (b) If there is no spare capacity at the time the access request is lodged, the service provider will advise the prospective shipper of this fact (in accordance with the access arrangement and the NGR). However, the prospective shipper has no right to require that the service provider provide the additional capacity which is required to meet the request. As stakeholders are aware, a decision to proceed with funding of an expansion to accommodate an access request takes months and will require the service provider to work closely with the prospective shipper before making the final investment decision. So, the prospective shipper would have plenty of time to withdraw its access request.
>
> (c) In a situation where there is no spare capacity to meet an access request (which DBP will have advised the prospective shipper following DBP's receipt of the access request), it is doubtful that a prospective shipper would have to provide, in its accounts, for a contingent liability equal to the amount of the capacity charges for the term of the proposed access request.
>
> Secondly, in circumstances where there is no capacity, without either a binding access request or an access request capable of immediate acceptance by the service provider, DBP will not be able to obtain funding for expanding the pipeline's capacity to meet an access request. Financiers (including debt and equity financiers) will require this as a precondition to funding. Without this certainty, there could be significant delays in investment in pipelines and this is directly contrary to the national gas objective.
>
> Thirdly, the provision of a binding access request capable of immediate acceptance would provide DBP with protection against spurious access requests that could be used by an entity as a means of blocking access to spare or developable capacity by bona fide prospective shippers. As has been previously outlined by DBP to the regulator, there has been at least one example in the history of the DBNGP queue of a party lodging an access request in circumstances where the entity had no intention of entering into an

[434] DBP, 17 May 2011, Submission 57 pp 3, 4.

> access contract. The entity was simply seeking to extract a fee from either the service provider (to remove the request from the queue) or bona fide prospective shippers (to bypass the access request). To structure a queuing requirement in an access arrangement which has this effect is contrary to the national gas objective. On the other hand, DBP's proposal does not have this effect.

1584. DBP submits the following reasons for not revising the access arrangement proposal to address draft decision amendment 106 in relation to providing for some access requests to bypass the queue.

> DBP submits that the ERA has misunderstood the effect of the proposed queuing requirements which already explicitly allow for the access request of a small prospective shipper whose access request can be met without expanding the pipeline, such as the small Pilbara part haul prospective shipper outlined in the example used by Rio Tinto, to bypass the access request of the other (larger) prospective shipper used in Rio Tinto's example whose access request can only be met by expanding the capacity of the pipeline. The provision leaves this to the discretion of the service provider.
>
> If, instead, the ERA intended, by making this amendment, to require the AA Proposal to include a provision for the bypass to occur automatically, DBP submits that it would be wrong to include such an amendment in the AA Proposal, for the following reasons.
>
> Firstly, including in the queuing requirements a provision which explicitly contains a bypass arrangement which allows for applications in the queue for haulage services that do not require expansion of capacity to be processed ahead of applications that do is anticompetitive. Why should one small shipper get preferential treatment over a large shipper. For example, if there are 2 prospective shippers seeking access at or around the same outlet point and they both compete in the same downstream market, then why should the one shipper seeking only a small amount of capacity (that can be delivered from existing capacity) be given a competitive advantage (in terms of both timing and price, particularly if the tariff increases as a result of an expansion). This would put the larger shipper at a competitive disadvantage to the smaller shipper.
>
> Secondly, clause 5.4(g) of the Original AA Proposal explicitly contains a by-pass arrangement which allows for applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do but in a way that does not create anti-competitive effects in a downstream market. This is done by requiring that the later access request be materially different to an earlier request in the queue.
>
> Thirdly, clause 5.4(g) in the Original AA Proposal, when combined with DBP's commercial incentives, means that DBP will be encouraged to use the existing pipeline in the most economically efficient way before expanding its capacity.
>
> Finally, clause 5.4(g) has been in place in the DBNGP access arrangement for some time and has never led to a difficulty for shippers or DBP in its ability to process access requests of a varying nature (including the example quoted by Rio Tinto in its submission).

Submissions

1585. None of the submissions made to the Authority subsequent to the draft decision addressed the queuing requirements.

Considerations of the Authority

1586. The Authority has reconsidered the required amendments to the queuing requirements having regard to DBP's further submission.

1587. Draft decision amendment 105 required that clause 5.3(d) of the proposed revised access arrangement be amended to include the option for a user to choose between a non-refundable deposit for the submission of an access request or an executed application form.

1588. The Authority notes that this required amendment under the draft decision should have required an amendment to clause 5.2(d) of the proposed revised access arrangement and not clause 5.3(d). However, this incorrect reference has no bearing on the substantive matter addressed by the required amendment and DBP's response.

1589. DBP has submitted that this amendment is unnecessary where the access request is for a reference service as there is no negotiation of terms for such a service and therefore the access request is submitted with the prospective user having full knowledge of the terms of the service. Under rule 112 of the NGR, DBP is required to respond to the access request within a short time frame as to whether the requested service can be provided. Further, a prospective shipper knows that by lodging an access request for a reference service, the service provider must accept the access request where there is capacity available to provide the service.

