

# Proposed Revisions DBNGP Access Arrangement

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*2016 – 2020 Access Arrangement Period*

*Access Arrangement Proposal*

*Supporting Submission: 1*

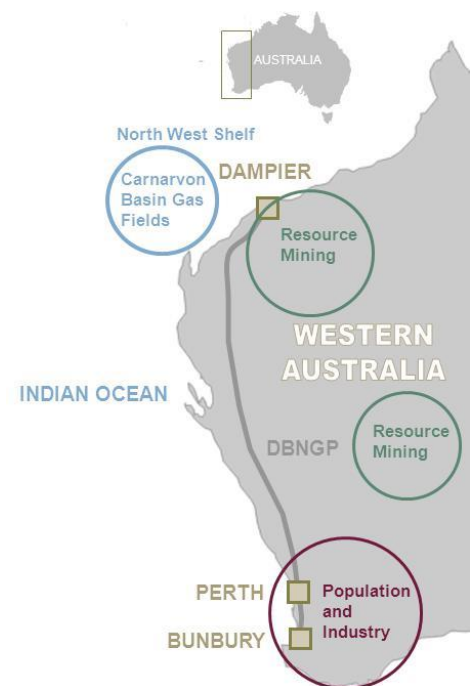


**PUBLIC VERSION**

*Date Submitted: 31/12/2014*

*DBP Transmission (DBP) is the owner and operator of the Dampier to Bunbury Natural Gas Pipeline (DBNGP), Western Australia's most important piece of energy infrastructure.*

*The DBNGP is WA's key gas transmission pipeline stretching almost 1600 kilometres and linking the gas fields located in the Carnarvon Basin off the Pilbara coast with population centres and industry in the south-west of the State*



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## 1. INTRODUCTION

- 1.1 This submission provided by DBNGP (WA) Transmission Pty Ltd (**DBP**) contains the following documents filed on 31 December 2014 with the Economic Regulation Authority of Western Australia (**ERA**):
  - (a) proposed revised Access Arrangement (**Proposed Revised AA**) (Appendix A: ); and
  - (b) proposed revised Access Arrangement Information (**Proposed Revised AAI**) (Appendix B: ).
- 1.2 Marked-up documents indicating proposed changes to the Access Arrangement that was approved by the ERA on 5 October 2012 (**Current AA**) (and which covers the period 1 January 2011 to 31 December 2015 (**Current AA Period**)) are provided as:
  - (a) Appendix C: that sets out marked-up changes to the Current AA; and
  - (b) Appendix D: that sets out marked-up changes to the Access Arrangement Information for the Current AA.
- 1.3 These documents are proposed to cover the access arrangement period commencing on 1 January 2016 and ending on 31 December 2020 (**AA Period**)
- 1.4 These documents contain the information that the National Gas Access (WA) Act 2009 (**NGA**) (which includes the Western Australian National Gas Access Law text (**NGL**) and the National Gas Rules (**NGR**)) requires to be included in order to enable them to be approved by the ERA. In particular, Appendix C: and Appendix D: are being submitted in accordance with NGR 52(2)(a).
- 1.5 In addition to the Proposed Revised AA and Proposed Revised AAI, a number of additional supporting submissions were filed to assist the ERA in assessing the Proposed Revised AA. These included the following:
  - (a) Submission 1: Proposal
  - (b) Submission 2: Cost Controls and Governance
  - (c) Submission 3: Proposed Reference Service
  - (d) Submission 4: Terms and Conditions
  - (e) Submission 5: Non-tariff related issues
  - (f) Submission 6: Cost Verification and Allocation
  - (g) Submission 7: Actual Capital Expenditure (Expansion)
  - (h) Submission 8 Actual Capital Expenditure (Stay-in-Business) (Part 1 & 2)
  - (i) Submission 9: Forecast Capital Expenditure
  - (j) Submission 10: Forecast Operating Expenditure
  - (k) Submission 11: Capacity and throughput forecast
  - (l) Submission 12: Rate of Return
  - (m) Submission 13: Total Revenue
  - (n) Submission 14: Tariff model and tariff calculation
- 1.6 This submission contains the following information:
  - (a) Section 2 contains a justification for DBP's compliance with the requirements of the NGL and NGR in relation to the submission of revisions to the Current AA;
  - (b) Section 3 of this submission contains a checklist table that outlines which section of the Proposed Revised AA contains the information required by the NGL and NGR to be included in an access arrangement; and

