

Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 - 2020

Submitted by DBNGP (WA) Transmission Pty Limited

22 December 2015

Economic Regulation Authority

WESTERN AUSTRALIA

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DRAFT DECISION

1. On 31 December 2014, DBNGP (WA) Transmission Pty Limited (**DBP**) submitted to the Economic Regulation Authority (**Authority**) proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**). The proposed revised access arrangement covers the period 1 January 2016 to 31 December 2020 (herein referred to as **AA4**, or the fourth access arrangement period).
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. DBP also made several submissions of supporting information to the Authority shortly after submission of the access arrangement revision proposal and during the course of the Authority's assessment. A full list of submissions made by DBP is provided at Appendix 3 of this Draft Decision.
4. The role of the Authority is to approve or not approve the proposed access arrangement revisions in accordance with the requirements of the National Gas Law (**NGL**) and National Gas Rules (**NGR**).¹
5. The proposed revised access arrangement, access arrangement information and access arrangement supporting information (except for confidential information which is redacted), are available on the Authority's website.²
6. DBP's current access arrangement (herein referred to as **AA3**, or the third access arrangement) applies until a revised access arrangement is approved by the Authority.
7. The purpose of an access arrangement is to provide details regarding the terms and conditions, including price, upon which an independent third party user can gain access to the DBNGP for the purpose of transporting gas.
8. The Authority invited submissions from interested parties on the revised access arrangement by publishing an initiating notice on 11 February 2015 calling for submissions by 20 April 2015. On 20 April 2015, the Authority published an Issues Paper in order to assist interested parties in understanding some of the significant issues to be addressed by the Authority in determining whether to approve or not to approve the proposed revised access arrangement and extended the public consultation period to 2 June 2015 to enable interested parties sufficient time to consider the issues.
9. The following parties provided submissions on DBP's proposed revised DBNGP access arrangement by the closing date:
 - Wesfarmers Chemicals, Energy & Fertilisers (**WESCEF**)

¹ 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 Australian) Law (NGL(WA))*.

² DBNGP (WA) Transmission Pty Limited, *Proposed Revisions: DBNGP Access Arrangement Supporting Submission 1*, 31 December 2014.

- United Energy and Multinet Gas
 - DBNGP (WA) Transmission Pty Ltd (**DBP**)
 - CITIC Pacific Mining (**CPMM**)
 - BHP Billiton
 - Alinta Energy
10. The submissions from these parties can be found on the Authority's website.
 11. As required by rule 59(1) of the NGR and section 65(a) of the NGL(WA), in arriving at this Draft Decision the Authority has considered the public submissions it received within the timeframe specified in its initiating notice and subsequent extensions of time. The details of the public submissions that were received and considered by the Authority are set out in this Draft Decision.
 12. Under rule 59 of the NGR, the Authority is required to make a Draft Decision that indicates whether the Authority is prepared to approve the access arrangement revision proposal as submitted or, if not, the nature of amendments that are required in order to make the proposal acceptable to the Authority. An access arrangement Draft Decision must include a statement of the reasons for the decision.
 13. After considering submissions received from interested parties and advice from its technical and legal advisors, the Draft Decision of the Authority is to not approve the access arrangement revision proposal. The Authority's reasons for not approving the access arrangement revision proposal are set out in this Draft Decision. Each of the required amendments is discussed in the relevant sections of this Draft Decision.
 14. The amendments that are required to be made to the proposed access arrangement revisions before the Authority will approve the proposed revised access arrangement are listed in Appendix 1. For the purposes of clarity, the required amendments are also indicated in the reasons for this Draft Decision at the point at which each relevant element of the proposed revised access arrangement is considered.
 15. Under rule 59(3) of the NGR, the Authority is required to fix a period (revision period) within which DBP may, under rule 60, submit additions or other amendments to the access arrangement revisions proposal to address matters raised in this Draft Decision. The Authority fixes the revision period to commence from the date of this Draft Decision and to expire at 4.00 pm WST on Monday, 22 February 2016.
 16. The Authority also invites submissions on this Draft Decision for a period of 20 business days following the revision period allowed to DBP, consistent with the requirements of rule 59(5)(c)(iii) of the NGR. Hence, the closing date for submissions is 4:00 PM WST on Tuesday, 22 March 2016.
 17. Under rule 62 of the NGR, the Authority will consider any submissions received on this Draft Decision and make a final decision to approve, or to refuse to approve, the proposed revised access arrangement (or revised proposed access arrangement revisions if submitted by DBP).

REASONS

Introduction

Regulatory Framework

18. 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.
19. 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 Australian) Law (**NGL(WA)**).
20. Section 23 of the NGL(WA) sets out the National Gas Objective (**NGO**). Under rule 100 of the NGR all provisions of an access arrangement are required to be consistent with the NGO.
 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.
21. 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.
22. During the course of the third access arrangement (AA3) period, the AEMC made numerous changes to the NGR. In particular, rule 87 of the NGR has been updated

extensively. The Authority addressed some of these changes, including the changes to rule 87, in its *Rate of Return Guidelines* published on 16 December 2013.³

23. At the time, when the proposed revisions for the third access arrangement (AA3) period were submitted by DBP, rule 87(1) of the NGR stated the following:⁴

87. Rate of return

- 1) The rate of return on capital is to be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services.
- 2) In determining a rate of return on capital:
 - a) it will be assumed that the service provider:
 - i) meets benchmark levels of efficiency; and
 - ii) uses a financing structure that meets benchmark standards as to gearing and other financial parameters for a going concern and reflects in other respects best practice; and
 - b) a well accepted approach that incorporates the cost of equity and debt, such as the Weighted Average Cost of Capital, is to be used; and a well-accepted financial model, such as the Capital Asset Pricing Model, is to be used.

24. The current (updated) rule 87 of the NGR states as follows:⁵

87. Rate of return

- 1) Subject to rule 82(3), the return on the projected capital base for each regulatory year of the access arrangement period is to be calculated by applying a rate of return that is determined in accordance with this rule 87 (the allowed rate of return).
- 2) The allowed rate of return is to be determined such that it achieves the allowed rate of return objective.
- 3) The allowed rate of return objective is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of reference services (the allowed rate of return objective).
- 4) Subject to subrule (2), the allowed rate of return for a regulatory year is to be:
 - a) a weighted average of the return on equity for the access arrangement period in which that regulatory year occurs (as estimated under subrule (6)) and the return on debt for that regulatory year (as estimated under subrule (8)); and
 - b) determined on a nominal vanilla basis that is consistent with the estimate of the value of imputation credits referred to in rule 87A.
- 5) In determining the allowed rate of return, regard must be had to:
 - a) relevant estimation methods, financial models, market data and other evidence;
 - b) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and

³ Economic Regulation Authority, *Rate of Return Guidelines – Meeting the requirements of the National Gas Rules*, 16 December 2013.

⁴ Rule 87 of the National Gas Rules (Version 10).

⁵ Rule 87 of the National Gas Rules.

- c) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

Return on equity

- 6) The return on equity for an access arrangement period is to be estimated such that it contributes to the achievement of the allowed rate of return objective.
- 7) In estimating the return on equity under subrule (6), regard must be had to the prevailing conditions in the market for equity funds.

Return on debt

- 8) The return on debt for a regulatory year is to be estimated such that it contributes to the achievement of the allowed rate of return objective.
- 9) The return on debt may be estimated using a methodology which results in either:
 - a) the return on debt for each regulatory year in the access arrangement period being the same; or
 - b) the return on debt (and consequently the allowed rate of return) being, or potentially being, different for different regulatory years in the access arrangement period.
- 10) Subject to subrule (8), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
 - a) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the time when the [Authority's] decision on the access arrangement for that access arrangement period is made;
 - b) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the commencement of a regulatory year in the access arrangement period; or
 - c) some combination of the returns referred to in subrules (a) and (b).
- 11) In estimating the return on debt under subrule (8), regard must be had to the following factors:
 - a) the desirability of minimising any difference between the return on debt and the return on debt of a benchmark efficient entity referred to in the allowed rate of return objective;
 - b) the interrelationship between the return on equity and the return on debt;
 - c) the incentives that the return on debt may provide in relation to capital expenditure over the access arrangement period, including as to the timing of any capital expenditure; and
 - d) any impacts (including in relation to the costs of servicing debt across access arrangement periods) on a benchmark efficient entity referred to in the allowed rate of return objective that could arise as a result of changing the methodology that is used to estimate the return on debt from one access arrangement period to the next.
- 12) If the return on debt is to be estimated using a methodology of the type referred to in subrule (9)(b) then a resulting change to the service provider's total revenue must be effected through the automatic application of a formula that is specified in the decision on the access arrangement for that access arrangement period.

Rate of return guidelines

- 13) The [Authority] must, in accordance with the rate of return consultative procedure, make and publish guidelines (the Rate of Return Guidelines).
- 14) The Rate of Return Guidelines must set out:

- a) the methodologies that the [Authority] proposes to use in estimating the allowed rate of return, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent with the allowed rate of return objective; and
 - b) the estimation methods, financial models, market data and other evidence the [Authority] proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in rule 87A.
- 15) There must be Rate of Return Guidelines in force at all times after the date on which the [Authority] first publishes the Rate of Return Guidelines under these rules.
- 16) The [Authority] must, in accordance with the rate of return consultative procedure, review the Rate of Return Guidelines:
- a) at intervals not exceeding three years, with the first interval starting from the date that the first Rate of Return Guidelines are published under these rules; and
 - b) at the same time as it reviews the Rate of Return Guidelines under clauses 6.5.2 and 6A.6.2 of the National Electricity Rules.^[6]
- 17) The [Authority] may, from time to time and in accordance with the rate of return consultative procedure, amend or replace the Rate of Return Guidelines.
- 18) The Rate of Return Guidelines are not mandatory (and so do not bind the [Authority] or anyone else) but, if the [Authority] makes a decision in relation to the rate of return (including in an access arrangement final decision or an access arrangement final decision) that is not in accordance with them, the [Authority] must state, in its reasons for the decision, the reasons for departing from the guidelines.
- 19) If the Rate of Return Guidelines indicate that there may be a change of regulatory approach by the decision maker in future decisions, the guidelines should also (if practicable) indicate how transitional issues are to be dealt with.

Special Circumstances of the Dampier to Bunbury Natural Gas Pipeline

25. Access contracts between DBP and users of the DBNGP – the DBNGP shipper contracts – are currently substantially independent of the access terms and reference tariffs under the access arrangement for the DBNGP. With the exception of an access contract with the foundation customer (Alcoa), the contracts with shippers have taken the form of the “Standard Shipper Contract” (**SSC**). The terms of the SSC were originally negotiated in 2004 (**previous SSC**). DBP renegotiated the terms of the old SSC with most of its customers in 2014 (**current SSC**). A copy of the current SSC can be found on DBP’s website.⁷
26. Clause 20.5 (subclauses (d) to (g)) of the previous SSC made provision for gas transmission tariffs to transition to a reference tariff under the access arrangement in 2016:

⁶ The National Electricity Rules are not applicable in Western Australia.

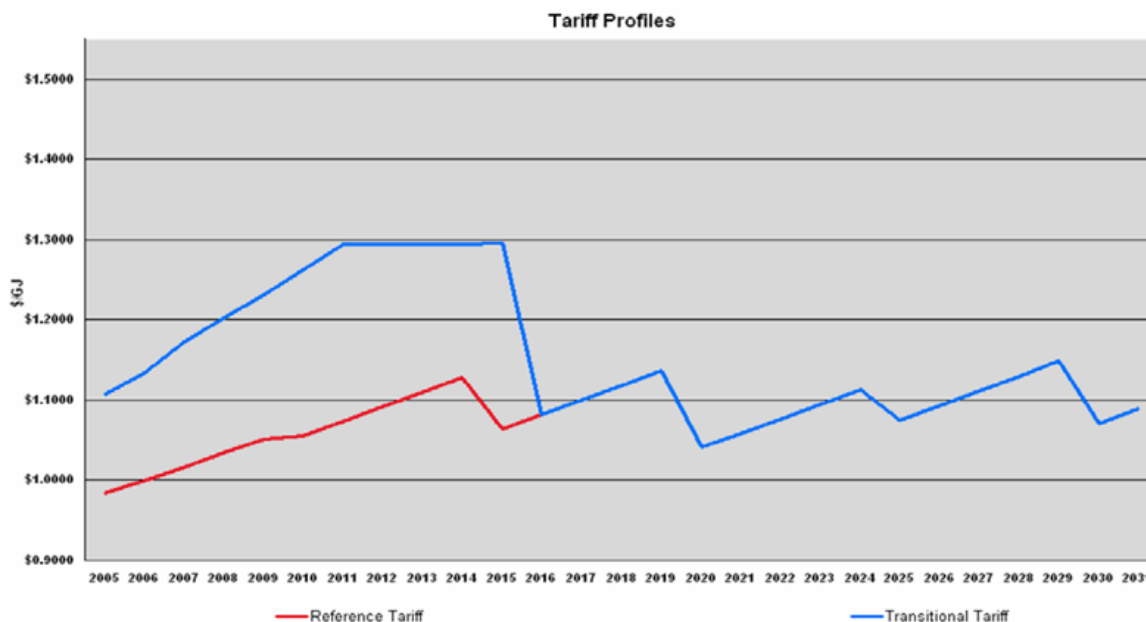
⁷ <http://www.dbp.net.au/>

20.5 Adjustment to Base T1 Tariff

...

- 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% 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 ERA 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).
 - 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%/20%.
 - 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%/20%.

- 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%/20% 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.
27. As indicated in subclause 20.5(f)(ii) of the previous SSC, Schedule 9 illustrated 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. This is reproduced in Figure 1 below.

Figure 1 Tariff expectations set under Schedule 9 of the old Standard Shipper Contract

Source: Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 14 March 2011 (reprinted 5 May 2011), p. 19.

28. In its submission to the Authority, DBP notes that during the first half of 2014 it engaged all firm full haul shippers in negotiations to renegotiate their SSCs. DBP notes that the majority of shippers agreed to amend their contracts in a number of respects. The key amendments identified by DBP are as follows.⁸

- All Participating Shippers agreed to extend the period during which the tariff payable under the contract sits outside the regulatory framework of the NGL (WA) and NGR. Effective from 1 July 2014, the parties have agreed to a fixed tariff and tariff path until 1 January 2021 at which time, the tariff under the contract will revert to the reference tariff for the reference service that is the most similar to the service provided under the SSCs.
- Certain Participating Shippers also were allowed to reduce the amount of contracted capacity - effectively bringing forward relinquishment rights that they would have had from 1 January 2016 had the SSCs not been amended. These reductions - totalling 63.5TJ/d of contracted capacity (on an annual average basis) took effect mostly from 1 July 2014.
- All Participating Shippers agreed to defer the right to relinquish capacity that they would have had from 1 January 2016 had the SSCs not been amended. This right has largely been deferred to 1 January 2021.

29. The Authority notes the DUET Group ASX release on 7 August 2014,⁹ which indicates that approximately 85 per cent of the aggregate firm full haul contracted capacity had been recontracted, resulting in less than 15 per cent of DBP's firm full haul contracted capacity being subject to the 2016 regulatory tariff determination. Furthermore, the tariff payable under the current SSCs represented an initial

⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11*, 31 December 2014, p. 17.

⁹ Duet Group, ASX Release "DBP recontracts with its shippers", 7 August 2014, <http://www.duet.net.au/ASX-releases/2014/DBP-recontracts-with-its-Shippers.aspx> (accessed 26 November 2015).

reduction of approximately 9.5 per cent to DBP's previous SSC tariff and that the new tariff would be escalated annually. The contracts retain the existing take-or-pay tariff structure and extend the contract term with participating shippers to between 2025 and 2033 (with two further five year extension options).

30. Consistent with previous decisions, the Authority considers that the existence and terms of the SSC do not have a direct bearing on the access arrangement for the DBNGP. However, the Authority has had regard to the terms of the SSC 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 and proposed terms and conditions.

Content of an Access Arrangement

31. 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.
32. 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.
33. Per rule 43 of the NGR, the service provider must submit access arrangement information when submitting a full access arrangement proposal, and that

information must include the information specifically required by the NGL(WA).¹⁰ Access arrangement information is information that is reasonably necessary for users to understand the background to the access arrangement or the access arrangement proposal, and the basis and derivation of various elements of the access arrangement or the access arrangement proposal.¹¹

34. The DBNGP access arrangement is a full access arrangement, for which a proposed revised access arrangement and revised access arrangement information have been submitted by DBP.¹²
35. The reasons for the Authority's Draft 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
 - Revenue requirements
 - Reference tariffs
 - Non-tariff components

¹⁰ Rule 42(2) of the NGR.

¹¹ Rule 42(1) of the NGR.

¹² DBNGP (WA) Transmission Pty Ltd, *DBNGP Access Arrangement – Access Arrangement Revision Proposal*, 31 December 2014. All related revision proposal documents submitted by DBP are available from the Economic Regulation Authority website at: <https://www.erawa.com.au/gas/gas-access/dampier-to-bunbury-natural-gas-pipeline/access-arrangements/proposed-access-arrangement-for-period-2016-2020>

Pipeline Description

Regulatory Requirements

36. 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 at which a description of the pipeline can be inspected.

DBP's Proposed Changes

37. 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)*, as amended or varied before the date the revisions to the access arrangement commence to have effect under clause 14.1 of the access arrangement.
- Pipeline Licence 40;
 - Pipeline Licence 41;
 - Pipeline Licence 47;
 - Pipeline Licence 69;
 - Pipeline Licence 91;
 - Pipeline Licence 94;
 - Pipeline Licence 95;
 - Pipeline Licence 100;
 - Pipeline Licence 101; and
 - the Burrup Extension Pipeline (**BEP**) Capacity.
38. A detailed description of the DBNGP is provided at Attachment 1 to the proposed revised access arrangement¹³, with maps showing the pipeline system annexed to the access arrangement information. A description of the pipeline is also available from DBP's website at <http://www.dbp.net.au>.
39. DBP's proposal includes changing the description of the pipeline with the addition of assets described in PL 91, PL 94, PL 95, PL 100 and PL 101. In a subsequent submission to the Authority, following an information request, DBP has indicated the part(s) of the DBNGP to which each of the licences relate.¹⁴

¹³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 1 – Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014)*.

¹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, ERA05 and ERA06 Response – Supporting Submission 36, 2 October 2015*.

- New Pipeline Licence 91 refers to the section of DBNGP Loop 0 (constructed as part of the Stage 5B expansion project) that crosses the Fortescue River.¹⁵
 - New Pipeline Licence 94 refers to the Mondarra storage facility interconnect pipeline which connects the APA Mondarra Storage Facility Meter Station outlet pipe with the western boundary of the DBNGP corridor.
 - New Pipeline Licence 95 refers to the Brown Range Interconnect Gas Pipeline connecting the DBNGP to the Brown Range outlet point and pig receiver compound.
 - New Pipeline Licence 100 refers to a short lateral pipe referred to as 'Wagerup Cogeneration Meter Station' connecting an offtake pipe within PL 40 with the Alcoa Wagerup Meter Station.
 - New Pipeline Licence 101 refers to what is known as 'Pinjarra Cogeneration Meter Station' which connects an offtake pipe within PL40 with the Alcoa Pinjarra Meter Station.
40. DBP further indicated that the above pipeline assets are proposed to form part of the covered pipeline. The capital costs associated with each set of assets however (with the exception of the assets regulated by PL 91) are not proposed to be added to the capital base as conforming capital expenditure. DBP indicated that the reason for this is that the capital costs were contributed to by shippers (as capital contributions) under third party agreements with those shippers.¹⁶
41. The treatment of capital contributions and the capital costs attributable to the assets regulated by PL 91, which are proposed to be added to the capital base of the DBNGP, are addressed elsewhere in this Draft Decision.

Submissions

42. No submissions were made to the Authority which addressed the description of the pipeline.

Considerations of the Authority

43. DBP's proposed revised access arrangement identifies the DBNGP as the pipeline to which the access arrangement relates. A detailed description of the DBNGP is contained in a separate document (herein referred to as the "**DBNGP description document**") that is attached to the proposed revised access arrangement.¹⁷ In support of this document, reference is made to maps showing the pipeline system that are annexed to the access arrangement information. A further reference to

¹⁵ DBP further indicate that "A New Pipeline Licence was required to be granted for this crossing because the loop had to be constructed outside the confines of the DBNGP Corridor because of the constant movement, over time, of the bed and banks of the Fortescue River at the original pipeline location. PL 40 (being the original pipeline) only covers the part of the DBNGP system that lies within the geographical bounds of the DBNGP Corridor".

¹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, ERA05 and ERA06 Response – Supporting Submission 36*, 2 October 2015, p. 3.

¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 1 – Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014)*.

DBP's website¹⁸ is also made where it is indicated that a description of the DBNGP can also be found.

44. The Authority observes that the DBNGP description document attached to the proposed revised access arrangement is dated at 1 January 2013 and is inclusive of an August 2014 interim update. It appears to be the same DBNGP description document that is available from DBP's website, however, this website version is dated at 1 January 2015.¹⁹
45. The Authority is aware that the information contained within DBP's proposed revised access arrangement was prepared sometime in advance to meet the access arrangement review submission date (of 1 January 2015), and that documents on DBP's website are maintained outside of the access arrangement regulatory process. For this reason the Authority accepts that the DBNGP description document submitted as part of the proposed revised access arrangement on 31 December 2014 and the DBNGP description document available on DBP's website may differ.
46. The Authority considers that the DBNGP description document used to describe the DBNGP in detail for the purpose of the access arrangement should be the most current and up-to-date version available at the time the access arrangement is approved.

Required Amendment 1

The proposed revised access arrangement should be amended so that the detailed description of the DBNGP (that is, the document titled "*Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014)*") is current as of the date of the approval of the revised access arrangement.

¹⁸ <http://www.dbp.net.au>

¹⁹ DBNGP (WA) Transmission Pty Ltd, *Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2015*, <http://www.dbp.net.au>, (accessed 8 December 2015).

Pipeline Services

Regulatory Requirements

47. 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.
48. Under rule 48(1) of the NGR, a full access arrangement proposal must, *inter alia*:
- 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.
49. Rule 101 of the NGR requires a full access arrangement to specify all reference services.
- 1) A full access arrangement must specify as a reference service:
 - a) at least one 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 [Authority] considers should be specified as a reference service.
50. The Authority is required to take into account the revenue and pricing principles when deciding whether to specify a pipeline service as a reference service.²⁰ The revenue and pricing principles are set out in sections 24(2) to 24(7) of the NGL(WA) and are considered in detail elsewhere in this Draft Decision.

DBP’s Proposed Changes

51. Clause 3.1 of the proposed revised access arrangement includes a description of the pipeline services to be offered by means of the DBNGP (as defined in clause 15

²⁰ Rule 101(2) of the NGR.

of the proposed revised access arrangement). These pipeline services include three reference services and several non-reference services. Detailed descriptions of each of the pipeline services are provided in clauses 3.3 to 3.6 of the proposed revised access arrangement. DBP has also provided additional information in a separate supporting submission to justify the inclusion of the proposed reference services.²¹ The terms and conditions relating to these reference services are outlined in clause 4 and Attachments 2, 3 and 4 of the proposed revised access arrangement.²² The specifics of these terms and conditions are discussed elsewhere in this Draft Decision.

52. The proposed reference services include:
- a full haul T1 service (the “**T1 Service**”);
 - a part haul P1 service (the “**P1 Service**”); and
 - a back haul B1 service (the “**B1 Service**”).
53. DBP’s proposal includes several changes to these three proposed reference services as currently described in the access arrangement applying for the third access arrangement period (AA3). These changes are as follows:
- The reference tariffs for each reference service (the “**T1 Tariff**”, “**P1 Tariff**” and “**B1 Tariff**”) have been changed to specify that the tariffs come into effect at 1 January 2016.
 - The T1 Service is described as a full haul service, which is defined in clause 15 of the proposed revised access arrangement. The definition of “full haul service” has been changed from that in AA3 to specify that it is a forward haul pipeline service where the outlet point is downstream of compressor station 9 (**CS9**), regardless of the location of the inlet point, but does not include back haul. In contrast, the definition of “full haul service” in AA3 specifies that the “inlet point” is upstream of the main valve line 31 on the DBNGP and there is no reference to “back haul”.
 - The P1 Service is described as a part haul service, which is defined in clause 15 of the proposed revised access arrangement. The definition of “part haul service” has been changed from that in AA3 to specify that it is a service to provide forward haul on the DBNGP where the outlet point is upstream of CS9, regardless of the location of the inlet²³ point, but does not include back haul. In contrast, the definition of “part haul service” in AA3 is inclusive and refers to the position of the “inlet point” in relation to main line valve 31 (**MLV31**) and CS9; there is also no reference to “back haul”.
 - The description of the B1 Service has been changed from that in AA3 to specify that the service is a back haul service in which the operator delivers a quantity

²¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014.

²² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Services Terms and Conditions; Attachment 3 – P1 Reference Services Terms and Conditions; Attachment 4 – B1 Reference Services Terms and Conditions*.

²³ DBP’s access arrangement proposal states “outlet” as opposed to “inlet”. The Authority has confirmed with DBP (email response of 30 November 2015, “*Re: Information Request – ERA11*”) that this is a typographical error and the correct reference should be to “inlet”.

of gas to the shipper at an outlet point located upstream of the relevant inlet point. The definition of "back haul service" has not changed from that in AA3.

54. Paragraphs 4.5 to 4.16 of DBP's supporting submission²⁴ provide justification for DBP's proposed change to the definition of part haul that is to be used to describe the proposed P1 Service to be offered under the proposed revised access arrangement. DBP submits that the following original definition of part haul, which has been the basis of the part haul service on the DBNGP since the 1990s, should be reinstated.

[Part Haul means] 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.

55. DBP submits that there is no evidence of significant demand in the market for the P1 Service on the basis of the current definition of part haul, but that it is demonstrably evident that there is demand in the market for a P1 Service that is provided on the basis of the original definition (as set out above).²⁵ DBP submits that this original definition should be reinstated for the following reasons:²⁶

- DBP has not had a single access request for the P1 Service with the [current part haul definition²⁷], nor does it expect to receive future requests;
- during the current [third] access arrangement period, there have been four access requests for part haul services inclusive of the original definition of part haul;
- shippers who utilise the Mondarra Gas Storage Facility (**MGSF**), and who also have existing contracted capacity under their T1 Standard Shipper Contracts (**SSC**) continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement;
- the majority of shippers (approximately 85 per cent) with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and are therefore unlikely to use any other service in relation to the MGSF during the proposed access arrangement period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF; and
- to the extent that an existing or prospective shipper would like to contract for a P1 Service in the access arrangement period, the existence of the Parmelia Gas Pipeline ensures that competition exists for services that support the

²⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, pp. 6-8.

²⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.13, p. 7.

²⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.14, p. 7.

²⁷ The current (AA3) definition of part haul is "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".

MGSF. Therefore this will continue to drive efficient outcomes for consumers for that particular form of service on the DBNGP.

56. DBP's proposed non-reference services will be offered subject to either the availability of capacity (as defined in section 15 of the proposed revised access arrangement) or operational availability.²⁸
57. Non-reference services that will be subject to the availability of capacity are:
- spot capacity service;
 - park and loan service; and
 - seasonal service.
58. Non-reference services that will be subject to operational availability are:
- peaking services;
 - metering information service;
 - pressure and temperature control service;
 - odourisation service;
 - co-mingling service;
 - pipeline impact agreement service; and
 - interconnection service.
59. A third non-reference service proposed by DBP is a pipeline service provided by it under access contracts entered into prior to the commencement of the access arrangement period.²⁹
60. DBP's proposal in respect of the non-reference services includes a change to the principles of the spot capacity service at clause 3.6(b)(vii) of the proposed revised access arrangement. The change relates to the bidding of spot capacity and specifies that if an operator entity, Alcoa or a related body corporate of Alcoa bids and is allocated spot capacity, then the operator entity must indicate this on its customer reporting system without disclosing the identity of the operator entity, Alcoa or a related body corporate of Alcoa. The proposed clause 3.6(b)(vii) also removes references to WestNet.

Submissions

61. In its submission to the Authority, WESCEF raises concern over DBP's proposal to change the definition of "part haul" and submits that the change should not be approved.³⁰ WESCEF is of the view that:
- ... there is no justification for a shipper to be required to pay a full haul tariff when it wishes to obtain a forward haul service to transfer gas only part of the way down the

²⁸ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3, 31 December 2014, paragraph 5.1, p. 9.

²⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 5.1(c), p. 9.

³⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p .3.

DBNGP. The calculation of part haul tariffs already take into account the distance the gas is transported (the "Distance Factor").

62. WESCEF also notes that based on current and previous submissions, existing and potential shippers believe that there is a likelihood of demand for such a service, including services for:
- the transfer of gas from upstream of MLV31 to the Mondarra Gas Storage Facility (**MGSF**); and
 - the transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9.
63. CPMM states in its submission to the Authority that it has no objection to the proposed amendment to the definition of "part haul".³¹

Considerations of the Authority

Reference Services

64. In assessing DBP's proposal to amend the reference services to be offered under a revised access arrangement, the Authority has given consideration to DBP's supporting submission³² that provides additional information and reasoning for the proposed amendments. The Authority has also given consideration to the submissions from WESCEF and CPMM.
65. The reference tariff for each reference service (the T1 Tariff, P1 Tariff and B1 Tariff) is specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the proposed revised access arrangement. DBP has amended each reference tariff to specify its proposed tariffs as at 1 January 2016. The actual value and calculation of DBP's proposed reference tariffs is discussed elsewhere in this Draft Decision.
66. The Authority has not approved the value of the reference tariffs proposed by DBP. Clauses 3.3(c), 3.4(c) and 3.5(c) of the approved revised access arrangement will need to be amended to reflect the reference tariffs approved by the Authority in its Final Decision.

Required Amendment 2

The value of the T1 Tariff, P1 Tariff or B1 Tariff specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the proposed revised access arrangement will need to be amended to reflect the reference tariffs approved by the Authority in its final decision.

³¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 34.

³² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014.

Full haul T1 Service

67. Clause 3.3 of the proposed revised access arrangement describes the T1 Service as being a full haul service. DBP has proposed the following change to the definition of “full haul” at clause 15 (Definitions) of the proposed revised access arrangement.
- Full Haul Service** means a ~~Gas transportation~~ **Forward Haul pipeline** service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the delivery point **Outlet Point** is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.
68. No third parties made submissions on DBP’s proposed change to the definition of “full haul”.
69. The Authority notes that DBP’s proposed amendments to the definition of “full haul” are as follows:
- the insertion of the word “Service” to make the term read *“Full Haul Service means...”*;
 - the insertion of the defined term “Forward Haul” to replace some of the existing wording that is encompassed by the definition of forward haul; and
 - deletion of the requirement for the receipt point to be upstream of MLV31.
 - DBP has not provided any clear rationale for the proposed changes.
70. With respect to DBP’s proposal to add the word “Service” to the defined term (i.e. *“Full Haul Service”* not just *“Full Haul”*), it would appear that the insertion of the word “service” has been made for consistency with the terms relating to the part haul and back haul reference services, which are defined in clause 15 of the proposed revised access arrangement as *“Part Haul Service means ...”* and *“Back Haul Service means ...”*. Although the proposed amendment makes these terms consistent across clause 15 of the proposed revised access arrangement, the Authority notes that the definition in the Standard Shipper Contract (**SSC**) is for “Full Haul” and that DBP has not proposed a similar amendment to the term “Full Haul” in the proposed terms and conditions.
71. With respect to inserting the defined term “forward haul” to replace some of the existing wording that is encompassed by the definition of forward haul, the Authority notes that to this extent the proposed amendment may simplify the definition of full haul by eliminating words duplicated in the definition of forward haul. However, by incorporating the defined term “Forward Haul” within the definition of “Full Haul”, the Authority is of the view that DBP’s proposed addition of the closing words *“but does not include Back Haul”* is not necessary.
72. With respect to deleting the requirement for the receipt point to be upstream of MLV31 so that the inlet point can now be anywhere on the DBNGP, so long as the service remains forward haul (and not back haul), the Authority notes that this change is consistent with the definition of full haul in the SSC. DBP’s proposed deletion of the requirement for the receipt point to be upstream of MLV31 means that the full haul service would effectively include any forward haul so long as the outlet point is downstream of CS9. That change would create a risk of overlap with the existing definition of “part haul”, which currently includes forward hauls from an inlet point downstream of MLV31 to an outlet point downstream of CS9. Whilst DBP has proposed amending the definition of “part haul” to remove deliveries downstream of CS9, the Authority has rejected this proposed amendment (as discussed below at paragraph 74). Given the Authority’s decision to reject DBP’s proposed

amendments to the definition of part haul, and in the absence of any justification for the proposed amendment to delete the requirement for the receipt point to be upstream of MLV31, the Authority requires the definition of full haul to maintain this requirement (i.e. for the receipt point to be upstream of MLV31).

73. The Authority notes that there is no explicit reference to the location of MLV31 within the pipeline description document that is used to describe (and identify) the DBNGP for the purpose of rule 48(1)(a) of the NGR.³³ Absent such a reference, it may be difficult for prospective users to know what is meant by “full haul” under the definition required by the Authority. The Authority therefore requires DBP to make it clear in its description of the DBNGP where MLV31 is located on the DBNGP.

Required Amendment 3

Subject to DBP justifying the insertion of the word “Service”, the term “full haul”, as specified in clause 1 (Definitions) of the proposed revised access arrangement, should be amended as follows:

“Full Haul Service means a ~~Gas transportation~~Forward Haul pipeline service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the ~~delivery point~~Outlet Point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.”

DBP must include a reference to the location of main line valve 31 (MLV31) in its detailed description and map of the DBNGP.

Part Haul P1 Service

74. Clause 3.4 of the proposed revised access arrangement describes the P1 Service as being a part haul service. DBP has proposed the following change to the definition of “part haul service” at clause 15 (Definitions) of the proposed revised access arrangement.

Part Haul Service means a service to provide Forward Haul on the DBNGP which is not a full haul 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~~regardless of the location of main line valve 31 on the DBNGP and the Outlet [Inlet³⁴] 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,~~ but does not include Back Haul.

³³ The description of the pipeline (i.e. the DBNGP) is discussed at paragraph 36 and following of this Draft Decision.

³⁴ The Authority has confirmed with DBP (email response of 30 November 2015, “Re: Information Request – ERA11”) that the reference to “Outlet” point is a typographical error and the correct reference should be to “Inlet” so that the proposed definition to Part Haul Service means “a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul”.

75. The Authority notes that the proposed change, if approved, would reinstate the original definition for part haul service that was proposed by DBP (and subsequently not approved by the Authority) in its proposed revised access arrangement for the third access arrangement (AA3) period. DBP details its reasoning for the proposed change to the definition of part haul service in paragraphs 4.5 to 4.16 of its supporting submission (and which have been summarised at paragraphs 54 and 55 of this Draft Decision).
76. DBP submits that there is no evidence that there is a significant demand in the market for the P1 Service with the current part haul definition, but that it is demonstrably evident that there is demand in the market for a P1 Service that has the original pre-AA3 definition (which was the basis of the part haul service on the DBNGP since the 1990s³⁵ and which DBP now seeks to reinstate through its proposed change).³⁶
77. DBP further submits that its proposed change (to reinstate the original pre-AA3 definition) should be accepted for the following reasons:³⁷
- DBP has not had a single access request for the P1 Service with the [current part haul definition³⁸], nor does it expect to receive future requests;
 - during the current [third] access arrangement period, there have been four access requests for a part haul service with the original definition of part haul;
 - shippers who utilise the Mondarra Gas Storage Facility (MGSF) who have existing contracted capacity under their T1 Standard Shipper Contracts (SSC) continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement;
 - the majority of shippers (approximately 85 per cent) 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 access arrangement period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF; and
 - to the extent that an existing or prospective shipper would like to contract for a P1 Service in the access arrangement 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.

³⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2010, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.11, p. 6.

³⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.13, p. 7.

³⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.14, p. 7.

³⁸ The current (AA3) definition of part haul is “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”.

78. DBP also submits that:³⁹
- 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;
 - 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;
 - 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;
 - 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;
 - 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
 - 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.
79. WESCEF has submitted that:⁴⁰
- [s]ubmissions made historically, and now, make it clear that existing and potential shippers believe that there is a likelihood of demand for such a service, including for the transfer of gas from upstream of MLV31 to the Mondarra Gas Storage Facility ("MGSF") and the transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9.
80. Clearly, there is disagreement between DBP and WESCEF as to whether the current definition of the "part haul" service (including deliveries downstream of CS9) satisfies the requirements of rule 101 of the NGR to qualify as a "reference service".
81. The Authority is generally of the view that having a wider, more flexible part haul service that includes the ability for deliveries downstream of CS9 is, absent other evidence to the contrary, more likely than not to promote the efficient operation and use of natural gas services consistent with the NGO and revenue and pricing principles. The Authority also notes that, even if (as DBP claims) there is no evidence that a significant part of the market has so far sought the part haul service

³⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.15, pp. 7-8.

⁴⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 3.

in its current form, that does not necessarily mean that this service is not "likely to be sought by a significant part of the market" (as required by rule 101 of the NGR and claimed by WESCEF).

82. With regards to DBP's claim that the definition of part haul service in the current access arrangement "is confusing", the Authority considers that the definition is sufficiently clear in its meaning. If improvements are to be made to the definition of part haul service to enhance and clarify the meaning, such improvements should be made without substantially altering the more flexible nature of the current definition of the part haul service.
83. The Authority is mindful that DBP's proposed change would effectively require shippers to take and pay for a full haul service (or else expose them to paying for an unregulated non-reference part haul service) when they only need to transport gas partway down the pipeline for deliveries downstream of CS9. Operating the pipeline in that way could result in added unnecessary expense for shippers, which could flow through to gas consumers. On that basis, and absent other evidence to the contrary, the Authority considers there is a higher risk of DBP's proposed change being contrary to the NGO than if the existing definition of "part haul" service in the current access arrangement for the third access arrangement period (AA3) is retained.
84. As indicated above (refer paragraph 78), DBP has also claimed that the current (ERA) definition of part haul:
- could 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 ("**DBP's Discrimination Claim**"); and
 - could trigger most favoured nation (or **MFN**) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers ("**DBP's MFN Claim**").
85. In this regard, the Authority notes section 321(1) of the NGL(WA), which in effect would prohibit DBP's access arrangement having the "effect of depriving a person of a relevant protected contractual right". A "relevant protected contractual right" is in effect a pre-existing contractual right "other than a relevant exclusivity right". A "relevant exclusivity right" is defined in section 321 to mean an express contractual right that arose on or after 30 March 1995 that —
- (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or
 - (b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,
- but does not include a user's contractual right to obtain a certain amount of pipeline services.
86. With regard to DBP's Discrimination Claim, DBP has not provided sufficient information to enable the Authority to be satisfied that:
- it would "discriminate" against the shipper with the non-discrimination right if a P1 Service customer were offered a price for part haul delivery to an outlet point downstream of CS9 that is different to the price payable by the pre-existing right holder for its service;
 - the non-discrimination right that DBP owes to the existing shipper is a "relevant protected contractual right" within the meaning of that term in section 321(2) of

the NGL(WA). The Authority is of the view that, if the non-discrimination right DBP claims it owes to the customer arose on or after 30 March 1995, then it would be a "relevant exclusivity right" because it would limit or control DBP's ability to supply the P1 Service to third party customers by effectively limiting or controlling DBP's pricing to those customers. If so, the non-discrimination right would not be within the definition of a "relevant protected contractual right" and would not be protected by section 321(1) of the NGL(WA); or

- the access arrangement would in fact have the effect of "depriving" the holder of the pre-existing non-discrimination right.

87. Similarly, with regard to DBP's MFN Claim, the Authority is of the view that:

- DBP has not provided adequate justification for its claim that if DBP were required to enter into a contract for a P1 Service with a contracted outlet point downstream of CS9, on the basis of the current (ERA) definition, this could trigger most favoured nation (or **MFN**) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers;
- DBP would need to show more clearly how entering into a contract for a P1 Service with a contracted outlet point downstream of CS9 would trigger these MFN arrangements;
- DBP would need to show more clearly what the consequences of triggering the MFN arrangements would actually be;
- if the MFN "arrangements" are express contractual rights that arose on or after 30 March 1995 and would have the consequence (if triggered) of "limiting or controlling" DBP's ability to supply pipeline services to persons who are not parties to the contract, then they may be "relevant exclusivity rights" (as defined in section 321(2) of the NGL(WA)). That in turn would mean that the MFN "arrangements" are not protected as "relevant protected contractual rights" by section 321(1) of the NGL(WA). DBP has not provided adequate information to establish whether or not this is the case; and
- even if DBP could establish that the MFN "arrangements" are "relevant protected contractual rights", for section 321(1) protection to apply, DBP would need to show more clearly how the access arrangement had the "effect of depriving" the holders of the MFN rights of those rights. In this regard, if as DBP claims, the access arrangement would merely "trigger" the MFN rights, the Authority is of the view that DBP has not established how that would in any way have the "effect of depriving" the MFN rights from those who hold them.

88. Accordingly, having regard to the submissions of interested parties and for the reasons stated by the Authority above, the Authority considers that DBP has not provided adequate justification for the proposed change. The Authority is therefore of the view that DBP's proposed amendments to the definition of "part haul service" should not be accepted.

Required Amendment 4

The term “part haul service” should retain the same meaning as currently drafted in clause 1 (Definitions) of the existing access arrangement for the third access arrangement (AA3) period. That is 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.”

Back Haul B1 Service

89. Clause 3.5 of the proposed revised access arrangement specifies that the B1 Service is a back haul service. “Back haul” is defined in section 15 (Definitions) of the proposed revised access arrangement as *“the haulage of gas from [an] inlet point which is downstream of the outlet point”*. DBP has proposed changes to clause 3.5(a)(ii) of the proposed revised access arrangement to specify that the outlet point is an outlet point located upstream of the relevant inlet point.

B1 Service is a Back Haul Service in which Operator (subject to availability of Capacity):

...

- (ii) delivers to the Shipper at ~~one or more~~ an Outlet Points Point located upstream of the relevant Inlet Point on that Day a quantity of gas not exceeding the Shipper’s MDQ, without interruption or curtailment except as permitted by the Access Contract.

90. The Authority notes that no changes have been proposed to the definition of the term “back haul” in section 15 of the proposed revised access arrangement. The Authority is of the view that the proposed change to clause 3.5(a)(ii) of the proposed revised access arrangement to substitute the words “one or more” with words *“an [Outlet Point] located upstream of the relevant Inlet Point...”* aims to clarify that the B1 Service is a back haul service whereby gas is delivered to the shipper from an inlet point that is located downstream of the outlet point (based on the definition of back haul), or put another way gas is delivered to the shipper at an outlet point that is located upstream of the inlet point. In the Authority’s view, the wording of clause 3.5(a)(ii) of the current access arrangement may lead to a conclusion that the relevant outlet point could be located upstream of the inlet point and therefore not be classified as a back haul service.

Non-Reference Services

91. DBP proposes to include the same non-reference services that are currently included in the access arrangement for the third access arrangement period (AA3). The “spot capacity service” is one such service and is described in clause 3.6(a) of the proposed revised access arrangement as *“a pipeline service available on an*

interruptible basis (and at varying levels of interruptibility), subject to availability of capacity in accordance with [eight] principles”.

92. The eight principles applying to a spot capacity service are specified in clause 3.6(b) of the proposed revised access arrangement. DBP proposes to amend the principle specified in clause 3.6(b)(vii) relating to the bidding and reporting of spot capacity as follows.
- b) Until otherwise advised by Operator, the following principles apply to Spot Capacity and Spot Transactions (as the case may be) (which principles form the basis of the Spot Market Rules):
- ...
- vii) Operator will not bid for Spot Capacity and if an Operator Entity, Alcoa, ~~WestNet~~ or a Related Body Corporate of ~~either Alcoa or WestNet~~ bids and is allocated Spot Capacity, Operator must indicate on its electronic customer reporting system that the relevant Spot Capacity has been allocated to an Operator Entity, Alcoa or a Related Body Corporate of Alcoa without disclosing the identity of the Operator Entity, Alcoa or a Related Body Corporate of Alcoa.
93. The proposed amendment specifies that if an operator entity, Alcoa or a related body corporate of Alcoa bids and is allocated spot capacity, then the operator must indicate this on its electronic customer reporting system without disclosing the identity of the bidder. The terms of clause 3.6(b)(vii) of the current access arrangement suggest that only the operator entity will be allocated spot capacity if either it, Alcoa or a related body corporate of Alcoa bids. In other words, the current terms do not distinguish between the operator entity or Alcoa or a related body corporate of Alcoa being allocated spot capacity.
94. Further, references to WestNet have been removed from clause 3.6(b)(vii) of the proposed revised access arrangement.
95. The Authority is of the understanding that WestNet⁴¹ was from October 2004 until July 2011 a part owner of the DBNGP. Accordingly, WestNet, together with its related bodies corporate, may have been considered to be associated with the operator during all or part of that period. The need to include a reference to WestNet in clause 3.6(b)(vii) would have ceased when WestNet divested its interest in the DBNGP, which the Authority understands to have occurred in late July 2011. Giving consideration to these circumstances applying to WestNet, the Authority accepts DBP's proposed amendments to clause 3.6(b)(vii) to remove references to WestNet.

Bundling of Services

96. Rule 109(1) of the NGR prohibits the bundling of services unless it is reasonably necessary.

Rule 109(1) of the NGR states:

“A scheme 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.”

⁴¹ WestNet Infrastructure Group Ltd, ABN 40 087 857 001.

97. The Authority is not aware of any bundling of services by DBP, and assuming that to be the case, is satisfied the access arrangement meets the criteria of rule 109(1).