1590. Under the proposed queuing requirements if the service cannot be provided then, in full knowledge of the prospective user, the access request can be placed in the queue. The prospective user has the right to withdraw the access request at any time prior to DBP accepting the access request, including at any time the access request is included in the queue for access.

1591. Taking these matters into account, the Authority accepts DBP's submission that a requirement for a prospective user to execute an access request for a reference service prior to submission should not make it difficult for a prospective user to obtain internal approvals for an access request.

1592. DBP has not explicitly addressed the situation of access requests for services other than reference services. However, under the queuing requirements of the proposed access arrangement (clause 5.3(d)(2)) such an access request is not binding on the prospective user and the access request is only accepted by the prospective user subsequently executing an access contract. Accordingly, the Authority considers that a requirement for the prospective user to execute an access request for a non-reference service prior to submission should not make it difficult for a prospective user to obtain internal approvals for the access request.

1593. Taking the above matters into account, the Authority has determined not to maintain the requirement for amendment of the proposed revised access arrangement as set out in draft decision amendment 105.

1594. Draft decision amendment 106 required that the proposed revised access arrangement be amended to include explicit bypass provisions to allow applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do.

1595. In response to the required amendment DBP points to clause 5.4(g) of the proposed revised access arrangement that allows for access requests to be dealt with out of order provided that the access request that is being dealt with out of order is materially different to the access requests which have the same or earlier priority dates; and prospective users with the access requests which have the same or earlier priority dates do not suffer any material prejudice as a result.

1596. DBP submits that a stronger right for a prospective user to bypass the queue would potentially have anti-competitive effects between prospective users. These potential anti-competitive effects are avoided by the existing clause 5.4(g) that provides for DBP to have some discretion in allowing bypass of the queue only where access requests that have the same or earlier priority dates do not suffer any material prejudice as a result.

1597. Having regard to DBP's submission, the Authority accepts that clause 5.4(g) of the access arrangement already makes sufficient provision for access requests to bypass the queue. The Authority has therefore determined not to maintain the requirement for amendment of the proposed revised access arrangement as set out in draft decision amendment 106.

Extension and Expansion Requirements

Regulatory Requirements

1598. Under section 18 of the NGL(WA):

(a) an extension to, or expansion of the capacity of, a covered pipeline must be taken to be part of the covered pipeline; and

(b) the pipeline as extended or expanded must be taken to be a covered pipeline,

if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline.

1599. Under rule 48(1)(g) of the NGR, a full access arrangement proposal must set out extension and expansion requirements. Extension and expansion requirements are defined under section 2 of the NGL(WA).

Extension and expansion requirements means—

(a) the requirements contained in an access arrangement that, in accordance with the Rules, specify—

(i) the circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and

(ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that arrangement applies; and

(iii) whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and

(b) any other requirements specified by the Rules as extension and expansion requirements.

1600. Specific provisions relating to extension and expansion requirements are set out in rule 104 of the NGR.

104 Extension and expansion requirements

(1) Extension and expansion requirements may state whether the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline or may allow for later resolution of that question on a basis stated in the requirements.

(2) Extension and expansion requirements included in a full access arrangement must, if they provide that an applicable access arrangement is to apply to incremental services, deal with the effect of the extension or expansion on tariffs.

(3) The extension and expansion requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.

1601. 'Incremental services' are defined under rule 3 of the NGR as "pipeline services provided by means of an extension to, or expansion of the capacity of, the pipeline".

Original Access Arrangement Proposal

1602. Clause 7 of the proposed revised access arrangement contains provisions that deal with:

- the obligations of the operator to extend the DBNGP and/or expand the capacity of the DBNGP;
- determining whether extensions or expansions will become part of the covered pipeline; and
- the effect of extensions and expansions on reference tariffs.

1603. DBP's original proposed revisions to the extensions and expansions policy of the access arrangement included two changes.

1604. First, DBP proposed changes to clause 7.1 of the proposed revised access arrangement to set out a range of tests that must be satisfied before the operator has an obligation to expand the capacity of the DBNGP.

1605. Secondly, DBP proposed a new clause 7.4(f):

7.4 In considering whether to treat an extension, expansion or enhancement as part of the Covered Pipeline, Operator may have regard to the following factors:

…

(f) the extent to which the Capacity is as a result of an expansion to be undertaken through the application of the provisions of the Gas Supply (Gas Quality Specifications) Act 2009 (WA).

Draft Decision

1606. DBP proposed revisions to the extension and expansion requirements of the access arrangement to incorporate the tests in clause 7.1 that must be satisfied before DBP will expand the capacity of the pipeline to meet the transportation needs of prospective users. These tests are:

- the operator is not required to extend the geographical range of the DBNGP;
- the expansion is technically and economically feasible and consistent with the safe and reliable provision of the service to which the expansion relates;
- DBP's legitimate business interests are protected;
- the prospective shipper does not become the owner of any part of the DBNGP without the agreement of the operator; and
- DBP is not required to fund part or all of the expansion (except in relation to a capacity expansion option, where the provisions of the capacity expansion option require the expansion to be funded by the operator).

1607. These tests essentially reproduce the requirements of section 6.22 of the Gas Code which has since been replaced by the NGL and NGR. However, the Authority is of the view that these tests may modify the NGL and is of the view that they are no longer necessary in the access arrangement as the provisions of the NGL cover the requirements for extensions and expansions.

