

Proposed Revisions DBNGP Access Arrangement

2016 – 2020 Access Arrangement Period

Proposed Reference Service

Supporting Submission: 3

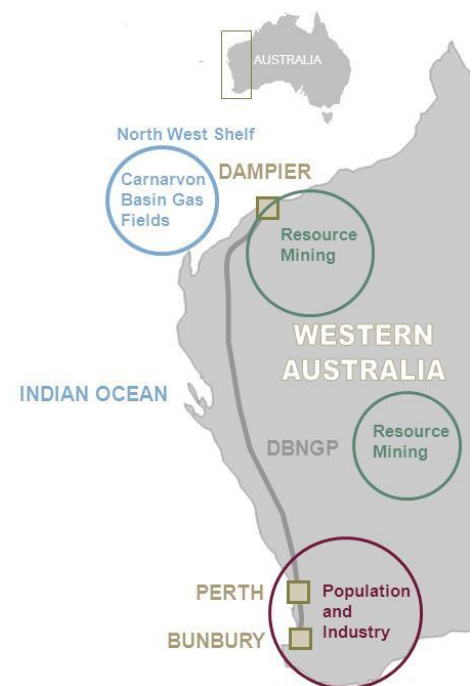


PUBLIC VERSION

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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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Table of Contents

- 1. INTRODUCTION.....1
- 2. REQUIREMENTS FOR PIPELINE SERVICES.....2
- 3. WHERE DOES THE PROPOSED REVISED AA PROPOSAL MEET THE REQUIREMENTS OF THE NGR THAT RELATE TO PIPELINE SERVICES.....4
- 4. JUSTIFICATION FOR PROPOSED REFERENCE SERVICES5
- 5. JUSTIFICATION FOR WHY NO OTHER PIPELINE SERVICES IS A REFERENCE SERVICE9
- APPENDIX A: SUBMISSION 7311

List of Tables

- TABLE 1: SPOT SERVICE 9

1. INTRODUCTION

- 1.1 On 31 December 2014, DBNGP (WA) Transmission Pty Ltd (**DBP**) filed the following documents with the Economic Regulation Authority of Western Australia (**ERA**):
 - (a) proposed revised Access Arrangement (**Proposed Revised AA**); and
 - (b) proposed revised Access Arrangement Information (**Proposed Revised AAI**).
- 1.2 These documents are proposed to cover the access arrangement period commencing on 1 January 2016 and ending on 31 December 2020 (**AA Period**)
- 1.3 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.
- 1.4 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
- 1.5 This submission contains further supporting information in relation to the matters in the Proposed Revised AA and Proposed Revised AAI that relate to pipeline services and reference services and with respect to which the NGR require to be addressed.

2. REQUIREMENTS FOR PIPELINE SERVICES

2.1 The NGL and NGR contain a number of provisions that require information relating to pipeline services to be included in an access arrangement.

2.2 The NGL defines the term "Pipeline Service" as follows:

"Pipeline Service" means:

- (a) *a service provided by means of a pipeline, including:
a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
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),*
- (c) *but does not include the production, sale or purchase of natural gas or processable gas.*

2.3 NGR 48 provides that a full access arrangement must, amongst other things:

- (a) *describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and*
- (b) *specify the reference services; and*
- (c) *specify for each reference service:
the reference tariff; and
the other terms and conditions on which the reference service will be provided.*

2.4 The NGL defines the term "Reference Service" as follows:

"Reference Service" means a pipeline service specified by or determined by the regulator under, the [NGR] as a reference service.

2.5 There are three key provisions of the NGR that assist in determining what pipeline services should be reference services. Firstly, the general requirement in NGR 100 that the provisions of an access arrangement be consistent with the national gas objective.

2.6 Secondly, the provisions of NGR 101 which provide that a full access arrangement must specify as a "reference service":

- (a) *a pipeline service that is likely to be sought by a significant part of the market; and*
- (b) *any other pipeline service that is likely to be sought by a significant part of the market and which the regulator considers should be specified as a reference service.*

2.7 In the final decision made by the ERA in its approval of the current access arrangement for the DBNGP (**Current AA**), the ERA determined that the "market" referred to is the total market for pipeline services provided by DBNGP, including any expected increase in provision of services during the access arrangement period for which the approved access arrangement will apply.¹ NGR 101 requires that any pipeline service must be likely to be sought by a significant part of that market. To determine whether a "significant part" of the market is likely to seek a particular pipeline service, the ERA has in the past had regard to existing contracts between DBP and its Shippers as well as evidence of new services demanded by a significant number of users and

¹ Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 31 October 2011 as amended on 22 December 2011, p39 @ paragraph 133

prospective users, without regard to pipeline capacity.² Past reference services were also determined by having regard to the nature of services obtained by a significant number of users under contracts entered into just prior to the ERA's consideration of the proposed revisions to the access arrangement.³

- 2.8 The third provision of the NGR that assists in determining what pipeline services should be reference services is NGR 109. NGR 109 requires that a scheme pipeline service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.
- 2.9 The NGR do not require anything to be included in the Proposed Revised AAI in relation to pipeline services.