Total Revenue

Revenue Building Blocks

Regulatory Requirements

98. 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:

76. Total revenue

Total revenue is to be determined for each regulatory year of the *access arrangement period* using the building block approach in which the building blocks are:

- (a) a return on the projected capital base for the year; and
- (b) depreciation on the projected capital base for the year; and
- (c) the estimated cost of corporate income tax for the year; and
- (d) increments or decrements for the year resulting from the operation of incentive mechanism to encourage gains in efficiency; and
- (e) a forecast of operating expenditure for the year.

DBP's Proposed Revisions

99. DBP has applied the building block methodology, including an estimate of the tax liability, to propose a total revenue requirement for the fourth access arrangement period of \$2.199 billion. DBP's proposed building blocks for the total revenue requirement for the fourth access arrangement period as set out in its Access Arrangement Information is shown in Table 1 below.

Table 1 DBP's Proposed Total Revenue Building Blocks (AA4)

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Return on capital base	287.68	281.03	274.28	267.18	260.70	1,370.87
Depreciation	102.77	101.63	102.27	96.34	87.14	490.15
Less inflationary gains on RAB	(70.09)	(70.10)	(70.87)	(71.01)	(71.57)	(353.65)
Correction for over-depreciation	(3.56)	-	-	-	-	(3.56)
Tax	26.55	26.13	26.31	27.25	28.49	134.74
Operating expenditure	109.45	111.07	114.05	112.16	114.12	560.84
Total	452.79	449.75	446.05	431.92	418.88	2,199.39

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 25, p. 27.

100. Table 2 below sets out DBP's proposed revenue requirement in nominal terms.

Table 2 DBP's Proposed Total Revenue Building Blocks (AA4)

Nominal \$ million	2016	2017	2018	2019	2020	Total
Return on capital base	293.54	292.73	291.88	290.65	290.11	1,458.91
Depreciation	104.86	105.86	108.83	104.80	96.97	521.33
Less inflationary gains on RAB	(71.52)	(73.02)	(75.42)	(77.25)	(79.64)	(376.86)
Correction for over-depreciation	(3.64)					(3.64)
Tax	27.09	27.22	28.00	29.64	31.71	143.67
Operating expenditure	111.68	115.69	121.37	122.01	126.99	597.74
Total	462.01	468.49	474.67	469.85	466.13	2,341.15

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Tariff Model.

101. DBP notes that two line items used in the calculation of total revenue in the table above are not expressly identified as separate “building blocks” in rule 76 of the NGR. They are:
- a correction for over-depreciation which it notes forms part of the building block of the return on the projected capital base; and
 - a deduction of inflationary gains on the capital base, which DBP notes form part of the building block of depreciation on the projected capital base.

Submissions

102. Submissions in relation to specific elements of the building blocks are included under the relevant building block component below.

Considerations of the Authority

103. The Authority’s assessment of DBP’s proposed total revenue is documented in the following Draft Decision sections.
- Operating Expenditure
 - Opening Capital Base
 - Projected Capital Base
 - Rate of Return
 - Gamma
 - Depreciation
 - Taxation
 - Incentive Mechanism
 - Allocation of Total Revenue between Reference Services and Other Services
104. As a result of the Authority’s assessment of DBP’s proposed total revenue building blocks as per rule 76 of the NGR, set out in detail below, the Authority does not approve DBP’s proposed total revenue for the fourth access arrangement (AA4)

period. The Authority's approved total revenue by building block in real and nominal dollars is set out in Table 3 and Table 4 respectively.

Table 3 Authority Approved Total Revenue Building Blocks (AA4)

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Return on capital base	140.32	137.05	133.63	130.07	126.81	667.87
Depreciation	97.81	100.32	100.78	94.67	85.28	478.85
Less inflationary gains on RAB						
Correction for over- depreciation						
Tax	-	-	-	2.13	7.50	9.63
Operating expenditure	99.91	101.27	103.79	101.42	102.89	509.28
Total	338.04	338.64	338.20	328.28	322.47	1,665.63

Source: Economic Regulation Authority, DBP Tariff Model, December 2015

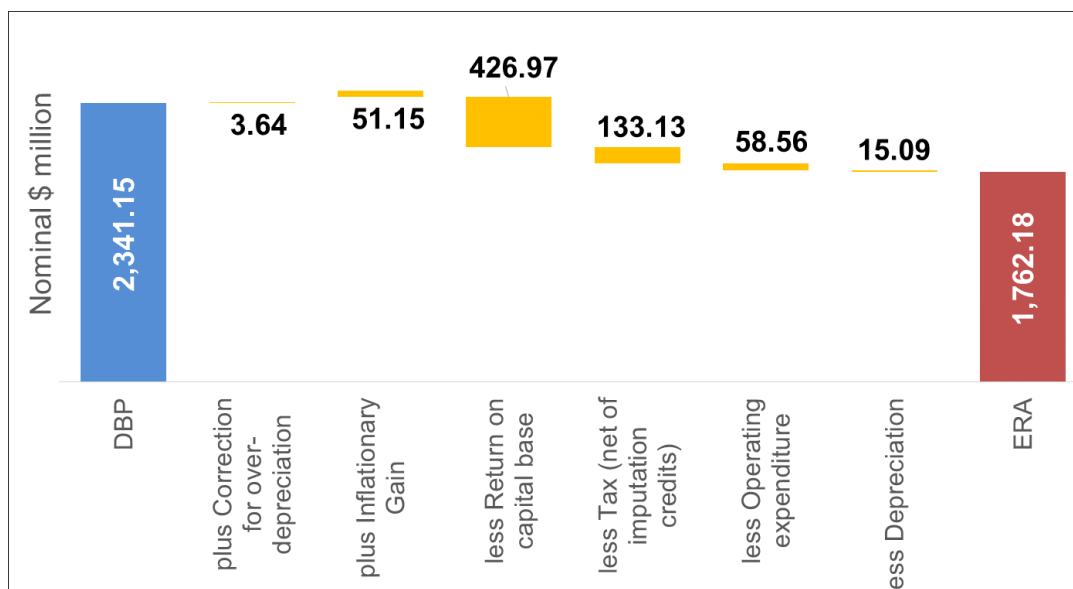
Table 4 Authority Approved Total Revenue Building Blocks (AA4)

Nominal \$ million	2016	2017	2018	2019	2020	Total
Return on capital base	208.92	207.94	206.60	204.91	203.57	1,031.94
Depreciation	99.67	104.17	106.63	102.07	93.69	506.23
Less inflationary gains on RAB	(65.94)	(65.63)	(65.21)	(64.67)	(64.25)	(325.70)
Correction for over- depreciation	-					-
Tax	-	-	-	2.29	8.24	10.53
Operating expenditure	101.81	105.16	109.82	109.35	113.04	539.17
Total	344.46	351.63	357.84	353.95	354.29	1,762.18

Source: Economic Regulation Authority, DBP Tariff Model, December 2015

105. Figure 2 (below) compares DBP's proposed revenue building blocks with the Authority approved building blocks.

Figure 2 Comparison of DBP's Proposed and Authority Approved Revenue Building Blocks



Required Amendment 5

The Authority requires DBP to amend the values for total revenue (in nominal terms) to reflect the values in Table 4 (Authority Approved Total Revenue Building Blocks) of this Draft Decision.

Basis for Financial Information

Regulatory Requirements

106. 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.

DBP's Proposed Changes

107. Section 2 of the revised access arrangement information sets out the basis on which DBP has provided its financial information:

- Financial information is provided on a calendar year basis.
- Unless otherwise stated, financial information is stated in real terms with values expressed on a 31 December 2015 basis.
- Where necessary to express financial values in dollar values of 31 December 2015, the financial values have been escalated at the rate of inflation as measured by the December Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities)⁴² or de-escalated at the expected rate of inflation.
- The expected rate of inflation has been determined using the linear interpolation and Fischer equation approach outlined in the ERA's Rate of Return Guidelines and based on the 40 trading days prior to 30 September 2014.

108. DBP's actual and forecast inflation for the AA3 period is set out in Table 5 below.

Table 5 DBP Actual/Forecast Inflation for AA3

	2011	2012	2013	2014	2015
	%	%	%	%	%
Rate of inflation	3.10	2.20	2.75	2.05	2.02

109. DBP's forecast inflation for the AA4 period is set out in Table 6 below.

Table 6 DBP Forecast Inflation for AA4

	2016	2017	2018	2019	2020
	%	%	%	%	%
Rate of inflation	2.04	2.09	2.16	2.22	2.30

Submissions

110. No submissions were received in relation to the basis for financial information.

Considerations of the Authority

111. The Authority is satisfied that provision of financial information expressed in real values is consistent with the requirements of Rule 73. The Authority is also satisfied with the method used by DBP to escalate or de-escalate financial costs to dollar values of 31 December 2015.

112. However, the Authority does not accept the forecast inflation factors that DBP has proposed. The reasons for this are set out in Appendix 4. The Authority has determined the inflation rates as set out in Table 7 and Table 8 below.

⁴² The rate of inflation for 2014 and 2015 has been determined on the same basis as "expected inflation" and will be updated for actual when available.

Table 7 Authority Actual/Forecast Inflation for AA3

	2011	2012	2013	2014	2015
	%	%	%	%	%
Rate of inflation	3.10	2.20	2.75	1.72	2.75

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Table 8 Authority Forecast Inflation for AA4

	2016	2017	2018	2019	2020
	%	%	%	%	%
Rate of inflation	1.90	1.90	1.90	1.90	1.90

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Required Amendment 6

DBP must amend the inflation assumptions in its proposed revised access arrangement to reflect the values in Table 7 (Authority Actual Inflation for AA3) and Table 8 (Authority Forecast Inflation for AA4) of this Draft Decision.

Demand Forecast

Regulatory Requirements

113. Rule 72 of the NGR contains specific requirements for access arrangement information.
72. Specific requirements for access arrangement information relevant to price and revenue regulation
- 1) The access arrangement information for a full access arrangement proposal (other than an access arrangement variation proposal) must include the following:
 - a) if the access arrangement period commences at the end of an earlier access arrangement period:

...

 - (iii) usage of the pipeline over the earlier access arrangement period showing:
 - (A) for a distribution pipeline, minimum, maximum and average demand and, for a transmission pipeline, minimum, maximum and average demand for each receipt or delivery point; and
 - (B) for a distribution pipeline, customer numbers in total and by tariff class and, for a transmission pipeline, user numbers for each receipt or delivery point.
 - d) to the extent it is practicable to forecast pipeline capacity and utilisation of pipeline capacity over the access arrangement period,

a forecast of pipeline capacity and utilisation of pipeline capacity over that period and the basis on which the forecast has been derived; ...

114. In addition, rule 74 contains specific requirements for the provision of forecasts and estimates.

74. Forecasts and estimates

- 1) Information in the nature of a forecast or estimate must be supported by a statement of the basis of the forecast or estimate.
- 2) A forecast or estimate:
 - a) must be arrived at on a reasonable basis; and
 - b) must represent the best forecast or estimate possible in the circumstances.

DBP's Proposed Revisions

115. In accordance with rule 72 of the NGR, DBP has provided the required pipeline capacity and usage information for both the third and fourth access arrangement periods.

116. Summaries of key demand information for the AA3 period together with information in relation to the AA2 period are shown in the tables below.

Table 9 DBP demand (Table 6, AAI) – Full haul demand AA2 and AA3

Full Haul (TJ)	2005-2010*	2011	2012	2013	2014
Maximum	894.03	793.65	767.02	752.73	812.22
Average	627.04	630.52	631.80	631.31	648.89
Minimum	560.37	477.26	531.60	502.20	514.96

* Figures sourced from AA3 AAI document.

Table 10 DBP demand (Table 7, AAI) – Part haul demand AA2 and AA3

Part Haul (TJ)	2005-2010*	2011	2012	2013	2014
Maximum	137.24	141.26	134.18	212.13	180.53
Average	77.23	110.31	106.47	130.66	109.65
Minimum	52.27	91.26	83.34	51.48	69.17

* Figures sourced from AA3 AAI document.

Table 11 DBP demand (Table 8, AAI) – Back haul demand AA2 and AA3

Back Haul (TJ)	2005-2010*	2011	2012	2013	2014 ⁴³
Maximum	136.67	127.47	151.58	198.65	200.97
Average	93.80	105.17	128.96	146.48	176.15
Minimum	0	5.79	42.43	53.20	88.36

* Figures sourced from AA3 AAI document.

⁴³ DBP Quote from AAI: The information for 2014 is year to date information up to [October 2014], reflecting what information was available at the time the AAI was submitted to the ERA.

117. The tables below set out the number of shippers per inlet and outlet point for the AA2 and AA3 period.

Table 12 DBP demand (Table 9, AAI) – Number of shippers per inlet point

Inlet/Receipt Point	Aggregate Number of Shippers (AA2)*	Aggregate Number of Shippers (AA3)
DOMGAS Dampier Receipt	19	12
MLV7 Interconnect	7	19
Griffin	2	
Devil Creek		21
Harriet	16	31
Gorgon		0
Macedon		17
Mondarra Storage Facility		5
Red Gully		1
Total	44	106

* Figures sourced from AA3 AAI document.

Table 13 DBP Demand (Table 10, AAI) – Number of shippers per outlet

Outlet/Delivery Point	Aggregate Number of Shippers (AA2)*	Aggregate Number of Shippers (AA3)
Full Haul Points	14	17
Part Haul Points	9	27
Back Haul Points	6	18

* Figures sourced from AA3 AAI document.

118. DBP's forecast pipeline capacity is set out in Table 14 below.

Table 14 DBP Demand Forecast (Table 17, AAI) – Pipeline Capacity (TJ/Day)

	2016	2017	2018	2019	2020
Full Haul (TJ/day)	845	845	845	845	845

119. The pipeline capacity shown in the table above is lower than the value included in the previous access arrangement, which reported pipeline capacity of 888 TJ/Day. The Authority queried DBP in relation to this. DBP advised⁴⁴ that the values shown in Table 17 of its proposed access arrangement information relate to Firm Full Haul or T1 Capacity and noted an error in the assumptions shown with the table. The assumptions state "all compressor units are operating" whereas it should state "compressor units are available to operate at 98.3% of the time".

120. DBP also advised that the capacity figures included in Table 16 of the AA3 Access Arrangement Information were calculated based on the assumption that compressor

⁴⁴ Proposed Revisions DBNGP Access Arrangement 2016-2020, Response to Information Requests ERA07 and 07A, Supporting Submission: 37.

units were available at all times. It also notes there was an error in relation to the assumed value for HHV. DBP notes the 888 TJ/day reported in 2010 was based on an HHV of 38.0 MJ/m³ and not 37.0 MJ/m³ (as was stated in the Access Arrangement Information assumptions). It notes maximum capacity, assuming all compressor units are operating, based on 37.0 MJ/m³ is 866, not 888 TJ/day.

121. In summary, the capacity figure of 845 TJ/day reported in the proposed access arrangement information relates to Firm Full Haul capacity, is based on an HHV of 37.0 MJ/m³ and assumes compressor units are available to operate 98.3 per cent of the time.
122. DBP's capacity and throughput forecasts are set out in the tables below together with actuals for 2012 to 2014.

Table 15 DBP Demand Forecast (Table 16, AAI) – Capacity Forecast (TJ/Day)

	2012 Actual	2013 Actual	2014 Actual	2016	2017	2018	2019	2020
Total Full Haul	██████	██████	██████	727.1	718.5	718.5	716.4	716.4
Total Part Haul	██████	██████	██████	259.3	259.3	259.3	259.3	259.3
Total Back Haul	██████	██████	██████	217.7	216.6	216.6	216.6	216.6

Table 16 DBP Demand Forecast (Table 18, AAI) – Throughput Forecast

	2012 Actual	2013 Actual	2014 Actual	2016	2017	2018	2019	2020
Total Full Haul	██████	██████	██████	626.3	622.0	625.7	629.5	633.1
Total Part Haul	██████	██████	██████	119.6	130.0	135.5	136.2	136.1
Total Back Haul	██████	██████	██████	183.2	182.6	182.6	182.6	182.6

123. DBP submits⁴⁵ that its demand forecasts for the third access arrangement period are based on:
- the amount of capacity currently contracted. It notes that contracted capacity is generally very predictable and stable, with the Standard Shipper Contracts requiring 15 year commitments to contracted capacity;
 - reviews of capacity utilisation factors taking account of contracts, historical usage, business requirements and industry type for each shipper to forecast throughput;
 - adjustments for any expected relinquishment, termination or additional capacity that is either allowable within the Standard Shipper Contract or currently being negotiated with the shipper; and
 - forecasts that are peer reviewed within DBP's commercial division to determine the reasonableness of forecasts and whether any final adjustments need to be made (it notes this review occurs at least two times a year).

⁴⁵ Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, 31 December 2014.

124. DBP notes that the reductions in full haul capacity relate to capacity relinquishments agreed when renegotiating its Standard Shipper Contracts, [REDACTED] and closure of a business in the South West due to bankruptcy.

Submissions

125. CPMM disagrees with DBP's forecast gas throughput and instead submits that flow data from the Gas Bulletin Board indicates the daily throughput exceeds 1,000 TJ/day, which it considers indicates that 100 per cent of DBP's full haulage capacity of 845 TJ/day is currently contracted and is likely to remain contracted throughout the fourth access arrangement period.⁴⁶
126. CPMM submits that data from the Independent Market Operator's (IMO) Gas Bulletin Board shows that volume movements through the DBNGP have recently been above its full capacity and have been increasing slightly over the last six month period despite the overall economic slowdown in Western Australia and a drop in oil and iron ore prices.⁴⁷ CPMM considers that the trend of increasing gas transmission volumes will continue for the next five years with additional gas volume capacity being required by Gorgon 1 and 2, Wheatstone and the new Apache entity. Furthermore, CPMM states that new projects such as the Fortescue River Gas Pipeline to FMG's Solomon Hub, the Tropicana Gold Mine and the Roy Hill Mine, all of which are scheduled to commence within the next two years will further increase throughput demand through the DBNGP over the course of the forth access arrangement period.⁴⁸
127. CPMM suggests that the reduction in global LNG prices and the likely implementation of a carbon emissions reduction scheme will encourage the use of gas in power generation in the South West Interconnected System (SWIS) and in remote mine sites, further increasing the volume of gas transmitted through the DBNGP.

Considerations of the Authority

128. In relation to the pipeline capacity reported by DBP of 845 TJ/day, the Authority notes it is consistent with the IMO's Gas Bulletin Board for nameplate capacity and DBP's DBNGP Capacity Register.
129. The Authority's technical consultant, EMCa, reviewed DBP's demand forecast and provided advice to the Authority. EMCa considered both the capacity and throughput forecasts were derived from a reasonable assessment of the information available to DBP. EMCa noted the capacity forecast is significantly underpinned by contracted capacity commitments and that the capacity factors derived from the throughput

⁴⁶ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 8.

⁴⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 9.

⁴⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 9.

forecasts are in a reasonable range. EMCa also notes forecast throughput is consistent with the IMO's Gas Statement of Opportunities (**GSOO**) forecast.

130. As noted in EMCa's report, DBP has not based any of its forecast capital expenditure requirements on the demand forecast. The only operating expenditure identified by DBP as being related to demand is fuel gas. Otherwise, the main relevance of the demand forecast is that it provides the denominator for deriving the reference tariffs. The greater the forecast demand, the lower the reference tariff and vice versa. As discussed in the section in relation to the tariff variation mechanism, the Authority has rejected DBP's proposal to adopt a revenue cap and considers its current price cap price control provides better incentives.
131. As noted above, EMCa undertook a review of the forecasts and concluded they were reasonable. DBP has provided additional information to the Authority to explain reductions from the AA3 forecasts which appear broadly reasonable. However, the Authority notes DBP has excluded capacity volumes in relation to the Special Purpose Access Contract (**SPAC**) from the forecasts but continued to include throughput volumes.⁴⁹ In the past DBP has included forecast volumes for both capacity and throughput in relation to the SPAC. The Authority considers it should continue to do so.
132. The Authority notes the submission from CPMM comparing volume data reported on the Gas Bulletin Board with the throughput volumes used by DBP in its proposed access arrangement. The Authority agrees that it is difficult to reconcile DBP's demand forecast with the throughput volumes reported on the Gas Bulletin Board. In its proposed revised access arrangement, DBP has only provided individual demand forecasts for full haul, part haul and back haul. It has not provided an overall forecast which can easily be reconciled with the Gas Bulletin Board. DBP has also not provided any details in relation to any non-firm supplies or other non-reference services which may be included in the Gas Bulletin Board volumes. In addition, the Gas Bulletin Board is broken into zones, whereas DBP has only provided demand forecasts for the total pipeline. The Authority considers the robustness of DBP's forecasts would be improved by providing a reconciliation of its demand forecasts with the volumes reported to the Gas Bulletin Board.
133. In relation to CPMM's views that future demand for gas is likely to increase, the Authority notes the 2015 GSOO was published in November 2015. The IMO expects domestic gas consumption to fall slightly over the period to 2020. It expects a decrease in gas fired electricity generation to be partially offset by demand from new mining related projects. It notes forecast demand for the period to 2020 has reduced compared with the 2014 GSOO forecast due to:
- the scheduled decommissioning of the South-West Joint Venture Co-generation facility in 2016 which consumes about 30 TJ per day; and
 - closure of the Windimurra vanadium mine (due to fire damage in late 2014).
134. The GSOO notes these reductions are partially offset by commencement of the following projects between 2014 and 2017:
- connection of the Sunrise Dam and Tropicana gold mines to the EGGP;

⁴⁹ Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, 31 December 2014, pp. 12-13.

- restart of Newman Power Station, which will supply electricity to the Roy Hill iron ore mine;
 - operation of the South Hedland Power Station;
 - operation of the Pilbara Temporary Power Station; and
 - expansion of the Sino Iron magnetite mine.
135. In its proposal, DBP notes it considers the potential for any new demand outside of the Pilbara to be limited. DBP notes it is aware of several potential customers in the Pilbara but their location will require laterals to be built. Consequently, DBP considers any increase in contracted capacity is only expected in the latter years of AA4.⁵⁰ It is unclear to the Authority whether the projects identified in the GSOO have been adequately accounted for in DBP's projected demand. The Authority requires DBP to provide additional information demonstrating that the projects identified in the GSOO, to the extent they impact DBP's demand, have been accounted for.
136. For the purposes of calculating the reference tariffs, consistent with previous years, DBP has calculated full haul equivalent volumes for part haul and back haul services by using the distance factors for each shipper. In its review, the Authority requested additional information from DBP to verify the distances used. Whilst preparing this information, DBP noted a number of discrepancies in the distance factors it had provided to the Authority. Whilst the impact of these discrepancies appears to be small, given the importance of this data in calculating the reference tariffs, the Authority considers DBP should review its data and calculations and provide updated data, together with evidence to support the distance factors used, to the Authority.
137. The Authority also noted an error in DBP's tariff model, whereby volumes related to two customers were not included in the calculation of the full haul equivalent values. The Authority has corrected this in its tariff model for this Draft Decision.
138. As noted above, DBP has not based any of its proposed capital expenditure on its demand forecast. The consequence of the demand forecast being incorrect is the impact it has on the reference tariffs. For the purposes of this Draft Decision, the Authority has used the demand forecast provided by DBP, with the correction noted above in relation to the calculation of full haul equivalent volumes. However, as discussed above, there are a number of areas where the Authority is seeking further information or evidence from DBP in relation to the forecasts. The Authority will take this information into account in its final decision and make any necessary adjustments.

Required Amendment 7

DBP must provide updated demand forecasts together with the additional information detailed in paragraphs 131 to 138 of this Draft Decision.

⁵⁰ Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, 31 December 2014, p 18.

Key Performance Indicators

Regulatory requirements

139. Rule 72(1)(f) requires the access arrangement information for a full access arrangement proposal to include Key Performance Indicators (**KPIs**) to be used by the service provider to support expenditure to be incurred over the access arrangement period.

DBP's Proposed Changes

140. DBP's KPI information is set out in section 12 of its Access Arrangement Information. DBP has only proposed one KPI to support its proposed expenditure for AA4. Its proposed indicator is to compare the forecast operating expenditure for each year against the actual operating expenditure excluding expenditure for System Use Gas and government imposts.
141. DBP considers it relevant to include this as a KPI because:
- most of the firm full haul capacity is fully contracted under access contracts for non-reference services;
 - the tariffs payable under these non-reference service access contracts are structured in such a way that DBP is incentivised to reduce its operating expenditure to the lowest sustainable costs;
 - the non-reference services are structured in a way that DBP has limited control of the throughput on the DBNGP and therefore, expenditure for System Use Gas will be largely driven by the throughput requirements of Shippers; and
 - there continues to be increases in government imposts and DBP is forecasting a continued steep increase in this type of expenditure during AA4. DBP considers it has limited control over the level of government imposts imposed on it.

Submissions

142. No submissions were made in relation to DBP's proposed KPI.

Considerations of the Authority

143. The Authority directed EMCa, its technical advisor, to assess DBP's proposed KPIs from the following perspectives:
- how they have been used to support capital and operating expenditure forecasts in comparison with industry standards; and
 - operational and service level performance in comparison with industry standards;
144. EMCa notes a business should be able to demonstrate a causal link between inputs (expenditure) and outcomes, both of which can be represented by KPIs and both of which can be subject to scrutiny to determine:

- whether the inputs are justifiable- including through benchmarking against similar businesses via “common” transmission pipeline (normalised) expenditure measures; and
 - whether the outcomes are justifiable-typically in terms of what measures satisfy prudent safety, reliability, and cost objectives.
145. In the absence of DBP having proposed such measures, EMCa notes it has drawn on publicly available information and identified two alternative opex benchmarks used by other regulated transmission gas pipelines. These are; operating expenditure/mm-km, used by the Roma Brisbane Pipeline; and operating expenditure used by N.T. Gas Pty Ltd. EMCa notes (based on 2011 data) these measures indicate DBP’s operational expenditure is relatively high. EMCa notes:
- DBP underspent its opex allocation in the AA3 period, including through the impact of the new capitalisation process (i.e. introducing the Subsequent Costs category, which is discussed below in the operating expenditure section); and
 - DBP has proposed to significantly increase opex in real terms from its 2011 “base”.
146. EMCa acknowledges that a normalised benchmark is only a starting point for comparative assessment and there may be exogenous factors which explain DBP’s apparently poor relative performance. However, it recommends that DBP should be required to present an opex KPI based on \$/km to facilitate comparison with other transmission pipelines.
147. The Authority considers that appropriate KPI’s provide a valuable tool for assessing the efficiency of operating expenditure by enabling comparisons with similar companies and to measure ongoing performance. The Authority recognises that such measures are only a starting point for assessment and other factors (for example the size of the pipeline or capacity utilisation) may need to be taken into account when making comparative assessments or comparisons from year to year.
148. The Authority requires DBP to include an opex KPI similar to those described above with appropriate modifications, if necessary, to provide a suitable comparator with other pipelines.

Required Amendment 8

DBP must include an operational expenditure KPI based on \$/km, or similar, to support its proposed operating expenditure forecast.

Operating Expenditure

Regulatory Requirements

149. Rule 91 of the NGR sets the criteria the Authority must consider in approving a service provider's operating expenditure:
91. Criteria governing operating expenditure
 - 1) Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good

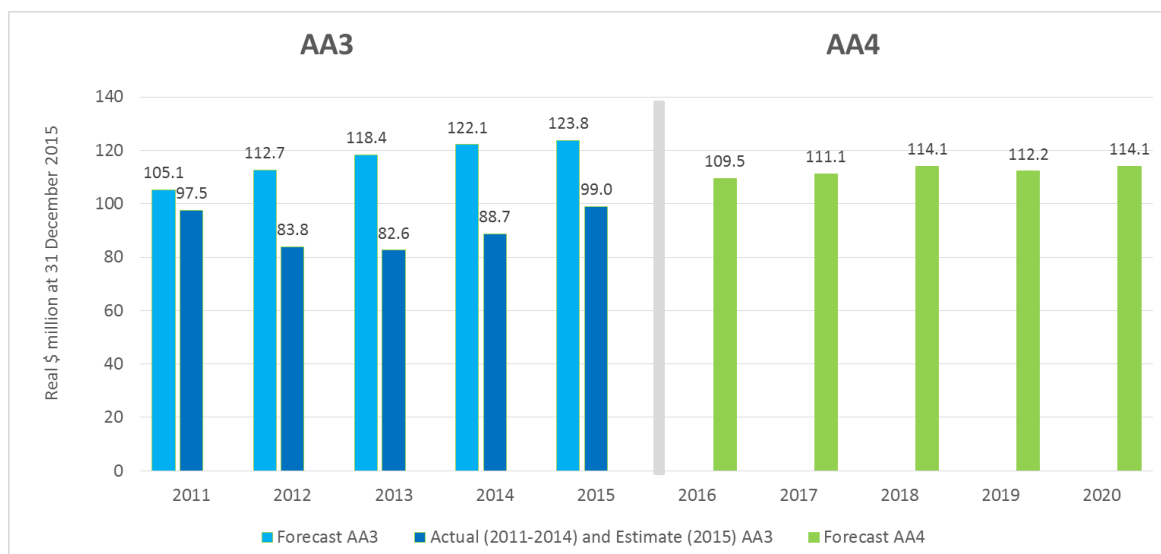
- industry practice, to achieve the lowest sustainable cost of delivering pipeline services.
- 2) The [Authority's] discretion under this rule is limited.
150. Rule 74 of the NGR contains specific requirements for the provision of forecasts and estimates.
74. Forecasts and estimates
 - 1) Information in the nature of a forecast or estimate must be supported by a statement of the basis of the forecast or estimate.
 - 2) A forecast or estimate:
 - a) must be arrived at on a reasonable basis; and
 - b) must represent the best forecast or estimate possible in the circumstances.
151. Rule 71 of the NGR is also relevant to the Authority's consideration of forecast operating expenditure.
71. Assessment of compliance
 - 1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [Authority] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [Authority] considers appropriate.
 - 2) The [Authority] 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.
152. Rule 93 of the NGR is relevant to the allocation of total revenue and costs.
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 (which must be consistent with the revenue and pricing principles) determined or approved by the ERA.
153. Rule 95 of the NGR is relevant to the portion of revenue referable to reference services.
95. Tariffs – transmission pipelines
 - ...
 - 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 AER's discretion under this rule is limited.
154. The national gas objective is defined in section 23 of the NGL(WA) as:
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.
155. The revenue and pricing principles are set out in section 24 of the NGL(WA):
24. Revenue and pricing principles
 - 1) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - a) providing reference services; and
 - b) complying with a regulatory obligation or requirement or making a regulatory payment.

DBP's proposed changes

156. DBP has forecast a 4.97 per cent reduction in operating expenditure to total \$560.84 million from the Authority's approved amount for the third access arrangement period of \$590.15 million.
157. Figure 3 shows the Authority's approved operating expenditure forecast for the current access arrangement period, DBP's actual operating expenditure for the current access arrangement period and DBP's proposed operating expenditure forecast for the forthcoming access arrangement period.

Figure 3 Authority Approved Forecast and Actual Operating Expenditure (AA3) and DBP Proposed Operating Expenditure (AA4) by year



SOURCE: DBNGP (WA) Transmission Pty Limited, Tariff Model, 31 December 2014, DBNGP (WA) Transmission Pty Limited, Forecast operating Expenditure – Supporting Submission 10.

158. DBP presented its forecast operating expenditure in its proposed revised access arrangement information document under the following six categories:

- wages & salaries;
- non-field expenses;
- field expenses;
- government charges;
- reactive maintenance; and
- system use gas.

159. Table 17 below shows the Authority approved operating expenditure for the current access arrangement period (2011 to 2015) and DBP's actual/forecast operating expenditure for the AA4 period.

**Table 17 Authority Approved Forecast Operating Expenditure for AA3 and DBP
Proposed Forecast Operating Expenditure for AA4**

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	Authority Approved					DBP Actual/Forecast				
Wages & salaries	29.68	31.07	32.36	34.04	34.79	27.23	27.65	28.79	27.31	28.94
Non-field expenses	19.97	20.05	20.01	20.81	20.77	18.72	22.46	25.11	21.44	15.87
Field Expenses	20.19	20.27	20.23	20.41	20.38	28.92	13.25	9.88	14.67	19.46
Government charges	12.33	12.38	12.36	12.35	12.33	8.69	9.62	6.82	7.60	8.29
Reactive maintenance	0.00	4.60	9.25	9.68	10.24	0.43	0.82	1.79	1.56	1.40
System use gas	22.95	24.33	24.19	24.84	25.30	13.50	9.98	10.17	16.10	25.05
Total	105.12	112.70	118.39	122.13	123.80	97.49	83.77	82.57	88.68	99.00

Source: Economic Regulation Authority, Tariff Model, 5 October 2012. DBNGP (WA) Transmission Pty Limited, Tariff Model, 31 December 2014.

160. Table 18 below compares DBP's proposed forecast operating expenditure for AA4 with its actual and forecast expenditure for AA3.

Table 18 Actual/ Forecast Operating Expenditure for AA3 and DBP Proposed Forecast Operating Expenditure for AA4

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
	DBP Actual/Forecast					DBP Proposed				
Wages & salaries	27.23	27.65	28.79	27.31	28.94	29.50	30.08	30.67	31.27	31.88
Non-field expenses	18.72	22.46	25.11	21.44	15.87	15.36	15.21	15.54	16.26	17.08
Field Expenses	28.92	13.25	9.88	14.67	19.46	15.96	17.87	19.41	15.64	15.53
Government charges	8.69	9.62	6.82	7.60	8.29	8.29	8.29	8.29	8.29	8.29
Reactive maintenance	0.43	0.82	1.79	1.56	1.40	1.40	1.40	1.40	1.40	1.40
System use gas	13.50	9.98	10.17	16.10	25.05	38.93	38.22	38.74	39.30	39.94
Total	97.49	83.77	82.57	88.68	99.00	109.45	111.07	114.05	112.16	114.12

Source: Economic Regulation Authority, *Tariff Model*, 5 October 2012. DBNGP (WA) Transmission Pty Limited, *Tariff Model*, 31 December 2014.

161. In DBP's Supporting Submission 10: Forecast Operating Expenditure, the six operating expenditure categories presented in the access arrangement information document have been broken down into 20 line items of operating costs.
162. DBP stated that its forecast operating expenditure for each regulatory year of the access arrangement period is based on the internal budget developed by management and approved by DBP's Board and unitholders for the 2014-15 financial year.⁵¹
163. In calculating the base year for the proposed access arrangement, with the exception of the below mentioned expenditure line items, DBP has applied six months of CPI (All Groups Weighted average of eight capital cities) to each item in the budget approved for the financial year 2014/15 to arrive at a base year of forecast expenditure for calendar year 2015:
- Regulatory
 - Gas Engine Alternator (GEA) / Turbine Overhauls
 - Fuel Gas
 - Insurance

⁵¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 3.

164. To arrive at the forecast for each regulatory year of the access arrangement period, DBP has escalated cost categories contained in the Base Year in each regulatory year by the expected inflation provided in table 2 of the Access Arrangement Information document⁵² with the following exceptions:
- Salaries –this forecast is escalated by expected inflation and 2 per cent, which DBP has determined to be the average real increase in average weekly earnings (AWE);
 - Salaries – Contractors – this forecast is escalated in the same manner as salaries;
 - Consulting – this forecast is escalated in the same manner as salaries;
 - Fuel Gas – the assumed gas price has been escalated based on DBP’s methodology;
 - Insurance, Regulatory Expenses and GEA and Turbine Overhaul costs have not been escalated by DBP as these categories are cyclical in nature.
165. DBP has noted that in addition to the information provided in section 5 of its supporting submission 10 on Forecast Operating Expenditure⁵³, that there are a number of key drivers that influence the operating expenditure. These include:
- Requirements and obligations under the DBNGP Safety Case;
 - Obligations under pipeline licences and other mandatory requirements; and
 - Findings from internal and external audits that are completed.
166. The key drivers behind the reduction in non-field expenses include a new Corporate ICT Service Agreement and a general softening in the global insurance market. Conversely, consulting expenditure is forecast to increase over the forthcoming access arrangement period.⁵⁴
167. The key categories affecting field expenses include GEA/Turbine overhauls and repairs and maintenance. DBP’s replacement philosophy for turbines on the DBNGP is for units that have exceeded 30,000 hours to be replaced in the following financial year. Similarly for the GEA overhaul, engines that reach a required run hour will require either a minor or major overhaul. The hours are normally 12,000 hours, 24,000 hours, 48,000 hours and 54,000 hours.⁵⁵
168. DBP states that due to the nature of work captured under the reactive maintenance category, expenditure is volatile and difficult to forecast. DBP has based its 2015 base year costs on historical costs.⁵⁶

⁵² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information*, 31 December 2014, p. 3.

⁵³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 6 – 47.

⁵⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 16-24.

⁵⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 44-45.

⁵⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 43.

System Use Gas

169. System Use Gas (**SUG**), also referred to as Fuel Gas, has the most significant increase in forecast operating expenditure categories from the third access arrangement period to the forthcoming access arrangement. SUG is forecast to account for approximately 35 per cent of all operating expenditure for the forthcoming access arrangement period.
170. SUG is required to operate compressors used to deliver gas on the DBNGP. The SUG quantity required during the 2016 to 2020 regulatory period has been estimated using forecasts of:
- The expected gas quality that the DBNGP will be transporting during this period;
 - The quantity of gas required as compressor fuel to transport the forecast throughput; and
 - The quantity of gas required for all other operational activities, including gas used as fuel in gas engine alternators and heaters and vented during normal operation and maintenance activities.
171. DBP submits that for the purpose of the reference tariff, DBP's forecast of fuel gas operating expenditure assumes that all fuel gas will be supplied by DBP. This is consistent with clause 5.12 of the reference service terms and conditions and the approach taken in the current AA period.⁵⁷
172. DBP submits that the SUG price is contracted, which is a long term take or pay purchase and sales agreement rather than a short term spot agreement, should underpin its fuel gas price assumptions. DBP notes in its submission that public statements about new long term gas supply contracts negotiated in recent times infer gas prices of between \$6.50 and \$12.00/GJ.⁵⁸

Labour Escalation

173. DBP has included in its proposal a real 2 per cent labour escalation to its salary and wage expenditure over the fourth access arrangement period, taking into consideration information from labour market reviews and based on the following evidence:
- Historical Average Weekly Earnings (**AWE**) for Western Australia obtained from the Australian Bureau of Statistics (**ABS**); and
 - Western Australian Treasury forward estimates wage price index (**WPI**).
174. DBP submits that the average real AWE for Western Australia for the period from 30 June 2000 to 30 June 2014 is 2.29 per cent. However, DBP notes that the recent AWE figures have trended lower than the long run average. DBP considers that it would not be appropriate to set the real labour price escalation lower than its proposed figure of two per cent for the following reasons:
- the two per cent figure is lower than the average for the last 14 years; and

⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 41.

⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 36-43.

- as the two per cent assumption is being applied for the fourth access arrangement period, DBP does not consider it appropriate to rely on a small sub set of data points for a five year forecast.

175. Table 19 below shows DBP's calculation of the adjusted forward WPI estimates. DBP has adjusted the WPI for a 0.5 per cent premium for the Electricity, Gas, Water and Waste Sector (**EGWWS**).

Table 19 DBP Adjusted Forward Wage Price Index Estimate for 2014/15 to 2017/18

Per Cent	2014/15 (budget estimate)	2015/16 (forward estimate)	2016/17 (forward estimate)	2017/18 (forward estimate)
Nominal WPI	3.25	3.5	3.5	3.75
Less: DBP expected rate of inflation	2.01	2.03	2.08	2.16
EGWWS 'premium'	0.5	0.5	0.5	0.5
Real adjusted WPI	1.74	1.97	1.92	2.09

Source: DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014, Table 4, p. 11.*

176. DBP submits that its calculations return a range of between 1.93 and 2.39 per cent for its labour escalation factor.
177. DBP states that it does not consider that the Authority's Draft Decision on ATCO's initial proposed revisions to the Mid-West and South-West Gas Distribution meets the requirements of rule 74 of the NGR.
178. DBP states that it uses the WPI as a reference point for its annual salaries review process, but notes the limitations of using this economic indicator in that it fixes price-determining characteristics of jobs, "i.e. the index does not account for an individual's progression within the role due to being assigned different tasks or responsibilities, number of hours worked...". For this reason, DBP submits that the WPI should not be the sole reference point in setting the labour escalation factor.
179. DBP considers that the AWE measure is a more important indicator as it takes into account changes in the level of earnings of employees but also changes with the overall composition of wage and salaries in the labour force. DBP submits that a real two per cent labour escalation factor is arrived at on a reasonable basis and represents the best possible estimate.⁵⁹

Submissions

Labour Escalation

180. The Authority has not received any submissions in relation to DBP's proposed labour escalation assumptions.

⁵⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014, p. 11.*

System Use Gas

181. CPMM submits that DBP's proposed operating expenditure for the fourth access arrangement period does not satisfy the requirements of the prudence test under the NGR, as the costs forecast by DBP for its SUG of between \$6.50/GJ and \$12/GJ are significantly higher than prices on the gas spot market, which at the time of CPMM's submission were between \$2.80/GJ and \$5.60/GJ. CPMM considers that a prudent service provider would diversify its gas portfolio by purchasing some of the gas on the spot market and some under medium term contracts. CPMM submits that DBP has the flexibility to manage its line-pack and SUG by bidding on at least some of its gas on the spot market. CPMM also suggests that the gas spot market prices should be substituted for DBP's forecast prices as they are representative of the lowest sustainable cost.⁶⁰
182. WESCEF considers that the significant increase in DBP's System Gas Use is contrary to recent movements in the domestic gas market.⁶¹
183. BHP considers that the Authority should interrogate DBP's forecast operating expenditure carefully to establish the reasons for the differences between the forecast and actual expenditure over the third access arrangement period, and to ensure that the SUG forecast is not also inflated for the fourth access arrangement period.⁶²

Economic Growth and Inflation

184. CPMM considers that factors such as changes to the economic climate, significant falls in the price of oil, slowing inflation and labour costs, and falling prices of parts, steel and pipes are likely to continue over the coming years and that these factors should be taken into account in the determination for DBP's approved operating and capital expenditure.⁶³
185. DBP submits that its forecast salaries and wages are lower than the amounts approved in previous access arrangement periods and are therefore not a source of increases in forecast operating expenditure.⁶⁴
186. DBP submits that Figure 5 in the Authority's Issues Paper presents a misleading picture of operating costs because it does not take into account the operation of inflation, which alone would account for the significant difference between the nominal average between the 2011-2013 value and the average forecast for AA4. DBP considers that the ERA should have presented year on year figures or values

⁶⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 10.

⁶¹ Wesfarmers Chemicals, Energy & Fertilisers, *Wesfarmers Chemicals, Energy & Fertilisers submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 2.

⁶² BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, pp. 14-15.

⁶³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 2.

⁶⁴ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 7.

representing the averages of real costs to enable stakeholders to see the clear trend produced by inflation.⁶⁵

Considerations of the Authority

System use Gas

187. The Authority notes that DBP has submitted an operating expenditure forecast for system use gas of \$195.1 million over the course of the fourth access arrangement (AA4) period. The calculation of system use gas is made up of two components being the quantity and cost of the gas required.

System Use Gas - Quantity

188. In order to determine the quantity of fuel gas required, DBP has used an equation as set out in its proposal taking into account the pipeline configuration, throughput and a number of other factors in order to calculate the total fuel gas requirements on TJ/day basis for each year of the forthcoming access arrangement period.⁶⁶

189. As part of EMCa's technical review of DBP's access arrangement proposal, EMCa reviewed the quantity of fuel gas proposed by DBP. EMCa noted that DBP has modelled the DBNGP pipeline system and derived a suite of fuel curves to represent different operating conditions to produce a 'weighted average' fuel curve to capture the full dynamics of the pipeline system. DBP also uses actual performance to calibrate its model and to manage costs within forecast.⁶⁷

190. EMCa notes that DBP's explanations of the fuel gas use model and the modification and calibration of the fuel curve are in accordance with common industry practice and appear to be reasonable.

191. EMCa has stated in its report to the Authority that it considers that DBP's SUG quantity forecast for the forthcoming access arrangement period is reasonable for the following reasons:⁶⁸

- The gas quantity equation is based on an industry standard model;
- The constants are derived from calibrating the model from actual pipeline operation;
- The model adjustment factors (transient effects and other gas) have been derived from experience with operating the pipeline and forecast declining Average HHV and Receipt Point pressure); and
- DBP's actual and budget fuel ratios (with the latter derived from the fuel quantity model) are almost identical, indicating a valid model and input assumptions.

192. During the process of reviewing the SUG price and quantity proposed by DBP the Authority asked a number of clarifying questions to DBP. During the process of

⁶⁵ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 7.

⁶⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 41.

⁶⁷ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, p. 67.

⁶⁸ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, p. 70.

preparing responses to these questions additional information was accessed by DBP which it disclosed to the Authority. The information affects the amount of SUG used to determine the forecast expenditure for SUG included in DBP's proposed forecast operating expenditure.

193. As a result of [REDACTED] [REDACTED] thus reducing the amount of SUG required for the pipeline operations.
194. DBP has provided revised SUG quantity requirements to the Authority in a further confidential submission and intends to make the required adjustment in revisions to the AA4 proposal in response to the Authority's draft decision.
195. The Authority has used these revised SUG quantities when reviewing and determining the appropriateness of the quantities proposed for the fourth access arrangement period.
196. Based on EMCa's advice, the Authority is satisfied that the quantity of system use gas proposed for use by DBP in the AA4 period is justified.