> Draft decision amendment 107
>
> Clause 7.1 of the proposed revised access arrangement, which sets out a series of tests that must be satisfied before DBP will expand the capacity of the pipeline, should be deleted.

1608. DBP's proposed new clause 7.4(f) of the proposed revised access arrangement provides that, in considering whether to treat the extension or expansion as part of the covered pipeline the operator may have regard to the extent to which capacity is a result of an expansion to be undertaken through the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*. DBP indicated to the Authority that clause 7.4(f) is necessary as projects initiated under the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)* may be funded by either DBP or third parties.[435] DBP submitted that it requires the ability to elect whether the extension, expansion or enhancement becomes part of the covered pipeline so that the costs of such an extension or expansion are not added to the capital base where the costs are funded by a party other than DBP or a user.

1609. An expansion of the pipeline to be undertaken through the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)* would be:

- an expansion to compensate for a reduction in the capacity of the pipeline resulting from a change in the gas quality specification; and
- undertaken for the purpose of providing the same level of services as were provided by the covered pipeline before the change in the gas specification.

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[435] Email correspondence from DBP to the ERA, 22 June 2010.

1610. The Authority determined in the draft decision that the capacity made available by the construction of additional assets (extra compression or looping) should be considered in the same way as any other expansion or extension, even if such capacity is replacing "lost" capacity due a change in the gas quality specification.

> Draft decision amendment 108
>
> Clause 7.4(f) of the proposed revised access arrangement, extensions and expansion requirements, should be amended by deleting clause 7.4(f). This clause provides that in considering whether to treat the extension or expansion as part of the covered pipeline the operator may have regard to the extent to which capacity is a result of an expansion to be undertaken through the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*.

Revised Access Arrangement Proposal

1611. DBP has made revisions to the proposed revised access arrangement that respond the requirements of draft decision amendments 107 and 108.

1612. Clause 7.1 of the original proposed revised access arrangement (that set out a range of tests that must be satisfied before the operator has an obligation to expand the capacity of the DBNGP) has been deleted, with the exception of maintaining the provision that “Operator is not required to fund part or all of the expansion (except in relation to a Capacity Expansion Option, where the provisions of the Capacity Expansion Option require the expansion to be funded by the Operator or an Operator Entity)”.

1613. Clauses 7.4(f) of the proposed revised access arrangement has been maintained, but the following changes made to clauses 7.7 and 7.10:

> 7.7 Except where Operator imposes a Surcharge or seeks a Capital Contribution, or where clause 7.10 applies, Shippers using Incremental Capacity will pay the Reference Tariff.
>
> …
>
> 7.10 If the Operator elects to include as part of the covered pipeline any expansion to be undertaken as a result of the application of the provisions of the Gas Supply (Gas Quality Specifications) Act 2009 (WA) and in circumstances where the funding of that expansion was made by someone other than the Operator or its Related Bodies Corporate (PIA Expenditure) the Operator and Nominees will not benefit, through increased revenue, from each amount of PIA Expenditure that has been rolled into the capital base through a mechanism equivalent to that in clause 12.4.

1614. DBP provides the following reasons for not revising the access arrangement proposal in accordance with draft decision amendment 108:

> (a) Any works undertaken in response to a pipeline impact agreement give rise to an expansion and this expansion should not be treated any differently to any other type of expansion when it comes to determining whether it should be covered.

(b) The purpose of clause 7.4(f) is to deal with the following circumstances:

(i) If DBP incurs costs in making up lost capacity but which it cannot recover from a producer under a pipeline impact agreement by reason of the compensation methodology prescribed under the Act which do not guarantee that the service provider is to be compensated for all of its capital and operating costs.

(ii) If DBP recovers all of its costs from a producer under a pipeline impact agreement and wants to include these costs in the capital base (for a reason such as the need to meet a financing covenant), but will do so on the basis that these costs will not be included in the reference tariff calculation.

(iii) If DBP is not able to secure a pipeline impact agreement from a producer because the DBNGP ceases to be a PIA pipeline under the Act.

Submissions

1615. None of the submissions made to the Authority subsequent to the draft decision addressed the extension and expansion requirements.

Considerations of the Authority

1616. Draft decision amendment 107 required that clause 7.1 of the proposed revised access arrangement, which sets out a series of tests that must be satisfied before DBP will expand the capacity of the pipeline, should be deleted.

1617. This required amendment has been addressed in the revised access arrangement proposal by deletion of the relevant clause of the access arrangement. The Authority acknowledges that this accords with draft decision amendment 107.

1618. Draft Decision amendment 108 required that clause 7.4(f) of the proposed revised access arrangement be deleted.

1619. DBP has not made this required amendment in the revised access arrangement proposal but rather maintains that clause 7.4(f) remains necessary to provide a mechanism to ensure that capital expenditure on the pipeline that is undertaken to maintain capacity in the face of a change in gas quality and that is financed by parties other than DBP is not added to the capital base and hence not reflected in reference tariffs.