² *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 31 October 2011 as amended on 22 December 2011, p29*

³ *Economic Regulation Authority, 2005, Final Decision on the Proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (reprinted 11 November 2005), paragraph 56*

3. WHERE DOES THE PROPOSED REVISED AA PROPOSAL MEET THE REQUIREMENTS OF THE NGR THAT RELATE TO PIPELINE SERVICES

3.1 Sections 3 and 4 of DBP's Proposed Revised AA contain the following in order to meet the requirements of the NGR for reference services (being those requirements outlined in Section 2 of this submission):

- (a) Section 3 of the Proposed Revised AA specifies the T1 Service, P1 Service and B1 Service as the reference services – this meets the requirements of NGR 101(2). The reasoning for why they are proposed to be the reference services is outlined in Section 4 of this submission. The reasoning for why no other service should be a reference service is outlined in Section 5 of this submission;
- (b) Section 3 of the Proposed Revised AA specifies the reference tariff for the Reference Service – this meets the requirements of NGR 48(1)(d)(i).
- (c) Section 4 of the Proposed Revised AA specifies the other terms and conditions on which each of the reference services will be provided by the DBP – this meets the requirements of NGR 48(1)(d)(ii).

3.2 The requirements of the NGL and NGR for those pipeline services that are not reference services (being those requirements outlined in section 5 of this submission), are met in the Proposed Revised AA as follows:

- (a) Section 3 of the Proposed Revised AA describes each of the pipeline services the service provider currently proposes to offer to provide by means of the DBNGP – this meets the requirements of NGR 48(1)(b).
- (b) Subject to paragraph (c) below, each pipeline service is described in Section 3 of the Proposed Revised AA in a way that is consistent with Rule 109 – i.e. there are no conditions of pipeline services (other than the Park and Loan Service) that require prospective users to accept another non-gratuitous service from the service provider unless bundling of the service is reasonably necessary.
- (c) Section 3 of the Proposed Revised AA describes only one pipeline service – the Park and Loan Service – as being conditional upon the shipper for that pipeline service having to accept another non-gratuitous service from DBP – being any type of haulage service. DBP submits that it is reasonably necessary to bundle these pipeline services – and therefore Rule 109 of the NGR is met. It is reasonably necessary to bundle these pipeline services for the following reasons:
 - (i) To enable gas to be either parked in or loaned from the DBNGP under a Park and Loan Service, it will need to be transported along the pipeline;
 - (ii) It is envisaged that the only entities seeking to access the Park and Loan Service will be shippers with a haulage service;
 - (iii) The terms and conditions of the proposed Park and Loan Service do not contain terms and conditions relating to transportation or haulage;
 - (iv) There is no requirement in the Proposed Revised AA for a shipper seeking access to a haulage service to also enter into an access contract for a park and loan service; and
 - (v) By allowing a prospective user to only enter into a Park and Loan Service significantly increases the risk that DBP is involved in the sale or purchase of natural gas in a way that amounts to a related business (as that term is defined in the NGL). This is prohibited under the NGL.

4. JUSTIFICATION FOR PROPOSED REFERENCE SERVICES

- 4.1 DBP has proposed the following reference services in the Proposed Revised AA:
- (a) Full Haul T1 Service (T1 Service);
 - (b) Part Haul P1 Service (P1 Service); and
 - (c) Back Haul B1 Service (B1 Service).
- 4.2 This section of the submission contains the justification for their inclusion as reference services.
- 4.3 Firstly, each of the T1, P1 and B1 services meet the definition of Pipeline Services in that they are provided by means of a pipeline and are haulage services and do not include the production, sale or purchase of natural gas or processable gas.
- 4.4 Secondly, while no shipper has either contracted for or sought a T1, P1 or B1 reference service during the Current AA Period, DBP submits that each of the T1, P1 and B1 services are likely to be sought, during the Proposed AA Period, by a significant part of the market on the basis that:
- (a) In relation to the T1 Service:
 - (i) recent recontracting negotiations with shippers have confirmed that the existing demand is overwhelmingly for a firm full haul service;
 - (ii) The defining characteristic of the service is the 'firmness' offered, and:
 - (A) The firmness of the Proposed T1 Reference Service is consistent with the firmness of the T1 Service the subject of each T1 Standard Shipper Contract entered into between DBP and each existing shipper;
 - (B) The firmness of the Proposed T1 Reference Service is consistent with that offered as a T1 reference service in the Current AA Period; and
 - (C) The firmness of the Proposed T1 Reference Services is consistent with that offered as a T1 reference service in the Prior AA Period;
 - (iii) Forecasts of contracted capacity and throughput provided by DBP (see submission 11) indicates that a service that is positioned in the curtailment plan with the same level of priority as the T1 Service provided under the Standard Shipper Contracts is likely to continue to be sought by a significant part of the market;
 - (iv) DBP has a contractual commitment under the T1 Standard Shipper Contract to offer a T1 full haul firm service.
 - (v) Access requests received during the Current AA Period have mostly been for firm services either on a full or part haul basis.
 - (b) In relation to the B1 Service:
 - (i) The defining characteristic of the service is the 'firmness' offered, and:
 - (A) The firmness of the Proposed B1 Reference Service is consistent with the firmness of the B1 Service the subject of each B1 Standard Shipper Contract entered into between DBP and each existing shipper;
 - (B) The firmness of the Proposed B1 Reference Service is consistent with that offered as a B1 reference service in the Current AA Period; and
 - (C) The firmness of the Proposed B1 Reference Service is consistent with that offered as a B1 reference service in the Prior AA Period;
 - (ii) Forecasts of contracted capacity and throughput provided by DBP (see submission 11) indicates that a service that is positioned in the curtailment plan with the same level of priority as the B1 Service provided under the Standard Shipper Contracts is