System Use Gas - Price

197. DBP has submitted that its forecast fuel gas operating expenditure for 2016 to 2020 is based on an assumed price for fuel gas that is consistent with the price for which it has contracted to pay under its System Use Gas contract [REDACTED].
198. DBP notes that the contract [REDACTED] and under the contract it is required to pay [REDACTED].
199. DBP submits that the SUG price contracted for under [REDACTED] which is a long term take or pay purchase and sales agreement as opposed to short term spot agreements should underpin the fuel gas price assumption for a number of reasons including most importantly that SUG is essential for the operation of the DBNGP as without fuel for compressors and auxiliaries, the pipeline cannot deliver gas. The other reasons DBP submits as to why [REDACTED] should underpin the fuel gas price assumption are set out in paragraph 5.160 of supporting submission 10 (Forecast Operating Expenditure) of its proposal.
200. In order to meet these obligations, DBP submits that they must have in place firm supply agreements for system use gas which [REDACTED] represents. Contracts for firm supply of gas incorporate obligations on the supplier to make certain quantities available each day and on the buyer to take or pay for those quantities.
201. [REDACTED]
202. [REDACTED]
203. [REDACTED]

- 204. The Authority has reviewed DBP’s proposal on the calculation of price for system use gas in the AA4 period and is not satisfied that DBP’s forecast is justified. The Authority believes that [REDACTED] the most prudent and efficient cost is not being incorporated into the access arrangement.
- 205. The Authority accepts that DBP requires some certainty with regards to supply of SUG on a daily basis to ensure operation of the pipeline can continue unimpeded. However, the Authority does not accept that as a result of this need for certainty that customers should bear all of the costs and that DBP should reap all the benefits.
- 206. DBP noted in its submission that for the purpose of the reference tariff, the forecast of fuel gas operating expenditure assumes that all fuel gas will be supplied by DBP. This is consistent with clause 5.12 of the reference service terms and conditions and the approach taken in the current access arrangement period.
- 207. [REDACTED]
- 208. [REDACTED]
- 209. [REDACTED]
- 210. [REDACTED]
- 211. [REDACTED]
- 212. [REDACTED]
- 213. [REDACTED]
- 214. [REDACTED]

- 215. [Redacted]
- 216. [Redacted]
- 217. [Redacted]
- 218. [Redacted]
- 219. [Redacted]
- 220. [Redacted]
- 221. [Redacted]
- 222. [Redacted]
- 223. [Redacted]
- 224. [Redacted]
- 225. [Redacted]
- 226. [Redacted]

227. [Redacted text block]

228. [Redacted text block]

229. [Redacted text block]

230. [Redacted text block]

231. [Redacted text block]

232. [Redacted text block]

233. [Redacted text block]

Table 20 Authority Determined Weighted Average Price for System Use Gas for the fourth access arrangement period by year

Prices in Nominal dollars per Tj	2016	2017	2018	2019	2020
Weighted Average Price of SUG	█	█	█	█	█

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

234. The Authority notes there is a significant variance between the fuel gas reported in DBP's financial accounts and its forecast costs for the AA4 period. █. █. However, the Authority is concerned at the size of the variance and requires DBP to provide a reconciliation of its access arrangement forecast with its forecast financial statement values.
235. Subject to DBP providing a satisfactory explanation, based on the Authority's review and the information supplied by DBP in its original proposal and subsequent supporting submissions, the Authority is not satisfied that DBP's forecast of \$195.14 million on system use gas in the AA4 period is justified. The Authority has decided that of the \$195.14 million of system use gas that is forecast by DBP for the fourth access arrangement period:
- \$181.40 million satisfies rules 74 and 91 of the NGR; and
 - \$13.74 million does not satisfy rules 74 and 91 of the NGR.

Wages & Salaries

Labour Escalation

236. The Authority notes that DBP has submitted an operating expenditure forecast with a two per cent escalation factor above inflation for salary and wage expenditure categories (salaries, salaries-contractors and consulting) over the course of the fourth access arrangement period.
237. The Authority considers that it is reasonable for DBP to include a labour escalation factor as part of the operating expenditure forecast for the fourth access arrangement period. The Authority notes that it has previously included a labour escalation factor for the Mid-West and South-West Gas Distribution Systems' fourth access arrangement period, once it had determined that it satisfied the requirements of rule 74 of the NGR.
238. The Authority notes that DBP has used the historical AWE figures, WA Treasury forward estimates of the WPI, in addition to considering benchmarks and labour market reviews. However, the Authority notes that DBP has not provided its benchmarking studies or labour market reviews as part of its access arrangement proposal. Additionally, Table 20 above only makes reference to the nominal WPI, DBP's expected inflation projections and DBP's calculation of the EGWWS premium. It is not clear to the Authority how the other sources and materials cited by DBP have directly contributed to the calculation of DBP's labour escalation factor.
239. The Authority notes DBP's assessment of the Authority's Draft Decision with regard to ATCO's initial proposed labour escalation factor. The Authority considers that DBP's assessment on this matter is irrelevant to the Authority's decision on DBP's proposed labour escalation factor in this Draft Decision. However, the Authority notes that it rejected ATCO's proposed labour escalation factor on the basis that it

did not satisfy rule 74 of the NGR. In particular, the Authority was not satisfied at the time that there was a reasonable basis to support ATCO's proposed labour escalation factor. The Authority allowed a labour escalation factor for ATCO's forecast operating expenditure in its Final Decision, upon being satisfied that it met the requirements of rule 74 of the NGR.

240. The Authority has reviewed DBP's proposal and notes DBP's assessment regarding the use of the WPI over the historical AWE. The Authority notes that the ABS generally recommends using the AWE if the analysis of wages and salaries needs to reflect contemporary structural change in the labour market, whereas analyses that is concerned with inflationary pressure associated with wages and salaries should consider using the WPI. The Authority notes that it has consistently applied the WPI in its two most recent regulatory decisions (Western Power and ATCO).⁶⁹
241. The Authority does not agree with DBP's view that the AWE is a more important indicator in the determination of a labour escalation factor. The Authority considers that a prudent and efficient service provider should only be compensated for forecast changes in the price of labour, and not structural or compositional changes in the labour market. The Authority is of the opinion that productivity issues do not need to be considered for the purposes of the labour escalation factor. The Authority notes that compositional changes in the skill mix is a business choice. If a business chooses to pay for a skill mix with a higher (or lower) average wage, the business will get the associated productivity benefit (loss) of that decision. The Authority considers that a prudent and efficient service provider should only be concerned, and therefore compensated for inflationary pressures associated with wages and salaries.
242. For the reasons above, the Authority considers the WPI to be a better measure of the change in the price of labour. The Authority notes that it is determining how the change in the price of labour will affect DBP's proposed operating expenditure forecast for wages and salaries, and not issues of productivity. Furthermore, as stated in paragraph 238 it is not clear to the Authority how DBP has factored in the AWE or the other reference sources in its calculation of the labour escalation factor. Accordingly, the Authority has determined its own labour escalation factor based upon the most recent WPI and EGWWS figures from the WA Treasury and ABS.
243. Table 21 presents the WA Treasury's most recent mid-year revision for 2014/15 period along with the forward estimates for the next three years. The Authority notes that DBP's submission, as at 31 December 2014, contained the budget estimate figure for the 2014/15 WPI. The Authority has used the most recent data as it considers that this presents the best forecast in accordance with rule 74 of the NGR.

Table 21 Western Australian Treasury WPI Forward Estimate

Per Cent	2014/15 (Mid-Year Revision)	2015/16 (Forward Estimate)	2016/17 (Forward Estimate)	2017/18 (Forward Estimate)
Annual Average of Western Australian WPI	2.75	3.25	3.50	3.75

Source: Western Australian Department of Treasury, *Economic Forecasts*, http://www.treasury.wa.gov.au/Treasury/Economic_Data/Economic_Forecasts/

⁶⁹ Australian Bureau of Statistics, *Feature Article - Average Weekly Earnings and Wage Price Index – What do they Measure?*, 14 August 2014.

244. The Authority does not consider that DBP's calculation of the EGWWS premium over the WA Treasury forward estimate of WPI to be an accurate calculation, as it compares historical amounts for the EGWWS against the WA Treasury's forward estimates. The Authority considers that the premium should be determined on a like for like basis, by taking the difference from the equivalent time periods. Accordingly, the Authority has used ABS series A2603491L and A2607601L for historical EGWWS and historical WPI respectively, to determine a suitable average historical premium.⁷⁰ The Authority has taken the difference between each series' quarterly percentage change amounts from June 2011 through to June 2015, to determine an average premium of the EGWWS WPI over the Western Australian WPI of 0.14 per cent. The Authority notes that for the purposes of determining a forecast WPI, it is necessary to use WA Treasury forward estimates as the ABS does not provide this in its data series.
245. The Authority has applied its forecast inflation, as discussed in the rate of return chapter of this Draft Decision in Table 22 below, to derive its approved labour escalation factor, to be applied on the wages and salaries forecast operating expenditure for the fourth access arrangement period. The Authority rejects DBP's proposed labour escalation factor of 2 per cent and has instead approved a labour escalation factor of 1.56 per cent for the fourth access arrangement period. Where labour escalation applies in this chapter, the Authority has adjusted DBP's forecast to reflect the approved labour escalation forecast of 1.56 per cent.

Table 22 Authority's Derivation of Approved Real Labour Escalation Factor

Labour Escalation Factor Component	Per Cent
Annual Average of Western Australian WPI over AA4	3.31
Plus Premium of EGWWS WPI over Western Australian WPI	0.15
Equals Nominal Labour Escalation Forecast per annum	3.46
Less Forecast Inflation/CPI per annum	1.90
Equals Authority Approved Labour Escalation Factor	1.56

246. Based on EMCa's advice and the Authority's review of the inclusion of labour escalation the Authority is not satisfied that DBP's forecast of \$148.88 million on Salaries in the AA4 period is justified. The Authority has decided that of the \$148.88 million of salaries that is forecast by DBP for the fourth access arrangement period:
- \$138.76 million satisfies rules 74 and 91 of the NGR; and
 - \$10.12 million does not satisfy rules 74 and 91 of the NGR.
247. Again, based on EMCa's advice and the Authority's review of the inclusion of labour escalation the Authority is not satisfied that DBP's forecast of \$4.53 million on Salaries for Contractors in the AA4 period is justified. The Authority has decided that of the \$4.53 million of salaries for contractors that is forecast by DBP for the fourth access arrangement period:
- \$4.30 million satisfies rules 74 and 91 of the NGR; and
 - \$0.23 million does not satisfy rules 74 and 91 of the NGR.

⁷⁰ Australian Bureau of Statistics, 6345.0 – Wage Price Index, Australia - June 2015, 12 August 2015.

Non-field Expenses

248. DBP proposes to spend \$79.4 million on Non-Field Expenses in the AA4 period across the following sub categories:
- Consulting: \$27.96 million
 - Information Technology: \$20.59 million
 - Insurance: \$16.37 million
 - Office and Administration: \$4.9 million
 - Regulatory Expenses: \$4.5 million
 - Employee Expenses: \$2.0 million
 - Entertainment: \$1.4 million
 - Self-Insurance: \$1.22 million
 - Advertising: \$0.5 million
249. Each of these sub categories are reviewed in further detail below.

Consulting

250. The Consulting cost category includes expenditure for the engagement of auditors, external lawyers, engineering consultancies, contractors engaged on a long term basis and other consultancies and advisors as required.
251. DBP has proposed to spend \$27.96 million on consulting in the AA4 period compared to a forecast actual spend of \$20.8 million in the AA3 period. The forecast consulting expenditure accounts for 5 per cent of all operating expenditure proposed for the AA4 period.
252. DBP's forecast has used its 2015 forecast as the base year for determining its AA4 forecast plus a 2 per cent real increase in labour rates. DBP note that the variance between the 2013 actuals and the 2016 forecast is largely due to an increase in expected legal costs for health safety and environment consultancy, additional audit and compliance consultancy, additional risk management consultancy offset by reductions in commercial, finance and engineering consultancy needs.
253. EMCa noted in its review that it did not consider the 2 per cent real escalation included by DBP was justified. The Authority noted above in the salaries section of this Draft Decision that an allowance for labour escalation above inflation is a reasonable cost to include when forecasting labour costs in operating expenditure. As set out above the Authority has determined that a labour escalation factor of 1.56 per cent should be used in escalating salaries, contractor salaries and consulting costs.
254. EMCa also noted that in its opinion DBP had not provided adequate information to demonstrate that its 2015 forecast expenditure level represents an efficient amount or that the amount is required for the AA4 period. EMCa considers that that the most recent revealed annual expenditure of \$4.2 million in 2014 is likely to be representative of an efficient annual amount.
255. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$27.96 million on consulting in the AA4 period is justified. The Authority has decided

that of the \$27.96 million of consulting that is forecast by DBP for the fourth access arrangement period:

- \$21.91 million satisfies rules 74 and 91 of the NGR; and
- \$6.05 million does not satisfy rules 74 and 91 of the NGR.

Information Technology

256. The Information Technology (IT) cost category includes expenditure incurred under its Corporate ICT service agreement, expenditure incurred for software, software maintenance and support, licence and rental costs, hardware licenses and leases, hardware maintenance and support and IT consumables.
257. DBP has proposed to spend \$20.59 million on information technology in the AA4 period compared to a forecast actual spend of \$32.1 million in the AA3 period. The forecast IT expenditure accounts for 4 per cent of all operating expenditure proposed for the AA4 period.
258. DBP's forecast has used its 2015 forecast as the base year for determining its AA4 forecast. EMCa notes that DBP's 2015 forecast is based primarily on the terms of a new Corporate ICT Service Agreement with ZettaServe, which was established through a competitive tender process.
259. EMCa considers that based on the information provided by DBP, the new service agreement represents good value for money pursuant to DBP's evaluation criteria. As a result, EMCa considers that the proposed expenditure level of AA4 is likely to represent a prudent and efficient amount.
260. For proposed operating expenditure in the AA4 period, the Authority has adopted the 2014 revealed cost for the base year where appropriate. For IT expenditure, the Authority has not used 2014 as the base year as the existence of a contract with ZettaServe for the AA4 period forms the best forecast and estimate of the efficient cost.
261. Based on EMCa's advice, the Authority is satisfied that DBP's forecast of \$20.59 million on information technology in AA4 is justified. The Authority has decided that of the \$20.59 million of information technology that is forecast by DBP for the fourth access arrangement period:
- \$20.59 million satisfies rules 74 and 91 of the NGR.

Insurance

262. The Insurance cost category includes expenditure incurred for a number of insurance products including directors and officers insurance, workers compensation and other insurance which includes industrial special risks, liability, motor vehicle, travel, journey, employment practices liability and crime insurance policies. The forecast expenditure for Insurance accounts for 2 per cent of all operating expenditure proposed for the AA4 period.
263. DBP proposes to spend \$16.37 million on insurance in AA4 compared to a forecast spend of \$18.8 million for the AA3 period. DBP has used its 2015 forecast of \$2.6 million as its base year which is the same as DBP's most recent revealed cost in 2014.

264. DBP notes that its insurance costs are influenced by a number of factors including the state of the global insurance market and more specific issues such as the size and frequency of claims, value of the asset base and revenue. DBP notes that the steady decrease in actual costs in 2011, 2012 and 2013 reflect a general softening in the global insurance market.
265. DBP has stated that as the global insurance market is cyclical in nature and is likely to be at the bottom of its cycle, DBP submits that there is a greater chance that premiums will increase from that assumed in the base year than decrease.
266. EMCa has reviewed DBP's proposal and is of the opinion that DBP has not provided compelling information to explain the increase proposed over the AA4 period. EMCa considers that the most recent revealed annual expenditure of \$2.6 million in 2014 is likely to be representative of an efficient level.
267. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$16.37 million on insurance in the AA4 period is justified. The Authority has decided that of the \$16.37 million of insurance that is forecast by DBP for the fourth access arrangement period:
- \$12.91 million satisfies rules 74 and 91 of the NGR; and
 - \$3.46 million does not satisfy rules 74 and 91 of the NGR.

Office and Administration

268. The Office and Administration cost category includes expenditure for office supplies, office equipment hire and lease costs, archiving costs, printing and mailing, couriers and freight charges and other general expenses. The forecast expenditure for office and administration accounts for less than 1 per cent of all operating expenditure proposed for the AA4 period.
269. DBP proposes to spend \$4.92 million on office and administration in AA4 compared to \$5.0 million in the AA3 period. DBP has used its 2015 forecast of \$0.99 million as the base year for determining its AA4 forecast.
270. EMCa has reviewed DBP's proposal and is of the opinion that DBP has not provided compelling evidence to explain the increase from the most recent revealed cost in 2014 of \$0.91 million. EMCa considers that the most recent revealed annual expenditure of \$0.91 million in 2014 is likely to be representative of an efficient level.
271. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$4.92 million on office and administration in the AA4 period is justified. The Authority has decided that of the \$4.92 million of office and administration that is forecast by DBP for the fourth access arrangement period:
- \$4.57 million satisfies rules 74 and 91 of the NGR; and
 - \$0.35 million does not satisfy rules 74 and 91 of the NGR.

Regulatory Expenses

272. The Regulatory Expenses cost category includes expenditure for the Economic Regulation Standing Charges and Economic Regulation Authority Specific Charges. DBP's forecast expenditure is based on available information including the 2014-15 WA State Budget Papers (#3); and DBP's actuals incurred for Standing and Specific charges levied by the Authority.

273. DBP proposes to spend \$4.52 million on regulatory expenses in AA4 compared to \$9.60 million in the AA3 period. As regulatory expenses are not a standard cost each year and can differ greatly between years, DBP has not used a base year in forecasting its proposed costs.
274. The Authority has reviewed DBP's proposed costs including its proportions used to apply against the Authority's regulatory fees for the AA4 period and these appear to be based on reasonable assumptions. In the absence of further information, the Authority accepts DBP's proposed regulatory costs for the AA4 period.
275. The Authority is satisfied that DBP's forecast of \$4.52 million on regulatory expenses in AA4 is justified. The Authority has decided that of the \$4.52 million of regulatory expenses that is forecast by DBP for the fourth access arrangement period:
- \$4.52 million satisfies rules 74 and 91 of the NGR.

Employee Expenses

276. The Employee Expenses cost category includes expenditure for employee reimbursements, employee incentives and awards (e.g. gym memberships, service awards, HSE awards) and recruitment costs. The forecast expenditure for employee expenses accounts for less than 1 per cent of all operating expenditure proposed for the AA4 period.
277. DBP proposes to spend \$2.03 million on employee expenses in AA4 compared to \$1.9 million in the AA3 period. DBP has used its 2015 forecast of \$0.41 million as the base year for determining its AA4 forecast. DBP has noted that it considers that the labour market conditions have become more favourable in terms of staff retention in recent times DBP is likely to see a significant number of retirements due to an aging demographic which will affect this cost category.
278. EMCa has reviewed DBP's proposal and is of the opinion that they expect the labour conditions DBP refers to are more likely to persist rather than lead to increased labour expenses. As a result EMCa considers that the most recent revealed annual expenditure of \$0.35 in 2014 is likely to be representative of an efficient level.
279. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$2.03 million on employee expenses in the AA4 period is justified. The Authority has decided that of the \$2.03 million of employee expenses that is forecast by DBP for the fourth access arrangement period:
- \$1.73 million satisfies rules 74 and 91 of the NGR; and
 - \$0.30 million does not satisfy rules 74 and 91 of the NGR.

Entertainment

280. The Entertainment cost category includes expenditure incurred for meals, catering for meetings and staff events such as an annual end of year function. The forecast for entertainment accounts for less than 1 per cent of all operating expenditure proposed for the AA4 period.
281. DBP proposes to spend \$1.38 million on entertainment expenses in AA4 compared to \$2.30 million in the AA3 period. DBP has used its 2015 forecast of \$0.28 million as the base year for determining its AA4 forecast.

282. EMCa has reviewed DBP's proposal and notes that the expenditure is substantially reduced from the 2014 revealed cost and is therefore considered to be efficient. EMCa recommends that the 2015 proposed cost be accepted by the Authority as the most efficient cost.
283. For proposed operating expenditure in the AA4 period, the Authority has adopted the 2014 revealed cost for the base year where appropriate. For entertainment, DBP notes in its submission that Fringe Benefits Tax was previously included in this section. As a result of this information the Authority believe that DBP's 2015 proposed expenditure figure is the most reasonable estimate of costs for the AA4 period as opposed to the 2014 revealed cost.
284. Based on EMCa's advice and DBP's submission information, the Authority is satisfied that DBP's forecast of \$1.38 million on entertainment in AA4 is justified. The Authority has decided that of the \$1.38 million of entertainment expenses that is forecast by DBP for the fourth access arrangement period:
- \$1.38 million satisfies rules 74 and 91 of the NGR.

Self-Insurance

285. DBP has proposed the inclusion of Self-Insurance costs of \$1.22 million over the AA4 period. DBP states that self-insurance generally falls into three categories being:
- Physical items that DBP does not or cannot insure at all and thus bears all risk if they are damaged or stolen;
 - Expenses incurred for insured events of items that fall under the deductibles for insurance products DBP will have in place over the period; and
 - Risks that could be insured for under insurance products but DBP has elected not to.
286. DBP notes that it has not attempted to quantify the level it is effectively self-insured for in both (a) and (b) above. DBP states that it has attempted to quantify at least some of the level of self-insurance it has accepted by not entering into insurance covers for events or risks that it is exposed to. To quantify, the cost of self-insurance, DBP asked its broker, Marsh, to provide a list of insurance policies which could elect to purchase but have not.
287. EMCa notes in their review of the self-insurance cost category that the Authority did not approve any expenditure in this category for AA3 and that DBP has no history of claims under this category or has not presented any evidence that it incurred such costs as would be covered by this self-insurance allowance prior to the AA3 period. EMCa considers that there should continue to be a nil allowance for this expenditure category in AA4.
288. As the Authority noted in the AA3 access arrangement draft decision, the Authority considers that an allowance in the forecast of operating expenditure for self-insurance may be consistent with rule 91 of the NGR if supported by relevant evidence in the form of an actuarial assessment of the risks and fair-value assessments of self-insurance costs. The Authority notes that DBP has not provided any actuarial assessments to validate and justify the self-insurance costs proposed in AA4.

289. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$1.22 million on self-insurance in the AA4 period is justified. The Authority has decided that of the \$1.22 million of self-insurance that is forecast by DBP for the fourth access arrangement period:

- \$1.22 million does not satisfy rules 74 and 91 of the NGR.

Advertising

290. The advertising cost category includes expenditure for marketing and sponsorship activities undertaken by DBP. DBP proposes spending \$0.46 million on advertising expenses over the AA4 period compared to \$0.42 million in the AA3 period. The forecast for advertising expenses accounts for less than 1 per cent of all operating expenditure proposed for the AA4 period.

291. DBP has used its 2015 forecast as its base year for determining the AA4 forecast. DBP's 2015 forecast is for \$0.092 million compared to the 2014 actual revealed cost of \$0.072 million.

292. EMCa considers that DBP has not provided a compelling reason for the expenditure increase from the 2014 revealed cost. Both EMCa and the Authority believe that the 2014 revealed cost provides the most reasonable basis to forecast the AA4 costs.

293. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$0.46 million on advertising in the AA4 period is justified. The Authority has decided that of the \$0.46 million of advertising that is forecast by DBP for the fourth access arrangement period:

- \$0.36 million satisfies rules 74 and 91 of the NGR; and
- \$0.10 million does not satisfy rules 74 and 91 of the NGR.

Field Expenses

294. DBP proposes to spend \$84.43 million on Field Expenses in the AA4 period across the following sub categories:

- GEA/Turbines: \$30.58 million
- Repairs and maintenance: \$29.78 million
- Travel and accommodation: \$10.84 million
- Training and development: \$6.17 million
- Motor Vehicles: \$6.08 million
- Health Safety and Environment: \$0.98 million

295. Each of the sub categories is reviewed in further detail below.

GEA/Turbines

296. The GEA/Turbine overhaul cost category includes costs associated with overhauling the gas engine alternators and turbine on the DBNGP. The forecast expenditure for GEA/Turbine overhauls accounts for 5 per cent of all operating expenditure proposed for the AA4 period.

297. DBP proposes to spend \$30.58 million on GEA/Turbine overhauls in AA4 compared to a forecasted spend of \$38.58 million for the AA3 period. DBP's replacement philosophy for turbines is for units that have exceeded 30,000 hours to be replaced in the following financial year. Similarly for the GEA overhaul, engines that reach a required run hour will require either a minor or major overhaul. The hours are normally 12,000 hours, 24,000 hours, 48,000 hours and 54,000 hours.
298. EMCa has noted that it considers DBP's asset management strategy and plan with respect to GEA/turbines is commensurate with good industry practice. EMCa note from advice provided at the on-site meeting that DBP has tested the risk/benefit trade-off of shorter and longer maintenance and turbine exchange run time limits and decided to revert to the original equipment manufacturer recommended operating times.
299. Based on EMCa's advice, the Authority is satisfied that DBP's forecast of \$30.58 million on GEA/turbine overhauls in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Repairs and maintenance

300. The repairs and maintenance cost category includes 15 sub-categories of expenditure with the majority of the expenditure allocated to property repairs and maintenance, general repairs and maintenance, cleaning and waste removal, maintenance surveys and materials. The forecast expenditure for repairs and maintenance accounts for 5 per cent of all operating expenditure proposed for the AA4 period.
301. DBP has proposed to spend \$29.78 million on repairs and maintenance in AA4 compared to a forecast actual spend of \$24.4 million for the AA3 period by DBP and the Authority approved allowance of \$27.2 million for the AA3 period. DBP attributes the underspend in AA3 forecast actual expenditure and Authority approved expenditure to a restructuring of the Maintenance division in 2012 which enabled better cost controls and delivered cost savings for maintenance.
302. DBP's proposed expenditure is based on maintaining its forecast 2015 expenditure level of \$5.9 million for the AA4 period. EMCa notes that DBP has sought to explain the need for the increase from the 2013 amount by listing a number of step increases to certain cost components.
303. EMCa considered that the information provided is insufficient to support the extent of the increase from the 2013 amount on an ongoing basis. EMCa considers that a portion of the increase is likely to be necessary and proposes an annual expenditure allowance commensurate with the 2014 amount actually incurred being \$4.4 million.
304. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$29.78 million on repairs and maintenance in the AA4 period is justified. The Authority has decided that of the \$29.78 million of repairs and maintenance that is forecast by DBP for the fourth access arrangement period:
- \$22.20 million satisfies rules 74 and 91 of the NGR; and
 - \$7.58 million does not satisfy rules 74 and 91 of the NGR.

Travel and Accommodation

305. DBP has proposed spending \$10.84 million over the AA4 period for travel and accommodation. The AA4 proposed expenditure is \$0.3 million higher than forecast actual expenditure for AA3 of \$10.5 million and \$0.7 million lower than the Authority approved expenditure of \$11.5 million for the AA3 period.
306. DBP's forecast expenditure is based on the 2015 base year escalated by expected inflation. EMCa notes that DBP has not provided any explanation for the reversal of the downward trend of actual expenditure that was experienced in AA3 through to 2014.
307. EMCa considers that DBP has not provided adequate information to demonstrate that the 2015 forecast expenditure level represents an efficient amount. EMCa considers that the most recent revealed annual expenditure of \$1.7 million in 2014 is likely to be representative of an efficient level.
308. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$10.84 million on travel and accommodation in AA4 is justified. The Authority has decided that of the \$10.84 million of travel and accommodation that is forecast by DBP for the fourth access arrangement period:
- \$8.77 million satisfies rules 74 and 91 of the NGR; and
 - \$2.07 million does not satisfy rules 74 and 91 of the NGR.

Training and Development

309. DBP has proposed spending \$6.17 million over the AA4 period for training and development. The training and development category includes expenditure incurred through the provision of professional development and training for DBP staff.
310. DBP's proposed expenditure of \$6.17 million for the AA4 period is \$1.5 million higher than the forecast actual expenditure for AA3 of \$4.7 million. The forecast training and development expenditure for the AA4 period accounts for less than 1 per cent of all forecast operating expenditure for AA4.
311. DBP has used its 2015 forecast as its base year for determining the AA4 forecast. EMCa has noted that DBP advised that the relatively low expenditure in 2013 was due to establishing an in-house capability. However, DBP does not explain the relatively low expenditure in 2011 nor the increase from 2014 to 2015.
312. EMCa considers that DBP has not provided adequate information to demonstrate that the 2015 expenditure level represents an efficient amount. As a result EMCa considers that that the most recent revealed annual expenditure of \$1.0 million in 2014 is likely to be representative of an efficient annual amount.
313. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$6.17 million on training and development in the AA4 period is justified. The Authority has decided that of the \$6.17 million of training and development that is forecast by DBP for the fourth access arrangement period:
- \$4.91 million satisfies rules 74 and 91 of the NGR; and
 - \$1.26 million does not satisfy rules 74 and 91 of the NGR.

Motor Vehicles

314. DBP has proposed spending \$6.08 million over the AA4 period for motor vehicle expenses. The motor vehicle category includes costs for motor vehicle fleet expenses, fuel and oil, licencing and registration, hire and lease costs and repairs and maintenance. The forecast for motor vehicles accounts for less than 1 per cent of all forecast operating expenditure for AA4.
315. DBP has used its 2015 forecast as its base year for determining the AA4 forecast, however, EMCa has noted that DBP has not explained the forecast increase in costs between 2014 and 2015 in its submission.
316. EMCa considers that DBP has not provided adequate information to demonstrate that the 2015 expenditure level represents an efficient amount. As a result EMCa considers that the most recent revealed annual expenditure of \$1.0 million in 2014 is likely to be representative of an efficient annual amount.
317. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$6.08 million on training and development in the AA4 period is justified. The Authority has decided that of the \$6.08 million of training and development that is forecast by DBP for the fourth access arrangement period:
- \$5.24 million satisfies rules 74 and 91 of the NGR; and
 - \$0.84 million does not satisfy rules 74 and 91 of the NGR.

Health, Safety and Environment – PPE

318. The health safety and environment (**HSE**) cost category includes expenditure required to supply the required personal protective equipment (**PPE**), GIS datasets required for environmental compliance work and a small amount of training that is specific only to the HSE staff within DBP. The forecast expenditure for HSE accounts for less than 1 per cent of all operating expenditure proposed for the AA4 period.
319. DBP proposes to spend \$0.98 million on HSE in AA4 compared to a forecast spend of \$1.8 million for the AA3 period. DBP noted that expenditure in AA3, in particular 2011 was markedly higher than actual expenditure in 2012 and 2013 due to the roll of the early warning driver fatigue detection system, Optartlet programme in 2011.
320. DBP has used its 2015 forecast as its base year for determining the AA4 forecast. EMCa has noted that DBP has forecast a 14 per cent reduction in expenditure from 2014 to 2015 and has forecast constant expenditure at the base year level.
321. EMCa notes that the base year represents a reduction on the most recent revealed cost and as it comes after a number of years of progressive reductions, EMCa is satisfied that the 2015 expenditure is likely to be representative of an efficient level.
322. For proposed operating expenditure in the AA4 period, the Authority has adopted the 2014 revealed cost for the base year where appropriate. For HSE, the Authority is of the opinion that there is no circumstances present as to why it should deviate from this approach. As a result the Authority has determined that the 2014 actual expenditure figure is the most reasonable estimate of costs for the AA4 period.
323. Taking into account EMCa's advice and the Authority's decision that the 2014 actual revealed cost should form the base year for AA4 operating expenditure costs, where

appropriate, the Authority determines that DBP's actual cost in 2014 of \$1.14 million on HSE is justified in AA4. The Authority has decided that of the \$1.14 million of HSE that is forecast by DBP for the fourth access arrangement period:

- \$1.14 million satisfies rules 74 and 91 of the NGR.

Government Charges

324. The Government Charges cost category, referred to by DBP as Utilities, Rates and Taxes (**URT**), included expenditure relating to fixed line, satellite and mobile telephone charges, rent and accommodation, gas and water rates and other general rate and taxes. In DBP's submission it notes that this cost category included ERA standing and specific charges however these costs have actually been included in the Regulatory Expenses cost category.
325. DBP proposes to spend \$41.44 million over the AA4 period on URT compared to \$41.01 million for the AA3 period. AA4 forecast URT accounts for 7 per cent of all proposed operating expenditure for the AA4 period. DBP has used its 2015 forecast as its base year for determining the AA4 costs.
326. EMCa notes that on the basis that DBP's regulated business activities are likely to be relatively stable, EMCa would expect DBP's government charges to be stable (flat) in real terms. Accordingly, EMCa considers that the most recent revealed annual expenditure of \$7.6 million in 2014 is likely to be representative of an efficient level.
327. EMCa considers that an allowance of \$38.0 million for the AA4 period is more in keeping with the expenditure that a prudent and efficient service provider would incur and is consistent with rule 74(2).
328. Based on EMCa's advice, the Authority is not satisfied that DBP's forecast of \$41.44 million on government charges in the AA4 period is justified. The Authority has decided that of the \$41.44 million of government charges that is forecast by DBP for the fourth access arrangement period:
- \$38.02 million satisfies rules 74 and 91 of the NGR; and
 - \$3.42 million does not satisfy rules 74 and 91 of the NGR.

Reactive Maintenance

329. Forecast reactive maintenance accounts for less than one per cent of all operating expenditure proposed for the fourth access arrangement period. DBP submits that due to the nature of work, expenditure captured under the Reactive Maintenance cost category is volatile and difficult to forecast.
330. EMCa has noted that DBP has used its forecast 2015 expenditure as the Base Year for projecting its expenditure in AA4 at a constant \$1.4 million per year (real). This 2015 forecast is less than the 2014 actual expenditure but is still 17 per cent higher than the average expenditure over AA3.
331. EMCa has recommended that an allowance of \$1.2 million per year for the AA4 period is likely to be representative of an efficient level of expenditure for the following reasons:

- DBP's maintenance operations are aligned with good industry practice, which should help ensure reactive maintenance costs are relatively stable over a five year period;
 - through its 'Subsequent Costs' category, DBP intends to capitalise a significant amount of expenditure on activities that the Authority understands were previously treated as reactive operating expenditure (so in effect there is an additional provision of \$12.9 million for 'unplanned work'; and
 - DBP has provided no compelling information to support an expenditure level in excess of the average rate of expenditure in AA3.
332. Based on EMCA's advice, the Authority is not satisfied that DBP's forecast of \$6.99 million on reactive maintenance in AA4 is justified. The Authority has decided that of the \$6.99 million of reactive maintenance that is forecast by DBP for the fourth access arrangement period:
- \$6.00 million satisfies rules 74 and 91 of the NGR; and
 - \$0.99 million does not satisfy rules 74 and 91 of the NGR

Required Amendments

333. The Authority considers that only \$509.28 million of DBP's forecast operating expenditure for the fourth access arrangement period satisfies rules 74 and 91 of the NGR:
- \$143.06 million on Wages & Salaries;
 - \$67.96 million on Non-Field Expenses;
 - \$72.84 million on Field Expenses;
 - \$38.02 million on Government Charges;
 - \$6.00 million on Reactive Maintenance; and
 - \$181.40 million on System Use Gas.
334. Table 23 (below) shows DBP's proposed operating expenditure forecast, and the Authority's required amendments for the fourth access arrangement period by cost category.

Table 23 Authority Approved Operating Expenditure Forecast Reductions by Cost Category for the Fourth Access Arrangement Period

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
DBP Proposed Operating Expenditure Forecast	109.45	111.07	114.05	112.16	114.12	560.84
Wages & salaries	(1.77)	(1.91)	(2.06)	(2.22)	(2.38)	(10.34)
Non-field expenses	(1.75)	(2.01)	(2.28)	(2.57)	(2.87)	(11.48)
Field Expenses	(2.32)	(2.32)	(2.32)	(2.32)	(2.32)	(11.58)
Government charges	(0.68)	(0.68)	(0.68)	(0.68)	(0.68)	(3.42)
Reactive maintenance	(0.20)	(0.20)	(0.20)	(0.20)	(0.20)	(0.99)
System use gas	(2.82)	(2.67)	(2.72)	(2.75)	(2.78)	(13.74)
Total Reductions	(9.54)	(9.80)	(10.27)	(10.74)	(11.23)	(51.56)
Authority Approved Operating Expenditure Forecast	99.91	101.27	103.79	101.42	102.89	509.28

Source: Economic Regulation Authority, DBP Tariff Model, December 2015

335. Table 24 summarises the Authority approved operating expenditure by category for the fourth access arrangement period.

Table 24 Authority Approved Operating Expenditure Forecast by Cost Category (AA4)

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Wages & salaries	27.73	28.17	28.61	29.05	29.50	143.06
Non-field expenses	13.61	13.20	13.26	13.69	14.20	67.96
Field Expenses	13.65	15.56	17.10	13.32	13.21	72.84
Government charges	7.60	7.60	7.60	7.60	7.60	38.02
Reactive maintenance	1.20	1.20	1.20	1.20	1.20	6.00
System use gas	36.12	35.54	36.02	36.55	37.16	181.40
TOTAL	99.91	101.27	103.79	101.42	102.89	509.28

Source: DBNGP (WA) Transmission Pty Limited, Tariff Model, 31 December 2014. EMCa, Review of Technical Aspects of the Proposed Access Arrangement, September 2015. Economic Regulation Authority, DBP Tariff Model, December 2015.

Required Amendment 9

The Authority requires DBP to amend its forecast operating expenditure for the AA4 period to the values set out in Table 24 (Authority Approved Operating Expenditure Forecast by Cost Category) of this Draft Decision.

Opening Capital Base

Regulatory Requirements

336. The capital base is the capital value attributed to the pipeline assets that are used to provide regulated services. The capital base is used to calculate the return on capital and depreciation (return of capital).
337. Rule 77(2) of the NGR establishes the approach to determining the opening capital base for an access arrangement period that follows immediately on the conclusion of a preceding access arrangement period.
338. The Authority notes that the AEMC published an updated version of the NGR on 2 October 2014, which added text to rule 77(2)(a).
339. Rule 77(2) of the NGR states:
77. Opening capital base
- ...
- 2) If an *access arrangement period* follows immediately on the conclusion of a preceding *access arrangement period*, 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 difference between estimated and actual capital expenditure included in that opening capital base. This adjustment must also remove any benefit or penalty associated with any difference between the 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 to new capital expenditure], 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*.
340. Rule 79 of the NGR sets out the criteria for new capital expenditure. Rule 79 of the NGR states:
79. New capital expenditure criteria
- 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 [Authority's] discretion under this rule is limited.
341. Rule 82(1) of the NGR provides that a user may make a capital contribution towards a service provider's capital expenditure. Any capital contributions by a user may, with the approval of the Authority, be rolled into the capital base for a pipeline on condition that the service provider does not benefit through increased revenue from the user's contribution to the capital base.
342. Rules 88, 89 and 90 of the NGR specify particular requirements for the depreciation of pipeline assets in the RAB.
343. Rule 88(2) of the NGR states that the depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or asset class.

344. Rule 89(1) of the NGR states that the depreciation schedule should be designed so that:
- reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services;
 - so that each asset or group of assets (asset class) is depreciated over the economic life of that asset or group of assets (asset class);
 - 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 (asset class) can be adjusted;
 - so that (subject to the rules about capital redundancy in rule 85 of the NGR), an asset is depreciated only once (i.e. 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 Authority permits, for inflation)); and
 - so as to allow the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.
345. Rule 90(1) of the NGR specifies that a full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period. Rule 91(2) of the NGR states that those provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.
346. Rule 93 of the NGR is relevant to the allocation of total revenue and costs.
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 (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
- ...
347. Rule 95 of the NGR is relevant to the portion of revenue referable to reference services.
95. Tariffs – transmission pipelines
- ...
- 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 AER's discretion under this rule is limited.
348. The National gas objective is defined in section 23 of the NGL(WA).
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.
349. Revenue and pricing principles are defined in section 24 of the NGL(WA).
24. Revenue and pricing principles
- ...
- 2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - a) providing reference services; and
 - b) complying with a regulatory obligation or requirement or making a regulatory payment.
- ...

DBP's Proposed Changes

350. DBP proposes an opening capital base for the fourth access arrangement period of \$3,536.78 million⁷¹ as at 1 January 2016. DBP's proposed opening capital base includes \$239.37 million (\$nominal) in conforming capital expenditure less depreciation of \$495.57 million for AA3.

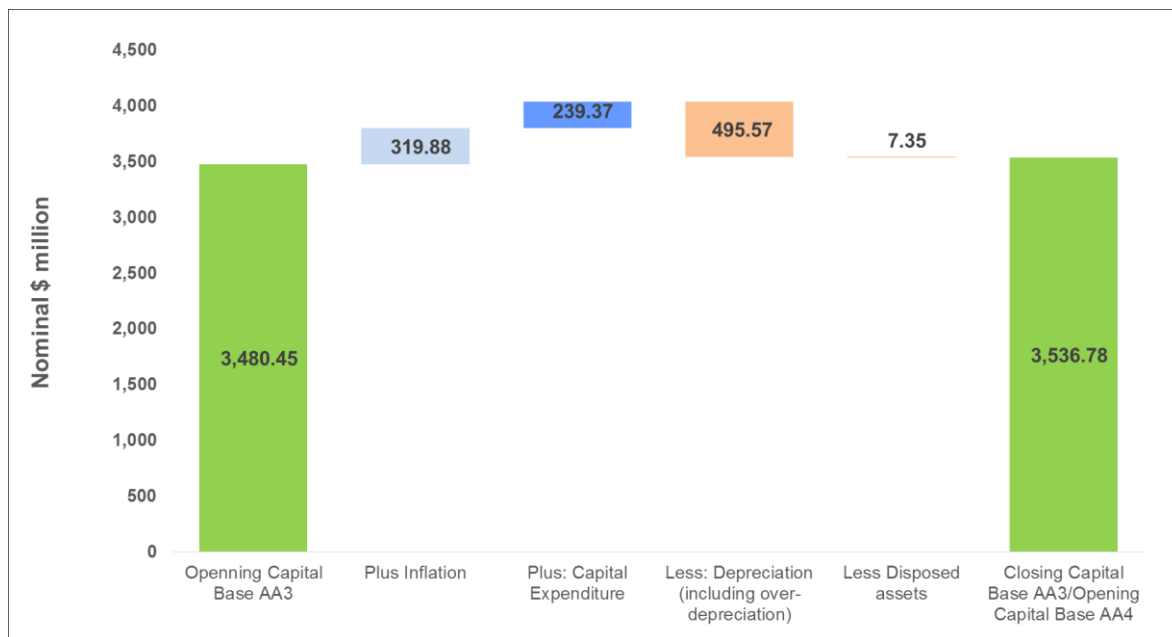
⁷¹ Real \$ million at 31 December 2015.

Table 25 DBP (Table 11, AAI) – Opening Capital Base (Real \$m at 31 December 2015)

Year ending 31 December	2011	2012	2013	2014	2015
Total assets					
Capital base at 1 Jan	3,8505.08	3,862.99	3,792.18	3,709.93	3,617.40
<i>Plus</i>					
Conforming capital	162.39	34.71	24.13	15.21	20.30
Correction for over-depreciation	0.00	0.00	0.00	0.00	5.32
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.83	0.40	0.79	1.84	0.00
Depreciation	99.66	105.12	105.59	105.90	106.24
Capital base at 31 December	3,862.99	3,792.18	3,709.93	3,617.40	3,536.78
DBNGP assets					
Capital base at 1 Jan	3,775.14	3,833.75	3,764.08	3,683.02	3,591.73
<i>Plus</i>					
Conforming capital	162.39	34.71	24.13	15.21	20.30
Correction for over-depreciation	0.00	0.00	0.00	0.00	3.36
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.83	0.40	0.79	1.84	0.00
Depreciation	98.95	103.98	104.40	104.67	105.01
Capital base at 31 December	3,833.75	3,764.08	3,683.02	3,591.73	3,510.37
Shipper assets					
Capital base at 1 Jan	29.94	29.23	28.10	26.90	25.68
<i>Plus</i>					
Conforming capital	0.00	0.00	0.00	0.00	0.00
Correction for over-depreciation	0.00	0.00	0.00	0.00	1.97
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	1.13	1.19	1.23	1.23
Capital base at 31 December	29.23	28.10	26.90	25.68	26.41

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 11, p. 9.

351. DBP's calculated values of the capital base at the commencement of the fourth access arrangement period are shown in Figure 4 below.

Figure 4 DBP Proposed Opening Capital Base for AA4

Source: DBNGP (WA) Transmission Pty Limited, *Tariff Model*, 31 December 2014. DBNGP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information*, 31 December 2014, pp. 8-9.

352. DBP considers that its actual past capital expenditure is capital expenditure that conforms to the criteria under rule 79 of the NGR. Under rule 77(2) of the NGR, capital expenditure must be 'conforming capital expenditure' in order to be added to the capital base.
353. DBP proposes the addition of \$256.74 million⁷² for the third access arrangement period to the opening capital base. The \$256.74 million for conforming capital expenditure is \$30.60 million, or 13.5 per cent more than the forecast amount approved by the Authority for the third access arrangement period.
354. The Authority's approved capital expenditure for AA3 and DBP's proposed conforming capital expenditure for the AA3 period is shown in Table 26 below.

⁷² Real \$ million at 31 December 2015.