- (c) Section 4 of this submission contains a checklist table that outlines which section of the Proposed Revised AAI contains the information required by the NGL and NGR to be included in access arrangement information.
  - (d) Section 5 of this submission summarises the level of engagement that DBP has had with the ERA in the lead up to the filing of the Proposed Revised AA and Proposed Revised AAI.
- 1.7 The compliance assessments outlined in this submission were undertaken against version 23 of the NGR, available on the Australian Energy Market Commission's website as at 11 December 2014 and which incorporates amendments to the NGR up to and including those which were given effect to by the National Gas Amendment (Settlement Surplus and Shortfall ) Rule 2014 No.2.

## 2. SERVICE PROVIDER & SUBMISSION DATE

- 2.1 The DBNGP is an old scheme covered transmission pipeline. It is a scheme pipeline under the NGA<sup>1</sup>, the NGL (being a Schedule to the National Gas (South Australia) Act 2008)<sup>2</sup> and the NGR, promulgated by the Australian Energy Market Commission (AEMC) pursuant to s 74 of the NGL.
- 2.2 By s7(1)(a) of the NGA, the Western Australian National Gas Access Law text applies as a law of Western Australia. The Western Australian National Gas Access Law is the text that results from modifying the NGL, to give effect to section 7A(3) and (4) and Schedule 1 of the NGA. In this submission each reference to the NGL should be read as comprehending the equivalent provisions set out in section 7A(3) and (4) and Schedule 1 of the NGA.
- 2.3 Section 132 of the NGL requires a covered pipeline service provider to submit to the ERA, for approval by the ERA under the NGR, revisions to an applicable access arrangement that is a full access arrangement, in respect of the pipeline services the provider provides or intends to provide:
  - (a) in the circumstances specified by the NGR; and
  - (b) within the period specified by the NGR.

### Provisions of the NGR relating to the requirement to submit revisions to a full access arrangement

- 2.4 The access arrangement for the DBNGP, as approved by the ERA in October 2012 (**Current AA**), is:
  - (a) an applicable access arrangement that is a full access arrangement for the purposes of section 132 of the NGL and the NGR; and
  - (b) a full access arrangement for the purposes of the NGR.
- 2.5 NGR 55(1) provides that a service provider must, on or before the review submission date of an applicable access arrangement, submit an access arrangement revision proposal to the ERA.
- 2.6 The definition of "review submission date" in the NGR is the date on or before which an access arrangement revision proposal is required to be submitted.
- 2.7 NGR 49(1) provides (relevantly) that a full access arrangement must contain a review submission date and a revision commencement date.
- 2.8 Section 14 of the Current AA provides that the review submission date for the Current AA is 1 January 2015.
- 2.9 Accordingly, on or before 1 January 2015, the service provider of the DBNGP must submit an access arrangement revision proposal to the ERA.
- 2.10 The Proposed Revised AA and Proposed Revised AAI were submitted on 31 December 2014.

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<sup>1</sup> Section 2 of the NGL defines "scheme pipeline".

<sup>2</sup> The NGL is applied as a law of South Australia by the 2008 Act, and as a law of other jurisdictions by their Application Acts.

## Covered & Complying Pipeline Service Providers

- 2.11 Section 8 of the NGL defines a service provider as a person who:
- (a) owns, controls or operates; or
  - (b) intends to own, control or operate,
- a pipeline or scheme pipeline or any part of a pipeline or scheme pipeline.
- 2.12 Based on this definition, the entities who are currently service providers of the DBNGP who carry out controlling pipeline activities are:
- (a) DBNGP (WA) Transmission Pty Limited ACN 081 609 190; and
  - (b) DBNGP (WA) Nominees Pty Limited, as trustee for the DBNGP WA Pipeline Trust ACN 081 609 289.
- 2.13 These entities are a "service provider group" for the purposes of section 10 of the NGL.
- 2.14 Section 10 of the NGL provides (relevantly) that if:
- (a) more than one service provider (**service provider group**) carries out a controlling pipeline activity in respect of a pipeline; or
  - (b) under the NGL or the NGR a service provider is required or allowed to do a thing,
- then one of these service providers (**complying service provider**) may do that thing on behalf of the service provider group if the complying service provider has the written permission of all of the service providers of that group to do that thing on behalf of the service provider group. Section 10 goes on to say that in such circumstances, all of the service providers will be taken to have done the thing by the complying service provider.
- 2.15 DBNGP (WA) Nominees Pty Limited has given DBNGP (WA) Transmission Pty Limited written permission to do all things required under the NGL and NGR on its behalf and on behalf of the service provider group.
- 2.16 DBNGP (WA) Transmission Pty Limited ACN 081 609 190 (**DBP** or **Operator**) therefore has submitted the access arrangement revision proposal on its own behalf and on behalf of DBNGP (WA) Nominees Pty Limited ACN 081 609 289 (Nominees) as Trustee for the DBNGP WA Pipeline Trust.
- 2.17 Accordingly, DBP has complied with the following requirements
- (a) Section 14 of the Current AA;
  - (b) NGR 52; and
  - (c) Sections 10 and 132 of the NGL.