likely to continue to be sought by a significant part of the market for firm back haul services;

- (c) In relation to the P1 Service, subject to the comments in paragraphs 4.5 and following:
 - (i) The defining characteristic of the service is the 'firmness' offered, and:
 - (A) The firmness of the Proposed P1 Reference Service is consistent with the firmness of the P1 Service the subject of each P1 Standard Shipper Contract entered into between DBP and each existing shipper;
 - (B) The firmness of the Proposed P1 Reference Service is consistent with that offered as a P1 reference service in the Current AA Period; and
 - (C) The firmness of the Proposed P1 Reference Service is consistent with that offered as a P1 reference service in the Prior AA Period;
 - (ii) Forecasts of contracted capacity and throughput provided by DBP (see submission 11) indicate that a service that is positioned in the curtailment plan with the same level of priority as the P1 Service provided under the Standard Shipper Contracts is likely to continue to be sought by a significant part of the market for part haul services.

Definition of Part Haul to be adopted for the P1 Service

4.5 DBP has proposed to change the definition of Part Haul in the proposed reference service that is the P1 Service to be offered in the AA Period.

4.6 The following definition (is applicable to the P1 Service (reference service) in the Current AA Period (brought about by the ERA's Final Decision in 2011) (Current ERA Definition):

- (a) *"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."*

4.7 At paragraphs 138-145 of the Final Decision, the ERA refers to the APA Group's submission.

4.8 In these paragraphs, the ERA notes that the APA Group expressed a concern that, under the defined terms in the Prior AA Period, the P1 Service potentially limited transport gas between inlet points downstream of MLV31 and upstream of CS9. If that was correct, the P1 Service could not be used for either transfer of gas from upstream of MLV31 to the MGSF, or transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9.

4.9 Although the ERA expressed the view that it did not necessarily agree with all of the submissions on this issue made by the APA Group, it concluded that 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 Current AA Period⁴.

4.10 However, it then made Amendment 4 which amends the definition of the term "Part Haul Service" to make it clear that a Part Haul Service could include transportation where in the inlet point is downstream of MLV31 and the outlet point is downstream of compressor station 9.

4.11 The ERA's Amendment 4 replaced the following definition (Original Definition) which had been the basis for the part haul service on the DBNGP since the 1990's:

⁴ Paragraph 145 of the ERA's Final Decision 31 October 2011 as amended 22 December 2011

"Gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Outlet Point, but does not include Back Haul."