Table 26 Comparison of DBP's Proposed Conforming Capital Expenditure with the Authority Approved Capital Expenditure for AA3 by Category

Real \$ million at 31 December 2015	Total Approved Forecast AA3 (A)	Total Actual AA3 (B)	Difference (B-A)
Expansion			
Pipeline	15.19	47.24	32.05
Compression	30.68	31.21	0.53
Metering	0.16	0.00	(0.16)
Other	50.92	18.12	(32.80)
other non-depreciable	0.00	0.00	0.00
BEP Lease	21.26	21.26	0.00
Sub total	118.21	117.82	(0.38)
Stay-in-business			
Pipeline	19.32	28.59	9.27
Compression	29.28	30.04	0.77
Metering	7.17	7.75	0.58
Other	52.17	72.39	20.22
Other non-depreciable	0.00	0.14	0.14
BEP Lease		0.00	
Sub total	107.93	138.91	30.98
Total			
Pipeline	34.51	75.83	41.32
Compression	59.96	61.25	1.29
Metering	7.33	7.75	0.42
Other	103.09	90.51	(12.58)
Other non-depreciable	0.00	0.14	0.14
BEP Lease	21.26	21.26	0.00
Total	226.14	256.74	30.60

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 4, p. 4.

355. Of the \$256.74 million⁷³ proposed by DBP as conforming capital expenditure for the third access arrangement period, \$117.82 million⁷⁴ of this relates to capital expenditure expansion works and \$138.92 million⁷⁵ relates to stay in business capital expenditure.

⁷³ Real \$ million at 31 December 2015.

⁷⁴ Real \$ million at 31 December 2015.

⁷⁵ Real \$ million at 31 December 2015.

356. DBP has noted that the proposed conforming capital expenditure for the current access arrangement period relates to the Stage 5A and 5B expansion projects. DBP provided substantiation of these expansion projects to the Authority as part of the approval for the third access arrangement.
357. DBP largely completed the Stage 5A and 5B expansion works in the 2005-2010 access arrangement period. There were amounts of expansion capital expenditure not included in the opening capital base of the third access arrangement period as they were incurred in 2011 and 2012.
358. DBP submits that the expansion capital expenditure meets the criteria contained in NGR 79 and should be approved as conforming capital expenditure and rolled into the opening capital base calculation.
359. DBP's stay in business capital expenditure is expenditure made to ensure DBP is able to continue operating the pipeline to meet its statutory and contractual obligations.
360. DBP notes that the reason for the difference between the level of conforming capital expenditure made in 2011 and the level of expenditure made in later years is due to the change in accounting treatment of capital expenditure from 2011 to subsequent years. In 2012, DBP moved from a capitalised basis of accounting to an incurred basis for regulatory purposes.
361. DBP submits that the prudence and efficiency criterion is met for each of the projects that make up the actual capital expenditure.
362. Consistent with the requirements of the current access arrangement, depreciation is based on the forecast conforming capital expenditure approved for AA3. DBP notes it has adopted the depreciation determined by the ERA in 2012 when it approved the prior access arrangement's forecast conforming capital expenditure.
363. DBP notes the correction made for over-depreciation reflects the fact that certain assets will have been over depreciated by the end of the prior AA period due to the application of approved forecast depreciation and conforming capital expenditure inputs.
364. DBP has provided the value of pipeline assets disposed of during AA3.
365. No expenditure was added to shipper funded assets during the period.

Submissions

366. BHP suggests that recently incurred conforming capital expenditure for expanding the capacity of the pipeline should be examined carefully in the context of the forecasts for reduced throughput and capacity reservation.⁷⁶

⁷⁶ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p 11.

Considerations of the Authority

367. In assessing whether DBP's proposed opening capital base and projected capital base over the 2011 to 2015 access arrangement period meet the requirements of the NGR, 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 2011 to 2015 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 depreciation schedules applied by DBP and DBP's calculation of depreciation allowances.
 - DBP's proposed treatment of capital contributions from users.

Verification of Capital Expenditure

368. On 31 December 2014 as part of its Access Arrangement proposal documentation, DBP supplied the Authority with Special Purpose Financial Reports (Statutory Reports) for financial years ending 30 June 2011, 30 June 2012 and 30 June 2013 in supporting submission 6. On 25 April 2015, DBP provided the Authority with supporting submission 25 which included the statutory report for 30 June 2014.
369. DBP engaged an auditor, Ernst & Young (EY), to conduct audit reviews on each of the statutory reports. The auditor was required to perform "agreed upon procedures" reviews to verify the amounts of conforming capital expenditure included in the Proposed Revised AAI for the periods 1 January 2011 to 31 December 2014 by reference to the amounts in the special purpose financial reports and DUET reporting packs for the same period.
370. EY stated in its review that it identified no errors or exceptions with regards to regulatory capital expenditure. EY also noted for each of the statutory reports that, in their opinion the financial report is prepared, in all material aspects, in accordance with the accounting policies described in Note 1 to the financial statements.
371. The Authority has reviewed the statutory reports provided by DBP, the audit reports and report of factual findings provided by EY and the information provided in supporting submissions 6 and 25 provided by DBP and are of the opinion that they appear free of material miss-statement.

Assessment of Capital Expenditure during AA3

372. DBP's proposal to add \$256.74 million for conforming capital expenditure is \$30.60 million, or 13.5 per cent more than the forecast amount approved by the Authority for the third access arrangement period.
373. With assistance from EMCa, the Authority has assessed whether DBP's actual capital expenditure for the third access arrangement period that is proposed to be rolled into the capital base is conforming capital expenditure in accordance with the NGR using a three-step framework:
- Evaluate whether the expenditure is justifiable on the grounds set out in rule 79(2) of the NGR;

- Consider whether the expenditure satisfies the prudent service provider test set out in rule 79(1)(a) of the NGR; and
 - Assess whether forecasts or estimates comply with rule 74(2) of the NGR.
374. As part of its review, EMCa assessed DBP's policies, processes and key strategic documents to establish the quality of what DBP 'says it does'. EMCa also assessed 15 stay-in-business projects with the highest expenditure as identified by DBP and undertook a high level assessment of the balance of the stay-in-business project expenditure.
375. EMCa assessed the current state of DBP's processes, policies and systems and noted that with few exceptions they were appropriate to manage DBP's business if properly applied. However, EMCa's review of the consistency of DBP's application of the procedures and policies found that DBP's information in support of its AA3 program to be generally inadequate to justify the expenditure.

Stay-In-Business capital expenditure

376. EMCa reviewed 15 sample projects representing a combined expenditure of \$75.23 million, or 54 per cent of stay-in-business capital expenditure over the AA3 period. EMCa also reviewed the Subsequent Costs expenditure category which totalled █████ million in AA3 bringing the total stay-in-business expenditure reviewed to █████ million, or █████ per cent of stay-in-business AA3 capital expenditure.
377. EMCa has reviewed DBP's proposed capital expenditure for the third access arrangement period as per the following steps:
- EMCa has first considered whether the sample projects are justified under one or more of the grounds set out in rule 79(2) of the NGR. In doing so, EMCa has reviewed:
 - The relevant information provided by DBP for each project;
 - The Safety Case;
 - Relevant formal safety assessments conducted by DBP;
 - Australian Standards AS2885 (Pipelines – Gas and Liquid Petroleum Pipelines);
 - DBP's asset management plan; and
 - Practices employed by other gas transmission pipelines.
378. EMCa's review looked at the following criteria to assess the sample projects including the primary documents, the business need, options analysis for the projects, procurement, delivered scope, the delivered cost and the close-out reports.

Primary Documents

379. In undertaking the review, EMCa focussed on project level documentation to which DBP provided project summaries, business cases and front end engineering design (**FEED**) documents. EMCa notes that the business case documentation was typically unsigned and undated and did not fully adhere to DBP's own internal quality assurance instructions.

Business Need

380. EMCa notes that in very few cases in the project level documentation was there an explicit link between DBP's risk assessment and risk rankings provided. Furthermore, there was no discussion of the concept of ALARP (as low as reasonably practicable) in any of the business cases provided, noting that they would have only expected to see such discussion when the risk was ranked as Intermediate.
381. Despite these limitations, EMCa found that DBP's project-level documentation was in most cases adequate to support the need to respond to the asset-related issue in some manner. EMCa noted that many of the stay-in-business projects respond to either equipment obsolescence, OEM-recommended replacement cycles and/or regulatory obligations, all of which are common and accepted drivers within the industry for stay-in-business work.

Options Analysis

382. Amongst other things, EMCa expected to see a rigorous options analysis as part of a comprehensive business case for these multi-million dollar projects. Based on the documentation provided, EMCa found that DBP's options analysis was inadequate to support a finding that the work planned to be undertaken was prudent.
383. EMCa found that the FEED documents included at least rudimentary options but they did not present a range of options that you would normally expect to see in such a document. Also business cases provided did not present a compelling case for the timing and scope of work to be undertaken in the AA3 period.
384. Even in the case where there is only one logical supplier of a replacement part or system, EMCa expected that DBP would explore the scope and timing options to demonstrate the selected scope and timing is optimal from a cost-benefit perspective. However typically, this analysis was not presented.

Procurement

385. EMCa reviewed DBP's procurement policy and found it to be sound but did expect that business cases would be explicit in confirming the rationale for the procurement approach applied. EMCa noted that in only a few cases the procurement strategy was clear from the documents provided but that this step is not required in DBP's business template. The inadequate information about the procurement process undermined EMCa's confidence that DBP has delivered expenditure efficiently.

Delivered Scope

386. EMCa found that DBP did not provide sufficient explanation of the reasons for variations between initially proposed/forecast expenditure across the AA3 period and actual expenditure, nor how project timing was determined. EMCa notes that DBP provided scant linkages to related projects and offered little information about the opportunities taken (or if not taken, why not) to combine work on a zone or asset basis to reduce costs.

Delivered Cost

387. EMCa notes that DBP provided inadequate information to allow EMCa to conclude that it has deployed prudent means of establishing efficient costs at the

project/program level. EMCa noted significant variation between actual and forecast expenditure within expenditure categories and with the absence of compelling, or any, explanations, notes that it is indicative of suboptimal decision making at a project level.

Close-out Reports

388. EMCa notes in its review that it would expect that a prudently operated business with good governance procedures to produce close-out reports for all projects over a certain dollar threshold. EMCa notes that DBP did not produce close-out reports for the projects comprising its \$138.91 million AA3 stay-in-business program of works. This made it difficult for EMCa to confidently assess the delivered cost against the business case estimate and the reasons for any significant variance.
389. EMCa considers that the absence of close-out reports further undermines its confidence that DBP delivers projects for an efficient cost and that benefits are realised.

Justification for expenditure per rule 79(1)(b)

390. EMCa found that despite the limitations with DBP's documentation that DBP's project scope descriptions, including descriptions of the reasons for undertaking the project, in conjunction with information from supporting documents and EMCa's industry experience, were sufficient to enable EMCa to form a view as to the project need in accordance with the requirements of rule 79(1)(b).
391. EMCa found that for each of the 15 sample projects reviewed that the project need was justified in accordance with one or more of the tests in rule 79(2)(c)(i)-(iv).

Prudency Test rule 79(1)(a)

392. When EMCa reviewed the 15 sample projects in the context of the prudent service provider test, EMCa concluded that only \$56.72 million, or 75 per cent of the \$75.23 million sample project stay-in-business capital expenditure satisfied the prudent service provider test.
393. EMCa notes that this assessment reflects the inadequate information provided to support DBP's claims that it has completed a prudent scope of work and has undertaken it efficiently.

Subsequent Costs

394. The Subsequent Costs category of expenditure is [REDACTED] million, the largest of the stay-in-business expenditure. Subsequent costs also represents the most significant variation in actual versus forecast expenditure due to the absence of any capital expenditure budget provision.
395. Subsequent costs comprises a myriad of expenditure items with varying amounts over the AA3 period. DBP, in a response to a request for further information from EMCa, defined subsequent costs as "those that cannot be adequately forecast on an individual basis, but which we know are likely to occur."
396. DBP provides a more detailed description in its submission to the Authority that formed part of the access arrangement proposal. Supporting Submission 8 (Part1) sets out that:

The subsequent cost category, consistent with the requirements of AASB116 Property, Plant and Equipment (PP&E), captures expenditure incurred as a condition of continuing to operate an item of PP&E. Regular day-to-day serving expenditure is recognised through profit and loss (operating expenditure) as consumed and generally described as repairs and maintenance. However, major overhauls that effectively extend the life of an asset are classified as a subsequent cost of the assets continued use the costs of which are recognised as part of the asset value.⁷⁷

397. As part of its review of subsequent costs, EMCa has been able to discern from the information provided that the majority of expenditure appears to conform with one or more of rule 79(2)(c)(i)-(iv).
398. However, EMCa notes that DBP has essentially replaced operating expenses with capital expenditure and has used the same categorisation in its AA4 forecast. However, DBP received an operating expenditure allowance from the Authority in its Final Determination for the AA3 period that included a component for the work that DBP has now capitalised.
399. Both EMCa and the Authority agree with DBP's rationale for the changed approach to these subsequent costs with regards to AASB116 but both EMCa and the Authority do not consider that these subsequent costs incurred in the AA3 period can be regarded as conforming capital expenditure.
400. The Authority provided DBP an operating expenditure allowance for these subsequent costs to be incurred in the AA3 period. This allowance then formed part of the operating expenditure building block and were included in the tariff calculation.
401. As EMCa notes, DBP has essentially changed the categorisation of subsequent costs from operating to capital expenditure for the AA3 period. As the Authority does not have the scope to claw-back operating expenditure from the AA3 period, if the Authority was to allow the AA3 subsequent costs to be included in conforming capital expenditure it would result in a double-counting of these costs.
402. Essentially, the subsequent costs from the AA3 period would form part of the capital base and also these same costs would form part of the tariff calculation. As a result, the Authority concludes that the subsequent costs expenditure for the AA3 period is not conforming capital expenditure. If it were to be included it would not result in the service provider acting efficiently, nor in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.

Expansion Capital Expenditure

403. Of the \$256.74 million in capital expenditure from AA3 that DBP propose adding to the capital base, \$117.82 million relates to expansion works which was incurred in 2011 and 2012. This expansion capital expenditure relates to the Stage 5A and 5B expansion projects and represents the final two years of multi-year projects that commenced in AA2.
404. EMCa notes in its review that over 90 per cent of the capital expenditure on the Stage 5A and 5B projects was incurred in the AA2 period. As a result, DBP has argued that the conclusions reached by the Authority in its 2011 Final Decision regarding

⁷⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual Capital Expenditure 2011-15 (Stay in business) – Supporting Submission 8 (part 1)*, 31 December 2014, Table 190, p. 126.

the prudence and efficiency of the two expansion projects are applicable to the expansion expenditure proposed as conforming capital expenditure in the AA4 submission.

405. In its 2011 Final Decision, the Authority concluded that the proposed Stage 5A and 5B expenditure satisfied or was likely to satisfy Rule 79(2)(a) and Rule 79(2)(c)(iii). Based on the Authority's approval in 2011, EMCa considers that the project need has been satisfactorily established.
406. Rule 79(1)(a) sets out the criteria of the prudent service provider test which EMCa considered in its review, in determining if the \$117.82 million spent by DBP was efficiently delivered in accordance with the requirements under this rule.
407. In undertaking the review, EMCa had regard to the Authority's requirement for DBP to provide satisfactory audited statements of capital expenditure, as was required in the Final Decision for the AA3 Access Arrangement period. EMCa notes that DBP has provided audited statements as required and while it was outside of EMCa's scope to verify the findings in the statements, it notes that the auditor, Ernst & Young, found no errors or exceptions for capital expenditure in its report.
408. The Authority reviewed the information provided by DBP in Submission 6 to the proposed access arrangement (Cost allocation and verification), and is satisfied with the auditor's findings that they found no errors or exceptions for capital expenditure.
409. EMCa also reviewed DBP's project governance framework employed for Stage 4, 5A and 5B including but not limited to independent engineer reports, close out reports and lessons learnt registers.
410. The 2010 forecast for total expenditure on the remainder of Stage 5A and 5B approved by the Authority was \$104.87 million (real \$ million at 31 December 2010) which EMCa considers is in a reasonable bound of the actual expenditure of \$108.03 million (\$ nominal). EMCa considers that DBP's actual expenditure performance is indicative of efficiently incurred costs.
411. EMCa notes that on balance it considers that it is reasonable to conclude that DBP's expenditure on expansion capital expenditure in AA3 satisfies the prudent service provider test pursuant to rule 79(1)(a).
412. Based on EMCa's review and findings and the Authority's review of expansion capital expenditure for the AA3 period, the Authority is satisfied that the expansion capital expenditure of \$117.82 million satisfies the requirements of rule 74(2).

Summary of Required Amendments in relation to conforming expenditure

413. For the reasons set out above, the Authority does not approve DBP's proposed capital expenditure for the third access arrangement period as submitted.
414. Table 27 (below) summarises the Authority's required amendments, described above, by asset class.

Table 27 Authority Approved Conforming Capital Expenditure Reductions by Asset Class for the Third Access Arrangement Period

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	Total
DBP Proposed Conforming Capital Expenditure - Expansion	105.09	12.73	0.00	0.00	0.00	117.82
Pipeline	0.00	0.00	0.00	0.00	0.00	0.00
Compression	0.00	0.00	0.00	0.00	0.00	0.00
Metering	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
BEP Lease	0.00	0.00	0.00	0.00	0.00	0.00
Total Reductions	0.00	0.00	0.00	0.00	0.00	0.00
Authority Approved Conforming Capital Expenditure - Expansion	105.09	12.73	0.00	0.00	0.00	117.82
DBP Proposed Conforming Capital Expenditure – Stay-In-Business	57.30	21.98	24.13	15.21	20.30	138.91
Pipeline	(2.91)	(2.59)	(2.50)	(0.29)	(2.49)	(10.78)
Compression	(4.02)	(1.32)	(1.78)	(1.82)	(2.46)	(11.41)
Metering	(0.08)	(0.42)	(0.20)	(1.05)	(0.63)	(2.38)
Other	(3.27)	(7.48)	(6.82)	(3.81)	(3.31)	(24.69)
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total Reductions	(10.29)	(11.81)	(11.31)	(6.96)	(8.89)	(49.26)
Authority Approved Conforming Capital Expenditure – Stay-In- Business	47.02	10.17	12.82	8.25	11.41	89.66

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

415. Taking into account EMCA's review and recommendation the Authority has decided that:

- \$207.48 million (comprising \$117.82 million in relation to expansion and \$89.66 million in relation to stay-in-business capital expenditure) complies with the criteria set out in rule 79 of the NGR and can therefore be included in the opening value of the asset base for the fourth access arrangement period; and
- \$49.26 million does not comply with the criteria set out in rules 74, 79 or 93 of the NGR and should not be included in the opening value of the asset base for the fourth access arrangement period.

416. Table 28 breaks down the Authority's approved conforming capital expenditure for the third access arrangement period by asset class for both expansion and stay-in-business capital expenditure.

Table 28 Authority Approved Conforming Capital Expenditure by Asset Class for the Third Access Arrangement Period

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	Total
Expansion						
Pipeline	36.45	10.79	0.00	0.00	0.00	47.24
Compression	27.46	3.74	0.00	0.00	0.00	31.21
Metering	0.00	0.00	0.00	0.00	0.00	0.00
Other	19.93	(1.81)	0.00	0.00	0.00	18.12
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
BEP Lease	21.26	0.00	0.00	0.00	0.00	21.26
Sub total	105.09	12.73	0.00	0.00	0.00	117.82
Stay-in-business						
Pipeline	11.06	2.24	2.38	0.32	1.82	17.81
Compression	1.56	3.81	4.00	1.29	7.98	18.64
Metering	0.30	1.56	0.79	0.58	2.14	5.37
Other	34.11	2.60	5.45	6.06	(0.53)	47.70
Other non-depreciable	(0.02)	(0.04)	0.20	0.00	0.00	0.14
Sub total	47.02	10.17	12.82	8.25	11.41	89.66
TOTAL						
Pipeline	47.50	13.03	2.38	0.32	1.82	65.05
Compression	29.03	7.55	4.00	1.29	7.98	49.84
Metering	0.30	1.56	0.79	0.58	2.14	5.37
Other	54.04	0.80	5.45	6.06	(0.53)	65.82
Other non-depreciable	(0.02)	(0.04)	0.20	0.00	0.00	0.14
BEP Lease	21.26	0.00	0.00	0.00	0.00	21.26
TOTAL	152.11	22.90	12.82	8.25	11.41	207.48

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Assessment of Depreciation

417. The depreciation values used by DBP to calculate the opening capital base are consistent with the depreciation forecasts approved for AA3.
418. The Authority does not accept DBP's proposed methodology for correcting over-depreciation. Over-depreciation arises where actual capital expenditure for 2011 to

2015 was less than forecast. This has two 'excess return' effects over the course of that third access arrangement period:

- first, the return on capital was higher than it might otherwise have been, had the forecast capital been closer to the (lower) actual capital expenditure; and
- second, the amount of depreciation is more than it might otherwise have been (so-called 'over depreciation'), resulting in more revenue than if the forecast capital had been closer to the actual capital expenditure.

419. The Authority considers that it is reasonable for DBP to retain some of this excess return, as it is consistent with incentive regulation. The potential for excess return encourages DBP to be prudent in its capital expenditure.
420. However, the 'over-depreciation' in the roll-forward of the regulated asset base (RAB) – over the third access arrangement – needs to be corrected. This is because it results in a RAB balance at the end of the period which is lower than it should otherwise be.
421. DBP has applied an adjustment to address such over-depreciation, by 'writing up' the opening capital base at 1 January 2016 by an amount equivalent to the over-depreciation accumulated over the third access arrangement. This has the effect of restoring the RAB to its correct value. It ensures that the opening balances for all asset classes are non-negative.
422. The approach means that DBP retains both of the excess return components outlined above.
423. However, the Authority is of the view that this method for correcting the RAB over-rewards efficiency gains, to the extent that it allows the return on the capital expenditure savings to be retained, as well as a depreciation (return) of capital expenditure (which was not undertaken). The Authority considers that this is not in the long term interests of consumers.
424. Accordingly, the Authority requires that an alternative approach be applied, where over-depreciated assets are 'written up' through a 'positive' depreciation amount in the first year of the fourth access arrangement (depreciation is usually a negative value entry in the roll forward, so as to reduce the RAB each year). The positive depreciation entry returns the asset class, and hence the RAB, to its correct value by the end of the first year of the fourth access arrangement period. At the same time, that depreciation entry recovers the over-depreciation for consumers, by reducing the building block revenue in the first year by a commensurate amount (this occurs because depreciation entries from the RAB roll forward are carried into the revenue building block calculation with the opposite sign).
425. DBP will also receive a smaller return on capital in the first year of the fourth access arrangement under the Authority's proposed approach, as compared to the proposed approach. That has the effect of recovering some of the excess return on capital which DBP received over the third access arrangement. However, it is unlikely to recover all of it, particularly if the forecast capital expenditure was expected early in the third access arrangement.
426. The net effect is that the service provider retains some of the excess 'return on' capital from the third access arrangement. This provides sufficient incentive for efficiency gains, balancing that against the long term interests of consumers. This is consistent with the requirements of the National Gas Objective. The Authority also

notes that it is the method utilised by the Australian Energy Regulator, so has regulatory precedent.

427. The Authority notes the values for asset disposals are small and similar to previous periods. The values have been extracted from the DBP's financial statements and the Authority considers them to be reasonable.

Assessment of General Method of Calculating the Opening Capital Base

428. With the exception of the correction for over depreciation, the Authority is satisfied with the method DBP has used to calculate the opening capital base.

Approved Opening Capital Base

429. The Authority's determination of the closing capital base for AA3 that forms the opening capital base for AA4 is set out in Table 29 below.

Table 29 Authority Approved Opening Capital Base at 1 January 2016

\$ million December 2015	2011	2012	2013	2014	2015
Total Assets					
Opening Capital Base (AA3)	3,819.99	3,867.29	3,784.69	3,691.20	3,591.81
Plus: Capital Expenditure	152.19	22.90	12.82	8.25	11.41
Less: Redundant & Disposed Asset	4.85	0.40	0.79	1.85	-
Less: Depreciation	100.05	105.10	105.51	105.79	106.13
Closing Capital Base (AA3)	3,867.29	3,784.69	3,691.20	3,591.81	3,497.09
DBNGP Assets					
Opening Capital Base (AA3)	3,789.94	3,837.94	3,756.05	3,663.27	3,564.59
Plus: Capital Expenditure	152.19	22.90	12.82	8.25	11.41
Less: Redundant & Disposed Asset	4.85	0.40	0.79	1.85	-
Less: Depreciation	99.34	104.39	104.81	105.08	105.42
Closing Capital Base (AA3)	3,837.94	3,756.05	3,663.27	3,564.59	3,470.57
Shippers Assets					
Opening Capital Base (AA3)	30.06	29.35	28.64	27.93	27.22
Plus: Capital Expenditure	-	-	-	-	-
Less: Redundant & Disposed Asset	-	-	-	-	-
Less: Depreciation	0.71	0.71	0.71	0.71	0.71
Closing Capital Base (AA3)	29.35	28.64	27.93	27.22	26.52

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Required Amendment 10

The opening capital base for 1 January 2016 in the proposed revised access arrangement must be amended to reflect the values in Table 29 (Authority Approved Opening Capital Base at 1 January 2016) of this Draft Decision.

Projected Capital Base

Regulatory Requirements

430. Rule 78 of the NGR establishes the approach to determine the projected capital base for an access arrangement period.
431. Rule 78 of the NGR states that the projected capital base for a particular period is:
78. Projected capital base
- 1) 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.
432. Rule 79 of the NGR sets out the criteria that capital expenditure must meet in order to be considered conforming capital expenditure. As discussed previously in the opening capital base section, capital expenditure must be incurred by a prudent service provider acting efficiently, and the expenditure must be justifiable on economic, safety or regulatory grounds.
433. The Authority's discretion is limited under rule 79. Rule 40(2) of the NGR sets out the Authority's limited discretion powers. Rule 40(2) states that the regulator must not withhold its approval of an element of an access arrangement proposal if it is satisfied that the element complies with the applicable requirements of the NGL(WA) and is consistent with any applicable criteria (if any) prescribed by the NGL(WA).
434. Rule 74 of the NGR provides that information in the nature of a forecast or estimate must be supported by a statement of its basis, and must be arrived at on a reasonable basis, and must represent the best forecast or estimate possible in the circumstances.
435. Rule 71 of the NGR is relevant to the Authority's consideration of actual and forecast capital expenditure against the requirements of rule 79 of the NGR, and 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 [Authority] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [Authority] considers appropriate.

- 2) The [Authority] 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.
436. Rule 88 of the NGR provides that the forecast depreciation of the capital base for the purpose of determining a reference tariff is to be calculated for each year of the access arrangement period on the basis set out in the depreciation schedule(s). The requirements in relation to forecast depreciation are set out in rule 89 of the NGR.
437. Rule 93 of the NGR is relevant to the allocation of total revenue and costs.
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 (which must be consistent with the revenue and pricing principles) determined or approved by the ERA.
438. Rule 95 of the NGR is relevant to the portion of revenue referable to reference services.
95. Tariffs – transmission pipelines
- ...
- 1) 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 AER.
 - 2) 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.
 - 3) The AER's discretion under this rule is limited.
439. 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.

440. Revenue and pricing principles

24. Revenue and pricing principles

...

- 2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
- a) providing reference services; and
 - b) complying with a regulatory obligation or requirement or making a regulatory payment.

DBP's Proposed Changes

441. DBP proposes a projected capital base for the fourth access arrangement period of \$3,149.77 million at 31 December 2020. DBP's proposed forecast closing capital base for each year of the fourth access arrangement period are shown in Table 30.

Table 30 DBP (Table 12, AAI) – Projected Capital Base (Real \$m at 31 December 2015)

Year	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,536.78	3,456.58	3,376.01	3,290.53	3,212.86
<i>Plus</i>					
Forecast conforming capital expenditure	23.27	21.77	17.50	19.37	24.76
<i>Less</i>					
Forecast depreciation	103.47	102.33	102.97	97.05	87.85
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Projected Capital Base	3,456.58	3,376.01	3,290.53	3,212.86	3,149.77
DBNGP Assets					
Capital base at 1 Jan	3,510.37	3,430.87	3,351.01	3,266.23	3,189.27
<i>Plus</i>					
Forecast conforming capital expenditure	23.27	21.77	17.50	19.37	24.76
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	102.77	101.63	102.27	96.34	87.14
Capital base at 31 December	3,430.87	3,351.01	3,266.23	3,189.27	3,126.88
Shipper Assets					
Capital base at 1 Jan	26.41	25.70	25.00	24.30	23.59
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	0.70	0.70	0.70	0.70
Capital base at 31 December	25.71	25.00	24.30	23.59	22.89

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 12, p. 10.

442. The projected capital base includes forecast conforming capital expenditure of \$106.66 million less forecast depreciation of \$493.67 million. DBP has no forecast value of pipeline assets to be disposed of during the current access arrangement period which would be deducted from the projected capital base.
443. DBP proposes that its forecast capital expenditure for the fourth access arrangement period conforms to the criteria under rule 79 of the NGR. DBP's proposal must also conform to rule 74 of the NGR, which requires that forecasts and estimates must be supported by a statement of the basis of the forecast or estimate, must be arrived at on a reasonable basis and must represent the best forecast or estimate possible in the circumstances.

444. DBP has forecast \$106.66 million in stay in business capital expenditure over the fourth access arrangement period, which is 23.3 per cent less than DBP's proposed actual stay in business capital expenditure for the third access arrangement period of \$138.91 million. DBP has not proposed any capital expenditure on expansion projects in the AA4 period.
445. DBP's proposed capital expenditure is shown in Table 31 below. The expenditure only relates to Stay-in-business as no expansions are forecast.

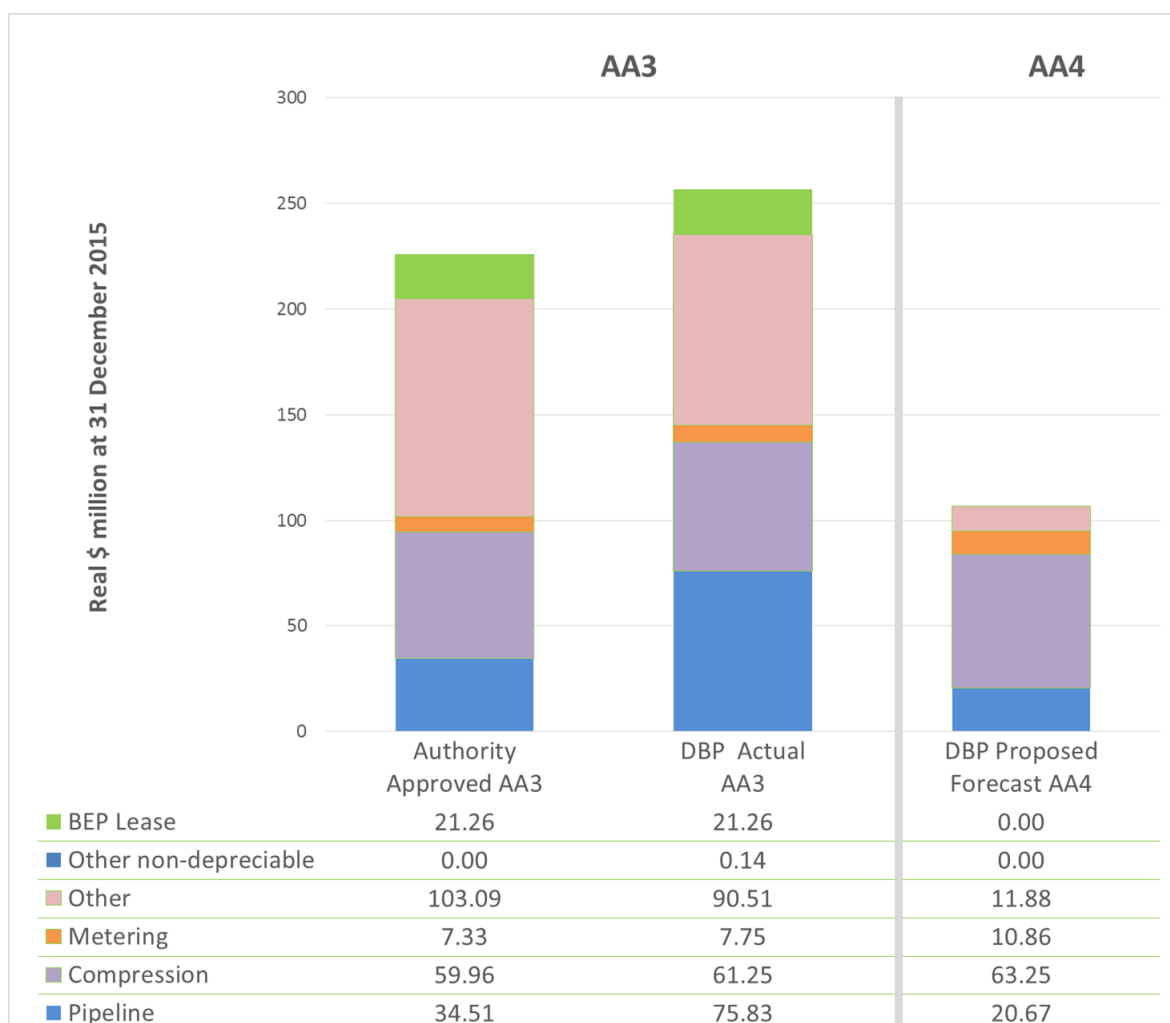
Table 31 DBP's Proposed Conforming Capital Expenditure for AA4

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline	3.67	2.48	1.63	5.33	7.55	20.66
Compression	13.61	13.97	12.44	11.65	11.59	63.26
Metering	3.60	2.68	0.85	0.64	3.10	10.87
Other	2.39	2.64	2.58	1.75	2.52	11.88
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total	23.27	21.77	17.50	19.37	24.76	106.67

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 13, p. 11.

446. DBP submits that the prudence and efficiency criteria are met for each of the projects that are included in the forecast capital expenditure for the fourth access arrangement period.
447. The most substantial capital expenditure projects proposed for the fourth access arrangement period include the design and installation of new accommodation units at each of the compressor stations, intelligent pigging of the network as per the DBP asset management plan, and the provision of subsequent costs for compressors to allow DBP to carry out activities that are required to continue to operate the assets.

Figure 5 Comparison of DBP's Proposed Conforming Capital Expenditure for AA3 and AA4 with Authority Approved Capital Expenditure for AA3



Source: Economic Regulation Authority, *Tariff Model*, 5 October 2012. DBNGP (WA) Transmission Pty Limited, *Tariff Model*, 31 December 2014.

448. DBP states its forecast conforming capital expenditure for the fourth access arrangement period is based on the need to ensure DBP:
- Maintains and improves the safety of pipeline services;
 - Maintains the integrity of pipeline services;
 - Complies with the regulatory obligations or requirements applicable to the DBNGP; and/or
 - Maintains its capacity to meet levels of demand for pipeline services existing at the time the capital expenditure is forecast to be incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity).
449. DBP submits that the “subsequent costs” referred to in paragraph 128 of the Issues Paper are not expenditure solely for compressors, but are instead an accounting

term that captures the expenditure related to the overhaul of property, plant and equipment that effectively extends the life of an asset.⁷⁸

450. DBP considers that the ERA has committed a typographical error when outlining DBP's assumptions with regards to the certainty of knowing the terminal value of the DBNGP in paragraph 38 of the Issues Paper.⁷⁹

Submissions

451. No submissions commented in relation to the AA4 forecast capital expenditure or the projected capital base.

Considerations of the Authority

452. The Authority has considered whether DBP's proposed value of the projected capital base for the fourth access arrangement period meets the requirements of the NGR.
453. The Authority appointed a technical advisor Energy Market Consulting associates (**EMCa**) to assess the technical aspects of DBP's proposal including capital expenditure and the associated governance processes.
454. EMCa undertook a review of a sample of projects from the DBP AA4 capex program and used this to test the extent to which the systemic governance, management and expenditure forecasting issues that were identified in the review are manifest in DBP's claimed AA4 capex requirement.
455. Relying on advice from EMCa, the Authority has assessed DBP's proposed capital expenditure forecast for the fourth access arrangement period in accordance with NGR using a three-step framework:
- Evaluate whether the expenditure is justifiable on the grounds set out in rule 79(2) of the NGR;
 - Consider whether the expenditure satisfies the prudent service provider test set out in rule 79(1)(a) of the NGR; and
 - Assess whether forecasts or estimates comply with rule 74(2) of the NGR.
456. EMCa has assessed DBP's governance framework and processes in relation to capital expenditure forecasting. EMCa's review has focused on DBP's policies, processes, procedures and reference documents that relate to project and program development, approval and delivery. EMCa conducted the review in relation to DBP's corporate objectives and regulatory obligations, in addition to good industry practice.
457. As part of the review, EMCa assessed 17 AA4 capex projects in order to identify how DBP applies its policies and processes in practice. EMCa assessed 15 projects with the highest expenditure (as identified by DBP) and two other projects of an atypical nature.

⁷⁸ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 7.

⁷⁹ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 8.

458. The total sample of 17 projects represented a combined expenditure of \$72 million over the AA4 period which is equivalent to 67 per cent of total proposed AA4 capex. DBP provided relevant supporting documentation for the sample projects, including FEED (front end engineering design) and business case documents.
459. EMCa has reviewed DBP's proposed capital expenditure for the fourth access arrangement period as per the following steps:
- EMCa has first considered whether the projects are justified under one or more of the grounds set out in rule 79(2) of the NGR. In doing so, EMCa has reviewed:
 - Rationale provided by DBP for each project;
 - The Safety Case that was accepted by EnergySafety;
 - Relevant formal safety assessments conducted by DBP;
 - Australian Standards AS2885 (Pipelines – Gas and Liquid Petroleum Pipelines);
 - DBP's asset management plan; and
 - Practices employed by other gas transmission pipelines.
460. EMCa notes DBP provided sufficient information to EMCa to conclude that the expenditure satisfied one or more of the components of rule 79(2)(c)(i) to (iv) in relation to 15 projects in the sample.
461. EMCa identified two projects totalling [REDACTED] million that did not satisfy one or more of the components of rule 79(2)(c)(i) to (iv). [REDACTED]
[REDACTED]
[REDACTED]
462. For these two projects, EMCa has noted that DBP has not provided sufficient supporting evidence to justify the expenditure for the capital works.
463. EMCa further noted that for the 15 projects that satisfied one or more of the components of rule 79(2)(c)(i) to (iv), EMCa had to apply its industry knowledge and experience to bridge information gaps pertaining to risk assessment in the project summaries and other supporting project-level documentation where necessary.
464. For the 15 projects that satisfied one or more of the components of rule 79(2)(c)(i) to (iv), these projects were then reviewed under rule 79(1)(a) to determine if this proposed capital expenditure by DBP satisfies the prudent service provider test in that the expenditure is likely to be necessary in the AA4 period and that the cost estimate is reasonable.
465. EMCa noted in its review of the documentation provided by DBP in support of the proposed expenditure on the projects in the sample, that it had identified a number of systemic issues including poor documentation, lack of clarity about the scope, lack of options analysis, lack of clarity of the basis for the estimate and lack of demonstration of delivery capability. Further details about the issues identified are as follows:
- Poor Documentation – As EMCa identified in the review of the AA3 sample projects, the business case documentation provided for the AA4 sample projects was typically unsigned and undated and did not fully adhere to DBP's own internal quality assurance instructions.

- Lack of clarity about the scope – For a number of the sample projects EMCa noted that it was not clear what work was proposed to be undertaken in the AA4 period. This included ‘continuation’ projects for work that had been commenced in the AA3 period and that continued into the AA4 period, sometimes with a different project scope or under a different project name.
 - Lack of options analysis – With regards to options analysis, EMCa did not expect to see detailed, approved business cases for all the proposed projects to commence in the AA4 period at this point in the project lifecycle. EMCa did, however, expect DBP to present the options considered in deciding the timing and volume of work assumed for the purpose of developing its expenditure proposal. EMCa found in some cases it was clear that the timing and volume of work was based on appropriate reasons, however, in a number of cases, EMCa found insufficient justification for the proposed volume and timing of work proposed.
 - Lack of clarity of the basis for the estimate – EMCa notes that in some of the sample cases no basis for the cost estimate is given and in others the cost estimate is said to be ‘preliminary’. EMCa further notes that only a breakdown of expenditure for one year was provided with no indication of the estimate accuracy and some cases the cost estimate in the Access Arrangement Information varies materially from the estimates in the ‘business cases’ presented for the review.
 - Lack of demonstration of delivery capability – EMCa identified from its review that typically no information was provided about the delivery plan. EMCa notes that at a portfolio level this is not a significant concern, however, at the project level, the proposed delivery strategy is an indicator of efficient cost.
466. Taking into account the systemic governance, management and forecasting issues that EMCa identified and described in section 4 of its review (i.e. what DBP says it does), with the evidence of those issues being apparent in the sample review EMCa undertook (i.e. what DBP does in practice), EMCa considers that there is reasonable evidence that those issues apply generally across DBP’s proposed capex allowance.
467. As a result of these findings, EMCa concludes that DBP’s proposed capex allowance does not meet the requirements of rule 79(1)(a), in that it does not represent the best forecast or estimate possible in the circumstances as required under rule 74(2), of the expenditure that 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.
468. EMCa notes that in order to estimate the impact of these systemic issues, it has considered the extent to which they are evident, and their relative impact, in projects by asset category.
469. From this review of the systemic issues by asset category, EMCa has determined adjustment ranges applicable to each of the asset categories. EMCa notes that it estimates the aggregate impact of the systemic issues identified to be an over-statement of required capex in the order of 22 per cent to 32 per cent. EMCa accordingly proposes that a reasonable forecast of DBP’s capex requirement is likely to be in the range of \$83.0 million to \$72.9 million.
470. Table 32 sets out EMCa’s adjustment ranges by asset category and associated adjustments to the proposed AA4 capital expenditure.

Table 32 EMCa Adjustment Ranges for DBP's AA4 proposed capex

Assessment Category	As per DBP proposal	EMCa adjustment range			EMCa adjusted (\$)	
		Percentage	Low (\$)	High (\$)	Low adjustment	High adjustment
Pipeline	20.66	15-25%	(3.10)	(5.17)	17.56	15.50
Compression	63.26	30-40%	(18.98)	(25.30)	44.28	37.96
Metering	10.87	15-25%	(1.63)	(2.72)	9.24	8.15
Other	11.88	0-5%	0.00	(0.59)	11.88	11.29
Other non-depreciable	0.00	0%	0.00	0.00	0.00	0.00
BEP lease	0.00	0%	0.00	0.00	0.00	0.00
Total	106.67		(23.71)	(33.78)	82.96	72.89

Source: EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, Table 5, p. 63.

471. Taking into account the review of DBP's proposed AA4 capital expenditure undertaken by EMCa the Authority agrees with EMCa's findings that there are a number of systemic issues with the sample projects reviewed to extrapolate these findings out to be likely to be evident in all of the proposed AA4 capital expenditure.
472. As a result the Authority concurs with EMCa that not all proposed AA4 capital expenditure meets the criteria to be considered conforming capital expenditure. The Authority has reviewed EMCa's recommended adjustment ranges and has decided to adopt a mid-point of the range for each asset class as an appropriate reduction in the over-statement of proposed capital expenditure by DBP.
473. The Authority considers this reflects a reasonable estimate of capital expenditure that DBP requires to meet its capital expenditure objectives in the AA4 period both prudently and efficiently. The Authority's percentage reduction is set out below in Table 33.

Table 33 EMCa recommended adjustment ranges and Authority determined adjustment percentage for DBP's proposed AA4 capital expenditure

Assessment Category	EMCa adjustment range	Authority's Determined Adjustment Percentage (mid-point of EMCa range)
Pipeline	15 - 25 %	20 %
Compression	30 – 40 %	35 %
Metering	15 – 25 %	20 %
Other	0 – 5%	2.5 %
Other non-depreciable	0 %	0%
BEP Lease	0 %	0%

Source: EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, Table 5, p. 63.

474. Taking account of these adjustments the Authority has determined that:

- \$77.92 million (73 per cent of DBP's proposed capital expenditure) complies with the criteria set out in rule 79 of the NGR, and can be considered conforming capital expenditure for the purposes of rule 78; and
- \$28.74 million (27 per cent of DBP's proposed capital expenditure) does not comply with the criteria set out in rule 79 of the NGR, and cannot be considered conforming capital expenditure for the purposes of rule 78.

475. Table 34 (below) shows DBP's proposed capital expenditure forecast, and the Authority's required amendments for the fourth access arrangement period by asset class.

Table 34 Authority Approved Capital Expenditure Forecast Reductions by Asset Class for the Fourth Access Arrangement Period

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
DBP Proposed Capital Expenditure Forecast	23.27	21.77	17.50	19.37	24.76	106.66
Pipeline	(0.73)	(0.50)	(0.33)	(1.07)	(1.51)	(4.13)
Compression	(4.76)	(4.89)	(4.35)	(4.08)	(4.06)	(22.14)
Metering	(0.72)	(0.54)	(0.17)	(0.13)	(0.62)	(2.17)
Other	(0.06)	(0.07)	(0.06)	(0.04)	(0.06)	(0.30)
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total Reductions	(6.28)	(5.99)	(4.91)	(5.32)	(6.25)	(28.74)
Authority Approved Capital Expenditure Forecast	16.99	15.78	12.58	14.05	18.51	77.92

Source: Economic Regulation Authority, DBP Tariff Model, December 2015

476. Table 35 shows the Authority's approved capital expenditure to be included in the projected capital base by asset class.

Table 35 Authority Approved Capital Expenditure Forecast by Asset Class for the Fourth Access Arrangement Period

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Pipeline	2.94	1.99	1.30	4.27	6.04	16.54
Compression	8.84	9.08	8.08	7.57	7.53	41.11
Metering	2.88	2.14	0.68	0.51	2.48	8.69
Other	2.33	2.57	2.52	1.70	2.45	11.58
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL	16.99	15.78	12.58	14.05	18.51	77.92

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Required Amendment 11

The value of conforming capital expenditure for 2016 to 2020 access arrangement period must be amended to reflect the values shown in Table 35 (Authority Approved Capital Expenditure Forecast by Asset Class for the Fourth Access Arrangement Period) of this Draft Decision.