1620. The revision of the access arrangement proposal to include the new clause 7.10 provides a further mechanism to achieve the same end, which is to exclude a return on and of any such capital expenditure from the determination of total revenue to be recovered from reference tariffs.

1621. The Authority has considered DBP's submission, but maintains the view expressed in the draft decision that an investment in capacity for the purposes of replacing "lost" capacity due a change in the gas quality specification should be treated in the same way as any other extension or expansion of the pipeline when it comes to a determination of whether any new assets form part of the covered pipeline and the amount of investment is added to the capital base. As such, the Authority maintains the view that the new clause 7.4(f) of the proposed revised access arrangement should be deleted.

1622. The Authority acknowledges that the extension and expansion requirements under the access arrangement should address the circumstance where investment is financed by a party other than DBP, in particular where the investment is financed by a party other than a user. The Authority considers that the proposed new clause 7.10 adequately addresses this circumstance, and makes DBP's proposed clause 7.4(f) unnecessary.

Required Amendment 73

The revised access arrangement proposal should be amended to delete clause 7.4(f) of the proposed revised access arrangement.

Amended Final Decision

1623. The Authority has addressed in this Final Decision a further element of the extension and expansion requirements which is the subject of rule 104 of the NGR: that is, whether the access arrangement will apply to incremental services provided as a result of an expansion in capacity of the DBNGP, or whether to allow for later resolution of that question.

1624. Clause 7.3 of the proposed revised access arrangement makes provision for DBP to elect that an extension, expansion or enhancement of the DBNGP will not become part of the covered pipeline.

1625. Clause 7.4 of the proposed revised access arrangement (which was amended by the Authority pursuant to required amendment 73 of this Final Decision) further states that DBP may have regard to the following factors in considering whether to treat an extension, expansion or enhancement as part of the covered pipeline:

- the application of the matters set out in rule 104 of the NGR in respect of the facilities comprising the extension, expansion or enhancement;
- the extent to which the Capacity resulting from the extension, expansion or enhancement is Contracted Capacity;
- the legitimate business interests of Operator;
- the application of any voluntary right of access to the Capacity resulting from the extension, expansion or enhancement; and
- the extent to which any Access Contract under which the extension, expansion or enhancement capacity is contracted relies upon a determination of the Reference Tariff.

1626. DBP *may,* but is not obliged to, consider these factors in electing whether an expansion will be treated as part of the covered pipeline.

1627. Under the extension and expansion requirements of the proposed revised access arrangement, DBP therefore has an unfettered discretion to elect that the access arrangement will apply to incremental services provided by an expansion of the DBNGP. This may have the result that DBP makes such an election taking into account only its own commercial interests.

1628. The Authority notes the recent decision of the Western Australian Electricity Review Board (**Board**) on proposed revisions to the access arrangement for the Goldfields Gas Pipeline (**GGP**) in Applications No. 1 and 2 of 2010[436] (**Applications**). Among other things, the Board rejected a proposal for a pipeline operator to have a determinative role in deciding whether an expansion should or should not be covered.

1629. The GGP proposed revised access arrangement was lodged under the previous *National Third Party Access Code* for Natural Gas Pipeline Systems (**Code),** and was dealt with as if the Code, including the provisions in relation to review, continued to apply. The Board's decision in the Applications was determined by reference to relevant provisions of the Code.

1630. The Board's decision on the extensions and expansions policy for the GGP access arrangement relied on a construction of section 3.16(a) of the Code, and is therefore not directly relevant to the Authority's determination of the extension and expansion requirements under rules 48(1)(g) and 104 of the NGR. However, the Authority is of the view that aspects of the Board's reasoning, in particular its reasons for rejecting the service provider's proposed extensions/expansions policy, may have implications for its approach to DBP's proposed extension and expansion requirements under the NGR.

1631. The Board rejected two extensions and expansions policies submitted by the GGP service provider, on the basis that they would permit the service provider to determine coverage having regard to its own interests, rather than for coverage to be evaluated by reference to the policies and objectives of the Code (**Code Criteria**):

> The Board considers that each of [the proposed extensions/expansions policies submitted by the Service Provider] do not comply with s 3.16(a). This is because both [proposed extensions/expansions policies] do not provide for substantive evaluation of Coverage by reference to the Code Criteria. Both [proposed extensions/expansions policies] confer on [the service provider] the determinative role in deciding whether an expansion should or should not be covered. It is inevitable that [the service provider] would carry out that role having regard to its own interests, rather than by reference to all the relevant Code Criteria, which include the public interest and the interest of Users and Prospective Users.[437]

1632. The Board placed significant emphasis on "the relevant Code Criteria".

1633. The Authority likewise considers that it is required to have regard to the National Gas Objective, in making a decision on the extension and expansion requirements of the access arrangement for the DBNGP, under rules 48(1)(g) and 104 of the NGR.

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436 BHP Billiton Nickel West Pty Ltd v Southern Cross Pipelines Australia Pty Ltd & Ors (Application No 1 of 2010) and Southern Cross Pipelines Australia Pty Ltd & Ors v BHP Billiton Nickel West Pty Ltd & Anor (Application No 2 of 2010), WA Electricity Review Board (22 November 2011).