### 3. ACCESS ARRANGEMENT REQUIREMENTS

- 3.1 The following Table 1 outlines the relevant provisions of the NGR that specify what must be included in a Proposed Revised AA and where these are dealt with by DBP in the Proposed Revised AA.
- 3.2 To the extent that the NGR specifies what a service provider may include in an access arrangement revision proposal (**voluntary content provision**), the table below also lists these provisions of the NGR and outlines where DBP has dealt with each of them in the Proposed Revised AA. To the extent that DBP has elected not to deal with the voluntary content provision in the Proposed Revised AA, DBP has indicated "N/A" in the table.

**Table 1: Access Arrangement requirements**

NGR Reference	NGR Requirement	AA Section
48(1)(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	2
48(1)(b)	Describe the pipeline services the service provider proposes to offer to provide by means of the pipeline	3
48(1)(c)	Specify the reference services	3.1 to 3.5
48(1)(d)(i)	The reference tariff	3.3(c)(iii) 3.4(c)(iii) 3.5(c)(iii)
48(1)(d)(ii)	The other terms and conditions on which the reference service will be provided.	4 & Attachment 1
48(1)(e)	Queuing requirements	5
48(1)(f)	Capacity trading requirements	6 & Attachment 1
48(1)(g)	Extension and expansion requirements	7
48(1)(h)	Terms and conditions for changing receipt and delivery points	8
48(1)(i)	The review submission date and the revision commencement date	14
48(1)(j)	State the expiry date (If there is to be an expiry date)	N/A
49(1)	Review Submission and Revision Commencement Dates	14.2 & 14.3
50	Duration of access arrangement	14
51	Trigger events to accelerate a review submission date	N/A
82	Capital contributions included in the capital base	12
84	Speculative Capital expenditure account	10
85	Capital redundancy mechanism	N/A
85(3)	Cost sharing mechanism for decline in demand	N/A
90	Provisions governing the calculation of depreciation	9
92(1) & 97(1)	Reference tariff variation mechanism	11
98	Incentive mechanism	N/A
99	Fixed principles	13
101	Reference services and other pipeline services	3
102	Variable operation of access arrangement	N/A
103	Queuing requirements	5
104	Extension and expansion requirements	7
105	Capacity Trading Requirements	6
106	Change of receipt or delivery point by user	8