477. As discussed in the Opening Capital Base chapter, the Authority has revised the Opening Capital Base consistent with rules 74 and 79 of the NGR. The Authority has considered DBP's forecast depreciation for AA4 in the following section.
478. Table 36 below shows the Authority's required amended values for the projected capital base as at 31 December 2020. This takes into account the Authority's required amendments to capital expenditure as provided by the rules 74 and 79 of the NGR and the amendments to depreciation for the fourth access arrangement period that are relevant to this calculation.

Table 36 Authority Approved Projected Capital Base (Real \$m at 31 December 2015)

Year	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,497.09	3,415.56	3,330.32	3,241.41	3,160.09
<i>Plus</i>					
Forecast conforming capital expenditure	16.99	15.78	12.58	14.05	18.51
<i>Less</i>					
Forecast depreciation	98.52	101.03	101.49	95.38	85.99
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Projected Capital Base	3,415.56	3,330.32	3,241.41	3,160.09	3,092.61
DBNGP assets					
Capital base at 1 Jan	3,470.57	3,389.75	3,305.21	3,217.02	3,136.40
<i>Plus</i>					
Forecast conforming capital expenditure	16.99	15.78	12.58	14.05	18.51
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	97.81	100.32	100.78	94.67	85.28
Capital base at 31 December	3,389.75	3,305.21	3,217.02	3,136.40	3,069.63
Shipper assets					
Capital base at 1 Jan	26.52	25.81	25.10	24.39	23.69
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.71	0.71	0.71	0.71	0.71
Capital base at 31 December	25.81	25.10	24.39	23.69	22.98

Source: Economic Regulation Authority, DBP Tariff Model, December 2015

Required Amendment 12

The projected capital base in the proposed revised access arrangement must be amended to reflect the values in Table 36 (Authority Approved Projected Capital Base) of this Draft Decision, which shows the Authority's required amended values for the projected capital base as at 31 December 2020. This takes into account the Authority's required amendments to capital expenditure and the amendments to depreciation that are relevant to this calculation.

Depreciation

Regulatory Requirements

479. 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’.
480. Rule 89 of the NGR specifies particular depreciation criteria and requirements for the calculation of depreciation. Rule 89 criteria are as follows:
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 [Authority's] discretion under this rule is limited.
481. The Authority's discretion is limited under rule 89(3). Rule 40(2) of the NGR sets out the Authority's limited discretion powers. Rule 40(2) states that the regulator must not withhold its approval of an element of an access arrangement proposal if it is satisfied that the element complies with the applicable requirements of the NGL(WA) and is consistent with applicable criteria (if any) prescribed by the NGL(WA).
482. Rule 40(2) of the NGR provides the following example:
- The [ERA] has limited discretion under rule 89. (See rule 89(3).) This rule governs the design of a depreciation schedule. In dealing with a full access arrangement submitted for its approval, the [ERA] cannot, in its *draft decision*, insist on change to an aspect of a depreciation schedule governed by rule 89 unless the [ERA] considers change necessary to correct non-compliance with a provision of the Law or an inconsistency between the schedule and the applicable criteria. Even though the [ERA] might consider change desirable to achieve more complete conformity between the schedule

and the principles and objectives of the *Law*, it would not be entitled to give effect to that view in the *decision* making process.

483. Rule 90 of the NGR specifies that a full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period. The provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.
484. The National gas objective is defined in section 23 of the NGL(WA) as:
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.
485. Revenue and pricing principles are defined in section 24 of the NGL(WA).
24. Revenue and pricing principles
- 1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
 - 2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - a) providing reference services; and
 - b) complying with a regulatory obligation or requirement or making regulatory payment.
 - 3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—
 - a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and
 - b) the efficient provision of pipeline services; and
 - c) the efficient use of the pipeline.
 - 4) A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.
 - 5) Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services.
 - 6) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

DBP's Proposed Changes

486. DBP's projected capital base includes forecast depreciation of \$490.15 million over the fourth access arrangement period. DBP proposes that the depreciation schedule for the fourth access arrangement period should be calculated using the straight line method.
487. DBP is proposing Current Cost Accounting (**CCA**) of the RAB, with nominal straight line depreciation. The CCA approach maintains the historic value of the asset base

in real terms (giving the so-called 'current cost'), for example by indexing the closing value of the previous year's asset base each year to account for inflation. Annual depreciation is then calculated on the current cost, given the effective life of the asset.

488. DBP's proposed forecast depreciation in real terms is shown in Table 37 below.

Table 37 DBP Forecast Depreciation for AA4

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.63	58.68	58.71	58.74	58.81	293.57
Compression assets	34.58	35.04	35.50	29.45	20.10	154.68
Metering assets	1.05	1.13	1.18	1.20	1.21	5.76
Other depreciable assets	8.13	6.41	6.50	6.59	6.64	34.27
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.86
Total⁸⁰	102.77	101.63	102.27	96.34	87.14	490.15

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 15, p. 13.

489. DBP's proposed forecast depreciation in nominal terms is shown in Table 38 below.

Table 38 DBP Forecast Depreciation for AA4

Nominal \$ million	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.82	61.12	62.48	63.89	65.45	312.76
Compression assets	35.29	36.50	37.78	32.04	22.37	163.98
Metering assets	1.07	1.17	1.25	1.30	1.34	6.15
Other depreciable assets	8.30	6.68	6.92	7.16	7.39	36.45
BEP Lease	0.38	0.39	0.40	0.41	0.41	1.99
Total⁸¹	104.86	105.86	108.83	104.80	96.97	521.33

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Tariff Model

490. Table 39 lists DBP's proposed RAB asset classes and economic lives. These are consistent with the asset classes and economic lives approved for AA3.

⁸⁰ Total excludes Depreciation for Shipper Assets.

⁸¹ Total excludes Depreciation for Shipper Assets.

Table 39 DBP's Proposed Asset Classes and RAB Asset Lives (AA4)

Asset class	Economic life (years)
Pipeline	70
Compression	30
Metering	50
BEP Lease	57
Other assets	30

Source: DBNGP, *Access Arrangement Information*, 31 December 2015, Table 14.

Submissions

491. No submissions were received in relation to depreciation.

Considerations of the Authority

492. Australian regulators generally adopt CCA indexed straight-line depreciation of the regulatory asset base, which is equivalent to straight line depreciation in *real* terms.

493. In line with the NGO, this 'standard' regulatory approach can be considered to be in the long term interests of consumers. This is because it results in a more even allocation of the return on and of capital in real terms over time, thereby:

- achieving efficient growth in the market for reference services over time in line with the requirements of rule 89(1)(a) of the NGR;
- providing efficient signals for utilisation of assets over the whole of their economic life, thereby further contributing to the achievement of the NGO and to the Revenue and Pricing Principles (RPP);⁸²
- taking account of the interests of current and future customers over the economic lives of the assets;
- avoiding subsidies from current customers to future customers; and
- avoiding price shocks for customers when major assets reach the end of their effective life and are replaced.

494. Indexed straight-line depreciation may be converted to nominal terms, as is done in the AER's PTRM that applies a CCA approach. This is achieved by the following:

- indexing the capital base;
- determining the associated straight-line depreciation for each asset; and then
- removing an amount so as to avoid a double count for inflation that would otherwise occur when a nominal rate of return is applied to an indexed asset base.⁸³

⁸² The efficient use of assets relate to the network assets themselves, as well as the assets of the upstream and downstream users of the network services.

⁸³ For a summary of the need to remove double counting for inflation when a nominal rate of return is applied to a nominal asset base, see section 2.2 in Queensland Competition Authority, *Financial Capital Maintenance and Price Smoothing*, February 2014.

495. The Authority considers that the standard regulatory CCA depreciation method meets all of the foregoing requirements.
496. The Authority considers that CCA is consistent with NGO for the following reasons:
- CCA allocates capital costs more evenly between current and future customers, resulting in price paths that reflect the opportunity costs of the pipeline. As a consequence, CCA:
 - avoids subsidies between current and future consumers, thereby ensuring outcomes that are in the long term interests of consumers with respect to price;
 - allows for efficient use of the pipeline by upstream and downstream consumers both now and in the future, thereby contributing to the efficient growth in the market of reference services;
 - signals efficient production and investment decisions by the service provider and consumers of natural gas, thereby contributing to the efficient growth in the market of reference services;
 - avoids price shocks for consumers, both for the forthcoming access arrangement period, and also at the end of the economic lives of major assets.
 - CCA depreciation schedules encourage more efficient asset utilisation, which strengthens the long term security and reliability of gas supply.

Depreciation for rolling forward capital base

497. DBP has based the depreciation schedule for establishing the forecast opening capital base at 1 January 2021 on forecast capital expenditure. DBP has based depreciation from 2016 to 2020 on the following:
- depreciation on the initial capital base and the assets created by added capital expenditure from 2000 to 2015; and
 - depreciation on assets expected to be created by capital expenditure forecast for 2016 to 2020.
498. DBP has added capital expenditure to the capital base at the end of the year in which it is forecast to be made, and applied depreciation the following year.
499. The depreciation method used for rolling forward the capital base is consistent with the approach approved for AA3. On that basis the Authority accepts DBP's proposed methodology.

Asset lives

500. DBP has adopted asset lives consistent with those approved for AA3. On that basis, the Authority accepts DBP's proposed regulatory asset lives.

Overall assessment of forecast depreciation

501. As set out above, the Authority has accepted the depreciation methodology and asset lives used by DBP. However, as the Authority has not approved DBP's proposed opening capital base or forecast capital expenditure for AA4, adjustments are required to forecast depreciation. The Authority's determination of forecast

depreciation for AA4 in real and nominal values is set out in Table 40 and Table 41 respectively below.

Table 40 Authority's Forecast Depreciation for AA4

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.69	58.73	58.76	58.78	58.84	293.81
Compression assets	34.30	34.59	34.90	28.67	19.15	151.62
Metering assets	(0.32)	1.07	1.11	1.12	1.13	4.11
Other depreciable assets	4.76	5.55	5.64	5.72	5.78	27.45
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.87
Total⁸⁴	97.81	100.32	100.78	94.67	85.28	478.85

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Table 41 Authority's Forecast Depreciation for AA4

Nominal \$	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.81	60.99	62.18	63.38	64.65	310.99
Compression assets	34.95	35.92	36.92	30.91	21.04	159.75
Metering assets	(0.32)	1.11	1.17	1.21	1.24	4.41
Other depreciable assets	4.85	5.76	5.96	6.17	6.35	29.10
BEP Lease	0.38	0.39	0.40	0.40	0.41	1.98
Total⁸⁵	99.67	104.17	106.63	102.07	93.69	506.23

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Required Amendment 13

Forecast depreciation must be amended to reflect the values (in nominal terms) in Table 41 (Authority's Forecast Depreciation for AA4) of this Draft Decision.

Rate of Return

502. The Authority has not accepted DBP's approach for estimating the rate of return and has determined its own numbers.
503. As provided in the *Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution Systems* (hereafter, the **ATCO**

⁸⁴ Total excludes Depreciation for Shipper Assets.

⁸⁵ Total excludes Depreciation for Shipper Assets.

GDS Final Decision) published as amended on 10 September 2015,⁸⁶ the Authority has recently modified its approach to estimating the return on debt and the return on equity as outlined in the Authority's Rate of +Return Guidelines.⁸⁷

504. The Authority considers that the modified approach aligns with the regulatory requirements for the rate of return as specified in the National Gas Law (**NGL**) and National Gas Rules (**NGR**). The Authority has considered DBP's proposal for estimating the rate of return, but is not convinced that it meets the requirements of either the NGL or the NGR.
505. The detailed reasoning for the Authority's decision is set out in Appendix 4.
506. For this Draft Decision, the Authority has determined that it will:
- continue to estimate the rate of return based on the debt proportion of total capital – the gearing - for the benchmark efficient entity of 60 per cent;
 - with regard to the estimate of the return on equity:
 - retain the Sharpe Lintner Capital Asset Pricing Model (**SL-CAPM**) as the primary relevant model for estimating the return on equity;
 - utilise information from other relevant models – including the Black Capital Asset Pricing Model (**Black-CAPM**) and the Dividend Growth Model (**DGM**) – to establish the value of parameters in the Sharpe Lintner CAPM;
 - estimate the risk free rate parameter for input to the Sharpe Lintner CAPM from Commonwealth Government Securities, based on a 5 year term to maturity;
 - estimate a range for the 5 year forward looking Market Risk Premium (**MRP**) based on historic excess return data and the DGM, in recognition that it fluctuates in response to prevailing conditions;
 - draw on a range of forward looking information to establish the point value of the MRP; and
 - estimate the beta parameter based a benchmark sample of Australian firms with similar characteristics to the benchmark efficient entity.
 - with regard to the estimate of the return on debt:
 - continue to estimate the cost of debt as the sum of the risk free rate, relevant Debt Risk Premium (**DRP**), and relevant debt raising and hedging transactions costs;
 - estimate the risk free rate from the bank bill swap rate with the same term as the regulatory period, that is, 5 years;
 - adopt a hybrid trailing average approach to estimating the return on debt, with the risk free rate estimated once, just prior to the regulatory period, and the DRP estimated using an equally weighted 10 year trailing average;

⁸⁶ Economic Regulatory Authority, *Final Decision on Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution Systems*, as amended 10 September 2015.

⁸⁷ Economic Regulation Authority, *Rate of Return Guidelines*, 16 December 2013.

- estimate the DRP based on a BBB band credit rating, for a term of 10 years, using the Authority's enhanced bond yield approach that includes international bonds issued by domestic entities (and for estimates of the DRP prior to the proposed averaging period, the Authority will utilise the Reserve Bank of Australia's credit spread data for the BBB band); and
 - annually update the estimate of the DRP using a set of specified automatic formulas.
507. The Authority's resulting *indicative* estimate for the overall post tax nominal rate of return for this Draft Decision, for the 2016 calendar year, is 6.02 per cent:
- the *indicative* expected 5 year return on equity is 7.28 per cent, estimated as at 2 April 2015;
 - the *indicative* estimate for the return on debt for the 2016 calendar year is 5.172 per cent, estimated as at 2 April 2015.
508. This rate of return is applied from 1 January 2016 to 31 December 2020 in the tariff modelling for this Draft Decision, in order to estimate *indicative* tariffs for the Draft Decision.
509. Table 42 below sets out the related WACC parameters approved by the Authority, as compared with those proposed by DBP. The parameters have been determined as at 2 April 2015, which is consistent with the ATCO final decision, given that the approach for DBP is identical.
510. The *indicative* estimate of the rate return on debt, reported here, will be updated in the Final Decision to account for DBP's (yet to be) nominated averaging period for the 2016 estimate. The overall method for determining that revised calendar year 2016 estimate will follow that for the *indicative* estimate set out here. The resulting estimated rate of return for 2016 will apply in the tariff modelling for the Final Decision for 2016 to 2020.
511. The 2017 to 2020 rates of return would then be progressively annually updated through the remaining years of AA4. The resulting revised rate of return will be included in the relevant tariff variations which occur in each calendar year.
512. The process for implementing the annual update is as follows:
- For each annual update for 2017, 2018, 2019 and 2020, the Authority will estimate the updated DRP following the relevant annual averaging period, recalculate the rate of return, and then notify DBP of the outcomes as soon as practicable. This will allow DBP to check the rate of return estimate, prior to its incorporation in the proposed annual tariff variation to occur on 1 January in each year and each subsequent quarterly tariff variation in that year.
 - Following that notification, DBP is required to respond on any issues as soon as practicable, in order to allow the updated DRP and rate of return estimates to be finalised prior to submission by DBP of its proposed annual tariff variation.
 - In the event that there is a disagreement on the DRP annual update estimate, the Authority will work with DBP to ensure that any misapplication of the automatic formulas in Appendix 4G of this Draft Decision are corrected in a timely manner.

- The updated annual rate of return based on the correct application of the DRP automatic update formulas is to be utilised for each relevant quarterly tariff variation.

Table 42 Rate of return for the Draft Decision

WACC as at 02 Apr 2015	DBP Proposal	Authority's Draft Decision
Nominal Risk Free Rate		1.96%
Real Risk Free Rate		0.06%
Inflation Rate		1.90%
Debt Proportion	60%	60%
Equity Proportion	40%	40%
Debt Risk Premium (10 year trailing average)		2.502%
5 year IRS (effective yield)		2.431%
Return on Debt; 5 year Interest Rate Swap Spread		0.47%
Return on Debt; Debt Issuing Cost (0.125%) + Hedging (0.114%)		0.24%
Return on debt	6.13%	5.18%
Australian Market Risk Premium		7.60%
Equity Beta		0.7
Corporate Tax Rate	30%	30%
Franking Credit	25%	40%
Nominal After Tax Return on Equity	11.71%	7.28%
Nominal After Tax WACC	8.36%	6.02%
Real After Tax WACC	6.20%	4.04%

Required Amendment 14

The Authority requires that the rate of return be estimated consistent with the method used to develop the estimates set out in Table 42 (Rate of return for the Draft Decision) of this Draft Decision. The *indicative* nominal post tax rate of return for 2016 is 6.02 per cent. This estimate needs to be updated for the Final Decision. The Authority requires that DBP nominate, as soon as practicable, the averaging period for 2016 to be used in estimating the rate of return for the Final Decision.

The Authority requires an annual adjustment to be applied to the debt risk premium to be incorporated in each subsequent tariff update during the fourth access arrangement period. The first annual update will apply for the tariff variation for the 2017 calendar year, and should be determined based on the automatic formula set out in Appendix 4G of this Draft Decision. The resulting annual adjustment to the rate of return should be incorporated in the Annual Tariff Variation.

The Authority requires that DBP nominate, as soon as practicable, the averaging periods for each annual update applying for 2017, 2018, 2019 and 2020. The averaging periods for each year must be a nominated 40 trading days in the window 1 June to 31 October in the year prior to the relevant tariff variation, which will allow estimation of the updated DRP for inclusion in the relevant annual tariff variation. The nominated 40 trading day averaging period for each of the four years do not need to be identical periods, only that they occur in the period 1 June to 31 October in each relevant year, and are nominated prior. The nominated averaging periods for the annual updates will remain confidential.

For each annual update for 2017, 2018, 2019 and 2020, the Authority will estimate the updated rate of return following the relevant annual averaging period and then notify DBP of the outcomes as soon as practicable. Following that notice, DBP is required to respond on any issues as soon as practicable, in order to allow the updated estimate to be finalised prior to submission by DBP of its proposed annual tariff variation within the required timeframe.

Gamma

513. The Authority is required by the NGR to estimate the value of gamma, a parameter in the building block revenue model.
514. The gamma parameter accounts for the reduction in the effective corporate taxation that is generated by the distribution of franking credits to investors. As a general rule, investors who are able to utilise franking credits will accept a lower required rate of return, before personal tax, on an investment that has franking credits, compared with an investment that has similar risk and no franking credits, all other things being equal.
515. DBP has proposed a gamma of 0.25. The Authority has not accepted this value and has determined a gamma of 0.4. Reasoning for the Authority's decision is set out in Appendix 5 of this Draft Decision.

Required Amendment 15

DBP is required to adopt a gamma of 0.4.

Taxation

Regulatory Requirements

516. Rule 76(c) of the NGR provides for the estimated cost of corporate income tax as a building block for total revenue.
517. Rule 87A of the NGR elaborates on how to calculate the estimated cost of corporate income tax:
- 87A. Estimated cost of corporate income tax
- 1) The estimated cost of corporate income tax of a service provider for each regulatory year of an access arrangement period (ETC_t) is to be estimated in accordance with the following formula:
- $ETC_t = (ETI_t \times r_t) (1-\gamma)$
- Where
- ETI_t is an estimate of the taxable income for that regulatory year that would be earned by a benchmark efficient entity as a result of the provision of reference services if such an entity, rather than the service provider, operated the business of the service provider;
- r_t is the expected statutory income tax rate for that regulatory year as determined by the [ERA]; and
- γ is the value of imputation credits.

DBP's Proposed Changes

518. DBP has proposed to estimate the cost of corporate income tax directly by multiplying its estimated taxable income by an assumed statutory income tax rate of 30 per cent.⁸⁸
519. DBP's proposal states that estimated tax losses should be carried forward to offset against taxable income.⁸⁹
520. DBP has assumed debt to be 60 per cent of its Regulatory Asset Base (RAB), which gives rise to tax deductible interest at the Allowable Rate of Return.⁹⁰

⁸⁸ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 9.

⁸⁹ However, in practice, DBP has no carried forward losses that could be applied to the calculation of the regulatory tax allowance as at 1 January 2016. (KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p.1.)

⁹⁰ KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p.11.

521. DBP has reduced its estimated amount of tax payable by the value of imputation credits. The value of imputation credits applied by DBP is 25 per cent.⁹¹
522. DBP has calculated taxable income as assessable income less tax deductible costs that are recognised by the Australian Taxation Office (ATO), as follows:⁹²
- Net cost of service.
 - *minus* Forecast operating expenditure.
 - *minus* Proposed depreciation of the Tax Asset Base (**TAB**), which excludes capital contributions, land and non-depreciable site works and Capital Works in Progress, and include the value of the BEP Lease and capitalised Gas Engine Alternator and compressor overhaul expenditure. DBP has calculated proposed tax depreciation on a straight-line basis.
 - *minus* Debt servicing costs, which DBP has calculated by multiplying the debt portion of the opening capital base by the debt to equity ratio (assumed at 60 per cent) and DBP's proposed nominal cost of debt (cost of debt risk margin plus nominal risk free rate).
 - *equals* Estimated taxable income.
523. DBP has proposed a corporate income tax building block of \$134.74 million over the 2016 to 2020 access arrangement period. Table 43 shows DBP's proposed estimated corporate income tax in real terms.⁹³

Table 43 DBP's Proposed Estimated Cost of Corporate Income Tax (2016-2020 Access Arrangement Period)

Real \$ million at June 2014	2016	2017*	2018	2019	2020	Total
Gross Estimated Cost of Corporate Income Tax	35.40	34.85	35.08	36.33	37.99	144.25
Value of Imputation Credits	(8.85)	(8.71)	(8.77)	(9.08)	(9.50)	(44.19)
DBP's Proposed Estimated Cost of Corporate Income Tax Net of Imputation Credits	26.55	26.13	26.31	27.25	28.49	134.74

Source: DBP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement – 2016 – 2020 Access Arrangement Period: Access Arrangement Information*.

* Figures may not add exactly, due to rounding.

524. A summary of DBP's tax calculation in nominal values is set out in Table 44 below.

⁹¹ DBNGP (WA) Transmission Pty Ltd, *Submission 13 – Total Revenue*, December 2014, p.14.

⁹² DBNGP (WA) Transmission Pty Ltd, *Proposed Tariff Model*, December 2014.

⁹³ DBP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement – 2016 – 2020 Access Arrangement Period: Access Arrangement Information*, 31 December 2014, Table 10, p. 14.

Table 44 DBP Calculation of Estimated Cost of Corporate Income Tax (AA4)

Nominal \$ million	2016	2017	2018	2019	2020	Total
Tariff Revenue	454.0	457.5	467.9	477.8	490.5	2,347.70
Operating Expenditure	(111.7)	(115.7)	(121.4)	(122.0)	(127.0)	(597.80)
Debt Servicing Costs	(129.1)	(128.8)	(128.4)	(127.8)	(127.6)	(641.70)
Tax Depreciation	(92.8)	(92.0)	(93.7)	(96.2)	(95.0)	(469.70)
Taxable Income	120.4	121.0	124.5	131.7	140.9	638.50
Taxation (30 per cent of taxable income)	(36.1)	(36.3)	(37.3)	(39.5)	(42.3)	(191.50)
Imputation credit	9.0	9.1	9.3	9.9	10.6	47.90
Income tax net of imputation credits	(27.1)	(27.2)	(28.0)	(29.6)	(31.7)	(143.60)

Source: ERA, DBP Tariff Model, December 2014.

525. DBP has rolled forward the TAB for the 2016 to 2020 access arrangement period from 1 January 2016 to 31 December 2020 by adding capital expenditure (excluding capital contributions), deducting depreciation, and deducting asset disposals (at written down tax value). Table 45 presents DBP's calculation of the closing TAB for the 2016 to 2020 access arrangement period.

Table 45 DBP's Proposed Closing Tax Asset Base, \$ nominal (2016-2020 Access Arrangement Period)

\$ million nominal	2016	2017	2018	2019	2020
Opening Tax Asset Base	1,238.4	1,166.1	1,090.8	1,014.9	938.4
DBP's Forecast Capital Expenditure	26.9	25.0	25.0	25.0	25.3
DBP's Forecast Depreciation	(99.2)	(100.3)	(100.9)	(101.5)	(100.4)
DBP's Forecast Asset Disposals	-	-	-	-	-
DBP's Proposed Closing Tax Asset Base	1,166.1	1,090.8	1,014.9	938.4	863.4

Source: DBP, Regulated Tax Depreciation Calculation workbook provided to the ERA, October 2015.

Consultant Review of DBP's Proposed Changes

526. KPMG was engaged by DBP to provide an estimate of the opening TAB at 1 July 2016, and opening written down value of any tax losses as at 1 January 2016, for a benchmark efficient entity providing reference services for the DBNGP.
527. KPMG was also instructed by DBP to perform a test of the methodology of calculating DBP's tax allowance in the next access arrangement period to determine if it is in compliance with the National Gas Rules.

528. In calculating the value of the TAB as at 1 January 2016, KPMG has made the following assumptions, in relation to the underlying data provided by DBP:⁹⁴
- The acquisitions and disposal information, including the cost and date of acquisition/disposal, which has been used in the preparation of [DBP's] relevant income tax returns is complete and accurate. We have performed an additional check to reconcile these to the financial statements;
 - The opening tax cost of the assets of DBP, calculated upon privatisation in 1998 and included in the income tax returns lodged on behalf of the relevant taxable entities, is complete and accurate. We understand that external consultants were engaged at the time to undertake work in respect of the transaction and the opening tax cost base was calculated in line with their advice; and
 - We have accepted the forecast additions and associated depreciation figures provided to use and note that these are consistent with the tariff forecasting model.
529. KPMG notes that its calculation of the opening TAB at 1 July 2016 is based on the following documents provided by DBP:⁹⁵
- Detailed tax asset register data for the period February 1998 to 30 June 2014;
 - A summarised year on year reconciliation of [DBP's] tax depreciation data as per income tax returns to tax the tax depreciation claim for regulatory purposes for the period February 1998 to 31 December 2020;
 - Forecast tax depreciation data for the period 1 July 2014 to 31 December 2020;
 - Income tax returns for the entities that provided the reference services for the period February 1998 to 30 June 2013 and estimates for the year ended 30 June 2014;
 - Special purpose financial reports for the entities and/or corporate group that provided the reference services for the period February 1998 to 30 June 2014.
530. KPMG has calculated the opening TAB as at 1 January 2016 as \$1,238,432,632.⁹⁶ This TAB:⁹⁷
- excludes capital contributions (being shipper-funded works);
 - excludes land and non-depreciable site works, on the basis that they are not depreciable for tax purposes;
 - excludes Capital Works in Progress on the basis that they are not depreciable for tax purposes;
 - is adjusted to include Gas Engine Alternator and compressor overhaul expenditure, which is treated as capital expenditure for tax purposes;⁹⁸

⁹⁴ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, pp.18-19.

⁹⁵ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 18.

⁹⁶ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 6.

⁹⁷ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 16.

⁹⁸ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 10.

- is adjusted for the regulatory BEP Lease value (\$19.44 million in costs, with a written down value of \$14.55 million as at 1 January 2015);
 - includes other minor adjustments to the treatment of capitalised interest, fuel gas, and pigging expenses, to ensure that tax return treatment aligns with regulatory expenditures;⁹⁹
 - includes metering assets that are also included in the RAB;
 - commences depreciation of assets in Capital Works in Progress as at 30 June 2014, and additions for regulatory purposes during the 6 months to 31 December 2014, in the 2015 calendar year;
 - commences depreciation of assets acquired during the year ended 31 December 2015 (and onwards) in the calendar year following the addition; and
 - uses the straight line method of depreciation.¹⁰⁰
531. KPMG stated that its calculation of the opening TAB as at 1 January 2016 was based on the following assumptions:
- The date the business was first subject to tax, and thus the date when a TAB was initially determined is the date of privatisation of the relevant gas transmission pipeline. This was early 1998;
 - The value for the RAB came into existence in 2000 and the TAB was established on all regulatory assets as at the date of privatisation being 1998;
 - The roll forward of the TAB between the establishment of the TAB (1998) and the forecast of a TAB as at 1 January 2016 incorporates adjustments for tax depreciation, actual capex and asset disposals;
 - The forecasts for the TAB has been prepared on the basis of a 1 year time lag to allow for tax depreciation to commence only after commissioning of the asset;
 - The BEP lease relates to pipeline capacity DBP has contracted for on the Burrup Extension Pipeline. We note this lease was approved as a forecast conforming capital expenditure for 2011 and is therefore considered to be included in the regulated asset based [sic] for the DBNGP. On this basis DBP has included a BEP asset in the TAB equal to the value of the allowed capital expenditure for the 2011 Access Arrangement. This has been depreciated from that time using a depreciation rate applicable for a gas transmission pipeline.
532. KPMG reviewed DBP's adoption of the straight line method of depreciation for tax purposes, and noted that use of the straight line method was consistent with Rule 87R the *Australian National Gas Rules*. KPMG stated that:
- [t]he straight line depreciation methodology applied to [DBP's] TAB is consistent with the current (and the historical) income tax position and therefore emulates the actual tax depreciation profile of the entity in that regard.

⁹⁹ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 9.

¹⁰⁰ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 13.

533. KPMG noted that, while the adoption of the diminishing value method would allow a benchmark efficient entity to maximise tax deductions, an efficient entity would also consider other factors when selecting tax depreciation method. Considerations such as cashflow planning and smoothing, and management of the entity's franking account, may give an efficient entity reason to adopt the straight line method.
534. KPMG also commented that:
- [a]s straight line depreciation delivers a smooth tax depreciation profile it delivers a more equitable distribution of tax deductions passed on to customers over the life of an asset.
535. KPMG reviewed DBP's timing in incorporating new assets into that TAB, and noted the following:¹⁰¹
- In the [Authority's] recent ATCO draft decision, the ERA argued that the ATO practice is to incorporate new assets into the TAB on an "as commissioned" basis. In particular, it required ATCO to adopt the practice of incorporating assets into the TAB and commencing tax depreciation through maintaining a one year lag "between spending capital expenditure and commissioning the relevant assets. The ERA requires that ATCO update the roll forward TAB to ensure the tax asset register includes commissioned assets only".
- DBP's approach would meet the ERA's requirements if they applied the same principle to DBP as they applied to ATCO.
536. Table 46 presents KPMG's calculation of DBP's proposed regulated TAB as at 1 January 2016.

¹⁰¹ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 17.

Table 46 DBP's Proposed Regulated Tax Asset Base as at 1 January 2016¹⁰²

	Tax values (\$)
Initial assets as at 1 January 2000 (excluding capital contributions, land, and Capital Works in Progress)	645,489,242
Add additions (at historic cost in relevant year) for the period 2000 to 2015	2,101,625,088
Depreciation of those assets for the period 2000 to 2015	(1,505,513,800)
Disposals – tax written down value	(3,167,898)
Balance as at 1 January 2016	1,238,432,632
<i>Includes</i>	
BEP lease	14,549,143
<i>Excludes</i>	
Shipper funded works – capital contributions	53,777,806
Land and non-depreciable site works	6,618,918

Source: KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd.*

Submissions

537. The Authority received one submission in relation to DBP's proposed estimated cost of corporate income tax. This submission was made by BHP Billiton, which stated that:¹⁰³

[DBP's] tax asset base should be based on a benchmark efficient entity operating the DBNGP business, and on this basis the tax asset base should be equal to the opening capital base as at the time the DBNGP became regulated in 2000 (\$1,550 million) not its actual tax value at that time (\$645 million) as proposed by DBP.

Considerations of the Authority

538. The Authority has assessed DBP's proposed opening TAB and estimated cost of corporate income tax. The Authority has reviewed the following:

- The tax asset lives that DBP has proposed for calculating tax depreciation.
- DBP's tax depreciation methodology.
- DBP's proposed cost of debt risk margin and nominal risk free margin for the calculation of debt servicing costs.
- DBP's use of actual tax value at the commencement of regulation in 2000 as the opening value of its TAB.

539. The Authority has also revised DBP's proposed taxable income in light of this Draft Decision's amendments to operating costs, capital expenditure and WACC.

¹⁰² KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, pp.17-18.

¹⁰³ BHP Billiton, *Public Submission By BHP Billiton: In response to DBNGP (WA) Transmission Pty Ltd's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 3.

Tax Asset Lives

540. In order to calculate tax depreciation, DBP has made asset life assumptions for the TAB. DBP has stated that the effective asset lives of assets used to calculate estimated corporate income tax for the regulatory period 'are consistent with tax life rulings and the statutory effective life cap from 2000/2001 which has been calculated from the time assets were installed ready for use'.¹⁰⁴
541. The Authority notes KPMG has reviewed the asset lives used by DBP and was provided with copies of DBP's tax returns. However, DBP has not provided the Authority with a summary of asset lives by regulatory category. For the purposes of its assessment, and to enable the taxation cost to be modelled, the Authority has used tax asset lives consistent with its understanding of the relevant tax legislation.
542. For income tax reporting purposes, DBP's BEP Lease payments are claimed as an expense, rather than depreciated. However, the BEP Lease is considered a capital asset for regulatory purposes. Consequently, DBP has included the written down value of the BEP Lease in its TAB, and applied an asset life consistent with the regulatory asset life approved by the Authority in the 2011-15 Access Arrangement.¹⁰⁵
543. Table 47 lists the asset lives that the Authority has determined to be appropriate for the TAB.

Table 47 Authority Determined Tax Asset Lives

Asset Category	Authority Determined Asset Life for TAB
Pipeline	20
Compression	20
Metering	15
BEP Lease	20
Other	20

Source: ERA Tariff Model, December 2015.

Tax Depreciation Methodology

544. DBP's proposed tax depreciation approach commences depreciation of new assets in the year following the addition. The Authority accepts this approach, and notes that it is consistent with its finding in its *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems* that a one-year lag should be maintained between capital expenditure and commissioning the relevant asset. This approach ensures that the tax asset register includes commissioned assets only.¹⁰⁶

¹⁰⁴ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 10.

¹⁰⁵ Economic Regulation Authority, *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems*, 10 September 2015, p. 67.

¹⁰⁶ Economic Regulation Authority, *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems*, 10 September 2015, p. 446.

545. DBP has applied the straight line method to calculate tax depreciation. The Authority accepts DBP's adoption of the straight line method to depreciate new capital expenditure in its TAB after 1 January 2016 for the following reasons:
- DBP has provided the Authority with evidence that it has and continues to adopt straight line depreciation in its tax returns.
 - The Authority considers that DBP has had an incentive to select the most efficient tax depreciation method, particularly during the pre-tax regime.
 - The Authority considers that a benchmark efficient entity would seek to minimise its tax liabilities over the lives of the assets, rather than over one access arrangement period only. Such an entity would select the tax depreciation methodology that achieves this, based on its circumstances. In a neutral NPV context, and in line with the National Gas Objective, the benchmark efficient entity would also safeguard the long term interests of consumers through making sure that costs are evenly spread out through the lives of assets.

Debt Servicing Costs

546. The Authority notes that DBP has used a capital base value that is consistent with the Current Cost Accounting (**CCA**) depreciation approach used to determine the RAB for other purposes in the building block approach, as discussed in the Depreciation chapter of this Draft Decision. The Authority considers that this approach is appropriate for determining the debt service costs used in the taxation calculations.
547. The Authority has updated debt servicing costs to reflect the impact of required amendments in this draft decision.

Use of actual tax value at the commencement of regulation to set DBP's tax asset base

548. The Authority accepts in principle DBP's use of a TAB for regulatory purposes that is derived from DBP's actual tax asset base, as reported in its corporate income tax returns.
549. BHP Billiton submitted that DBP's TAB should instead be calculated using DBP's opening capital base at the time it became regulated in 2000, rather than DBP's actual tax base for corporate income reporting purposes.¹⁰⁷
550. The Authority notes this would notionally reset the tax value of DBP's assets, as at the commencement of regulation in 2000 for the purpose of estimating the cost of corporate income tax for regulatory purposes.
551. The Authority considers adopting this approach would be inconsistent with past decisions made by both the Authority and the AER, in relation to establishing a TAB for a regulated utility when transitioning from a pre-tax to a post-tax model. In its *Further Final Decision on Proposed Revisions to the Access Arrangement for the Western Power Network*, the Authority accepted Western Power's use of written

¹⁰⁷ BHP Billiton, *Public Submission By BHP Billiton: In response to DBNGP (WA) Transmission Pty Ltd's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 3.

down 'historical cost' in determining its initial TAB, and noted that 'the AER accepts the actual written 'historic cost' TAB of the service provider, rather than any real pre-tax equivalent opening value for the TAB'.¹⁰⁸

552. However, the Authority notes the taxation schedules provided by DBP indicate the tax asset base decreased significantly during 1998 and 1999 [REDACTED].

553. In the absence of sufficient information to understand the reasons for the significant reduction in the TAB during 1998 and 1999, for the purposes of the Draft Decision, the Authority has estimated the opening TAB for 2000 by using the opening RAB value and deducting two year's tax depreciation based on a 20 year life and straight line depreciation. This results in an opening TAB as at 1 January of \$1,395 million compared with the value of \$645.5 million proposed by DBP.

554. Table 48 lists the Authority's estimated closing tax asset base by year over the fourth access arrangement period which was used to calculate tax depreciation.

Table 48 Authority Approved Estimated Closing Tax Asset Base (AA4)

\$ million nominal	2016	2017	2018	2019	2020
Opening Tax Asset Base	1,435.55	1,283.22	1,128.55	1,045.51	963.62
Authority Forecast Capital Expenditure	17.32	16.38	13.31	15.15	20.33
Authority Forecast Tax Depreciation	(169.64)	(171.05)	(96.36)	(97.04)	(97.70)
Authority Approved Estimated Closing Tax Asset Base	1,283.22	1,128.55	1,045.51	963.62	886.26

Source: Economic Regulation Authority, DBP Tariff Model, December 2015.

Forecast Taxation

555. The Authority has calculated taxable income as follows.

- Smoothed tariff revenue
- *minus* Approved forecast operating expenditure
- *minus* Depreciation of the TAB
- *minus* Debt servicing costs
- *equals* Estimated taxable income

556. The Authority's determination of taxation costs, taking into account relevant required amendments elsewhere in this draft decision, tax asset lives and an adjusted opening tax asset base as at 1 January 2000 is set out in Table 49 below.

¹⁰⁸ Economic Regulation Authority, *Further Final Decision on Proposed Revisions to the Access Arrangement for the Western Power Network*, 29 November 2012, p. 39; and Australian Energy Regulator 2007, *Preliminary positions: Matters relevant to distribution determinations for ACT and NSW DNSPs for 2009-2014*, Appendix A, p. 53.

Table 49 Authority Approved Calculation of Estimated Cost of Corporate Income Tax (AA4)

Nominal \$ million	2016	2017	2018	2019	2020	Total
Revenue						
Tariff Revenue (smoothed)	357.97	341.02	347.72	353.66	361.56	1,761.93
Operating Expenditure	(101.81)	(105.16)	(109.82)	(109.35)	(113.04)	(539.17)
Debt Servicing Costs	(107.80)	(107.29)	(106.60)	(105.72)	(105.03)	(532.44)
Tax Depreciation	(169.64)	(171.05)	(96.36)	(97.04)	(97.70)	(631.79)
Taxable Income	(21.28)	(63.75)	(28.81)	12.74	45.79	
Taxation (30 per cent of taxable income)	0.00	0.00	0.00	(3.82)	(13.74)	(17.56)
Imputation credit	0.00	0.00	0.00	1.53	5.49	7.02
Income tax net of imputation credits	0.0	0.0	0.0	(2.29)	(8.24)	(10.53)

Source: Economic Regulation Authority, DBP Tariff Model, December 2014.

Required Amendment 16

Taxation costs must be amended to reflect the values (in nominal terms) in Table 49 (Authority Approved Calculation of Estimated Cost of Corporate Income Tax) of this Draft Decision.

Incentive Mechanism

Regulatory Requirements

557. 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.

98. Incentive mechanism

- 1) A full access arrangement may include (and the AER [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.

558. 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.

DBP's Proposed Changes

559. DBP's current access arrangement does not have an incentive mechanism and it has not proposed one for the 2016-2020 access arrangement period.
560. DBP's supporting submission 13 notes its contractual arrangements with shippers provide an effective incentive mechanism. It notes there are mechanisms which either expose DBP to capital and operating cost risk (for certain items of expenditure) or which require approval from the shipper before the costs can be included in charges levied under the relevant contract.
561. DBP submits that it is consistent with the national gas objective not to have an incentive mechanism and that it is not necessary to include any specific incentive mechanism.

Submissions

562. No submissions commented in relation to an incentive mechanism.

Considerations of the Authority

563. The Authority has considered whether it should require that the access arrangement for the 2016 to 2015 access arrangement period include an incentive mechanism to encourage efficiency in the provision of services by DBP.
564. 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.
565. The Authority considers 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.
566. In considering the roles and benefits of an incentive mechanism, the Authority recognises 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.
567. Consistent with its decision in relation to AA3, the Authority is of the view that it is not practical to impose an incentive mechanism that provides the necessary protections against adverse incentives and therefore will not require the proposed revised access arrangement to be amended to include an incentive mechanism.

Allocation of Total Revenue between Reference Services and Other Services

Regulatory Requirements

568. Rule 93 of the NGR requires that total revenue be 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 the 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 [Authority].
 - 3) The [Authority] may, however, permit the allocation of the costs of rebateable services, in whole or in part, to reference services if:
 - a) the [Authority] 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 [Authority] 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.

DBP's Proposed Changes

569. DBP notes its proposal does not include any rebateable services, and therefore NGR 93(3) and 93(4) are irrelevant.¹⁰⁹

570. Consistent with the current access arrangement (AA3), DBP has proposed that:¹¹⁰

- all costs are allocated between reference services and non-reference services on the basis that all costs are directly attributable to reference services;
- there are no costs directly attributable to non-reference services;
- there are no other costs requiring allocation between reference and non-reference services; and
- all the costs that are allocated to reference services (and accordingly the portion of the total revenue referable to providing reference services) are to be allocated amongst users of the reference services on an equal basis and based on the following assumptions:
 - the demand for part haul and back haul reference services is equal to the demand for all shippers who are forecast to have contracted for all types of firm part haul and back haul services during the period;
 - the demand for the T1 firm full haul reference service is equal to the demand for all shippers who are forecast to have contracted for all types of firm full haul pipeline services during the period. Accordingly, the users of the T1 reference service will have the same amount of costs allocated to them as are to be allocated to users of all other types of firm full haul pipeline services; and
 - the demand for part haul and back haul reference services is converted to a full haul equivalent demand so that users of part haul and back haul services will have the same costs allocated to them (on a dollar per kilometre basis) as users of the T1 firm full haul reference service.

571. In relation to its cost allocation methods, DBP states in its supporting submission that:¹¹¹

When applied to the contracted Full Haul equivalent capacity and throughput forecasts for the Access Arrangement Period, the proposed revised Reference Tariff yields a forecast of revenue which has a present value equal to the present value of the proportion of the total revenue referable to the Reference Service during that period.

Submissions

572. No third party submissions to the Authority addressed the allocation of revenue.

¹⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Tariff Model and tariff calculation – Supporting Submission 14*, 31 December 2014, p. 2.

¹¹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Tariff Model and tariff calculation – Supporting Submission 14*, 31 December 2014, p. 2.

¹¹¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Access, Cost allocation & verification of costs – Supporting Submission 6*, 31 December 2014, p. 17.

Considerations of the Authority

573. The Authority notes DBP's proposed arrangements relating to the allocation of costs are consistent with those currently in place.
574. The Authority considers it is appropriate to continue to allocate costs on the same basis between reference and non-reference full haul, part haul and back haul services, as the services are essentially the same.
575. In relation to whether DBP has any non-reference services that should be declared to be rebateable services, the Authority notes this is a matter it considered at the last access arrangement review.
576. At the last access arrangement review DBP noted that, in addition to non-reference full haul, part haul and back haul services, other non-reference services it may provide could include:¹¹²
- park and loan, storage and delivery services;
 - spot services;
 - interruptible services;
 - co-mingling services;
 - commissioning services;
 - inlet swap services; and
 - out of specification gas services.
577. In its final decision for the third access arrangement (AA3) review, the Authority noted there was insufficient evidence of demand for these potential non-reference services over the 2011 to 2015 access arrangement period 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.¹¹³ The Authority also noted there may be practical difficulties in implementing a rebate mechanism. Specifically:¹¹⁴

[R]ule 93(3)(a) of the NGR contemplates rebates or refunds under a rebate mechanism being provided only to users of reference services ... 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.

¹¹² DBNGP (WA) Transmission Pty Ltd, *Submission 35: Response to ERA Information Request of 28 October 2010*, 7 January 2011.

¹¹³ Economic Regulation Authority, *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), paragraph 769.

¹¹⁴ Economic Regulation Authority, *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), paragraph 771.