437 Reasons for Decision in the Applications at p 42, para 107.

1634. The Authority also considers that, in the current circumstances of the DBNGP, an election by DBP not to include an expansion of capacity as part of the covered pipeline is likely to result in outcomes that are contrary to the National Gas Objective and the coverage criteria under section 15 of the NGL(WA). The next significant expansion in capacity of the DBNGP is likely to be achieved by the completion of looping of the pipeline between compressor stations. The result of this is likely to be a decrease in the average cost of gas transmission when the increment to capacity becomes fully utilised. In the event that the expansion in capacity does not form part of the covered pipeline, there is a risk that the benefits of the expansion (in a reduced average cost of gas transmission) will not be passed on to all pipeline users with adverse consequences for competition in energy markets in Western Australia.

1635. The Authority is therefore concerned that the treatment of expansions under the proposed extension and expansion requirements is inconsistent with the National Gas Objective.

1636. The Authority considers that it would be more appropriate for the extension and expansion requirements to provide that the access arrangement will apply to incremental services to be provided as a result of any expansion in capacity of the DBNGP, except in instances where DBP can demonstrate to the Authority's reasonable satisfaction that application of the access arrangement to such services is inconsistent with the National Gas Objective. If DBP were to take the view at any time that an expansion of capacity should not form part of the covered pipeline, it is open to DBP to seek revocation of coverage of the relevant part of the DBNGP under the coverage provisions of the NGL(WA).

1637. By notice dated 1 December 2011, the Authority invited submissions on its proposed alternative expansions requirements.[438]

1638. DBP submits that there are two deficiencies in the alternative approach.[439]

1639. First, DBP submits that the approvals role contemplated for the Authority for an expansion to not be part of the covered pipeline is beyond the jurisdiction of the Authority as it involves the Authority making a determination that can only be made by the National Competition Council and that "automatic coverage" of an expansion is contrary to the policy and intent of the NGL(WA) and NGR.

1640. Secondly, DBP submits that the Authority's reasons for the alternative treatment of expansions is based on speculative and erroneous assumptions of the course that may be adopted by DBP in the event that DBP extends or expands the DBP in the access arrangement period. Moreover, DBP submits that the Authority's rejection of DBP's proposed extension and expansion requirements has not been justified by the Authority identifying how DBP's proposal is inconsistent with the factors that the Authority must take into account in considering the proposed extensions and expansion requirements.

1641. The Authority does not accept the submissions of DBP.

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438 Notice of 1 December 2011.

439 DBP, 14 December 2011, Submission 73.

1642. On the matter of whether a role of the Authority in determining whether an expansion should be treated as part of the covered pipeline is within the jurisdiction of the Authority, the Authority accepts that the NGL(WA) and NGR do not explicitly make provision for a role or function of the Authority in administration of the extension and expansion requirements. The Authority considers, however, that the Rules leave it open for the Authority to assume a role taking into account:

- Rule 104(1) of the NGR provides for "later resolution" of a question of whether an expansion is treated as part of the covered pipeline, but does not identify by whom that resolution is made;
- in the Applications in respect of GGP's proposed revised extensions and expansions policy, the Board determined (under provisions of the Code similar to the NGR) that;
  - the Authority should have a determinative role in resolving whether an expansion of a pipeline should form part of a covered pipeline under the Code; and [440]
  - the role of the Minister and the NCC in coverage determinations under the code would not be subverted by allowing the Authority to determine whether an expansion should be part of the covered pipeline as the code clearly provides an alternative mechanism by which coverage of extensions and expansions may be determined.

1643. On the matter of DBP's submission that the Authority's rejection of DBP's proposed extension and expansion requirements has not been justified by the Authority identifying how DBP's proposal is inconsistent with the factors that the Authority must take into account in considering the proposed extensions and expansion requirements, the Authority refers to its reasons in paragraphs 1625 to 1633 of this final decision. The principal reason for rejection of DBP's proposed extensions and expansions requirements is that an unfettered discretion of DBP to determine whether an expansion should be treated as part of the covered pipeline may have the result that DBP will make such an election taking into account only its own commercial interests, which may result in an outcome contrary to the National Gas Objective. This reason is consistent with the aforementioned decision of the Western Australian Electricity Review Board.[441]

1644. No other submissions were received on this matter.

1645. The Authority therefore determines that the treatment of expansions under the proposed extension and expansion requirements set out in the proposed revised access arrangement is inconsistent with the National Gas Objective. The Authority requires that the access arrangement be amended to include the expansions requirements as set out in paragraph 1636, above.

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440 Western Australian Electricity Review Board 22 Nov 2011, Decision on Application No. 1 of 2010 and Application No. 2 of 2010, paragraphs 105 – 112.

441 Western Australian Electricity Review Board 22 Nov 2011, Decision on Application No. 1 of 2010 and Application No. 2 of 2010, paragraph 107.

Required Amendment 74

The revised access arrangement proposal should be amended to change clauses 7.3 and 7.4 of the proposed revised access arrangement so that the access arrangement will apply to incremental services to be provided as a result of any expansion in capacity of the DBNGP, except in instances where DBP can demonstrate to the Authority's reasonable satisfaction that application of the access arrangement to such services is inconsistent with the National Gas Objective.