- 4.12 The issue was later the subject of merit review at the Australian Competition Tribunal which confirmed the ERA's landing reached in the Final Decision⁵.
- 4.13 DBP submits that the Original Definition of Part Haul should be reinstated. This is because:
- (a) there is no evidence that there is significant demand in the market for the P1 Service with the Current ERA Definition; and
 - (b) it is demonstrably evident that there is demand in the market for a P1 Service that has the Original Definition.
- 4.14 The following is the substantiation for the position reached by DBP in paragraph 4.13:
- (a) DBP has not had a single access request for the P1 Service with the Current ERA Definition nor does it expect to receive future requests.
 - (b) During the Current AA Period, there have been four access requests for a Part Haul services inclusive of the Original Definition of Part Haul.
 - (c) Shippers who utilise the MGSF who have existing contracted capacity under their T1 Standard Shipper Contracts continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement. As the Reservation Charge for a T1 Service is a sunk cost, the incremental cost of transporting gas from the MGSF to outlet points located downstream of Compressor Station 9 is the Commodity Charge only.
 - (d) Additionally, the majority of shippers (approximately 85%) with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and therefore are unlikely to use any other service to use the MGSF during the Proposed AA Period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF.
 - (e) To the extent that an existing or prospective shipper would like to contract for a P1 Service in the AA Period, the existence of the Parmelia Gas Pipeline ensures that competition exists for services that support the MGSF and therefore this will continue to drive efficient outcomes for consumers for that particular form of service on the DBNGP.
- 4.15 DBP also maintains that:
- (a) The change in definition underpinning the P1 reference service is fundamentally different to the SSC P1 service that operates on the DBNGP. Further background was provided by DBP in the Submission 73 provided to the ERA on 13 December 2011 - a copy of which is attached as Appendix A;
 - (b) Utilisation of the P1 Service as defined under the Current ERA Definition would reduce the amount of T1 capacity available on the DBNGP and therefore is not in the interests of consumers of natural gas;
 - (c) Utilisation of the P1 Service as defined under the Current ERA Definition would increase the required fuel gas required on the DBNGP for the AA Period;
 - (d) The Current ERA Definition has brought uncertainty because a part haul service with an outlet point downstream of CS9 will fall within the definitions of both "part haul" and "full haul" services. While the Current ERA Definition states that "part haul service" is a service "to provide Forward Haul on the DBNGP which is not a full haul service" , it goes on to list a number of examples, one of which is a service with an outlet point downstream of CS9. Yet the definition of full haul service then also defines a service as being one with an outlet point downstream of CS9;

⁵ <http://www.judgments.fedcourt.gov.au/judgments/Judgments/tribunals/acompt/2012/2012acompt0014>

- (e) If DBP were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, it would put DBP in breach of one of its key obligations owed to at least one shipper under an existing contract - being to not discriminate in respect of price between shippers who have outlet points downstream of CS9; and
 - (f) if DBP were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, this could also trigger most favoured nation (or MFN) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers.
- 4.16 For these reasons DBP concludes that "Part Haul" should be defined as a gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Outlet Point, but does not include Back Haul.

5. JUSTIFICATION FOR WHY NO OTHER PIPELINE SERVICES IS A REFERENCE SERVICE

5.1 DBP has included in the Revised AA Proposal a description of a number of pipeline services but not classified them as reference services – see section 3 of the Revised AA Proposal. Proposed non-reference services are:

- (a) Subject to availability of Capacity:
 - (i) Spot Capacity Service;
 - (ii) Park and Loan Service;
 - (iii) Seasonal Service;
- (b) Subject to Operational Availability:
 - (i) Metering and temperature service;
 - (ii) Odourisation service;
 - (iii) Peaking Service;
 - (iv) Co-mingling service;
 - (v) Pipeline impact agreement service;
 - (vi) Interconnection service; and
- (c) Pipeline service provided by DBP under access contracts entered into prior to commencement of the AA Period which is not for a Reference Service.

5.2 Non-reference services are not sought by a significant part of the market. This is evidenced by:

- (a) Low and sporadic throughput;
- (b) Few, if any, shippers with contracts for those services; and
- (c) For those shippers who do have contracts for such services, the contract periods are short and not consistent;

5.3 The following tables outline the extent to which interruptible and spot capacity services have been utilised during the Current AA Period.

Table 1: Interruptible & Spot capacity services

Year	Contracted capacity (TJs)	Throughput (TJs) delivered basis
2011	6.14	10.2
2012	6.07	5.2
2013	20.03	13.9
2014*	45.01	28.7

**information available at the time of preparing the submission.*

5.4 DBP also makes the following specific comments regarding the remaining non-reference service listed above:

- (a) DBP only has one shipper with a park and loan service at the time of making this submission;

- (b) Only one gas transmission agreement for a pipeline impact agreement service was entered into⁶; and
 - (c) There was no contract entered into, nor were access requests received, for peaking, co-mingling, seasonal service, interconnection or odourisation services. Nor does DBP expect to receive requests during the AA Period.
- 5.5 There is no real likelihood of material demand for the pipeline services listed in paragraph 3.1(b) of the Proposed Revised AA and paragraph 5.1 in this submission. Therefore it cannot be demonstrated that there is demand for respective services by a significant part of the market for each service.
- 5.6 It should also be noted that:
- (a) the Tx service is no longer available to shippers and it is also not a service sought by any shipper or prospective shipper at the time; and
 - (b) the Tp service is not available to shippers other than those participated in the Stage 5A expansion project. Moreover, as part of the recontracting of services agreed to by DBP in 2014, all but three of the shippers agreed to end their rights to the Tp service.

⁶ DBP notes that the forecast volumes have been included in DBP's proposed forecast of contracted capacity and throughput (See Submission 11)



APPENDIX A: SUBMISSION 73