578. Consistent with the current access arrangement, DBP proposes to offer other pipeline services including a spot capacity service, park and loan service and seasonal service.
579. In response to a query, DBP has advised that the figures in Tables 6, 7 and 8 of the Access Arrangement Information include throughput in relation to other pipeline services but has not provided any details in relation to the quantity of such services. An examination of the Management Information reported on the DUET website shows DBP earned around \$15 million (approximately 4 per cent of total revenue) from other services in the 2014/15 financial year.¹¹⁵ It is also not apparent from the Management Information, whether the revenue described as “Transport Revenue” only includes revenues received from firm contracts based on the Standard Shipper Contract, or includes other arrangements such as non-firm contracts. As noted in the IMO’s 2015 GSOO, DBNGP shipped more than its nameplate capacity during winter 2014 and summer 2015. The IMO considers this suggests non-firm shipping capacity is not constant and notes more information could be made available to the market in relation to those services.
580. To enable the Authority to determine whether a rebate mechanism is necessary, it requires DBP to provide information in relation to any non-reference services provided during the 2011 to 2015 access arrangement period (including revenue received) and its forecasts of the likely demand for such services in the 2016 to 2020 period. If these services are found to be significant, and in the absence of DBP proposing an alternative method to allocate costs to such services, the Authority will give consideration to requiring a rebate mechanism to be included in the access arrangement.
581. As noted above, NGR 93(3)(a) contemplates any rebate or refund being provided only to users of reference services. Given that the proposed reference tariffs are based on volumes incorporating both reference and non-reference pipeline services, the Authority considers a similar methodology could be used to calculate the rebate as a reduction to reference tariffs.

Required Amendment 17

DBP must provide details (including revenue and volumes) of all non-reference services provided (in addition to full haul, part haul and back haul non reference services) during AA3 and its forecast for AA4. It should also provide details of any costs relating to such services and, if found to be significant, either a cost allocation methodology which ensures such costs are recovered from the parties receiving the services, or a rebate mechanism as permitted under the National Gas Rules.

¹¹⁵ See DUET website <http://www.duet.net.au/Investor-centre/Investor-reports/Tabs/Management-information-reports/2015/FY2015-Management-Information-Report.aspx>

Reference Tariffs

Regulatory Requirements

582. 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 [Authority].
- 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 [Authority].
- 4) The [Authority's] discretion under this rule is limited.

DBP's Proposed Changes

583. DBP has proposed to retain the reference services and tariffs that are currently offered under the existing access arrangement (AA3), which are the:

- “T1 Service” and “T1 Tariff” for full haul services;
- “P1 Service” and “P1 Tariff” for part haul services; and
- “B1 Service” and “B1 Tariff” for back haul services.

584. Consistent with the current access arrangement, the reference tariffs have been designed to recover from shippers, using each of the reference services, that portion of the total revenue that reflects:¹¹⁶

¹¹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Access Arrangement Information*, 31 December 2014, p. 24.

- those costs (including capital costs) which are directly attributable to the provision of the reference services; and
 - a share of those costs (including capital costs) which are attributable to the provision of the reference services jointly with pipeline services that are provided to other shippers with contractual rights existing prior to the commencement of the fourth access arrangement (AA4) and other pipeline services that DBP considers are reasonably foreseeable to be offered during the fourth access arrangement period.
585. Consistent with the current access arrangement, in determining the reference tariffs for the T1, P1 and B1 services, costs have been allocated to the services provided to shippers with access contracts entered into prior to the commencement of AA4, as if those shippers had been provided with the respective reference services.
586. Also consistent with the current access arrangement, for any expenditure included in the regulatory asset base that was funded by a capital contribution, the portion of total revenue attributable to the return on and depreciation of that expenditure has not been allocated to any pipeline service including the reference tariffs.
587. Consistent with the current access arrangement, each of the reference tariffs are divided into a two part tariff structure comprising:
- a “Capacity Reservation Tariff”; and
 - a “Commodity Tariff”.
588. The charges proposed by DBP result in 80 per cent of revenue being collected through the capacity reservation charge and 20 per cent being collected through the commodity charge. This contrasts with the 2015 T1 Reference Tariff where 92 per cent of revenue is collected through the capacity reservation charge and 8 per cent through the commodity charge.
589. DBP has also amended the basis for setting the commodity charge. During the current third access arrangement period it was based on the cost of system use gas and the carbon tax. For the fourth access arrangement period, DBP has amended this to be “*a proportion of the forecast operating expenditure (including but not limited to, the cost of the System Use Gas used on the DBNGP)*”.¹¹⁷ DBP has not provided any reasons for these changes.
590. Consistent with current access arrangement, to derive the split between the T1, P1 and B1 services, DBP has calculated a full haul equivalent value for each service and derived unit rates accordingly.
591. DBP's proposed reference tariffs are set out in Table 50 below.

¹¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access Arrangement Information*, 31 December 2014, p. 25.

Table 50 DBP's Proposed Reference Tariffs

Nominal \$	2016	2017	2018	2019	2020
Full Haul (\$/GJ/day):					
Capacity	1.322395	1.349980	1.379148	1.409798	1.442162
Commodity	0.330599	0.337495	0.344787	0.352450	0.360541
Total	1.652994	1.687475	1.723935	1.762248	1.802703
Part Haul (\$/GJ/day/km):					
Capacity	0.000945	0.000965	0.000986	0.001008	0.001031
Commodity	0.000236	0.000241	0.000246	0.000252	0.000258
Total	0.001182	0.001206	0.001232	0.001260	0.001289
Back Haul (\$/GJ/day/km):					
Capacity	0.000945	0.000965	0.000986	0.001008	0.001031
Commodity	0.000236	0.000241	0.000246	0.000252	0.000258
Total	0.001182	0.001206	0.001232	0.001260	0.001289

Source: ERA, DBP Tariff Model, December 2014.

Submissions

592. CPMM considers that DBP's proposed reference tariff should be reduced to \$1.24/GJ as at January 2016 in accordance with CPMM's proposed WACC of 5.56 per cent. CPMM also suggests that the contracted tariffs for the current access arrangement period were artificially inflated as a result of the negotiated rescue of the DBNGP in 2004 following the insolvency of its owner at that time, Epic Energy.¹¹⁸

Considerations of the Authority

593. The Authority notes that apart from the proposed revision in relation to the commodity charge, DBP has adopted the same approach as was taken in the current (AA3) access arrangement for deriving the reference tariffs. As discussed elsewhere in this Draft Decision,¹¹⁹ providing the costs of delivering the reference and non-reference T1, P1 and B1 services are similar, combining the reference and non-reference services to allocate total costs to reference and non-reference services on the same basis is reasonable. It follows that calculating reference tariffs on the same basis (i.e. including demand for both reference and non-reference services) is also reasonable. The Authority considers the reference and non-reference pipeline services continue to be sufficiently similar for this approach to continue to be adopted.

¹¹⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 11.

¹¹⁹ Refer to "Allocation of Total Revenue" section of this Draft Decision at paragraph 568 to paragraph 581.

594. In undertaking its review of DBP's proposed tariffs, the Authority identified errors in the calculation of the full haul equivalent values. DBP has confirmed the errors and intends to correct them when making its submission in response to this Draft Decision.¹²⁰ For the purposes of this Draft Decision, the Authority has made an adjustment to the revenue model to correct the error.
595. As noted above, DBP has amended the basis of the commodity charge, but has not provided any reasons for this change. In its decision in relation to the current (AA3) access arrangement, the Authority determined that the commodity charge should be set to recover costs of fuel gas and the capacity charge should be set to recover all other costs. The Authority notes that the requirement for fuel gas is variable and dependent on the amount of gas flowing through the pipeline. The Authority notes DBP has not provided any explanation for its proposed change to the basis of the commodity charge, or indeed the calculation of the split between the capacity charge (80 per cent) and the commodity charge (20 per cent).
596. The Authority requires DBP to revise its proposed tariff structure to ensure that the commodity charge is based on variable costs only and to provide sufficient workings to demonstrate this is the case. For the purposes of this decision, the Authority has modelled the commodity charge based on the forecast cost of fuel gas which has resulted in a split of around 90 per cent for the capacity charge and 10 per cent for the commodity charge.
597. The Authority notes adjusting the split between the capacity charge and commodity charge impacts on the total reference tariff. For example, the Authority's modelling indicates basing the split on 80/20 results in a total Full Haul tariff, including both the capacity and commodity charge, in 2016 of \$1.233 per GJ per day, whereas basing the split on 90/10 results in a total tariff of \$1.217 per GJ per day.
598. As the Authority has not approved DBP's proposed total revenue, forecast tariffs must also be amended. Based on the required amendments in this Draft Decision, the Authority's determination of reference tariffs is set out in Table 51 below.
599. The Final Decision will not be made in time for the revised tariffs to be in place by 1 January 2016. As permitted under NGR 92(3)(b), the Authority has adjusted the tariffs to reflect the delay in implementation. For the purposes of this Draft Decision, it has been assumed the revised tariffs take effect from 1 July 2016. An adjustment will be made in the Final Decision if necessary to reflect any revised timings.
600. In response to the concerns raised by CPMM in relation to the level of the non-reference tariffs, the Authority notes its decision only relates to reference tariffs. DBP is free to negotiate non-reference tariffs with shippers.

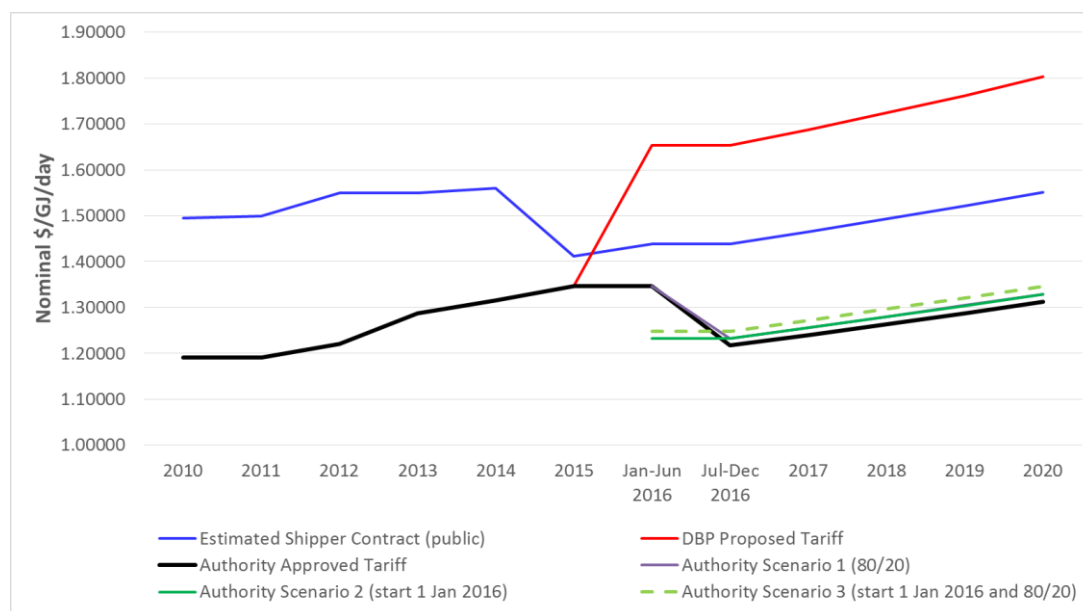
¹²⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Supporting Submission 37*, 15 October 2015, p. 3.

Table 51 Authority's Reference Tariffs

Nominal \$	Jul-Dec 2016	2017	2018	2019	2020
Full Haul (\$/GJ/day):					
Capacity	1.084822	1.105434	1.126437	1.147839	1.169648
Commodity	0.132339	0.134853	0.137416	0.140027	0.142687
Total	1.217161	1.240287	1.263853	1.287866	1.312335
Part Haul (\$/GJ/day/km):					
Capacity	0.000775	0.000790	0.000805	0.000820	0.000836
Commodity	0.000095	0.000096	0.000098	0.000100	0.000102
Total	0.000870	0.000887	0.000903	0.000921	0.000938
Back Haul (\$/GJ/day/km):					
Capacity	0.000775	0.000790	0.000805	0.000820	0.000836
Commodity	0.000095	0.000096	0.000098	0.000100	0.000102
Total	0.000870	0.000887	0.000903	0.000921	0.000938

Source: ERA, ERA Tariff Model, December 2015.

601. For information, the chart below (Figure 6) compares the total T1 reference tariffs determined by the Authority in this Draft Decision with DBP's proposed tariff and an estimate of the SSC tariff based on publicly available information. The chart also shows the tariffs that would have applied if they commenced on 1 January 2016 and the tariffs which would apply if an 80/20 split was applied to the capacity and commodity charges.

Figure 6 Full Haul Tariff Comparison

Source: ERA Tariff Model, Tariff Variation, DBP Tariff Model, Public information for estimate of Standard Shipper Contract tariff.¹²¹

¹²¹ The Standard Shipper Contract tariff is not published. The values for 2010 to 2014 have been taken from 2014/15 Margin Peak and Margin Off Peak Assumptions Report – Public, Sinclair Knight Merz,

Required Amendment 18

DBP must provide evidence to support its proposed split between the capacity and commodity charge, including demonstrating that the proposed split is consistent with an efficient tariff structure.

DBP must amend its proposed reference tariffs to reflect the Authority's Draft Decision.

10 September 2013, published on the AEMO website http://wa.aemo.com.au/docs/default-source/rules/imo-wem-procedures-and-other-documents/sh43499_assumptions_report-v7_0-1_public.pdf?sfvrsn=0. The value for 2015 has been derived by reducing the 2014 tariff by 9.5 per cent, reflecting the ASX announcement made by DBP on 7 August 2014 <http://www.duet.net.au/getattachment/ASX-releases/2014/DBP-recontracts-with-its-Shippers/DUET-ASX-Release-DBP-recontracting-7Aug14/DUET-ASX-Release-DBP-recontracting-7Aug14.pdf.aspx>. The ASX announcement notes the tariff will be escalated annually. The chart is based on an assumption that the indexation is in line with forecast CPI of 1.9 per cent per annum.

Tariff Variation Mechanism

Regulatory Requirements

602. 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 of 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 [Authority] 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 [Authority], 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 [Authority] 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.

DBP's Proposed Changes

603. DBP proposes that the tariff variation mechanism continue to allow for the variation of the reference tariff by way of the combined operation of two or more of the examples listed in NGR 97(1). The tariff variation mechanism is set out in clause 11 of the Access Arrangement.
604. DBP's tariff variation mechanism for the current access arrangement includes the following mechanisms:
 - CPI formula variation.
 - Tax change variation.
 - New cost pass-through variation.
605. DBP proposes retaining these mechanisms with some modification:
 - The CPI formula variation has been modified to allow for the introduction of a revenue cap price control (discussed below) rather than the current price cap control.
 - The tax change variation mechanism has been modified to remove "Carbon Costs" (which has been added to the new cost pass-through variation instead) and the approval process has been modified.
 - The new cost pass-through variation has been modified to include carbon costs and the approval process has been modified, similar to the process proposed for the tax change variation mechanism. DBP also proposes amending the description of new costs to replace "could not be predicted prior to" to "were not included in the Operators' forecast operating expenditure" when the revisions to the Access Arrangement were approved.
606. DBP has proposed the addition of two new variation mechanisms to the reference tariff for the fourth access arrangement period. These are:
 - a Revenue Cap Adjustment (establishing a revenue cap price control in place of the current price cap control); and
 - a Trailing Average Cost of Debt Annual Update Variation (annual updating of the tariff to reflect that the rate of return on debt has been estimated using a methodology that results in the potential for the return on debt to vary across regulatory years in the AA period).
607. DBP notes that the Revenue Cap Adjustment is a means by which the reference tariff is varied in a way that establishes the revenue cap price control for the access

arrangement period. DBP has stated that the revenue cap price control is consistent with rules 97(1)(b) and 97(2)(c) of the NGR.

608. DBP notes that more than 85 per cent of its revenues is earned from contracts that have negotiated tariffs that are not tied to the reference tariffs during the AA period. Consequently it considers it is difficult to justify the inclusion of a traditional revenue cap variation mechanism. It also notes that a revenue cap could not only apply to customers paying the reference tariff as this would lead to cost allocation implications between negotiated shippers and reference tariff shippers.
609. DBP has therefore proposed an approach that, rather than assessing actual revenues from all shippers, or from a small set of shippers, will use the concept of “regulated earned revenues” (**RER**). It considers these are the revenues the benchmark efficient entity operating the DBNGP would earn (rather than DBP itself) with the same capacity and throughput as in actual operations, but on the assumption that all customers are paying the regulated tariff. It proposes:
- Total revenue is set for each year of the access arrangement period, referred to as the Initial Total Revenue (**ITR**).
 - In December of each year the tariff model is updated for the RER during that year and the extent to which it varies compared to the ITR and any change in forecast contracted capacity and throughput for the remaining period. This creates a new Allowed Revenue (**AR**) for the next year, as well as new reference tariff to apply from 1 January each year.
610. DBP notes that, while a new allowable revenue is determined each year, the costs that are used to determine each of the building blocks required to calculate Total Revenue do not change during the period, it is only the allocation of the initial Total Revenue across the pipeline services of the benchmark efficient entity that may change from year to year.
611. DBP’s proposed revenue cap adjustment is adjusted by the WACC to reflect the time value of money. To obtain the relevant capacity and throughput tariffs (**CT** and **TT** respectively) for a given year, DBP proposes multiplying the AR by the split between capacity and throughput and dividing each by the expectation formed in December of a given year of the capacity and throughput for the following year.
612. DBP submits that the proposed revenue cap form of price control should be acceptable to the ERA on the following basis:
- DBP’s proposed revenue cap approach is more likely to achieve the Revenue and Pricing Principles in Section 24 of the National Gas Law. It considers it should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services and complying with a regulatory obligation or requirement. Under the current price cap approach, if the approved forecast contracted capacity and throughput prove to be overly optimistic DBP will not be afforded the opportunity to recover the efficient costs in providing the reference services;
 - the revenue cap tariff variation mechanism gives consumers comfort that if DBP’s proposed forecast contracted capacity and throughput process to be overly pessimistic DBP will not attract more than the total revenue determined by the ERA i.e. if spare capacity is contracted for in the access arrangement period the reference tariff will be revised down accordingly;

- the importance of volume forecasts is reduced under the proposed reference tariff mechanism, however, DBP considers it is still incentivised to propose forecasts that are reasonable and best in the circumstances for the following reasons:
 - to reduce the volatility in the prevailing reference tariff;
 - total revenue is fixed over the regulatory period; and
 - to the extent costs are determined by volume (i.e. fuel gas) if demand is greater than expected the costs would exceed the proposed forecast for operating expenditure reducing profits; and
 - DBP considers that the administrative costs will be minimal. It notes that it will carry out the tariff variation mechanism for the ERA's review and approval consistent with the existing tariff variation mechanisms. DBP does not expect the administrative costs of the ERA to be significantly different to the costs it has incurred in reviewing the tariff variation mechanism of the current access arrangement.
613. A summary of DBP's proposed tariff variation in relation to the trailing average cost of debt variation has been included in Appendix 4.

Submissions

614. Comments raised in submissions are discussed in the following sections below.

Tax change variation and new cost pass-through variation

615. CPMM supports a cost pass through mechanism that allows DBP to mitigate any direct costs that it might incur as a result of unforeseen changes in law or tax, however CPMM considers that DBP's proposed tariff variation mechanism is too complex and should not be accepted. CPMM considers that in order for DBP's true input costs for risk allocation to be correct, there must be no chance of over or under recovery for shippers who are using the reference service. CPMM also considers that a flat increase in the tariff component which includes non-variable components is inappropriate, and therefore variation should apply only to variable input cost components of the tariff.¹²²
616. CPMM also submits that for any cost escalation risk that DBP has agreed to absorb in its commercial dealings with recontracting shippers, the NGO requires that this risk should remain with DBP for the duration of the fourth access arrangement period.¹²³
617. WESCEF suggests that DBP's proposed amendments to Section 11.4(d) removes the requirement for the regulator to approve tariff variations, and may therefore hinder the regulator from objecting to variations unless it does so on the specific

¹²² CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 12.

¹²³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 12.

grounds set out by DBP in its proposal. WESCEF submits that this is inappropriate for a regulated asset.¹²⁴

618. WESCEF submits that the notice period for a change in tariffs should be reverted to 30 days (Section 11.4), as tariff changes can have a substantial impact on DBP and its customers.¹²⁵
619. WESCEF submits that DBP's proposed deletion of the words "could not be predicted prior to the" in section 11.5(a)(iii) should not be approved, as this will act as a mechanism for DBP to recover costs that were not originally recovered due to an oversight on the part of DBP.¹²⁶ WESCEF also considers that section 11.5(e) should not be approved, as it will enable DBP to pass additional charges through to shippers that have not been approved by the regulator.
620. BHP submits that the breadth of expenses that are potentially covered by DBP's proposed pass-through regime is too broad, and that it therefore has the potential to lower the risks of the DBNGP to the extent that it should be reflected in a lower rate of return.¹²⁷ BHP suggests that the cost pass-through events in DBP's current access arrangement should be retained as costs associated with a change in law, and additional costs payable to the Land Access Minister.¹²⁸

Revenue cap price control

621. CPMM expressed concerns that third parties seeking new or recontracted access to the DBNGP will pay a disproportionate share of the cost burden due to the pairing of a higher reference tariff and a revenue cap adjustment as well as from the discount that DBP has given to other shippers who accepted DBP's recontract deal.¹²⁹
622. WESCEF submits that DBP's proposed revenue cap adjustment for its reference tariffs transfers volume risk to the shippers contracted to the pipeline, and that this is will introduce volatility into DBP's tariffs.¹³⁰ WESCEF also considers that DBP's proposed revenue cap adjustment should be rejected, and that CPI escalation should remain as an escalation of the reference tariffs rather than of the initial total revenue.¹³¹

¹²⁴ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 4.

¹²⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 4.

¹²⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 4.

¹²⁷ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 12.

¹²⁸ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 12.

¹²⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p 11.

¹³⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 3.

¹³¹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 3.

623. BHP submits that if demand risk is transferred to shippers, then it would be appropriate for the regulatory decision to include a lower rate of return in the calculation of reference tariffs than would apply under a price cap.¹³²
624. BHP contends that as a transmission network, DBP is able to facilitate the market for gas demand and the use of its asset, and that a price cap (rather than a revenue cap) will therefore incentivise DBP to promote efficient use of its infrastructure.¹³³ BHP considers that there exists the potential for a number of issues regarding the application of a revenue cap in the context of the DBNGP, including:
- the provisions proposed by DBP are vague and would therefore require significant revision in order to ensure that DBP does not simply classify new load as being on services that are outside of the cap, and to classify reductions in load as pertaining to services that are within the cap, thus allowing DBP to retain any additional revenue;
 - demand forecasts must be carefully reviewed by the Authority as to their reasonableness, as the reference tariffs proposed by DBP assume a substantial drop from the third access arrangement period in both capacity reservation and throughput; and
 - proposed conforming capital expenditure for increasing capacity of the pipeline recently incurred should be examined carefully in the context of the forecasts for reduced throughput and capacity reservation.¹³⁴

Considerations of the Authority

625. The Authority has considered each of the proposed amendments to tariff variation mechanism in turn below.

CPI formula variation

626. As is discussed further below, the Authority has not accepted DBP's proposed revenue cap price control. Consequently, it also does not accept the proposed changes to the CPI formula variation.

Required Amendment 19

The proposed CPI formula variation set out in clause 11.2 of the proposed revised access arrangement must be deleted.

¹³² BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

¹³³ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

¹³⁴ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

Tax change variation

627. The Authority notes DBP proposes to amend (new) clause 11.4 of the proposed revised access arrangement, which details the meaning of “tax changes variation” as follows.

11.4 ~~11.3~~. Tax Changes Variation means the following mechanism:

- (a) The Operator has established the Reference Tariff for the Reference Service on the basis of forecast expenses for certain Taxes ~~and Carbon Costs~~ for the Current Access Arrangement Period being included in the Operator’s forecast operating expenditure (Included Taxes ~~and Carbon Costs~~).
- (b) If a Tax Change occurs in relation to the Included Taxes ~~and Carbon Costs~~ during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services ~~(including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs),~~ then:
 - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change ~~are 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 (Rule 91 Criteria) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator must vary the Reference Tariff to deal with the financial impact of the Tax Change; and~~
 - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change ~~satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator may vary the Reference Tariff to recover the financial impact of the Tax Change.~~
- (c) Before the Operator varies the Reference Tariff under clause ~~11.3(b)~~, 11.4(b), the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
 - (i) ~~in~~ outlines the case of a Tax Change where the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure ~~for~~ in the Current Access Arrangement Period—~~is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;~~
 - (ii) ~~outlines the amount of the relevant Included Tax and Carbon Cost that was included~~ sets out the expected annual increase or decrease in the Operator’s forecast operating expenditure in the Current Access Arrangement Period;
 - (iii) ~~provides as a result of the Tax Change together with the Operator’s assumptions, reasons and available evidence of the amount of the Tax Change;~~
 - (iv) ~~provides evidence that the Tax Change satisfies the Rule 91 Criteria;~~
 - (v) ~~specifies the scope~~ that justify its estimate of the financial impact of the Tax Change;

(iii) sets out the amount by which the Reference Tariff is to be varied;

- (iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
- ~~(d)~~ ~~(vii)~~ states the effective date for the variation to the Reference Tariff to take effect.
- ~~(e)~~ ~~The Operator must not vary (for the purposes of this clause 11.4, Variation Date). The variation to the Reference Tariff under clause 11.3(b)(ii) unless:~~
- ~~(i)~~ ~~the Operator provides a shall take effect on the Variation Date nominated in the Tax Change Notice to the, which must be no earlier than 20 Business Days from the date of the Tax Change Notice unless the Regulator, acting as a Reasonable and Prudent Person, objects to the proposed variation to the Reference Tariff on the basis that it can demonstrate one or more of the following grounds for objection:~~
- ~~(ii)~~ ~~the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.~~
- ~~(i)~~ ~~The proposed variation to the Reference Tariff does not arise from a Tax Change;~~
- ~~(ii)~~ ~~There is a material flaw in the Operator's estimate of the financial impact of the Tax Change on the Operator's forecast annual operating expenditure;~~
~~or~~
- ~~(iii)~~ ~~The calculation of the proposed variation to the Reference Tariff as a result of the Tax Change is flawed.~~
- ~~Any objection by the Regulator must be substantiated by a concise written summary of the reasons for the Regulator's objection and the existing Reference Tariff remains payable until the amount of the variation is resolved.~~
- ~~(e)~~ ~~If the Regulator objects to the proposed Tariff variation, the Operator may submit a further Tax Change Notice.~~
- ~~(e)~~~~(f)~~ The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- ~~(f)~~ ~~The minimum notice period for a Tax Change Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.~~
- (g) If the Tax Change Notice results in a reduction in the Reference Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and
- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.
- ~~(h)~~ ~~If the Tax Change Notice results in an increase in the Reference Tariff, the Operator may, within 50 Business Days of the date of the Tax Change Notice invoice each Shipper for a Reference Service an amount equal to the difference between:~~
- ~~(i)~~ ~~the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and~~
- ~~(ii)~~ ~~the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.~~
- ~~(i)~~ ~~Nothing in this clause prevents the Operator seeking judicial review of a decision of the Regulator under clause 11.40.~~

628. The Authority considers moving the provision for carbon tax from the “Tax Changes” variation to the “New costs” variation is reasonable, particularly as potential future costs in relation to carbon may not be in the form of a tax change. However, in considering this proposed amendment, the Authority notes it is unclear why there is a need for separate variations for “Tax Changes” and “New Costs”. The Authority considers removing the “Tax Change” variation and expanding the “New Costs” variation to include taxes would be administratively simpler and ensure the approval process for both is identical.

Required Amendment 20

The Authority requires DBP to consider merging clauses 11.4 and 11.5 of the proposed revised access arrangement to cover both “tax changes” and “new cost pass through” variations to simplify the drafting of the access arrangement and to ensure approval processes for both variation processes are consistent.

629. The Authority notes DBP’s proposed revisions to the approval process effectively result in the Regulator being required to object to a proposed Tariff variation for it to not take effect and also prescribe the form and criteria for how the Regulator can make an objection. The Authority refers to NGR 97(4) which requires a tariff variation to give the Regulator adequate oversight or powers of approval over variation of the reference tariff. The Authority does not consider DBP’s proposed revisions provide the Regulator with adequate oversight or powers of approval in relation to tariff variations. On that basis, the Authority does not approve the proposed revisions and requires the current approach, where DBP must seek the Regulator’s approval for a tariff variation, to be maintained.
630. In relation to DBP’s proposal that increases in tariffs due to a tariff variation may be invoiced within 50 business days of the Variation taking effect, the Authority notes this time period is the same as the current time period by which DBP currently must refund any decreases. The Authority considers applying a similar time period for implementing tariff increases is reasonable.
631. DBP has proposed to reduce the current notice period for tariff variations from 30 business days to 20 business days. As noted by WESCEF, tariff changes can have a substantial impact on DBP and its customers. The Authority notes DBP has not provided any reason for why it considers the time period should be reduced. The Authority considers reducing the time period would not provide adequate notice to customers of tariff variations and rejects the proposed shortening of the notice period.
632. CPMM submitted that a flat increase in the tariff component which includes non-variable components is inappropriate, and therefore variation should apply only to variable input cost components of the tariff. The Authority notes the tariff variation mechanism does not specify how the tariff adjustment should be made. The Authority considers the tariff variation should be amended to specify that any variation in tariff is applied appropriately to either the Capacity Charge (if it relates to a fixed cost) or the Commodity Charge (if it relates to a variable cost).

Required Amendment 21

Subject to Required Amendment 20, clause 11.4 of the proposed revised access arrangement should be amended as follows:

11.4~~11.3~~. Tax Changes Variation means the following mechanism:

- (a) The Operator has established the Reference Tariff for the Reference Service on the basis of forecast expenses for certain ~~Taxes and Carbon Costs~~ for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure (~~Included Taxes and Carbon Costs~~).
- (b) If a Tax Change occurs in relation to the ~~Included Taxes and Carbon Costs~~ during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services ~~(including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs)~~, then:
 - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are 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 (Rule 91 Criteria) and the changed amount of the relevant ~~Included Tax and Carbon Cost~~ is lower than the amount for that relevant ~~Included Tax and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator must vary the Reference Tariff to deal with the financial impact of the Tax Change; and
 - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant ~~Included Tax and Carbon Cost~~ is higher than the amount for that relevant ~~Included Tax and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator may vary the Reference Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the Reference Tariff under clause 11.4(b)~~11.3(b)~~, the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
 - (i) in the case of a Tax Change where the changed amount of the relevant ~~Included Tax and Carbon Cost~~ is lower than the amount for that relevant ~~Included Tax and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period – is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;

- (ii) outlines the amount of the relevant ~~Included Tax and Carbon Cost~~ that was included in the forecast operating expenditure in the Current Access Arrangement Period;
 - (iii) provides evidence of the amount of the Tax Change;
 - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;
 - (v) specifies the scope of the financial impact of the Tax Change;
 - (vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
 - (vii) states the effective date for the variation to the Reference Tariff to take effect.
- (d) The Operator must not vary the Reference Tariff under clause 11.3(b)(ii) unless:
- (i) the Operator provides a Tax Change Notice to the Regulator; and
 - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.
- (g) If the Tax Change Notice results in a reduction in the Reference Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.
- (h) If the Tax Change Notice results in an increase in the Reference Tariff, the Operator may, within 50 Business Days of the date of the Tax Change Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and

- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.
- (i) Any variation to the Reference Tariff under this clause 11.4 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

New cost pass-through variation

633. The Authority notes DBP proposes to amend (new) clause 11.5 of the proposed revised access arrangement, which details the meaning of “new costs pass through variation” as follows.

- 11.5 ~~41.4~~ 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 if (but only if) the expenses:
- (i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;
 - (ii) satisfy the Rule criteria in NGR 91—Criteria (1) for operating expenditure;
 - (iii) ~~could not be predicted prior to the~~ were not included in the Operators' forecast operating expenditure at the time at the revisions to the Access Arrangement were approved;
 - (iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.
- (b) Expenses which satisfy all criteria in this clause ~~41.4(a)~~ 11.5(a) result in a Cost Pass Through Event.
- (c) ~~(b)~~ Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause ~~41.4~~ 11.5 are:
- (i) Carbon Costs (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs);
 - (ii) ~~(i)~~ a Change in Law; ~~and~~
 - (ii) ~~(ii)~~ ~~[Deleted]~~; ~~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; and
 - (iv) any other expenses that satisfy all criteria in clause 11.5(a).
- (d) ~~(c)~~ Before the Operator varies the Reference Tariff under this clause ~~41.4~~ 11.5, the Operator must ~~obtain~~ provide a written approval from the Regulator to vary the Reference Tariff by providing a notice to the Regulator (Cost Pass Through Event Notice) which:
- (i) ~~must include~~ sets out the ~~substantiation for the Cost Pass Through Event justifying an~~ actual or expected increase ~~to the~~ in the

Operator's actual or forecast operating expenditure ~~that is used to calculate the Total Revenue for each year (as applicable) as a result of the Current Access Arrangement Period;~~

~~(ii) provides~~ New Cost, together with the Operator's assumptions, reasons and available evidence—

~~A as to how~~ that justify its estimate of the financial impact of the New Cost Pass Through Event has increased the operating expenditure on the operation of the Operator or its Related Bodies Corporate in their roles as service providers on the DBNGP, and;

~~(ii) B~~ provides the Operator's assumptions, reasons and available evidence that the expenses associated with the Cost Pass Through Event ~~satisfy the Rule 91 Criteria~~ are 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;

~~(iii) specifies the scope of the financial impact of the Cost Pass Through Event;~~

~~(iii)~~ sets out the amount by which the Reference Tariff is to be varied;

~~(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.

~~(e)~~ The variation to the Reference Tariff shall take effect on the Variation Date nominated in the Cost Pass Through Event Notice, which must be no earlier than 20 Business Days from the date of the Cost Pass Through Event Notice unless the Regulator, acting as a Reasonable and Prudent Person, objects to the proposed variation to the Reference Tariff on the basis that it can demonstrate one or more of the following grounds for objection:

~~(i)~~ the proposed variation to the Reference Tariff does not arise from a Cost Pass Through Event;

~~(ii)~~ there is a material flaw in the Operator's estimate of the financial impact of the Cost Pass Through Event on the Operator's forecast annual operating expenditure; or

~~(iii)~~ the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event is flawed.

Any objection by the Regulator must be substantiated by a concise written summary of the reasons for the Regulator's objection and the existing Reference Tariff remains payable until the amount of the variation is resolved.

~~(f)~~ If the Regulator objects to the proposed Tariff variation, the Operator may submit a further Cost Pass Through Event Notice.

~~(g)~~ ~~(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 30 Business Days.~~

~~(f)~~ ~~The Operator must not vary the Reference Tariff under clause 11.4(a) unless:~~

~~(i)~~ ~~the Operator provides a Cost Pass Through Event Notice to the Regulator; and~~

- (ii) ~~the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.~~
- ~~(h)(g)~~ If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the ~~Tax Change~~Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and
- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (i) If the New Costs Pass Through Variation results in an increase in the Reference Tariff by an amount of one per cent or greater, the Operator may, within 50 Business Days of the date of the Cost Pass Through Event Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and
- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
634. As noted above in relation to the proposed revisions to the “Tax Changes” variation (refer to paragraph 628), the Authority considers moving the provision for carbon tax from the “Tax Changes” variation to the “New costs” variation is reasonable, particularly as potential future costs in relation to carbon may not be in the form of a tax. However, in considering this proposed amendment, the Authority notes it is unclear why there is a need for separate variations for “Tax Changes” and “New Costs”. The Authority considers removing the “Tax Change” variation and expanding the “New Costs” variation to include taxes would be administratively simpler and ensure the approval process for both is identical.
635. DBP has proposed to replace the words “could not be predicted prior to the” in section 11.5(a)(iii) with the words “were not included in” in relation to the definition of “new costs”. The Authority notes WESCEF’s submission which considers this would act as a mechanism for DBP to recover costs that were not originally recovered due to an oversight on the part of DBP. The Authority considers the current wording, “could not be predicted prior to” better reflects the intent of the tariff variation mechanism, which is to ensure any legitimate new costs in relation to changes in circumstance outside the control of DBP can be passed through to customers. On that basis, the Authority does not consider broadening the definition as proposed by DBP, is appropriate.
636. The Authority notes DBP has proposed adding a new clause “any other expenses that satisfy all criteria in clause 11.5(a)” to 11.5(c) which broadens the scope of the current “New Costs” variation. BHP submitted that expanding the breadth of expenses that are potentially covered by DBP’s proposed pass-through regime has the potential to lower the risks of the DBNGP to the extent that it should be reflected in a lower rate of return. BHP suggests that the cost pass-through events in DBP’s current access arrangement should be retained as costs associated with a change in law, and additional costs payable to the Land Access Minister. The Authority

considers the existing clause 11.5(c) adequately captures potential new costs by specifying changes in law and changes in fees payable to the Land Access Minister. The Authority does not consider a general clause, as proposed by DBP, is necessary or appropriate.

637. As set out above in relation to the “Tax Change” variation, the Authority notes DBP’s proposed revisions to the approval process effectively result in the Regulator being required to object to a proposed Tariff variation for it to not take effect and also prescribe the form and criteria for how the Regulator can make an objection. The Authority refers to NGR 97(4) which requires a tariff variation to give the Regulator adequate oversight or powers of approval over variation of the reference tariff. The Authority does not consider DBP’s proposed revisions provide the Regulator with adequate oversight or powers of approval in relation to tariff variations. On that basis, the Authority does not approve the proposed revisions and requires the current approach, where DBP must seek the Regulator’s approval for a tariff variation, to be maintained.
638. In relation to DBP’s proposal that increases in tariffs due to a tariff variation may be invoiced within 50 business days of the Variation taking effect, the Authority notes this time period is the same as the current time period by which DBP currently must refund any decreases. The Authority considers that applying a similar time period for implementing tariff increases is reasonable.
639. DBP has proposed to reduce the current notice period for tariff variations from 30 business days to 20 business days. As noted by WESCEF, tariff changes can have a substantial impact on DBP and its customers. The Authority notes DBP has not provided any reason for why it considers the time period should be reduced. The Authority considers reducing the time period would not provide adequate notice to customers of tariff variations and rejects the proposed shortening of the notice period.
640. CPMM submitted that a flat increase in the tariff component which includes non-variable components is inappropriate, and therefore variation should apply only to variable input cost components of the tariff. The Authority notes the tariff variation mechanism does not specify how the tariff adjustment should be made. The Authority considers the tariff variation should be amended to specify that any variation in tariff is applied appropriately to either the Capacity Charge (if it relates to a fixed cost) or the Commodity Charge (if it relates to a variable cost).

Required Amendment 22

Subject to Required Amendment 20], clause 11.5 of the proposed revised access arrangement should be amended as follows:

11.544.4. 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 if (but only if) the expenses:
- (i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;
 - (ii) satisfy the Rule 91 Criteria;
 - (iii) could not be predicted prior to the time at the revisions to the Access Arrangement were approved;
 - (iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.

Expenses which satisfy all criteria in this clause ~~11.5(a)~~44.4(a) result in a Cost Pass Through Event.

- (b) Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause 11.544.4 are:

- (i) Carbon Costs (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs);
- (ii) ~~(i)~~-a Change in Law; and
- (iii) ~~(ii)~~-[Deleted]; and
- (iv) 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 11.544.4, the Operator must obtain written approval from the Regulator to vary the Reference Tariff by providing a 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 –

- A. 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, and
- B. that the expenses associated with the Cost Pass Through Event satisfy the Rule 91 Criteria;
- (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 30 Business Days.
- (f) The Operator must not vary the Reference Tariff under clause 11.4(a) unless:
- (i) the Operator provides a Cost Pass Through Event Notice to the Regulator; and
- (ii) the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.
- (g) If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event~~Tax Change~~ and the date that the variation to the Reference Tariff commenced to have effect; and
- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (h) If the New Costs Pass Through Variation results in an increase in the Reference Tariff by an amount of one per cent or greater, the Operator may, within 50 Business Days of the date of the Cost Pass Through Event Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and

- (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (i) Any variation to the Reference Tariff under this clause 11.5 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

Revenue cap price control

641. The Authority notes that DBP has proposed inserting a new clause (clause 11.6) in its access arrangement to replace the current price cap control mechanism with a revenue cap price control.
642. The Authority notes the requirements of NGR 97(2) and 97(3) as set out below:
- 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 [Authority] 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 [Authority], 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.
643. The NGR 97(2) contemplates a revenue cap price control, however NGR 97(3) sets out the criteria the Authority must have regard to in determining the appropriate tariff variation mechanism.
644. The Authority has considered DBP's proposal to move from the current price cap price control to a revenue cap price control.
645. As noted by BHP, a price cap incentivises DBP to promote efficient use of its infrastructure as the risk of actual demand being different from forecast demand lies with DBP. Under a revenue cap, the risk lies with the consumer.
646. As set out in DBP's submission, more than 85 per cent of its revenues is earned from contracts with negotiated tariffs not tied to the reference tariffs. The Authority notes

these negotiated tariffs are effectively a price cap and will not be adjusted for any changes in demand during AA4.

647. DBP is proposing that 80 per cent of the reference tariff will be based on a fixed charge, so a significant proportion of revenue is not affected by any change in demand.
648. The Authority considers DBP's proposal to adjust revenue based on non-reference service volumes is complex and DBP has not provided any mechanism for certifying those volumes. As noted by BHP, the provisions proposed by DBP are vague and potentially could enable DBP to classify new load as being on services that are outside of the cap and to classify reductions in load as pertaining to services within the cap, thus allowing DBP to retain any additional revenue from new load whilst increasing reference tariffs for any reductions in load.
649. In any case, as the current capacity is nearly all contracted, the Authority considers the risk of revenue under-recovery in relation to reference services during AA4 is low. Revenues will be rebased at the next access arrangement review so the period of any potential over or under recovery is, in any case, short.
650. The Authority considers the current price cap price control results in the best incentives for utilisation of the pipeline and meets the NGO. The Authority does not consider changing to a revenue cap would result in better incentives or achievement of the NGO. Furthermore, it would create practical difficulties in administering the price control mechanism. On that basis the Authority does not approve DBP's proposal to introduce a revenue cap price control.

Required Amendment 23

The Authority requires the existing price cap price control mechanism to be retained in the proposed revised access arrangement.

Trailing Average Cost of Debt Variation

651. As set out in Appendix 4, the Authority has not approved DBP's proposed methodology for the annual update of the cost of debt. Consequently, the tariff variation proposed by DBP also needs to be amended.
652. The method and automatic formulas for updating the debt risk premium for each regulatory year are set out in Appendix 4G of this Draft Decision. The Authority will provide the updated debt risk premium to DBP each year. DBP will be required to calculate revised reference tariffs, reflecting the updated debt risk premium, and submit these to the Authority for approval each year.

Required Amendment 24

The Trailing Average Cost of Debt Tariff Variation must be amended to reflect the method and automatic formulas set out in Appendix 4G of this Draft Decision and to

include calculation of the revised reference tariffs and submission to the Authority for approval.

Fixed Principles

Regulatory Requirements

653. 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 [Authority] under these rules, is binding on the [Authority] and the service provider for the period for which the principle is fixed.
- 4) However:
 - a) the [Authority] 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.

DBP's Proposed Changes

654. Clause 13 of the proposed revised access arrangement sets out the fixed principles to apply under the access arrangement. DBP proposes retaining the existing fixed principles, without amendment, which are:

- (a) 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;
- (b) 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:
 - (i) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and
 - (ii) the revenue actually earned from the sale of those services which were services other than Full Haul Services,must not:
 - (iii) 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

- (iv) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.
655. Consistent with the current access arrangement, DBP has proposed these fixed principles will apply until 31 December 2031.
656. DBP has proposed to add an additional fixed principle in relation to the trailing average approach it has proposed for inclusion in the reference tariff variation mechanism. Its proposed clause 13.1(c) states:
- The trailing average approach described at Clause 11.7. In respect of the trailing average mechanism, both the methodology and the actual allowed debt cost in a given year are to remain fixed. Thus, if the debt rate formed for year t is five per cent, then it will remain at five percent until that tranche of debt falls away from the trailing average, and the rate for period “ t ” cannot be changed in period “ $t + 1$ ” to some value other than five per cent.
657. DBP has not proposed a fixed period for this clause.

Submissions

658. There were no submissions in relation to the existing fixed principles.

Considerations of the Authority

659. The Authority notes that DBP has not proposed any amendments to the existing Fixed Principles and there were no submissions made in relation to these Fixed Principles. Consistent with its previous decisions, the Authority is satisfied 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.
660. The Authority does not consider that the proposed fixed principle for the application of the debt risk premium (**DRP**) trailing average update to the tariff variation is required. This is because Appendix 4G of this Draft Decision sets out the automatic formulas for the annual update of the trailing average, which also include the values which will apply. The Appendix is consistent with NGR 87(12), which requires that an annual update “must be effected through the automatic application of a formula that is specified in the decision on the access arrangement for that access arrangement period”.¹³⁵ The Authority considers that the method of the automatic formulas should also be inserted in the access arrangement itself, which then links the annual update of the DRP trailing average to the annual tariff variation method.¹³⁶

Required Amendment 25

¹³⁵ NGR 87(12).

¹³⁶ By way of example, the method of automatic updates was included in the Access Arrangement for the ATCO GDS Final Decision. See ATCO Gas Australia, *Access Arrangement for the Mid-West and South-West Gas Distribution Systems*, 1 October 2015, Annexure D.

The Authority requires DBP to delete clause 13.1(c), relating to the trailing average mechanism, from the proposed revised access arrangement.