Changes to Receipt and Delivery Points

Regulatory Requirements

1646. A 'receipt or delivery point' is defined under rule 3 of the NGR as "a point on a pipeline at which a service provider takes delivery of natural gas, or delivers natural gas".

1647. Under rule 48(1)(h) of the NGR, a full access arrangement proposal must state the terms and conditions for changing receipt and delivery points. Rule 106 further specifies the required provisions relating to the change of receipt or delivery point by a user.

> 106 Change of receipt or delivery point by user
>
> (1) An access arrangement must provide for the change of a receipt or delivery point in accordance with the following principles:
>
> (a) a user may, with the service provider's consent, change the user's receipt or delivery point;
>
> (b) the service provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
>
> (2) The access arrangement may specify in advance conditions under which consent will or will not be given, and conditions to be complied with if consent is given.

Original Access Arrangement Proposal

1648. Clause 8 of the original proposed revised access arrangement is a new clause of the access arrangement that sets out provisions for a shipper to change inlet or outlet points under an access contract or relocate contracted capacity between inlet points or between outlet points. Clause 8 indicates that this may occur subject to:

- a requirement for the shipper to make a change request in writing;
- the operator consenting to a change request before any change or relocation becomes effective;
- the operator not withholding its consent to a change request unless it has reasonable grounds, based on technical or commercial considerations, for doing so.

1649. Clause 8.2 of the original proposed revised access arrangement indicates that, for a reference service, the considerations that the operator will take into account in deciding whether to consent to a change request will include the considerations outlined in section 13 of the access contract terms and conditions, which relate to the control, possession and title of gas.

Draft Decision

1650. The provisions of clause 8 of the original proposed revised access arrangement replace a cross-reference in the current access arrangement to section 3.10(c) of the Gas Code that is materially the same as rule 106 of the NGR. As such, the proposed revision of the access arrangement to include clause 8 was considered by the Authority to not constitute a material change to the provisions for a user to change inlet or outlet points or relocate capacity between inlet or outlet points and to meet the requirements of rule 106 of the NGR.

1651. The Authority observed that clause 8.2(c) original proposed revised access arrangement makes reference to the considerations outlined in section 13 of the access contract terms and conditions which relate to the control, possession and title of gas. The Authority noted in the draft decision that clause 8.2(c) should instead refer to section 14 which relates to the relocation of contracted capacity of existing inlet/outlet points to new inlet/outlet points. The Authority required an amendment to correct this cross reference.

> Draft decision amendment 109
>
> Clause 8.2(c) of the proposed revised access arrangement should make reference to section 14 (Relocation) of the access contract terms and conditions not section 13 (Control, Possession and Title of Gas).

Revised Access Arrangement Proposal

1652. DBP's revised access arrangement proposal includes the corrected cross reference to the access contract terms and conditions as required under draft decision amendment 109.

Submissions

1653. None of the submissions made to the Authority subsequent to the draft decision addressed changes to receipt and delivery points.

Considerations of the Authority

1654. The Authority is satisfied that the revised access arrangement proposal incorporates draft decision amendment 109.

Review and Expiry Dates

Regulatory Requirements

1655. Rules 49 and 50 of the NGR set out requirements in relation to submission, commencement and expiry dates.

49 Review submission, revision commencement and expiry dates

(1) A full access arrangement (other than a voluntary access arrangement):

(a) must contain a review submission date and a revision commencement date; and

(b) must not contain an expiry date.

(2) An access arrangement to which this subrule applies:

(a) may contain a review submission date or both a review submission date and an expiry date; and

(b) must, if it contains a review submission date, contain a revision commencement date; and

(c) must, if it contains no review submission date, contain an expiry date.

(3) Subrule (2) applies to:

(a) a full access arrangement that is a voluntary access arrangement; and

(b) a limited access arrangement for a light regulation pipeline.

50 Review of access arrangements

(1) As a general rule:

(a) a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and

(b) a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.

(2) If a service provider, as part of an access arrangement proposal, proposes to fix a review submission date and a revision commencement date in accordance with the general rule, the [ERA] must accept that part of the proposal.

(3) The [ERA] has no discretion under subrule (2).

(4) The [ERA] may, however, approve dates that do not conform with the general rule if satisfied that they are consistent with the national gas objective and the revenue and pricing principles.

Original Access Arrangement Proposal

1656. Clause 14 of the proposed revised access arrangement contains the review submission and commencement dates that are to apply to the access arrangement:

- the revised access arrangement is to commence on 1 January 2011 (or the date specified by the Authority when making its final decision on the proposed revised access arrangement);
- the review submission date for the revised access arrangement is four years after its commencement; and

- the revision commencement date for the next access arrangement is 1 January 2016 or the date the Authority specifies when making its final decision on the next access arrangement revisions proposal, whichever is later.

Draft Decision

1657. The Authority determined in the draft decision that it is satisfied that clause 14 of the proposed revised access arrangement meets the requirements of rule 49 and rule 50 of the NGR and is consistent with the national gas objective and the revenue pricing principles.