## 4. CONTENT REQUIREMENTS OF THE AAI

- 4.1 This section outlines DBP's position as to what the NGL and NGR require to be included in the Proposed Revised AAI.
- 4.2 The NGR provides that:
- (a) when submitting an access arrangement proposal, a covered pipeline service provider must submit access arrangement information for that proposal (NGR 43(1)); and
  - (b) certain sensitive information may be aggregated or suppressed (NGR 43(2)).
- 4.3 The term 'access arrangement information' is defined in the NGR by reference to NGR 42. NGR 42 provides as follows:
- (a) Access arrangement information for an access arrangement or an access arrangement proposal is information that is reasonably necessary for users and prospective users:
    - (i) to understand the background to the access arrangement or the access arrangement proposal; and
    - (ii) to understand the basis and derivation of the various elements of the access arrangement or the access arrangement proposal.
  - (b) Access arrangement information must also include the information specifically required by the Law.
- 4.4 There are only two provisions of the NGR that specifically require information to be included in the access arrangement information for a full access arrangement:
- (a) NGR 72, which sets out in detail matters which must be included in the access arrangement information; and
  - (b) NGR 73(2), which provides that the basis on which financial information is provided must be stated in the access arrangement information.
- 4.5 NGR 42(2) provides that an access arrangement information must include the information specifically required by the Law. It is DBP's position that this provision governs the quality of information that must be included in an access arrangement information. Therefore, the only information required to be included in an access arrangement information document is that which the NGA specifically requires to be included in the AAI.
- 4.6 It is DBP's position that NGR 42 does not require to be included into the AAI all information necessary to understand the basis and derivation of all elements to an AA proposal unless the NGA expressly provides for information in relation to an element to be specifically included.
- 4.7 This position is supported by the following:
- (a) NGR 42(2) uses the word 'must', whereas NGR 42(1) uses illustrative language.
  - (b) If the broad interpretation of NGR 42 were intended such that NGR 42(1) did regulate the content of what must be included in an access arrangement information, the drafting should have illustrated that the subsections were cumulative (for example, by stating in NGR 42(2) that nothing in NGR 42(1) limits the breadth of NGR 42(1)). The drafting does not do this.
  - (c) NGR 42 is similar in content to and in the interaction between clauses 2.6 and 2.7 of the Gas Code. Under the Gas Code, the ERA adopted an approach similar to DBP's position – i.e. it has not required the AAI to contain information supporting all elements of an Access Arrangement.

4.8 In addition to the above drafting of the NGA, there are a number of previous statements of the ERA and the MCE which support DBP's position that it is the drafting and content of NGR 72 of the NGR which is the statement of the minimum access arrangement information requirements.

- (a) By letter to the MCE dated December 2006, the ERA commented on the previous rule 21 (NGR 72) of the draft initial NGR dated 21 November 2006, and stated:

*"The AER and ERA are satisfied in most respects with the approach taken in cl. 21 to reproducing, at a higher level of generality, the subject-matter of Attachment A to the Gas Code, the minimum access arrangement information requirements. The provisions for a general regulatory information order proposed in the NGL would provide the means for the regulator, following consultations, to specify the detail of content and form of information to be provided as access arrangement information.*

*However, Categories 5 and 6 of Attachment A contain useful information requirements that have not been incorporated in the Law or Rules.*

*Category 5 lists information about system capabilities, capacity and volume and Category 6 lists industry key performance indicators (KPIs) and the service provider's own KPIs.*

*We suggest that clauses modelled on Categories 5 and 6 of the Gas Code Attachment A provisions be included in the Rules."*

- (b) In response, the MCE stated in its Response Table to Submissions dated 14 May 2007 that the recommendation that access arrangement information should include information about system capacity and volume assumptions, and key performance indicators was accepted, and that these categories of information would be included as access arrangement information.
- (c) The Explanatory Material for the Second Exposure Drafts of the National Gas Law and National Gas Rules released by the Ministerial Council on Energy in July 2007 refers to the Gas Code AAI provisions as being clauses 2.7 to 2.9. This supports the view that clause 2.7 of the Gas Code (equivalent to NGR 42(2) of the NGR) determined what needed to be included in the AAI, and not clause 2.6 (equivalent of NGR 42(1) NGR).
- (d) The Explanatory Material for the Second Exposure Drafts of the National Gas Law and National Gas Rules released by the Ministerial Council on Energy in July 2007, which shows no intention to change the AAI requirements and comments. The section of the Explanatory Material that refers to Rule numbers 41-42 provides as follows:

*"Rule number 41-42: These rules achieve the policy intention of separating access arrangement information for the access arrangement itself similar to 2.7-2.9 of the Gas Code."*

4.9 DBP's table 1 in the Access Arrangement Information outlines the provisions of the NGR and NGL that specify what must be included in an access arrangement information for a full access arrangement and where these are dealt with by DBP in the Proposed Revised AAI.

## Sensitive Information

4.10 DBP considers that a strict compliance with the provisions of the NGR outlined in Table 2 would require DBP to include in the Revised AAI Proposal information which is sensitive information in that it would cause undue harm to the legitimate business interests of DBP and/or users and prospective users. Accordingly, DBP proposes that the sensitive information be aggregated so as to avoid disclosure of the elements that make it sensitive. Table 2 also contains details of where the sensitive information is dealt with in the AAI, why it would be sensitive if it was made publicly available and how it has been dealt with to remove the sensitivity.