Speculative Capital Investment

Regulatory Requirements

661. Rule 84 of the NGR (Speculative capital expenditure account) states:

- 1) A full access arrangement may provide that the amount of any non-conforming capital expenditure is, to the extent that expenditure is not to be recovered through a surcharge on shippers or a capital contribution, to be added to a notional fund (the **speculative capital expenditure account**).
- 2) The balance of the speculative capital expenditure account increases annually at a rate, determined at the AER's discretion, which may, but need not, be the rate of return implicit in a reference tariff.
- 3) If at any time the type or volume of services changes so that capital expenditure that did not, when made, comply with the new capital expenditure criteria becomes compliant, the relevant portion of the speculative capital expenditure account (including the return referable to that portion of the account) is to be withdrawn from the account and rolled into the capital base as at the commencement of the next *access arrangement period*.

DBP's Proposed Changes

662. Clause 10 of DBP's current access arrangement includes provision, for the purposes of NGR 84 for any non-conforming capital expenditure, to the extent that it is not to be recovered through a surcharge on shippers or a capital contribution, to be added to a notional fund (Speculative Capital Expenditure Account) and dealt with in accordance with NGR 84(2) and 84(3).
663. DBP has proposed amending the clause to state that the Speculative Capital Expenditure Account will increase annually at the Speculative Investment Rate and defines that rate as being the return on equity that is used to estimate the Allowed Rate of Return (Nominal Post Tax).
664. DBP considers that the rate or return applied to the speculative capital expenditure account should be higher than the allowable rate of return for conforming capital expenditure, as speculative capital expenditure carries a higher risk profile than expenditure that is included in regulated revenue. It considers this to be the case because there is no certainty that a non-conforming investment will result in additional revenue to the service provider.¹³⁷

¹³⁷ DBNGP (WA) Transmission Pty Limited, *Non-Tariff Related Issues – Supporting Submission 5*, 31 December 2014, p. 6.

Submissions

665. No submissions were received with respect to DBP's proposed amendments to speculative capital investment.

Considerations of the Authority

666. The Authority has considered DBP's proposal to specify the rate of return in relation to speculative capital expenditure in its access arrangement. As set out in NGR 84(2), the rate at which the speculative capital expenditure increases annually is determined at the ERA's discretion, which may, but need not, be the rate of return implicit in a reference tariff.
667. DBP has not proposed any specific speculative capital expenditure in its proposed revisions to its access arrangement. The Authority considers it would need to know the nature of any such expenditure before being able to determine an appropriate rate of return.
668. Before approving a rate of return for speculative capital expenditure, DBP would need to provide the Authority with details of the specific expenditure to which it would apply and, if it is seeking a higher rate of return than applies to conforming capex, would need to justify its claim including explaining how it would be consistent with the NGO.
669. The Authority notes that speculative capital expenditure can only be added to the capital base if and when it meets the requirements for conforming capital expenditure. The Authority does not consider DBP's proposal, that the rate of return should be set higher for speculative investment because there is no certainty that a non-conforming investment will result in additional revenue to the service provider, would incentivise efficient investment and is unlikely to meet the NGO.

Required Amendment 26

The Authority requires that clauses 10.2 and 10.3, relating to the speculative capital expenditure account and speculative investment rate respectively, be deleted from the proposed revised access arrangement.

Terms and Conditions for Reference Services

Regulatory Requirements

670. 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)).
671. The National Gas Rules (**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 (**NGO**) and with rule 100 of the NGR.
672. The Authority has the 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.

DBP's Proposed Changes

673. Clause 4 of the proposed revised access arrangement specifies that the terms and conditions to apply to the T1 Service, P1 Service and B1 Service are contained in the “*Access Contract Terms and Conditions*”, which are set out in Attachments 2, 3 and 4 of the proposed revised access arrangement.¹³⁸
674. The proposed terms and conditions comprise various changes that DBP advises are in the nature of “substantive changes” or “minor/drafting changes”. DBP provides a summary of the proposed changes and the rationale for each change in a supporting submission, which also provides marked-up versions of the proposed terms and conditions to easily identify the changes proposed.¹³⁹
675. Substantive proposed changes to the terms and conditions that will apply to the T1 Service, P1 Service and B1 Service include the following:¹⁴⁰
- a change to the definition of “carbon cost” to specify penalties as a cost in relation to any laws applying to greenhouse gas emissions;
 - a change to the definition of “major works” to include planned maintenance, with consequential amendments to clauses 17.2(d), 18(e) and 18(g);
 - a change to the definition of “part haul” to mean a “*gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on*”

¹³⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Service Terms and Conditions “Full Haul T1 Contract Terms and Conditions”; Attachment 3 – P1 Reference Service Terms and Conditions “Part Haul P1 Contract Terms and Conditions”; Attachment 4 – B1 Reference Service Terms and Conditions “Back Haul B1 Contract Terms and Conditions”*.

¹³⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014.

¹⁴⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 3-13.

the DBNGP, regardless of the location of the Outlet Point, but does not include Back Haul”;

- the deletion of clauses 4.3 to 4.7 that relate to the option to renew the contract, with a consequential amendment to clause 1 to delete the term “original capacity”;
- a change to the provisions that relate to the circumstances where the operator may refuse to receive gas, by amending clause 5.3(e) to delete the words “*subject to determination by operator as a reasonable and prudent person*”;
- a change to clause 5.5 to delete a cross reference to clause 5.3(d), which relates to the DBNGP exceeding its maximum allowable operating pressure, as a basis for claiming that a refusal to deliver is a curtailment in limited circumstances;
- a change to the provisions that relate to the circumstances where the operator may refuse to deliver gas, by amending clause 5.7(b)¹⁴¹ to delete the words “*to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas*”;
- a change to clause 6.3(e) to specify that a multi-shipper contract in respect of an inlet or outlet point is an agreement that contains terms that satisfy all the conditions outlined in clauses 6.3(e)(i) to 6.3(e)(viii);
- a change to clause 7.8, which relates to out-of-specification gas, to indicate that the operator is entitled to deal with any out-of-specification gas that enters the DBNGP by venting, flaring or burning the out-of-specification gas;
- the deletion of clauses 9.5(c) and 9.5(d) that relate to accumulated imbalance notice provisions;
- changes to the wording of clause 9.5(e),¹⁴² which relates to the payment of an excess imbalance charge, by deleting certain words from the clause;
- changes to clause 9.9, which relates to the cashing out of imbalances at the end of each gas month, by inserting new clauses to provide more options to restore shippers’ accumulated imbalances to zero;
- a change to clause 10.1 to clarify that the values specified in clauses 10.1(a), 10.1(b) and 10.1(c) are each an hourly peaking limit;
- changes to clause 10.3, which outlines the consequences of exceeding an hourly peaking limit, by amending the circumstances in which the operator can apply the consequences and deleting clause 10.3(b) and 10.3(c) that require the issuing of notices when peaking limits are exceeded;
- the deletion of clause 10.5 to remove provisions for an “outer hourly peaking limit”;
- a change to clause 11, which sets out provisions relating to overruns, by changing the circumstances in which the operator may give notice in relation to the unavailability or availability of overrun gas (in clause 11.2);

¹⁴¹ In DBP’s supporting information “*Proposed Terms and Conditions – Supporting Submission 4, p. 7, Item 2.7 Refusal to Deliver Gas*” reference is made to clause 5.7(d). The Authority believes that this reference should be to clause 5.7(b) and not to clause 5.7(d).

¹⁴² In DBP’s supporting information “*Proposed Terms and Conditions – Supporting Submission 4, p. 7, Item 2.11 Obligation to pay Excess Imbalance Charge*” reference is made to clause 9.6(e). The Authority believes that this reference should be to clause 9.5(e) and not to clause 9.6(e).

- a change to clause 17.4 to specify that shippers are entitled to refunds of the capacity reservation charge “to the extent that curtailment of the shipper’s [T1] Service exceeds the [T1] permissible curtailment limit for any reason other than” a force majeure event or a circumstance where the curtailment is not to be regarded as a curtailment;
 - changes to clause 20.5 to specify the circumstances in which the [T1] Tariff may be varied, with consequential amendments to delete clause 20.7 (which relates to tax change variations) and insert two new defined terms (“New Costs” and “Tax Change”) at clause 1; and
 - the deletion of clause 26 and clause 45 to remove provisions for the “general right of relinquishment” and “non-discrimination” respectively.
676. Proposed changes to the terms and conditions that have been identified by DBP to be “minor/drafting changes” and that will apply to the T1, P1 and B1 Services are outlined in its supporting submission and comprise:¹⁴³
- changes to the definition of several terms at clause 1 for reasons of simplicity and/or clarification and relevance;
 - drafting changes to some clauses to reflect current legislation;
 - drafting changes to some clauses to provide consistency of drafting between related clauses; and
 - drafting changes to some clauses to amend typographical and grammatical errors.
677. Further to the above proposed changes, DBP proposes two additional amendments to the proposed terms and conditions that will apply to the P1 Service. DBP indicates these proposed changes were inadvertently omitted from the current terms and conditions for the P1 Service that apply for the 2011 to 2015 access arrangement period (AA3); and that the changes align the P1 Service terms and conditions with the terms and conditions for the T1 Service.¹⁴⁴ The proposed changes comprise:
- the addition of clause 20.6 that sets out provisions relating to the “goods and services tax”, and
 - changes to clause 22.3 and 22.7 to amend the number of working days in which a default is to be remedied.

Submissions

678. Submissions from interested parties that comment on provisions of the proposed terms and conditions are addressed below under “Considerations of the Authority”.¹⁴⁵ Some of these submissions identify minor typographical and drafting matters in the terms and conditions. Given the nature of these items, the Authority has not specifically addressed these as part of its considerations below, but has

¹⁴³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 14-16.

¹⁴⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 17.

¹⁴⁵ Submissions from BHP Billiton, CITIC Pacific Mining Management Pty Ltd (**CPMM**) and Wesfarmers Chemicals, Energy & Fertilisers (**WESCEF**).

taken these comments into account in making recommended amendments to the terms and conditions.

Considerations of the Authority

679. In its assessment of the proposed changes to the terms and conditions that will apply to the T1, P1 and B1 reference services, 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;
 - concerns raised by existing and prospective shippers with the current terms and conditions applying to the third access arrangement period (AA3) and with proposed revisions to those terms and conditions;
 - operational and practical considerations in the operation of the pipeline;
 - a balancing of interests between DBP and users, including consideration of common principles of contracting; and
 - whether drafting changes in expression of certain terms achieve DBP's expressed intention and whether these changes may have other unintended consequences.
680. As indicated, DBP has proposed numerous changes to the proposed terms and conditions that DBP have identified to be in the nature of "minor/drafting changes". Unless otherwise specified in this Draft Decision, the Authority is satisfied that these changes are intended to, and do, improve the overall drafting of the terms and conditions and therefore accepts the proposed changes made for these reasons, subject to the required amendments specified in the following sections of this Draft Decision.

Clause 1 – Interpretation

681. Clause 1 of the proposed terms and conditions sets out the definitions and interpretation of terms used. DBP proposes amendments to several terms, each of which are considered below.

“Access Request Form”

682. DBP proposes as a "minor/drafting change" to amend the defined term "access request form" by making the following changes:

Access Request Form 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~~ [Schedule 1](#).

683. DBP's stated rationale for this proposed change is to "simplify definition, clarify form".¹⁴⁶

¹⁴⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

684. No submissions were received concerning this proposed change.
685. The Authority is of the view that the proposed change would substantially alter the meaning of the definition to produce a futile result. The defined term "access request form" is used in the proposed terms and conditions¹⁴⁷ to refer to the particular access request form that has been actually completed and entered into by DBP and the shipper, not just the template of that form in schedule 1 of the terms and conditions (as DBP's proposed change would have it). If this proposed change were to be made, then the definition would refer to an empty template with none of the particulars for the contract specified in it. As a result, the "contract" could be void for uncertainty. The Authority is of the view that DBP's proposed change makes no sense, is not minor in its effect (but potentially produces significant unintended adverse consequences) and is in any case not necessary. The Authority therefore rejects this proposed change.

Required Amendment 27

The term "access request form", under clause 1 of the proposed terms and conditions, should retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3).

"Carbon Cost"

686. DBP proposes to amend the term "carbon cost" to insert the following words:

Carbon Cost means any costs ([for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law](#)) 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. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator [or its Related Bodies Corporate](#) of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

687. DBP indicates the rationale for this change relates to the *Carbon Farming Initiative Amendment Bill*, now enacted as the *Carbon Farming Initiative Amendment Act 2014*, (Schedule 2, Part 1) of which will, with effect from 1 July 2016, amend the *National Greenhouse and Energy Reporting Act 2007* to establish a system (emissions reduction safeguard mechanism) whereby past emissions of a designated large facility are used to set targets for future emissions, with penalties imposed for exceeding those set targets.¹⁴⁸ DBP submits that this will expose it to a risk of additional costs that it has little or no control over for reasons relating to increased demand, the uncertainty of permit trading availability and the inability to recover penalties if they are imposed.

¹⁴⁷ For example, see definition of "contract" and also clauses 3.3, 4.1, 4.2, 4.6, 4.7, 5.11, 6.1, 14.9, 17.7, 26, 29.1, 29.3, 29.4, 30.1 and 38 of the proposed terms and conditions.

¹⁴⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 3.

688. CPMM makes the following comments with respect to the proposed changes to the term carbon costs:¹⁴⁹
- The Operator should be permitted to pass through only its *direct* costs and, in respect of costs reasonably incurred to reduce greenhouse gas emissions or mitigate their effect, only those *direct* costs to the extent that they do not exceed the direct costs avoided by taking those actions;
 - ... for the purposes of the emission reduction safeguard mechanism... CPMM understands that relevant emitters will be able to surrender prescribed carbon units if required to reduce the net emissions number... avoid an excess emissions situation occurring, and thus avoid the imposition of a penalty; and
 - Since the Operator may vary the reference tariff for Tax Changes (which include Carbon Costs) to recover the cost of acquiring prescribed carbon units, CPMM rejects the proposed change to “Carbon Cost” to include penalties...
689. The Authority notes that the Standard Shipper Contract (**SSC**) for a full haul (“T1”) service,¹⁵⁰ which the Authority understands forms the basis of existing access contracts for pipeline services that have been negotiated with shippers, does not define or use the term “carbon cost”.
690. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. The Authority considers that it should be within the ability of a pipeline operator, acting reasonably and operating the pipeline efficiently, to manage its obligations under the statutory emissions reduction safeguard mechanism (when in force) and other laws in such a way that it does not break the law or incur penalties. DBP has not provided adequate justification why it should not be able to do this.
691. Further, the new wording proposed by DBP in its proposed amendment would have effect more widely than necessary to deal with the particular concern raised by DBP in relation to the penalties arising under the statutory emissions reduction safeguard mechanism. Accordingly, the Authority is not prepared to accept DBP's proposed insertion of the words “(for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law)” into the definition of carbon cost. However, the Authority is prepared to accept DBP's proposed insertion of the words “or its Related Bodies Corporate” into that definition.
692. The Authority notes that DBP's proposed “for the avoidance of doubt” amendment highlights an unsatisfactory degree of uncertainty in the existing definition of carbon cost as to whether or not penalties are included in “costs”. The Authority is of the view that this uncertainty should be resolved by amending the definition of “carbon cost” to mean:
- Any costs (excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law) 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. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.

¹⁴⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 32-33.

¹⁵⁰ Standard Shipper Contract current terms and conditions for full haul (“T1”), part haul (“P1”) and back haul (“B1”) services are published and available from DBP's website: www.dbp.net.au

Required Amendment 28

The term “carbon cost”, under clause 1 of the proposed terms and conditions, should be amended as follows:

“**Carbon Cost** means any costs ~~(for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law)~~(excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law) 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. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.”

“Major Works”

693. DBP proposes to amend the definition of “major works” to include planned maintenance and to make consequential amendments to clauses 17.2(d), 18(e) and 18(g). The term “planned maintenance” remains unchanged in the proposed terms and conditions and means *“maintenance of the DBNGP which is scheduled in advance and of which the Shipper is given reasonable, and in any event not less than 3 Gas Days, written notice”*.
694. DBP indicates this change will provide streamlined and simplification benefits for the following reasons;¹⁵¹
- under clause 17.2, curtailments are permitted when necessary to undertake major works (clause 17.2(b)) and planned maintenance (clause 17.2(d)). By including “planned maintenance” in the definition of “major works” clause 17.2 is streamlined as clause 17.2(d) can be deleted; and
 - the access contract will be simplified through a single notice and planning regime applying to both major works and planned maintenance. The notice provisions for major works in clause 17.6 will apply to planned maintenance.
695. CPMM, WESCEF and BHP Billiton all comment on DBP’s proposal to amend the definition of “major works”.
696. CPMM submits that *“the consequences of including Planned Maintenance in the definition of Major Works go further than simply streamlining clause 17.2 and introducing a single notice and planning regime”*.¹⁵² CPMM identifies other consequences of the proposed change related to the provisions for the permissible curtailment limit (at clause 17.3(c)) and capacity reservation charge (at clause 17.4). CPMM further indicates that since 1995, contracts have had two regimes for outages: (1) planned maintenance, for which outages count towards the two per cent

¹⁵¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 3-4.

¹⁵² CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 33.

permissible curtailment limit and (2) major works, for which outages do not count towards the two per cent permissible curtailment limit. CPMM submits that:¹⁵³

The separate major works regime was created to allow sporadic major activities, such as tying in loops and commissioning new interconnections. It allows DBP more operational latitude, precisely because of the intermittent and major nature of these activities both requires and permits such latitude. It's not appropriate for DBP to try to extend that more generous regime to all run-of-the-mill planned maintenance activities, which should be closely managed to minimise harm to shippers. *[sic]*

697. WESCEF indicates that the proposed amendments to include planned maintenance in the definition of major works should not be approved for reasons relating to the calculation of the probability of supply under clause 3.2 of the proposed terms and conditions.¹⁵⁴ WESCEF submits that the inclusion of planned maintenance in the definition of major works will exclude such maintenance from the calculation of the probability of supply, which it believes will be *“detrimental to shippers as it may result in a lower actual probability of supply as curtailments for planned maintenance are excluded from the calculation”*.¹⁵⁵
698. BHP Billiton submits that *“DBP should not be immune from liability for Direct Damages caused by Curtailment due to Planned Maintenance. Accordingly... DBP’s proposed changes to clause 17.2 and the inclusion of ‘Planned Maintenance’ in the definition of ‘Major Works’ should be reversed”*.¹⁵⁶
699. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change which, in the Authority’s view, is likely to result in an additional exemption from the operator being liable for curtailing more than two per cent each year under clause 17.3 of the proposed terms and conditions. Taking into account the concerns raised by CPMM, WESCEF and BHP Billiton, the Authority does not approve DBP’s proposed amendments to the definition of “major works” to include “planned maintenance” or to DBP’s proposed consequential amendments to clauses 17.2(d), 18(e) and 18(g).

Required Amendment 29

The term “major works”, under clause 1 of the proposed terms and conditions, should be amended to exclude planned maintenance, and consequential amendments to clauses 17.2(d), 18(e) and 18(g) should not be made.

¹⁵³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 34.

¹⁵⁴ Clause 3.2(d) of the proposed terms and conditions reads: *“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”*.

¹⁵⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

¹⁵⁶ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

“Original Capacity”

700. DBP proposes, as a "minor/drafting change", to delete the term “original capacity” from the proposed terms and conditions because it claims it is *"not used [and] relates to options to extend term, which have been removed from [the] reference service"*.¹⁵⁷
701. The Authority notes DBP’s proposed change is consequential on the proposed removal of the renewal option provisions in clauses 4.3 to 4.7 (refer paragraph 725 below). Hence, its removal is only acceptable if that proposed change is made. As the Authority has concluded that DBP’s proposed change to remove the renewal option provisions in clauses 4.3 to 4.7 of the proposed terms and conditions is neither justified nor acceptable (refer paragraph 730 below), the Authority also considers that DBP’s proposed deletion of the definition of “original capacity” is neither justified nor acceptable.

Required Amendment 30

The term “original capacity”, under clause 1 of the current terms and conditions applying to the access arrangement for the third (AA3) period, should not be deleted from the proposed terms and conditions.

“Outlet Station”

702. DBP proposes, as a "minor/drafting change", to insert the following words in the definition of "outlet station".
- Outlet Station** means either the Metering Equipment site associated with an Outlet Point, and includes [gate stations as well as](#) any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and service.
703. DBP's stated rationale for this change is *"to ensure that costs of maintaining gate stations are included"*.¹⁵⁸
704. No submissions were received concerning this proposed change.
705. The Authority notes that DBP’s proposed change, if approved, would be inconsistent with the common understanding (as reflected in the SSC) that:
- a "gate station" is the metering equipment site associated with a "physical gate point" (being a point marking the boundary between the DBNGP and the gas distribution network); and
 - a "physical gate point" is not the same as an "outlet point" (being a point where a shipper has contracted to receive gas from DBP).¹⁵⁹

¹⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

¹⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

¹⁵⁹ Refer to the definition of "physical gate point" in the SSC, which reads: *"Physical Gate Point means a flange, joint or other point marked in the description of the DBNGP system in the Access Arrangement*

706. Given this understanding, the Authority is concerned that it makes no sense to say that the metering equipment site associated with an outlet point "includes" a metering equipment site associated with a physical gate point (i.e. a "gate station"). The Authority is of the view that the drafting of the proposed terms and conditions could be improved to remove the inconsistency and make better sense, if the definition of outlet station were amended to read the same as in the SSC, with a definition of "gate station" added in the same terms as used in the SSC.¹⁶⁰

Required Amendment 31

The term "outlet station", under clause 1 of the proposed terms and conditions, should be amended as follows:

"Outlet Station means either a Gate Station or the Metering Equipment site associated with an Outlet Point, and includes ~~gate stations as well as~~ any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and service."

The term "gate station" should be added to clause 1 of the proposed terms and conditions, using the same terms that are used in the Standard Shipper Contract, that is:

"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."

"Part Haul"

707. As previously indicated under the Pipeline Services section of this draft decision (refer paragraph 74 and following), DBP proposes to change the definition of "part haul service" at clause 15 (Definitions) of the proposed revised access arrangement to specify that it is *"a service to provide forward haul on the DBNGP which is not a full haul service and where the outlet point is upstream of compressor station 9 (CS9) on the DBNGP, regardless of the location of the outlet [inlet¹⁶¹] point, but does not include back haul"*.

Information as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point".

¹⁶⁰ In clause 1 of the SSC, "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, reserve flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services."*

¹⁶¹ The Authority has confirmed with DBP (email response of 30 November 2015, "Re: Information Request – ERA11") that the reference to "Outlet" point is a typographical error and the correct reference should be to "Inlet" so that the proposed definition to Part Haul Service means *"a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul"*.

708. Further to this change, DBP proposes to amend the definition of “part haul” under clause 1 of the proposed terms and conditions as follows:

Part Haul means 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 [Inlet¹⁶²] Point, but does not include Back Haul, 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.~~

709. DBP put forward a number of reasons for the proposed change, which are set out in its access arrangement submissions and are summarised as follows.¹⁶³

- There is no evidence that a significant part of the market for gas transportation services has sought, or will seek, an access contract for a Part Haul service (as that service is defined in the current access arrangement) where the outlet point is downstream of CS9. There has been no requests for this service since it has been available as a reference service.
- All shippers who have used the Mondarra Storage facility and who are likely to also deliver gas to an outlet point downstream of CS9 have been using their existing T1 contracted capacity.
- All potential users of the storage facility and who are likely to also deliver gas to an outlet point downstream of CS9 already have a T1 service access contract and therefore it would not be economic for them to enter into a separate P1 service (given the take or pay tariff obligations under the T1 Service contract).
- Moreover, the definition of Part Haul service in the current access arrangement is confusing causes discrimination problems in that potentially deliveries downstream of CS9 could be under a full haul or a part haul contract. *[sic]*

710. CPMM and WESCEF both comment on DBP’s proposal to amend the definition of part haul. CPMM states in its submission to the Authority that it *“has no objection to the proposed amendment”* to the definition of part haul.¹⁶⁴ In contrast, WESCEF submits that the proposed amendments should not be accepted for the same reasons that it raised in response to DBP’s proposal to amend the description of the proposed P1 Service under clause 3 (Pipeline Services) of the proposed revised access arrangement.^{165,166}

¹⁶² The Authority has confirmed with DBP (email response of 30 November 2015, “*Re: Information Request – ERA11*”) that the reference to “Outlet” point is a typographical error and the correct reference should be to “Inlet”.

¹⁶³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 4-5.

¹⁶⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 34.

¹⁶⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 3 and 5.

¹⁶⁶ Refer to paragraph 79 of this Draft Decision for WESCEF reasons.

711. DBP submits that there is no evidence that there is a significant demand in the market for the P1 Service with the current part haul definition, but that it is demonstrably evident that there is demand in the market for a P1 Service that has the original pre-AA3 definition (which was the basis of the part haul service on the DBNGP since the 1990s¹⁶⁷ and which DBP now seeks to reinstate through its proposed change).¹⁶⁸
712. DBP further submits that its proposed change (to reinstate the original pre-AA3 definition) should be accepted for the following reasons:¹⁶⁹
- DBP has not had a single access request for the P1 Service with the [current part haul definition¹⁷⁰], nor does it expect to receive future requests;
 - during the current [third] access arrangement period, there have been four access requests for a part haul services inclusive of the original definition of part haul;
 - shippers who utilise the Mondarra Gas Storage Facility (MGSF) who have existing contracted capacity under their T1 Standard Shipper Contracts (SSC) continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement...;
 - additionally, the majority of shippers (approximately 85 per cent) 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 access arrangement period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF; and
 - to the extent that an existing or prospective shipper would like to contract for a P1 Service in the access arrangement 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.
713. DBP also submits that:¹⁷¹
- 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 its Submission 73 provided to the ERA on 13 December 2011 - a copy of which is attached as Appendix A;
 - 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;

¹⁶⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2010, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.11, p. 6.

¹⁶⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.13, p. 7.

¹⁶⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.14, p. 7.

¹⁷⁰ The current (AA3) definition of part haul is “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”.

¹⁷¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.15, pp. 7-8.

- 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;
- 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;
- 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
- 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.

714. The Authority has given detailed consideration to the matters raised by DBP in relation to its proposed amendment to the term “part haul (service)” elsewhere in this Draft Decision. Accordingly, having regard to the reasons stated by the Authority in the Pipeline Services section of this Draft Decision (refer paragraph 74 and following), the Authority is of the view that DBP's proposed amendments to the definition of “part haul” in the proposed terms and conditions should not be accepted. This decision is consistent with the Authority's decision in relation to the proposed amendments to the description of the P1 Service (i.e. the definition of “part haul service”) in the proposed revised access arrangement.

Required Amendment 32

The term “part haul”, under clause 1 of the proposed terms and conditions, should retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3).

Clause 2.5(e) – Compliance with ring fencing

715. DBP proposes to amend clause 2.5(e) of the proposed terms and conditions to update legislation references to the current version of the *National Gas Law (WA) (NGL(WA))* as follows. DBP considers the proposed change to be a “minor/drafting change”.¹⁷²

The Operator must procure that the System Operator complies with the requirements of ~~the section 4 (Ring Fencing Arrangements of Part 2 of Chapter 4)~~ of the *National Gas Third Party Access (Western Australia) Law Rules for Natural Gas Pipeline Systems* as if it were a ‘Service Provider’ for the purposes of that section.

716. No submissions were received concerning this proposed change.

¹⁷² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

717. The Authority is of the view that this proposed change is erroneous and does not update the legislative references in the clause to the current legislation. The current wording in the terms and conditions applying to the access arrangement for the third access arrangement period (AA3) is correct. The ring fencing requirements are still in Part 2 of Chapter 4 of the NGL (WA) (which DBP is proposing to change) and the Authority also notes that Chapter 4 of the NGL (WA) is what is referred to in clause 2.5(e) of the SSC. The Authority therefore rejects this proposed change.

Required Amendment 33

Clause 2.5(e) of the proposed terms and conditions, relating to ring fencing compliance, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 3.2 – Capacity service

718. Clause 3.2 of the proposed terms and conditions sets out provisions relating to capacity service. DBP proposes to amend the wording of clause 3.2(a) as follows:
- a) The T1 Service is the Full Haul Gas transportation service ~~provided under this contract~~ which gives the Shipper a right of access to Gas Transmission Capacity and which, subject to the terms and conditions of this Contract, to ~~access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9);~~ to clause 17.9:
 - ~~(i) can only be Curtailed in the circumstances specified in clause 17.2;~~
 - i) ~~(ii)~~ is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - ii) ~~(iii)~~ is treated the same in the Nominations Plan as all other ~~shipper~~shippers with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.
719. DBP's proposed amendments include the deletion of existing clause 3.2(a)(i), which provides that the T1 Service *"can only be Curtailed in the circumstances specified in clause 17.2."*
720. DBP considers the proposed changes to clause 3.2 to be a "minor/drafting change" in that *"the proposed changes simplify the description, eliminate unnecessary words and bring the description of the T1 Service into line with the Operator's SSC, to prevent confusion about the nature of the service"*.¹⁷³
721. CPMM notes DBP's proposed change to the wording of clause 3.2 and submits the change is not a minor drafting change and hence should be reinstated.¹⁷⁴

¹⁷³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

¹⁷⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 53.

722. WESCEF also comment on DBP's proposed change to clause 3.2. WESCEF expresses concern over the removal of clause 3.2(a)(i), which states that access to gas can only be curtailed in circumstances as specified in clause 17.2. WESCEF believes the change *"is amending the certainty of the T1 and P1 services in the interests of DBP and [is] adverse to the interests of shippers"* and submits that the existing clause 3.2(a)(i) should not be deleted.¹⁷⁵
723. The Authority also notes that DBP has not provided any explanation for its proposed deletion of the cross-reference to clause 8.15 ("Default provision for Renomination process") in the opening paragraph of clause 3.2(a), and that clause 3.2(a) of the SSC still contains a cross reference to "clause 8.16" ("Aggregated T1 Service"). Presumably, at least one of these cross-references is incorrect.
724. Having regard to the submissions of interested parties, the Authority considers that DBP's proposed change is not wholly a "minor/drafting change" and that DBP has not provided adequate justification for the proposed change to clause 3.2(a). Accordingly, the Authority does not accept the proposed change.

Required Amendment 34

Clause 3.2 of the proposed terms and conditions, relating to capacity service, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clauses 4.3 to 4.7 – Options to renew contract

725. Clauses 4.3 to 4.7 of the current terms and conditions applying to the T1, P1 and B1 reference services, under the access arrangement for the third access arrangement period (AA3), set out the following provisions:
- option to renew contract (clause 4.3);
 - conditions to be satisfied before exercising an option (clause 4.4);
 - notice exercising an option (clause 4.5);
 - first option period (clause 4.6); and
 - second option period (clause 4.7).
726. DBP proposes to remove these provisions from the terms and conditions, by deleting these clauses and making a consequential amendment to clause 1 to delete the term "original capacity".
727. DBP submits that *"access contracts for a reference service (where spare capacity exists) are for a minimum term of two years... it would be inconsistent with the [NGO] to provide a shipper with an option to extend a two year term contract"*.¹⁷⁶ The reasons for this are indicated by DBP to be as follows.

¹⁷⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

¹⁷⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 5-6.

- DBP would not be able to deal with access requests made by other prospective shippers until all existing shippers have had the opportunity to exercise their options...
 - In the event that a shipper elects not to exercise its option, DBP and the prospective shipper may have already decided to undertake an expansion of the capacity of the pipeline...
 - ... it is open to shippers with reference service access contracts to apply for a new Access Contract towards the end of their term, in which case, they would be on the same position as all prospective shippers seeking access. It would be inequitable if a party has a number of short term options that it enters into when there was spare capacity and a new shipper has little opportunity to access the same transport volume as spare capacity becomes limited.
728. CPMM makes several comments on DBP's proposal to delete clauses 4.3 to 4.7 of the proposed terms and conditions, of which are summarised below.¹⁷⁷
- There must be a balance between the operator's ability to plan future demand and expansions, with the needs of shippers to match gas transport capacity to project life spans. The risk of DBP being forced to expand the pipeline to provide capacity for a prospective user, where existing capacity has to be reserved in case an existing shipper elects to exercise a renewal option, and DBP then being left with surplus capacity where the existing shipper does not in fact exercise that option, can be prevented by requiring the option to be exercised in advance to precede the construction start date.
 - DBP has greater bargaining power when there is less flexibility built into the reference service terms and conditions. In theory whilst matters (such as renewal options) can be negotiated, in practice anything not prescribed in the regulated terms and conditions are either not accommodated, or are accommodated with additional benefits to the pipeline operator.
 - In practical terms, shippers do not have the time or resources to commence an access dispute. Hence, shippers seeking access are at a substantial negotiating disadvantage, with the disadvantage being greater when there is less flexibility built into the reference terms and conditions.
729. While clearly there is disagreement between DBP and CPMM as to how the requirements of the NGO should be interpreted in relation to these renewal options, the Authority notes the suggestions put forward by CPMM in its submission to address the operational issues raised by DBP.
730. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. The Authority is of the view that in this case the NGO (including promotion of the efficient operation and use of the DBNGP for the long term interests of gas consumers) is likely to be best served by retaining the flexibility for shippers offered by these renewal options. Hence, clauses 4.3 to 4.7 should be retained in the proposed terms and conditions.

Required Amendment 35

¹⁷⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 35-36.

The following clauses of the current terms and conditions applying to the access arrangement for the third (AA3) period, which set out provisions relating to the duration of the contract, should not be deleted from the proposed terms and conditions.

- Clause 4.3 (Option to renew contract)
- Clause 4.4 (Conditions to be satisfied before exercising an option)
- Clause 4.5 (Notice exercising an option)
- Clause 4.6 (First option period)
- Clause 4.7 (Second option period)

Clause 5.3 – Operator may refuse to receive gas

731. Clause 5.3 of the proposed terms and conditions sets out the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point. DBP proposes to change the wording of clause 5.3(e) as follows:

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) ~~subject to determination by the Operator as a Reasonable and Prudent Person,~~ 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;

732. DBP submits that this change should be made for the following reasons:¹⁷⁸

- as currently drafted, it is not clear what the operator is required to determine;
- for the operator to exercise its rights under this clause, a determination by the operator that a shipper has engaged in misconduct, negligence or breach is implied and where the operator refuses to receive gas in the absence of such an act or omission by the shipper it would arguably be in breach of contract; and
- the refusal to receive gas is the operator's main remedy in the event of a shipper's breach, negligence or misconduct; as drafted the clause weakens the right of the operator to refuse to receive gas by qualifying when it can refuse.

733. CPMM and WESCEF both commented on DBP's proposal to change clause 5.3(e).

¹⁷⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 6.

- CPMM “objects to any erosion of a requirement that the operator must make determinations under the contract as a reasonable and prudent person”.¹⁷⁹
- WESCEF considers the proposed amendment to clause 5.3(e), as well as clause 5.3(g), to be “contrary to the interest of shippers seeking access... not reasonable or justified (WESCEF cannot see any reason why DBP should be entitled to act other than as a reasonable and prudent person in these circumstances)”.¹⁸⁰

734. The Authority notes that DBP's proposed change to clause 5.3(e) would alter the substance of the test that DBP must satisfy before it could refuse to deliver gas under clause 5.3(e). This could have potentially significant detrimental consequences for shippers. The Authority considers there are better ways of clarifying the drafting of clause 5.3(e) that do not involve removing the important “reasonable and prudent person” qualification. For example, the Authority considers that the drafting of clause 5.3(e) could be improved by replacing the words that DBP proposes to delete with the following words: “to the extent that it is reasonably necessary to do so (as determined by the Operator acting as a Reasonable and Prudent Person),”.
735. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. Accordingly, the Authority is of the view that DBP's proposed change to clause 5.3(e) should be rejected and that the suggested drafting of the Authority be incorporated.

Required Amendment 36

Clause 5.3(e) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should be amended as follows:

“subject to determination by the Operator as a Reasonable and Prudent Person to the extent that it is reasonably necessary to do so (as determined by the Operator acting as a Reasonable and Prudent Person), 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;

736. Further to the proposed change to clause 5.3(e), DBP proposes to make the following change to clause 5.3(g). DBP has identified this change to be a “minor/drafting change” as it seeks to clarify and simplify the drafting of the clause.¹⁸¹
- g) ~~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~~

¹⁷⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 36-37.

¹⁸⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

¹⁸¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity [at the relevant Inlet Point](#).

737. As CPMM has pointed out in its submission:¹⁸²

- CPMM considers the proposed change to clause 5.3(g) to be more than a minor amendment.
- CPMM believes the proposed change will “*substantially change the balance of priorities at a constrained inlet point*”. CPMM further indicates that whilst it “*does not have enough information to judge the full effect of this change... it is potentially a substantial rearrangement of the priority regime, especially if this change is not replicated in all shippers’ contracts [sic]*”
- “*The original words ensured that a shipper with reserved capacity at an inlet point was guaranteed the ability to inject gas up to its contracted capacity.*”
- “*The proposed new wording lets DBP refuse to receive gas from this shipper to give priority to other shippers’ interests, and because of clauses 17(3)(b)(iii) and (c)(ii), and clause 17.5, that refusal will not even count towards the 2% curtailment limit.*”

738. As stated at paragraph 733, WESCEF considers the proposed amendment to clause 5.3(g) to be “*contrary to the interest of shippers seeking access...not reasonable or justified (WESCEF cannot see any reason why DBP should be entitled to act other than as a reasonable and prudent person in these circumstances)*”.¹⁸³

739. The Authority notes that DBP's proposed change is more than a "minor/drafting change" as it would alter the substance of the test that DBP must satisfy before it could refuse to receive gas under clause 5.3(g). This would have potentially significant detrimental consequences for shippers. DBP's proposed change would replace a test that requires two thresholds to be satisfied before DBP could refuse to receive gas (i.e. exceeding contracted capacity at the inlet point and interference with other shipper's rights to firm capacity at the inlet point), with a test that requires only one threshold to be satisfied (i.e. interference with other shipper's rights to firm capacity at the inlet point). Clearly, this could make it much easier for DBP to refuse to receive gas under clause 5.3(g) and create far greater uncertainty for shippers (who could no longer be assured that DBP could not refuse to receive gas under clause 5.3(g), so long as they keep within their contracted capacity at the inlet point).

740. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. Accordingly the Authority is of the view that the proposed change should be rejected.

Required Amendment 37

Clause 5.3(g) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should retain the words: “*to the extent that the Receipt of that Gas for a Gas Day at an Inlet*

¹⁸² CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 37-38.

¹⁸³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

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,".

Clause 5.4 – Notification of refusal to receive gas

741. Clause 5.4 of the proposed terms and conditions sets out the circumstances in which the operator is to give notice to the shipper of a refusal to receive gas. In summary, the operator must:
- use its reasonable endeavours to give the shipper advanced notice of any impending refusal to receive gas (clause 5.4(a));
 - if no advanced notice is given, notify the shipper of a refusal as soon as practicable after the refusal (clause 5.4(b)); and
 - as soon as practicable, notify the shipper of the reasons for a refusal to receive gas (clause 5.4(c)).
742. DBP proposes to amend the wording of clause 5.4(c) to insert the word “reasonable” to make the requirement to notify the shipper of the reasons for a refusal to receive gas “as soon as *reasonably practicable*”. DBP considers this change in wording to be a “minor/drafting change”.¹⁸⁴
743. CPMM indicates that it does not support DBP’s proposed amendment to clause 5.4(c) and believes that DBP has not provided adequate reasoning as to why the current standard, of providing notice as soon as practicable, should be changed. CPMM submits:¹⁸⁵
- This is an important operational event. It can cause the shipper to incur imbalance penalties, and can result in contractual consequences under its gas purchase agreements. The shipper needs to know quickly so it can start making alternative arrangements.
744. The Authority considers that, if the insertion of “reasonably” causes the standard to be degraded in substance (as CPMM submits) then this proposed change is not a “minor/drafting change”. On balance, the Authority is of the view that there is likely to be little difference in practice between an obligation to do something “as soon as practicable” and to do it “as soon as reasonably practicable”. On this basis, the Authority considers that the proposed change is in the nature of a “minor/drafting change” which is acceptable.

Clause 5.5 – Refusal to receive gas is a curtailment in limited circumstances

745. Clause 5.5 of the proposed terms and conditions sets out the circumstances in which the refusal to receive gas is to be considered a curtailment under the contract and

¹⁸⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

¹⁸⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 53-54.

taken into account in determining whether the permissible curtailment limit for a gas year has been exceeded.

746. DBP proposes to change clause 5.5 to delete a cross reference to clause 5.3(d), which relates to the DBNGP exceeding its maximum allowable operating pressure (**MAOP**) as a basis for claiming that a refusal to deliver is a curtailment in certain circumstances. DBP indicates the reason for this change to be:¹⁸⁶

Clause 5.5 has the effect that if delivery of gas causes the pipeline to exceed MAOP in a situation that would not have happened if the Operator had acted as a [reasonable and prudent person] to avoid, then the failure to receive gas is a curtailment. This is not justifiable because:

- MAOP is set by the pipeline design,
- the Operator is not able to take steps to allow deliveries of gas into the pipeline that would cause it to exceed MAOP, and should be entitled to refuse receipt in that case without risk of penalty. [sic]

747. CPMM indicates that it objects to DBP's proposed "*on the basis that the operator is unlikely to be considered as having failed to act as a [reasonable and prudent person] in this situation*".¹⁸⁷

748. The Authority considers that the "reasonable and prudent person" requirement is an important safeguard and should not be lightly removed. If a reasonable and prudent person could have avoided having to refuse to receive gas because of a MAOP issue, then DBP should also have done so. The reasons put forward by DBP appear to be claims based largely on matters it considers to be beyond its prevention or control. However, it is still necessary to apply the reasonable and prudent person test to any such situation to determine if it is genuinely beyond DBP's prevention or control, or could have been prevented or controlled, had DBP acted as a reasonable and prudent person.

749. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. Accordingly, the Authority is of the view that the proposed change should be rejected.

Required Amendment 38

Clause 5.5 of the proposed terms and conditions, relating to the circumstances in which the refusal to receive gas is to be considered a curtailment under the contract and taken into account in determining whether the permissible curtailment limit has been exceeded, should retain the cross reference to clause 5.3(d).

¹⁸⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 6-7.

¹⁸⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 38.

Clause 5.7 – Operator may refuse to deliver gas

750. Clause 5.7 of the proposed terms and conditions sets out the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point. DBP proposes to change the wording of clause 5.7(b)¹⁸⁸ as follows:

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may refuse to Deliver Gas to the Shipper at an Outlet Point in all or any of the following cases:

...

- b) ~~to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas, 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;~~

751. DBP submits this change should be made for the same reasons as the change that is proposed for clause 5.3(e), which has been considered at paragraphs 731 to 734 of this Draft Decision. DBP indicates that these reasons are *“repeated, but in relation to deliveries of gas rather than receipt of gas”* and that the proposed change aims to clarify clause 5.7(b) and make it consistent with the corresponding clause of 5.3(e).¹⁸⁹

752. CPMM believes that the proposed change is *“an attempt by DBP to obtain substantial commercial leverage”* and indicates that the Authority should be mindful of the *“oddities”* contained within the contract.¹⁹⁰ Further comments submitted by CPMM are summarised below.

- The current wording of clause 5.7(b) only permits a suspension of supply in response to a contractual breach when it is necessary to protect pipeline integrity. The proposed change would allow DBP the ability to suspend supply in all breach circumstances, including circumstances of “misconduct”, which CPMM considers to be an undefined and broad concept.
- Peculiarities of the contract result in the refusal to accept or deliver gas operating in parallel to the normal curtailment regime, and not counting towards curtailment limits. CPMM believes this arrangement gives DBP extra advantages (and the shipper extra uncertainties) not normally found in a gas transmission agreement.
- Operationally, from the point-of-view of a shipper, there is no difference between a refusal to accept or deliver gas and a curtailment.

753. The Authority notes that DBP's proposed change to clause 5.7(b) (like its proposed change to clause 5.3(e) and discussed above at paragraph 731) would alter the substance of the test that DBP must satisfy before it could refuse to deliver gas under clause 5.7(b). This could have potentially significant detrimental consequences for shippers.

¹⁸⁸ In its submission to the Authority (*“Proposed Terms and Conditions – Supporting Submission 4”*), DBP cites this change to be a change to clause 5.7(d).

¹⁸⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

¹⁹⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 38-40.

754. As with the Authority's comments on clause 5.3(e), the Authority considers there should be better ways of clarifying the drafting of clause 5.7(b) that do not involve removing the important "reasonable and prudent person" qualification. Alternatively, the Authority notes that DBP does not have an equivalent to clause 5.7(b) in its SSC and accordingly, the Authority has no objection to DBP removing clause 5.7(b) in its entirety from the proposed terms and conditions.
755. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. Accordingly the Authority is of the view that the proposed change should be rejected.

Required Amendment 39

Clause 5.7(b) of the proposed terms and conditions, relating to the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point, should retain the words: *"to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas,"*.

Clause 5.10 – No liability for refusal to deliver gas

756. Clause 5.10 of the proposed terms and conditions limits DBP's liability for refusing to deliver gas in the circumstances set out in clause 5.9. The Authority notes that the drafting of clause 5.10 is almost identical to that used in clause 5.6 (which limits DBP's liability for refusing to receive gas in the circumstances set out in clause 5.5).
757. DBP has proposed a "minor/drafting change" to clause 5.6 to correct an ambiguity in the existing drafting, of which the Authority accepts.¹⁹¹ The Authority considers a similar change should be made to clause 5.10 in relation to liability for refusal to deliver gas as is being made to clause 5.6 (and for the same rationale). The Authority therefore recommends amending clause 5.10 as follows:

Subject to clause 23.2, ~~and clause 17 when a Refusal to Receive Gas is deemed a Curtailment~~, 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, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies.