Revised Access Arrangement Proposal

1658. DBP has made no revisions to the clause 14 of the proposed revised access arrangement dealing with revision and commencement dates.

Submissions

1659. None of the submission made to the Authority subsequent to the draft decision address the review and expiry dates for the access arrangement.

Considerations of the Authority

1660. The Authority maintains the view expressed in the draft decision that it is satisfied that clause 14 of the proposed revised access arrangement meets the requirements of rule 49 and rule 50 of the NGR and is consistent with the national gas objective and the revenue pricing principles.

Trigger Events

Regulatory Requirements

1661. Rule 51 of the NGR contains provisions for “trigger events”, which allow the review submission date that is fixed in an approved access arrangement (2011-2015) to be brought forward. The rule indicates that a trigger event may consist of any significant circumstance or conjunction of circumstances, such as, for example:

- a re-direction of the flow of natural gas through the pipeline;
- a competing source of natural gas becomes available to customers served by the pipeline; or
- a significant extension, expansion or interconnection occurs.

1662. The particular provisions of rule 51 are as follows.

> 51 Acceleration of review submission date
>
> (1) The review submission date fixed in an access arrangement advances to an earlier date if:
>
> (a) the access arrangement provides for acceleration of the review submission date on the occurrence of a trigger event; and

(b) the trigger event occurs; and

(c) the review submission date determined, in accordance with the access arrangement, by reference to the trigger event, is earlier than the fixed date.

(2) A trigger event may consist of any significant circumstance or conjunction of circumstances.

(3) The [ERA] may insist on the inclusion in an access arrangement of trigger events and may specify the nature of the trigger events to be included.

1663. The Authority has full discretion in relation to trigger events.[442]

Original Access Arrangement Proposal

1664. DBP's proposed revised access arrangement did not include any trigger events that are to apply during the access arrangement period.

Draft Decision

1665. The Authority accepted in the draft decision DBP's proposal not to include a trigger event for the forthcoming access arrangement period.

1666. The Authority indicated, however, that if the Authority was to be presented with evidence that pipeline capacity will become available during 2011 to 2015 then it would consider imposing a trigger mechanism in the revised access arrangement.

Revised Access Arrangement Proposal

1667. DBP has not made any revisions to the proposed revised access arrangement in respect of trigger events.

Submissions

1668. None of the submission made to the Authority subsequent to the draft decision address the trigger events for the access arrangement. In particular the Authority observes that there has been no provision of evidence that pipeline capacity will become available during the 2011 to 2015 access arrangement period.

Considerations of the Authority

1669. The Authority maintains the determination made in the draft decision accepting DBP's proposal not to include a trigger event for the forthcoming access arrangement period.

[442] Rule 40(3) of the NGR.

APPENDICES

Appendix 1 Glossary

Term	
AER	Australian Energy Regulator
Authority	Economic Regulation Authority
DBNGP	Dampier to Bunbury Natural Gas Pipeline
DBP	DBNGP (WA) Transmission Ltd
ERA	Economic Regulation Authority
Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NGA	*National Gas Access (WA) Act 2009*
NGL	National Gas Law
NGL(WA)	Western Australian National Gas Access Law
NGR	National Gas Rules

Appendix 2 List of DBP Submissions

DBP submissions	
DBP Access Arrangement *	01-Apr-10
DBP Terms and Conditions *	01-Apr-10
DBP Access Arrangement Information *	01-Apr-10
DBP Tariff model *	01-Apr-10
DBP Submission 1 - Background Information	14-Apr-10
DBP Submission 2 - Compliance Index	14-Apr-10
DBP Submission 3 - Pipeline Services	14-Apr-10
DBP Submission 4 - Basis for total revenue	14-Apr-10
DBP Submission 5 - Terms and Conditions Comparison	14-Apr-10
DBP Submission 6 - Explanation of queuing requirements	14-Apr-10
DBP Submission 7 - Capacity and throughput forecasts	14-Apr-10
DBP Submission 8 - Rate of Return	13-May-10
DBP Submission 9 - Justification of Expansion Related Capital Expenditure	14-Apr-10
DBP Submission 10 - Actual Stay-in-Business Capital Expenditure (2005 to 2010) Justification and Forecast Stay in Business Capital Expenditure (2011 to 2015)	15-Apr-10
DBP Submission 11 - Forecast Capex	15-Apr-10
DBP Submission 12 - Justification of Operating expenditure	26-May-10
DBP Submission 13 - Response to ERA Issues Paper	26-May-10
DBP Submission 14 - Response to Halcrow Pacific Issues Report / Request of Information	15-Jun-10
DBP Submission 15 - Clarification in relation to information request - revenue by pipeline service	23-Jun-10
DBP Submission 16 - Clarification sought on aspect of the proposed tariff model - hard-wired numbers	13-Jul-10
DBP Submission 17 - Response to Halcrow Pacific Issues Report / Request of Information	25-Jun-10
DBP Submission 18 - Response to Halcrow Pacific Issues Report / Request of Information	18-Jul-10
DBP Submission 19 - Clarification in regards to capex categories for tariff model	12-Jul-10
DBP Submission 20 - Data request in relation to NERA (2010) The Required Rate of Return on Equity for Gas Transmission Pipelines.	29-Jun-10
DBP Submission 21 - Clarification in relation to proposed tariff model - pipeline distances (II)	19-Aug-10
DBP Submission 22 - Clarification in relation to the proposed tariff model - R1 reference tariff	13-Aug-10
DBP SUBMISSION 23 - Response to Halcrow Pacific Issues Report / Request of Information	21-Jul-10
DBP Submission 24 – Response to Halcrow Pacific Issues Report / Request of Information	23-Jul-10
DBP Submission 25 - Clarification in regards to cash contributions for tariff model	28-Jul-10
DBP Submission 26 - Response to Third Party Submissions	21-Sep-10
DBP Submission 27 - Response to Rio Tinto Submission	11-Aug-10
DBP Submission 28 - Clarification in relation to the Kemerton lateral	18-Aug-10
DBP Submission 29 - Response to ERA Information Request of 12 August 2010	22-Sep-10
DBP Submission 30 - Clarification in relation to the BEP lease arrangements	08-Sep-10
DBP Submission 31 - Clarification in relation to the Kemerton Lateral	06-Sep-10