Table 2: Sensitive information

Relevant NGR	Where dealt with in AA/AAI	How sensitive information is dealt with	Reason for aggregating the sensitive information
71(1)(a)(iii)(A)	Section 5	Outlet Point information as to number of shippers is aggregated	<p>Would disclose information regarding individual shipper's contracted capacity and/or throughput – because some outlet points only have one shipper with contracted capacity</p> <p>Information has been aggregated in a way to enable shippers to understand how the reference tariff is structured.</p> <p>Given the proposed tariff structure, no shipper or prospective shipper should be adversely affected by the information being aggregated.</p>
71(1)(a)(iii)(B)	Section 5	Outlet Point information as to maximum, average and minimum throughput is aggregated	<p>Would disclose information regarding individual shipper's contracted capacity and/or throughput – because some outlet points only have one shipper with contracted capacity</p> <p>It is aggregated in a way to enable shippers to understand how the reference tariff is structured.</p> <p>Given the proposed tariff structure, no shipper or prospective shipper should be adversely affected by the information being aggregated.</p>

4.11 Pursuant to NGR 43(2), DBP requests the ERA's approval to the Proposed Revised AAI being submitted in this form to address the effects of disclosing the above sensitive information.

## 5. DBP PRE-FILING ENGAGEMENT WITH THE ERA

- 5.1 NGR 57 allows the service provider in the course of preparing a full access arrangement proposal to make a request, by way of notice, for a pre-submission conference.
- 5.2 DBP made such a request at 1 August 2014. The pre-submission conference comprised a number of sessions with the ERA to cover a number of mutually agreed topics.
- 5.3 DBP was motivated to engage with the ERA before filing revisions to the access arrangement for the following reasons:
- (a) Allow the ERA a better understanding of DBP's business context aimed at assisting the review process;
  - (b) Allow the ERA the opportunity to consider approaches to be adopted by DBP before formally filing the proposal;
  - (c) Allow the ERA to plan and allocate resources ahead of time to ensure an efficient approval process;
  - (d) Minimise the time required by the ERA to approve the DBNGP access arrangement for the AA Period.
- 5.4 A summary of the engagement undertaken with the ERA is provided in the following table.

**Table 3: DBP pre-filing engagement with ERA on proposal content**

Date	Matter
1 August 2014	<ul style="list-style-type: none"> <li>• Letter to ERA requesting pre-consultation in accordance with NGR 57</li> </ul>
15 August 2014	<ul style="list-style-type: none"> <li>• Expected timing for filing revision proposal</li> <li>• Briefing on the DBP's conclusion of re-contracting programme with shippers</li> <li>• Scope of agreed upon procedures review process for actual operating and capital expenditure to be included in Revised AA</li> <li>• Approach to be taken on capital contributions</li> </ul>
24 September 2014	<ul style="list-style-type: none"> <li>• Approach to taken in determining the depreciation in the reference tariff model</li> <li>• Value of the BEP Lease to be proposed as conforming capital expenditure in 2011</li> <li>• Approach used to calculate expected inflation</li> <li>• ERA's departure from the ERA Rate of Return Guidelines on Gamma as indicated in ATCO Draft Decision</li> </ul>
23 October 2014	<ul style="list-style-type: none"> <li>• Overview of steps taken to verify actual operating and capital expenditure to be proposed as conforming expenditure</li> <li>• Overview of forecast conforming operating and capital expenditure</li> </ul>
6 November 2014	<ul style="list-style-type: none"> <li>• Matters relating to the proposed approach to estimating overall Rate of Return.</li> </ul>
26 November 2014	<ul style="list-style-type: none"> <li>• Proposed approach to estimating corporate tax</li> <li>• Approach taken on decommissioning costs</li> <li>• Equity/debt consistency test to be used in the determination of rate of return</li> <li>• High level walk through of DBP's proposed reference tariff model</li> </ul>
22 December 2014	<ul style="list-style-type: none"> <li>• Meeting to outline DBP's access arrangement revision proposal</li> </ul>



# APPENDIX A: PROPOSED REVISED ACCESS ARRANGEMENT



# APPENDIX B: PROPOSED REVISED ACCESS ARRANGEMENT INFORMATION



# APPENDIX C: ACCESS ARRANGEMENT (MARK-UP)



# APPENDIX D: ACCESS ARRANGEMENT INFORMATION (MARK-UP)