DBP Submission 32 - Clarification in relation to timing of audits	**11-Oct-10**
DBP Submission 33 - Clarification in relation to revenue from non-reference pipeline services	**08-Oct-10**
DBP Submission 34 - BEP lease clarification	**20-Nov-10**
DBP Submission 35 - Response to ERA Information Request of 28 October 2010	**07-Jan-11**
DBP Submission 36 - Response to ERA Information Request of 17 November 2010, Clarification in relation to query about Terms and Conditions	**08-Dec-10**
DBP Submission 37 - Response to Section 42 Notice – Information Request in relation to the BEP lease arrangements	**09-Dec-10**
DBP Submission 38 - Response to ERA Information Request of 26 November 2010	**24-Dec-10**
DBP Submission 39 - Clarification of cash contributions in the tariff model	**24-Dec-10**
DBP Submission 40 - BEP Lease Agreement	**06-Jan-11**
DBP Submission 41 - Stage 5A and Stage 5B Audit Reports	**12-Jan-11**
DBP Submission 42 - Consideration of template for public tariff model	**25-Jan-11**
DBP Submission 43 - Response to initial Disclosure Notice	**23-Feb-11**
DBP Submission 44 - Halcrow Report for consideration of factual errors and confidentiality	**10-Mar-11**
DBP Submission 45 - Response to Initial Disclosure Notice - OSA and submission 18	**11-Mar-11**
DBP Submission 46 - Response to initial disclosure notice - Appendix 4	**05-Apr-11**
DBP Submission 47 - Revised Access Arrangement Proposal	**18-Apr-11**
DBP Submission 48 - Overarching	**20-May-11**
DBP Submission 49 - Response to specific Amendments	**18-Apr-11**
DBP Submission 50 - Reference Service	**20-May-11**
DBP Submission 51 - Terms and Conditions	**20-May-11**
DBP Submission 52 - Capital Base	**20-May-11**
DBP Submission 53 - Roll Forward of Capital Expenditure	**20-May-11**
DBP Submission 54 - Operating Expenditure	**20-May-11**
DBP Submission 55 - Rate of Return	**20-May-11**
DBP Submission 56 - Other Tariff Matters	**20-May-11**
DBP Submission 57 - Non Tariff Matters	**17-May-11**
DBP Submission 58 - Disclosure of Confidential Information	**21-Apr-11**
DBP Submission 59 - Public model	**02-May-11**
DBP Submission 60 - EY Agreed Upon Procedures letter	**04-May-11**
DBP submission 61 - Corrected Amended AA Proposal	**20-May-11**
DBP submission 62 - Response to initial disclosure notice – DBP submissions 50 & 56	**31-May-11**
DBP Submission 63 - Not provided	**NA**
DBP Submission 64 - Response to Third Party Submissions for draft decision	**20-Jul-11**
DBP Submission 65 - Gamma	**20-Jul-11**
DBP Submission 66 - Additional Requests (July/August) incl. updated Tariff Model	**11-Aug-11**
DBP Submission 67 - Rate of return in recent AER decisions	**13-Sep-11**
DBP Submission 68 - Response to Information Request 10 August 2011	**06-Sep-11**
DBP Submission 69 - Response to Information Request 17 and 18 August 2011	**08-Sep-11**
DBP Submission 70 - Corrected Model and AA/AAI document	**08-Sep-11**
DBP Submission 71 - Confidentiality assessment of Submission 68 & 69	**30-Sep-11**
DBP Submission 72 – Further Information Request Received 10 October 2011	**17-Oct-11**

*) Updated versions were later provided.

Appendix 3 Financial Model

The Authority's financial model sets out the Authority's determination and, in the event of inconsistency, the numbers in the calculation prevail over any other statement of these values in this decision.

The numbers in the revenue model are shown to 3 decimal places. Due to size and formatting, Appendix 3 is provided as a separate document to this Final Decision. A public version of the Authority's model is published as a separate document and is available on the Authority's website.

Appendix 4 Confidential Appendix