¹⁹¹ No submissions were received on DBP's proposed "minor/drafting change" to clause 5.6 of the proposed terms and conditions.

Required Amendment 40

Clause 5.10 of the proposed terms and conditions should be amended as follows:

~~“Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, 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, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies.”~~

Clause 5.13 – Additional rights to refuse to receive or deliver gas

758. Clause 5.13 details provisions relating to additional rights to refuse to receive or deliver gas. The Authority notes that clauses 5.13(b) and 5.13(c) contain various references to “*clause 5.12(a)*”. The Authority considers these references to be drafting errors (as there is no “*clause 5.12(a)*” in the proposed terms and conditions) and should be changed so that they refer to “*clause 5.13(a)*”.

Required Amendment 41

Clauses 5.13(b) and 5.13(c) of the proposed terms and conditions, relating to additional rights to refuse to receive or deliver gas, should be amended to replace references to “*clause 5.12(a)*” with references to “*clause 5.13(a)*”.

Clause 5.14 – Shipper’s gas installations

759. Clause 5.14 sets out provisions relating to the gas installations of shippers. The Authority notes that clause 5.14(a) contains a reference to “*this clause 5.13*”, which the Authority considers is a drafting error and should be changed so that it refers to “*this clause 5.14*”. Similarly, the Authority notes that clauses 5.14(b)(ii) and 5.14(c) contain references to “*clause 5.13(b)(i)*”, which the Authority considers are drafting errors and should be changed so that they refer to “*clause 5.14(b)(i)*”.

Required Amendment 42

Clause 5.14 of the proposed terms and conditions, relating to shipper’s gas installations, should be amended as follows:

- Clause 5.14(a) should be amended to replace a reference to “*clause 5.13*” with a reference to “*clause 5.14*”.
- Clauses 5.14(b)(ii) and 5.14(c) should be amended to replace references to “*clause 5.13(b)(i)*” with references to clause “*5.14(b)(i)*”.

Clause 6.3 – Multi-shipper inlet and outlet points

760. Clause 6.3 of the proposed terms and conditions sets out provisions relating to multi-shipper inlet and outlet points, which are points at which more than one shipper delivers (in the case of an inlet point) or receives (in the case of an outlet point) gas from the operator.
761. DBP proposes to change clause 6.3(e) to specify that a multi-shipper agreement (**MSA**), in respect of an inlet point or outlet point, is an agreement that contains terms that satisfy all the conditions outlined in clauses 6.3(e)(i) to 6.3(e)(viii). The change in wording to clause 6.3(e) is indicated to be as follows:
- c) ~~The Operator must promptly enter into a~~ Multi-shipper Agreement in respect of an Inlet Point or Outlet Point if is an agreement that contains terms that satisfy all of the following ~~apply to the Multi-shipper Agreement~~:
 - i) if any one of ...
762. DBP believes the current drafting of the clause does not make sense and may be a drafting error that has been maintained, hence the reason for the proposed change.¹⁹²
763. Whilst CPMM acknowledges the drafting of clause 6.3(e) is somewhat “*inelegant*”, it disagrees with DBP’s drafting error reasoning and objects to the proposed change. CPMM submits the operator should be required to enter into a MSA in the circumstance set out in cluse 6.3(e) and makes the following points.¹⁹³
- The current wording requires DBP to enter into a MSA if the agreement meets the circumstances specified in the clause – the proposed change will remove this obligation.
 - A MSA is important to shippers as a means of risk mitigation, as it allows a shipper to mitigate the take or pay risk under its gas sales and gas transportation by finding alternative sources of, or markets for, gas during its, or its suppliers’, outages.
 - A MSA is largely an agreement between affected shippers as to how commingled gas flows will be apportioned, but requires DBP to be a party for operational reasons. Removing the obligation for DBP to enter into such an agreement will impact on shippers’ risk mitigation efforts and increase DBP’s negotiating position (or “bargaining power”).
764. The Authority is of the view that, contrary to DBP’s stated rationale for this proposed change, the drafting of clause 6.3(e) does have sufficient clarity of meaning to make sense. If changes are to be made to improve the drafting, it should be possible to do that without altering the substance and meaning of the clause. However, DBP’s proposed change would substantially alter the substance and meaning of the clause. If the substance and meaning of the clause is to be altered, then DBP must provide good justification for doing this.

¹⁹² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

¹⁹³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 40-41.

765. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed change. Accordingly, the Authority is of the view that the proposed change should be rejected.

Required Amendment 43

Clause 6.3(e) of the proposed terms and conditions, relating to multi-shipper inlet and outlet points, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 6.5 – Allocation of gas at outlet points

766. Clause 6.5 of the proposed terms and conditions sets out provisions relating to the allocation of gas at outlet points. DBP proposes changes to clauses 6.5(b) and 6.5(c), which are identified to be in the nature of “minor/drafting changes”. DBP considers these minor drafting changes necessary “*to ensure consistent terminology (Receives Gas, rather than take Delivery of), to avoid confusion and to note that it relevant deliveries are for a Gas Day at any particular Outlet Point [sic]*”.¹⁹⁴

6.5 Allocation of Gas at Outlet Points

...

- b) If Shipper and any other shipper ~~take Delivery of~~ Receives Gas from Operator at the Outlet Point on a Gas Day then, if there is a Multi-shipper Agreement in relation to the Outlet Point, Shipper's proportional share of Gas Delivered by the Operator at the Outlet Point ~~must~~ on that Gas Day will be as determined under the Multi-shipper Agreement.
 - c) If there is no Multi-shipper Agreement in relation to an Outlet Point ... then Shipper's proportional share of Gas at the Outlet Point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Outlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers, and Shipper will be deemed to have Received ~~that~~ the proportionate share so determined of the Gas Delivered ~~to~~ by the Operator at that Outlet Point on that Gas Day at a constant rate over that Gas Day.
767. CPMM believes that DBP’s proposal to add the words “*at a constant rate over that Gas Day*” (at clause 6.5(c)) is not trivial. CPMM submits that:
- If DBP, making the determination as a Reasonable and Prudent Person (under line 7 of this clause), has information about the different consumption profiles of the multiple shippers at that point (eg. if one is a constant-rate plant and one a peaking power generator), it should be required to use that information in making its determination, not ignore it. *[sic]*
768. Further to the proposed amendments at clauses 6.5(b) and 6.5(c), DBP also proposes to amend clause 6.5(d), which outlines the order in which gas that is delivered by the operator to an outlet point is deemed to be received by the shipper.

¹⁹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

DBP proposes to delete the third ordered item as follows. DBP does not provide any specific reason for this proposed change.¹⁹⁵

Gas Delivered by the Operator to an Outlet Point is deemed 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 T1 Service (which shall include any available Aggregated T1 Service);
- (ii) second, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.8(a); and
- (iii) third, ~~Gas for any available Capacity under any Spot Transaction; and~~
- ~~(iv) fourth,~~ other gas.

769. WESCEF submits that the proposed change to clause 6.5(d)(iii), along with other proposed changes to clause 17.9(c)(iii) and 9.5(a) (as discussed elsewhere in this Draft Decision), should not be approved. WSECEF believes the proposed amendments alter the nature of spot transactions in a manner that is adverse to the interests of a shipper utilising spot capacity.¹⁹⁶
770. Having regard to the submissions of interested parties, the Authority considers that the proposed addition of the words “*at a constant rate over that Gas Day*” to clause 6.5(c) and the proposed amendment to clause 6.5(d) are not a “minor/drafting change” and DBP has not provided adequate justification for these proposed changes. Accordingly, given the current lack of justification, the Authority is of the view that the proposed addition of the words “*at a constant rate over that Gas Day*” to clause 6.5(c) and the proposed amendment to clause 6.5(d) should be rejected.

Required Amendment 44

Clause 6.5 of the proposed terms and conditions, relating to the allocation of gas at outlet points, should be amended as follows:

- Subclause 6.5(c) should be amended to remove the words “*at a constant rate over that Gas Day*”; and
- Subclause 6.5(d) should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 6.16 – *Certain installations taken to comply*

771. DBP proposes to make amendments to clause 6.16 of the proposed terms and conditions that are indicated to be a “minor/drafting change” for plain English drafting

¹⁹⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A “T1 Reference Service Terms and Conditions – marked-up version”*, p. 34.

¹⁹⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

and clarification purposes.¹⁹⁷ DBP's proposed drafting specifies that, despite any other provisions of the contract, certain installations relating to "existing stations" are taken to comply in all respects with the provisions of the contract, including clauses 6.6 to 6.11, which relate to the:

- design and installation of inlet stations (clause 6.6);
- design and installation of inlet point connection facilities (clause 6.7);
- design and installation of outlet stations (clause 6.8);
- requirements relating to inlet stations and outlet stations (clause 6.9);
- notional gate point (clause 6.10); and
- maintenance charge for inlet stations and outlet stations (clause 6.11).

772. Under the current terms and conditions applying for the third access arrangement period (AA3), the cross-referencing in clause 6.16 is to clauses 6.6 to 6.10, not clauses 6.6 to 6.11 as currently proposed by DBP.

773. WESCEF notes DBP's proposed drafting amendments to clause 6.16 and believe that the reference to clause 6.11 should be a reference to clause 6.9.¹⁹⁸ That is, certain installations relating to existing stations are taken to comply in all respects with the provisions of the contract, including clauses 6.6 to 6.9.

774. The Authority notes that DBP has not provided any justification for its proposed amendment of the clause cross-referencing in clause 6.16 from "clause 6.10" to "clause 6.11". Further, WESCEF's proposed change of the cross reference from clause 6.10 to clause 6.9 does appear to make more sense, given that neither clause 6.10 ("Notional Gate Point") nor clause 6.11 ("Maintenance Charge for Inlet Stations and Outlet Stations") appear to be dealing with matters that existing stations and facilities and pre-1995 SECWA metering arrangements relating to them would be expected to comply with.

775. Having regard to the submissions of interested parties, the Authority considers that, while the proposed change to clause 6.16 is generally acceptable, the proposed cross referencing to clause 6.11 does not appear to be justified and has not been adequately justified by DBP. On balance, therefore, the Authority prefers the suggestion made by WESCEF that the cross-referencing in clause 6.16 be changed to "*clauses 6.6 to 6.9*".

Required Amendment 45

Clause 6.16 of the proposed terms and conditions, relating to the compliance of certain installations, should be amended to replace the cross-referencing to "clauses 6.6 to 6.11" with cross-referencing to "clauses 6.6 to 6.9".

¹⁹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

¹⁹⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

Clause 7.8 – Shipper’s liability for out-of-specification gas

776. Clause 7.8 outlines the treatment of any out-of-specification gas that enters the DBNGP without agreement from the operator. DBP proposes to change this clause, at sub-clauses 7.8(b)(i) and (ii), to indicate that the operator is entitled to deal with any out-of-specification gas that enters the DBNGP by venting, flaring or burning the out-of-specification gas (by comparison, under the existing wording of clause 7.8(b) only venting is permitted).
777. DBP indicates the change will ensure the options of flaring or burning out-of-specification gas are available to the operator to use when necessary, and reflects the practical operation of the pipeline.¹⁹⁹ It will also ensure that the operator can deal with out-of-specification gas issues as quickly as possible.
778. CPMM believes the addition of the option to “burn” out-of-specification gas could have broader commercial consequences as it would include the burning of such gas in a compressor turbine. CPMM submits that *“if the gas is good enough to be allowed into the pipeline for use as compressor fuel, then it should not be treated as undelivered [gas] under clause 7.8(b)(ii)”*.²⁰⁰
779. Having regard to the submissions of interested parties, the Authority considers that:
- DBP should have the flexibility to vent, burn or flare out-of-specification gas as it thinks fit (acting as a reasonable and prudent person and consistently with the NGO); and
 - if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and (as the shipper did not supply the gas for that purpose) the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.
780. Accordingly, the Authority is of the view that the proposed change would be acceptable if additional drafting is included to the above effect.

¹⁹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

²⁰⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 41.

Required Amendment 46

Clause 7.8 of the proposed terms and conditions, relating to the shipper's liability for out-of-specification gas, should be amended to indicate that if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

Clause 8.2 – Requests for advance information

781. Clause 8.2 of the proposed terms and conditions sets out provisions that provide for the operator to request advance estimates from the shipper to assist the operator with its planning and forecasting. DBP proposes drafting changes to clause 8.2(a) of the proposed terms and conditions as follows.²⁰¹

To assist in its planning and forecasting, the Operator may ~~from time to time, acting as a Reasonable and Prudent Person,~~ request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) ~~in good faith~~ of the Shipper's likely Nominations which information will be governed by the provisions of clause 28.

782. No specific reasoning is provided for this proposed change.
783. CPMM notes DBP's proposal to amend the wording of clause 8.2(a) to remove certain words, with no explanation given for the change. CPMM submits that *"there is no reason not to maintain the same standard of behaviour, to ensure that this clause cannot be abused or become an onerous ongoing pre-nominations regime"*.²⁰²
784. Having regard to the submissions of interested parties, the Authority considers that the proposed changes to clause 8.2(a) potentially gives DBP a wider discretion in how it exercises its right to request advance estimates (removing the safeguard for shippers that is provided by the reasonable and prudent person qualification) and removes the obligation for shippers to provide estimates in good faith. Accordingly, given the current lack of justification, the Authority is of the view that the proposed changes should be rejected as not being more likely to achieve the NGO than the existing wording.

²⁰¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A "T1 Reference Service Terms and Conditions – marked-up version"*, p. 46.

²⁰² CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 41.

Required Amendment 47

Clause 8.2(a) of the proposed terms and conditions, relating to requests for advance information, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 9.5 – Accumulated imbalance limit

785. Clause 9.5 of the proposed terms and conditions sets out provisions relating to shippers' accumulated imbalance limits. DBP proposes to remove the provisions relating to the issuing of accumulated imbalance notices by deleting clauses 9.5(c) and 9.5(d) from the proposed terms and conditions. The apparent effect of these proposed changes would be to create a more inflexible eight per cent imbalance limit, with imbalance charges applying immediately it is exceeded, without any "cure period" (contrary to what is currently permitted).
786. DBP indicates the reason for the change is that the notice provisions do not work in practice. DBP also submits that:²⁰³
- the base reference service should not give shippers the right to excess imbalance rights above 8% above contracted capacity. DBP management understands that globally, the standard is 2% above contracted capacity; and
 - the changes proposed remove notification provisions and provide that once 8% limit is hit, charges for the imbalance automatically apply without the notice provisions (notice to all other shippers etc.) applying. [sic]
787. Both CPMM and WESCEF comment on DBP's proposal to delete clause 9.5(c) and clause 9.5(d) from the proposed terms and conditions.
- CPMM indicates that the DBNGP has been operating in accordance with the notice requirements in clause 9.5 for over a decade, hence CPMM rejects DBP's rationale that the notice provisions are "unworkable". CPMM also believes that the operator is equipped to deal with accumulated imbalances in excess of accumulated imbalance limits on any given gas day, and to notify shippers.²⁰⁴
 - WESCEF indicates that the proposed amendments to clause 9.5 will remove the operator's obligation to issue notices to all other shippers with a negative or positive accumulated imbalance; remove provisions that protect a shipper when it uses its best endeavours to reduce its imbalance; and remove the concept of an outer imbalance limit. WESCEF believes that this is contrary to the interests of shippers as it removes flexibility and reasonable protections.²⁰⁵
788. The Authority is of the view that any change to the imbalance regime would need to be justified based on the NGO. That is, DBP would need to show this proposed

²⁰³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 7-8.

²⁰⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 41-42.

²⁰⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 6-7.

change promotes the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas, despite the claimed adverse impact it would have on shipper flexibility and efficiency.

789. Clearly (according to the submission from CPMM) the notice provisions are "workable" in the sense that notices can and have been given in practice. It is not clear whether DBP means that, despite giving notices, they have not "worked" in the sense of achieving an improvement in shipper balancing behaviour. However, if shippers did adhere to the eight per cent limit more strictly, DBP has not shown how that improvement in behaviour would justify the change based on the NGO. DBP has not demonstrated that current shipper balancing behaviour is actually causing an adverse impact on pipeline integrity (or other shippers) that might be argued to be contrary to the long term interests of consumers of natural gas with respect to price, quality, safety, reliability or security of supply of natural gas. What evidence is there that pipeline integrity or other NGO considerations are genuinely threatened by current shipper balancing?
790. Further, if DBP's proposed change were to be implemented, DBP has not shown how its proposed eight per cent imbalance limit to operate with no-notice default for the reference service contracts, would improve pipeline integrity or other NGO considerations, given that most shippers are not on the reference service contract and would not necessarily be subject to the proposed eight per cent imbalance limit with automatic default (i.e. the SSC retains provisions that are substantially the same as clauses 9.5(c) and 9.5(d)). Unless that position is also changed, it would seem that shippers on a reference service could be exposed to a form of discrimination in this respect.
791. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for the proposed deletion of clauses 9.5(c) and 9.5(d). Accordingly, the Authority is of the view that the proposed change should be rejected unless it can be justified consistent with the NGO.

Required Amendment 48

Clauses 9.5(c) and 9.5(d), relating to the accumulated imbalance limit, should not be deleted from the proposed terms and conditions.

792. Further to deleting clauses 9.5(c) and 9.5(d) from the proposed terms and conditions, DBP proposes to change the wording of clause 9.5(e),²⁰⁶ which relates to the payment of an excess imbalance charge, by deleting certain words as outlined below. DBP indicates this change will simplify the imbalance regime.²⁰⁷

~~If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the~~ The Shipper must pay an Excess Imbalance Charge

²⁰⁶ In DBP's supporting submission reference is made to clause 9.6(e). The Authority believes this to be an error, with the correct reference being to clause 9.5(e).

²⁰⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 8.

at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit ~~up to the Outer Accumulated Imbalance Limit~~ in accordance with clause 20 in respect of ~~the Gas Day on which the notice is issued and each subsequent Gas Day~~ each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

793. CPMM submits that the proposed change to clause 9.5(e) may simplify the imbalance regime for the operator, but is detrimental to the shipper for the following reasons:²⁰⁸
- A Shipper may have exceeded its Accumulated Imbalance Limit for reasons outside its control so should have the opportunity to reduce the imbalance before Excess Imbalance Charges are imposed.
 - The two-stage imbalance regime emerged from the arms-length 2004 renegotiations, and provides a more sophisticated balance between the shipper's and the pipeliner's interests than DBP's proposed more blunt instrument.
 - The philosophy underlying the two-stage balancing (and peaking and overrun) regime is that the impact of an excursion depends on the prevailing circumstances at the time. Sometimes, the pipeline is in stress, and the shipper must manage its flows carefully to avoid harming other shippers or impacting efficient pipeline operation. But on many occasions the pipeline can tolerate excursions without harm or loss. Imposing too restrictive a regime can unnecessarily reduce shipper flexibility, and hence efficiency, in managing their own gas flows. There is no point requiring a shipper to reduce its plant's output (of electricity, crushed ore, or whatever) in order to comply with an arbitrary limit, in circumstances where that limit can be exceeded without harm. Conversely, if the excursion would cause harm, the shipper can and should be required to comply with the limits. The current two-stage regime, although more complex, implements this balance, and CPMM recommends that it be retained. [sic]
794. As with DBP's proposed changes to clauses 9.5(c) and 9.5(d), the Authority is of the view that DBP would need to show how this proposed change to clause 9.5(e) is necessary and consistent with the NGO. For example, how would this proposed change promote the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas, given the claimed adverse impact it would have on shipper flexibility and efficiency?
795. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed amendment of clause 9.5(e). Accordingly the Authority is of the view that the proposed change should be rejected unless it can be justified consistent with the NGO.

²⁰⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 42-44.

Required Amendment 49

Clause 9.5(e) of the proposed terms and conditions, relating to the payment of an excess imbalance charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

796. Additionally, DBP propose to amend the wording of clause 9.5(a) as follows, with the amendments identified by DBP to be a “minor/drafting change” whereby the new drafting maintains the meaning of the clause in fewer words.²⁰⁹
- The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the ~~sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions)~~ for that Gas Day.
797. CPMM submits that there should be “no intention to remove Spot Capacity from the imbalance limit”.²¹⁰
798. WSECEF notes DBP’s proposal to amend clause 9.5(a), along with other proposed changes to clauses 6.5(d)(iii) and 17.9(c)(iii) (as discussed elsewhere in this Draft Decision), should not be approved. WSECEF believes the proposed amendments alter the nature of spot transactions in a manner that is adverse to the interests of a shipper utilising spot capacity and claim that the exclusion of spot transaction in calculating the imbalance limit reduces the shipper’s flexibility.²¹¹
799. Clearly, DBP's proposed "minor/drafting change" to clause 9.5(a) on the face of it has the potential to exclude spot transactions from calculating the imbalance limit and may cause uncertainty and/or confusion. If, as DBP claims, the remaining words should have the same meaning (i.e. no change to the pre-existing inclusion of spot transactions in calculating the imbalance limit), then its proposed change would seem to have failed to achieve this. If changes are to be made to improve the drafting, it should be possible to do that without altering the substance and meaning of the clause. However, DBP's proposed change would appear to substantially alter the substance and meaning of the clause.
800. Having regard to the submissions of interested parties, the Authority considers that DBP's proposed change to clause 9.5(a) is not a "minor/drafting change" and DBP has not provided adequate justification for the proposed change. Accordingly, the Authority is of the view that the proposed change should be rejected.

²⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

²¹⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 55.

²¹¹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

Required Amendment 50

Clause 9.5(a) of the proposed terms and conditions, relating to the shipper's accumulated imbalance limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 9.9 – Cashing out imbalances

801. Clause 9.9 of the proposed terms and conditions specifies provisions for the cashing out of imbalances at the end of each gas month (whereas under the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), cashing out is to occur at the capacity end date). DBP proposes to add new provisions to this clause to provide more options for restoring the imbalance to zero".

9.9 Cashing out imbalances at end of each Gas Month

- a) The balancing process prescribed in this clause 9.9 is to be undertaken ~~at on~~ the ~~Capacity End Date~~, first day of each Gas Month (except the first Gas Month after the commencement of this contract) in relation to the Shipper's previous month's total Gas inputs to, and total Gas outputs from, the DBNGP.
- b) If at the ~~Capacity End Date~~ end of the last day of a Gas Month, the Shipper's Accumulated Imbalance is a positive number then, either:
 - i) the Shipper enters into an agreement with the Operator is to for a Storage Service in relation to the Shipper's Accumulated Imbalance amount; or
 - ii) the Operator must pay a fair market price to the Shipper for that Gas. at the rate of \$8.00 per GJ (\$2015) (Imbalance Gas Rate). The Excess Imbalance Rate is escalated from 1 January 2016 on 1 January each year in accordance with the following formula:

$$IGR_n = \$8.00 \times \left(1 + 0.67 \frac{CPI_n - CPI_b}{CPI_b} \right)$$

where:

IGR_n is the Imbalance Gas Rate for the relevant year (expressed in \$ per GJ);

CPI_n means the CPI for the quarter ending on 30 September in the year prior to the year in respect of which the Excess Imbalance Rate is being escalated; and

CPI_b means the CPI for the quarter ending on 30 September 2015.

- c) If at the ~~Capacity End Date~~ end of the last day of a Gas Month, the Shipper's Accumulated Imbalance is a negative number, the Shipper ~~is to~~ must either:
 - i) pay a fair market price to the Operator for that Gas. at the Operator's purchase price for that Gas; or
 - ii) deliver sufficient Gas to the Operator to restore the Shipper's Accumulated Imbalance to zero,
as elected by the Shipper within 3 business days of receiving a Notice from the Operator of the price of that Gas.

802. DBP submits the proposed change will provide parties with the flexibility to either enter into a storage agreement with DBP for accumulated imbalances or to cash out the imbalances, depending on the price being paid for gas.²¹²
803. CPMM, WESCEF and BHP Billiton all comment on DBP's proposal to change the provisions of clause 9.9.
804. CPMM submits DBP's proposal "*is an unreasonable change that will unfairly disadvantage reference service shippers*".²¹³ CPMM further indicates that:
- whilst individual volumes affected by this clause may be small (in normal months), the cumulative effect (and the effect in outlier months) may be substantial. Cash flow impact modelling, using historical imbalance data, should be undertaken to determine the actual effects; and
 - DBP's "storage service" is unregulated.
805. WESCEF submits that DBP's proposed changes, to require imbalances to be cashed out at the end of the month rather than at the end of the capacity end date, are unbalanced and unnecessary. The changes, if allowed, "*would significantly reduce the flexibility of the shipper's gas usage, and WESCEF is of the view that the current provisions in relation to imbalances... provide sufficient incentive on shippers to stay in balance [sic]*".²¹⁴
806. BHP Billiton indicates that it does not support DBP's proposed changes to clause 9.9, and submits that the clause should remain as is and refer to a "*fair market value as the amount payable by shippers and DBP in the event of an accumulated imbalance*".²¹⁵
807. As indicated above in relation to DBP's proposed changes to clause 9.5 (refer paragraph 785 and following), the Authority is of the view that any change to the imbalance regime would need to be justified by reference to its effect on achievement of the NGO. If DBP considers that the existing imbalance regime is not achieving the NGO, then it must explain more clearly why that is the case and how its proposed changes will better achieve the NGO. In this regard, for example, DBP has provided no clear justification based on the NGO for:
- its proposal to have the cashing-out occur monthly, instead of once-off at the capacity end date;
 - its proposal to switch the cashing-out pricing from a "fair market price" to (in the case where DBP must pay shippers) an arbitrary \$8 per GJ rate, and (in the case where shippers must pay DBP) whatever price DBP paid for the gas (without any safeguards to prevent DBP incurring on-charging an unreasonably high price); or

²¹² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 8.

²¹³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 44-45.

²¹⁴ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 5.

²¹⁵ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

- its proposal to offer shippers a storage service on unregulated pricing as an alternative to being paid the arbitrary \$8 per GJ rate by DBP.
808. Even if DBP's proposed amendments were implemented for the reference service contracts, DBP has not shown how this would have any meaningful impact on improving pipeline integrity (if that is a real concern in relation to imbalances) or other NGO considerations, given that most shippers are not on the reference service contract and would not necessarily be subject to the proposed new cashing-out regime (i.e. the SSC (at clause 9.10) retains provisions that are substantially the same as the existing clause 9.9 of the terms and conditions). Unless that position is also changed, it would seem that shippers on a reference service would be exposed to a form of discrimination in this respect.
809. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed amendment of clause 9.9. Accordingly, the Authority is of the view that the proposed change should be rejected unless it can be justified consistent with the NGO.

Required Amendment 51

Clause 9.9 of the proposed terms and conditions, relating to the cashing out of imbalances, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 10.3 – Consequences for exceeding hourly peaking limit

810. Clause 10.3 of the proposed terms and conditions specifies the consequences of exceeding an hourly peaking limit. An “*hourly peaking limit*” is stated in clause 10.1 of the proposed terms and conditions to be:²¹⁶
- a) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points on the DBNGP;
 - b) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points in pipeline zone 10; and
 - c) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points in pipeline zone 10B,
- (each of the limits in (a), (b) and (c) being an **Hourly Peaking Limit**).
811. DBP proposes to amend clause 10.3 to change the circumstances in which the operator can apply the consequences of exceeding an hourly peaking limit. Specifically, DBP proposes to change clause 10.3(a) of the proposed terms and conditions to provide that the operator may (subject to clause 10.3(e) or clause 10.3(f)) do either, or both, of:²¹⁷

²¹⁶ DBP indicates in its supporting submission that clause 10.1 has been amended to change the drafting of the clause to clarify that the values in (a), (b) and (c) are each an hourly peaking limit. The Authority notes that the amendment to which DBP refers to is a drafting and/or formatting amendment and that the actual wording of the clause remains unchanged.

²¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

- issue a notice requiring the Shipper to reduce its take of Gas, in which case the Shipper must comply immediately or procure immediate compliance and stop exceeding the Hourly Peaking Limit; or
- refuse to Deliver gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Peaking limit is within the Hourly Peaking Limit.

812. DBP specifies that the changes remove the requirement that:

- the Operator can only carry out these steps if the peaking will have a material adverse impact on the DBNGP or adversely impact any other capacity or reserved service; and
- notice must only require reduction in take of Gas to the extent reasonably required to ameliorate the condition that there is an impact on other Shippers [sic].

813. Furthermore, the changes make the requirement on shippers to reduce its gas take an absolute requirement and not a “best endeavours” requirement. DBP submits this change to be reasonable as the shipper still has a large degree of flexibility within the allowed peaking limit.²¹⁸

814. In addition to the proposed changes to clause 10.3(a), DBP proposes to delete clause 10.3(b) and 10.3(c) from the proposed terms and conditions, which require the issuing of notices when peaking limits are exceeded. DBP submits these clauses should be deleted as the requirement to issue notices to all shippers is unworkable in practice and is an administrative burden.²¹⁹ DBP indicates that shippers are able to access their peaking behaviour through the customer reporting system and hence are able to manage this behaviour.

815. CPMM, WESCEF and BHP Billiton all comment on DBP's proposed changes to clause 10.3. These comments are summarised as follows.

- CPMM objects to the proposed changes and submits that the notice provisions of clause 10.3 should be maintained. CPMM indicates that these notice requirements have been in place for over a decade and believes that “*DBP is attempting to shift the risk and flexibility [of] balance in its own favour and against the shipper without advancing any justification for why this is necessary or consistent with the NGO. CPMM believes that the more sophisticated two stage mechanism should be retained*”.²²⁰
- WESCEF believes the proposed changes to clause 10.3 will allow the operator greater discretion with respect to issuing notices to shippers when hourly peaking limits are exceeded. The changes require shippers to comply with the notice requirements immediately as opposed to using best endeavours to comply, and remove the requirement for the operator to issue similar notices to all other shippers.²²¹

²¹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

²¹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

²²⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 45-47.

²²¹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 5-6.

- BHP Billiton does not support the proposed changes, which if allowed, will mean that where a shipper exceeds the hourly peaking limit “DBP can unilaterally reduce delivery of gas regardless of the operational impact of the exceedance”.²²²
816. The Authority is concerned to see that any change to the terms and conditions is properly justified based on a real need for the change in order to promote the NGO. Accordingly, it seems contrary to the NGO for DBP to propose removing the pre-requirements in clause 10.3(a) that there be a material adverse impact on integrity or operation of the DBNGP, or that there be an actual or likely adverse impact on other capacity or reserved services. Once again, DBP has not shown why it thinks the current provisions of clause 10.3 of the terms and conditions are not functioning consistently with the NGO and why it thinks its proposed changes will better achieve the NGO than the existing wording of clause 10.3.
817. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed amendment of clause 10.3. Accordingly the Authority is of the view that the proposed change should be rejected, unless it can be justified consistent with the NGO.

Required Amendment 52

Clause 10.3 of the proposed terms and conditions, relating to the consequences of exceeding an hourly peaking limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 10.5 – Outer hourly peaking limit

818. Clause 10.5 of the current terms and conditions applying to the T1, P1 and B1 reference services, under the access arrangement for the third access arrangement period (AA3), sets out provisions relating to an “outer hourly peaking limit”. The outer hourly peaking limit is stated to be 140 per cent of the aggregate maximum hourly quantity (MHQ) calculated across all outlet points: (i) on the DBNGP; (ii) in pipeline zone 10; and (iii) in pipeline zone 10B (with each of the limits in (i), (ii), and (iii) being an outer hourly peaking limit).
819. DBP proposes to delete the concept of the outer hourly peaking limit, by deleting clause 10.5 from the proposed terms and conditions. DBP indicates that the outer hourly peaking limit “is a penalty type clause” that penalises the shipper, when peaking exceeds 140 per cent, at a higher rate for the entire time that peaking occurs. DBP believes that a simpler charging regime (as provided for under proposed clause 10.3, and discussed above at paragraph 810 and following) should be imposed, which will be “cheaper for the shipper and much easier for DBP to administer”.²²³

²²² BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

²²³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 9-10.

820. CPMM submits that while DBP's proposed charging regime (at clause 10.3) will be easier for the operator to administer, it will be detrimental to the shipper, as a shipper may incur peaking charges for reasons outside of its control.²²⁴ CPMM believes that the current regime, which was negotiated at arms' length, provides balance between the shipper's and operator's risk and operational flexibility.
821. WESCEF submits DBP's proposal to delete clause 10.5 should not be approved for the same reasons it believes DBP's changes to clause 10.3 should not be approved. These reasons are outlined in paragraph 815 above.
822. The Authority is concerned to see that any change is properly justified based on a real need for the change in order to promote the NGO. The Authority is also concerned to see that the terms and conditions are consistent with public policy.
823. However, as DBP has highlighted in its rationale, the current clause 10.5 *"is a penalty type clause, whereby if the peaking exceeds 140%, the Shipper is penalised at a higher rate for the entire time that peaking occurs."*²²⁵ By DBP's own admission, therefore, this clause would seem to have been established to penalise the shipper rather than simply to recover a genuine pre-estimate of DBP's actual loss caused by the peaking excess. If it is a penalty as DBP claims, then it will be contractually void and unenforceable at law (as being contrary to public policy). Accordingly, the Authority agrees with DBP's suggestion that clause 10.5 be deleted. However, as indicated above (at paragraph 817), the Authority does not agree with DBP's proposed changes to clause 10.3, and so (assuming it is not also a penalty) the existing charging regime under clause 10.3 would apply (without the amendments proposed by DBP).
824. Further, the Authority notes that the current SSC retains the outer hourly peaking limit provisions at clause 10.4 that DBP has claimed are penalties.
825. Having regard to the submissions of interested parties and DBP's own admissions, the Authority considers that clause 10.5 should be deleted (as proposed by DBP).

Required Amendment 53

Clause 10.5 of the proposed terms and conditions, relating to the concept of an outer hourly peaking limit, should be deleted from the proposed terms and conditions.

Clause 11 - Overrun

826. Clause 11 of the proposed terms and conditions sets out provisions relating to overruns. DBP proposes to change these provisions by changing the circumstances in which the operator may give notice in relation to the unavailability or availability of overrun gas, at clause 11.2(a) as follows:
- a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is

²²⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 47.

²²⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 10.

unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, ~~but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.~~

827. DBP submits the following as reasoning for the proposed change.

- Overrun gas is gas delivered above the Shippers aggregate contracted capacity. The Operator should be able to cut out overrun gas, as this goes above the contractual entitlements of the shipper under the T1 service.
- As per [the requirements] for peaking and imbalances, the notice requirements are administratively onerous and unworkable for DBP. The provision should be streamlined so that it is a meaningful right for DBP to ensure that Shippers do not take more than they are entitled to under their Reference Service contract.
- Shippers have constant access to CRS information to enable them to monitor and manage their gas flow, and in the event that CRS is not available, the Operator is not entitled to exercise its rights under this clause.

828. CPMM, WESCEF and BHP Billiton all comment on DBP's proposed changes to clause 11.2. These comments are summarised as follows:

- CPMM submits that the proposed changes are another example of the operator seeking to streamline its operations to the detriment of shippers. CCPM believes that *"if overrun will cause harm, it should be prevented. But if the overrun is operationally and commercially harmless, it should be allowed to be corrected without penalty [sic]"*.²²⁶
- WESCEF submits that the proposed changes should not be approved as the changes will *"remove the qualifications on the operator to issue unavailability notices in respect to overrun gas and the requirement that the operator issue similar notices to all other shippers taking overrun gas"*.²²⁷ WESCEF believes that there needs to be a balance between the management of taking overrun gas, providing shippers with flexibility and notice, and not discriminating between shippers.
- BHP Billiton indicates that DBP's proposed changes should not be allowed as the changes *"mean that DBP can now restrict use in the event of an overrun (irrespective of [the] impact of the overrun on other shippers)"*.²²⁸

829. The Authority is concerned to see that any change is properly justified based on a real need for the change in order to promote the NGO. For example, DBP claims that the existing notice requirements are "administratively onerous", but does not provide any evidence of how this affects operational efficiency within the NGO context. Nor do shippers, in their submissions, provide any evidence to show how

²²⁶ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 47-48.

²²⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

²²⁸ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

the "flexibility" they claim they have under the existing provisions feeds through to the long term interests of consumers of natural gas. Accordingly, without evidence of impact on the NGO, it is hard for the Authority to assess whether the NGO is best served by accepting DBP's proposed change or maintaining the status quo under the current terms and conditions applying for the third access arrangement period (AA3). However, the Authority is generally of the view that the current terms and conditions should continue unless there is justification for changing them.

830. If DBP considers that the existing overruns regime is not achieving the NGO, it must explain more clearly why that is the case and how its proposed changes will better achieve the NGO. In this regard, for example, DBP argues that DBP *"should be able to cut out overrun gas, as this goes above the contractual entitlements of the shipper under the T1 service"*,²²⁹ yet DBP does not link this claim to how making its proposed change would better achieve the NGO. Furthermore, DBP's assertion that overrun gas *"goes above the contractual entitlements of the shipper under the T1 service"* ignores that, under the current terms and conditions, a shipper does have a right to overrun unless DBP can justify giving an "unavailability notice" under clause 11.2(a). DBP's proposed changes to clause 11.2(a) to effectively make it easier for DBP to give an unavailability notice are therefore not in the nature of preventing a shipper "going above its contractual entitlement" (as DBP claims), but in fact would arguably undermine a shipper's existing contractual entitlement to overrun.
831. Under the current terms and conditions for the reference service, applying for the third access arrangement period (AA3), taking overrun gas is not some sort of a breach or default by the shipper (as DBP seems to be claiming). On the contrary, it can be seen as a practical way of making efficient use of the pipeline and, as such, seems consistent with the NGO and should be allowed to continue except where some overriding interest or NGO consideration prevails. However, the change DBP is proposing to clause 11.2(a), to remove the requirement that the overrun must impact or be likely to impact on another shipper's entitlement to its nomination before DBP can issue an unavailability notice, seems to be removing the very kind of thing that DBP should be considering when operating the pipeline, if doing so consistent with the NGO.
832. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed amendment of clause 11.2(a). The Authority is therefore of the view that the proposed change should be rejected unless it can be justified consistent with the NGO.

Required Amendment 54

Clause 11.2(a) of the proposed terms and conditions, relating to the issuing of an unavailability notice, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

²²⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 10.

Clause 17.4 – Refund of capacity reservation charge

833. Clause 17.4 outlines the circumstances in which the shipper is entitled to a refund of the capacity reservation charge. DBP proposes to change the wording of clause 17.4 as follows:

To the extent that curtailment of the Shipper's T1 Service ~~is Curtailed~~ exceeds the T1 Permissible Curtailment Limit for any reason other than:

- (a) an event of Force Majeure where the Shipper is the Affected Party; or
- (b) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment,

the Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.

834. DBP indicates that no refund should apply for curtailments associated with major works (including planned maintenance) or the remedy of a safety issue, provided the relevant curtailment does not exceed the T1 permissible curtailment limit (that is, two per cent of the time in the relevant gas year).²³⁰ DBP submits the reasons for this position to be:

- [DBP] should be entitled to have a certain amount of “down time” each year to carry out maintenance and major works, up to a limit that is sufficient time for DBP to carry out the works as a Reasonable & Prudent Person, operating the DBNGP in accordance with Good Gas Industry Practice. This is up to the T1 Permissible Curtailment Limit.
- This position is supported by the 98% reliability premise of the DBNGP.
- If the time taken for such activities exceeds the T1 Permissible Curtailment Limit, then the refund should apply.

835. CPMM acknowledges that the operator should be entitled to have a certain amount of time each year to carry out maintenance and major works, up to the relevant permissible curtailment limit. CPMM believes DBP's proposed change to clause 17.4 does not, however, entitle the shipper to a refund of the capacity reservation charge if the time taken for such activities exceed the relevant curtailment limit for the following reasons:²³¹

- Under clause 17.2(b), the Operator may Curtail the Capacity Services whenever it needs to undertake any Major Works which, by virtue of the Operator's proposed change [to the definition of Major Works], also includes Planned Maintenance.
- Under clause 17.3(c), a Curtailment in the circumstances set out in clause 17.2(b) is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the relevant Permissible Curtailment Limit to be exceeded.
- To achieve the objective described in the rationale for change, the reference to clause 17.2(b) should be deleted from clause 17.3(c)(i).

²³⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 11.

²³¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 48-49.

836. WESCEF believes DBP's proposed change to clause 17.4 *"is unreasonable, clearly in the interests of DBP and contrary to the interests of shippers and is an attempt to change the nature of the reference services"*. WESCEF further submit that *"the curtailment limit should not diminish the shipper's entitlement to a refund in the event of a curtailment"*.²³²
837. As WESCEF has submitted, DBP's proposed change would change the nature of the reference service, yet DBP has not provided any clear NGO-based justification why it thinks the clause 17.4 refund should only apply where the curtailment exceeds the two per cent T1 permissible curtailment limit. DBP already has the benefit of a liability limitation under clause 17.3(b) in respect of its two per cent T1 permissible curtailment limit, which is currently balanced by the refund under clause 17.4 so that, in effect neither party "loses out" because of curtailments within the two per cent limit. DBP escapes liability, but in return shippers do not have to pay capacity reservation charge for a service they are not getting.
838. Further, CPMM has pointed out valid reasons why the proposed change does not actually achieve the objective described by DBP in its rationale (because major works are already not counted in the two per cent T1 permissible curtailment limit, by virtue of the exclusion of clause 17.2(b) contained in clause 17.3(c)(i)).²³³
839. The Authority also notes that DBP has not made the same change to the comparable provision in the SSC (at clause 17.4).
840. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed amendment of clause 17.4. The Authority is therefore of the view that the proposed change should be rejected.

Required Amendment 55

Clause 17.4 of the proposed terms and conditions, relating to the refund of the capacity reservation charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 17.5 – Operator's rights to refuse to receive or deliver gas

841. Clause 17.5 of the proposed terms and conditions sets out provisions relating to the operator's rights to refuse to receive or deliver gas as follows.

Subject to clauses 5.5 and 5.9, where the Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (the Operator may refuse to Receive Gas);

²³² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

²³³ The Authority notes that, in accordance with its determination on DBP's proposed change to the definition of "major works" (refer to paragraph 693 of this Draft Decision), the Authority has determined that "planned maintenance" should not be included in major works and DBP's proposed deletion of clause 17.2(d) should not be made.

- (b) clause 5.7 (the Operator may refuse to Deliver Gas),
such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(b).
842. DBP indicates that it proposes to amend clause 17.5, by deleting the reference to clause 5.9, with the reason for the change being a “*consequential change due to [the] deletion of clause 5.9*”.²³⁴
843. The Authority notes that whilst DBP indicates a proposed drafting change to clause 17.5, the proposed terms and conditions submitted do not reflect any drafting changes to this effect (that is, clause 5.9 remains in the proposed terms and conditions unchanged from the current terms and conditions applying to the third access arrangement period (AA3)). CPMM also notes this and submits that the reference to clause 5.9 should be retained in any case for the following reason.
- [C]ause 5.9 is a major element in rectifying the long-term structural defect in the DBNGP contracts which created separate and inconsistent regimes for refusal to receive/deliver gas on one hand, and curtailment on the other. The effect on the shipper is the same in either case – no gas flows – and the contract should not leave room for the operator to exploit the structural error to avoid accountability, by characterising a non-receipt or non-delivery as a clause 5 even rather than a clause 17 event. *[sic]*
844. If DBP is proposing a change to clause 17.5, which is not entirely clear (given the lack of any change shown to clauses 17.5 or 5.9 in its proposed terms and conditions²³⁵), then having regard to the submissions of interested parties, the Authority considers that DBP's proposed change is not a "minor/drafting change" and DBP has not provided adequate justification for its proposed amendment of clause 17.5. The Authority is therefore of the view that the proposed change should not be made (or if it is made the change should be rejected).

Required Amendment 56

Clause 17.5 of the proposed terms and conditions, relating to the operator's rights to refuse to receive or deliver gas, should retain the cross reference to clause 5.9 of the proposed terms and conditions; and

Clause 5.9 (“Refusal to Deliver Gas is a Curtailment in limited circumstances”) of the proposed terms and conditions should not be deleted from the proposed terms and conditions.

Clause 17.9 – Priority of curtailment

845. Clause 17.9 of the proposed terms and conditions sets out provisions for the priority of curtailment. DBP proposes to delete clause 17.9(c)(iii) from the terms and conditions.

²³⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

²³⁵ Including the “marked-up” version of the proposed terms and conditions submitted.

~~(iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.~~

846. DBP considers the amendment to be a “minor/drafting change” and provides the following reasoning for the proposed deletion of clause 17.9(c)(iii):²³⁶
- This clause provides that Capacity under Spot Transactions that resulted from Daily Bids must be curtailed with the lower priced daily spot bid price being curtailed before the higher priced Daily Spot Bid Price. These definitions and clause 3.5 that related to Spot transactions were removed from the 2010 AA and this clause is no longer relevant – ie how spot capacity is curtailed is irrelevant to the shippers under this contract. [sic]
847. WESCEF believes that DBP’s proposed amendment to clause 17.9(c)(iii), along with its proposed amendments to clauses 6.5(d)(iii) and 9.5(a) (as discussed elsewhere in this Draft Decision), change the nature of spot transactions in a manner that is adverse to the interests of a shipper utilising spot capacity.²³⁷
848. The Authority is of the view that existing clause 17.9(c)(iii) provides shippers with a right in relation to curtailment of spot capacity transactions, which DBP is seeking to remove. If the exact same right is securely enshrined for shippers elsewhere, such as might apply if, for example, it were included in separate regulated terms on which shippers contract for spot capacity, then its removal from clause 17.9 would arguably be irrelevant for shippers (as DBP claims). However, if the right is not located elsewhere, then its removal from clause 17.9 is a potentially material change for shippers that is more than merely a “minor/drafting change” as claimed by DBP.
849. Having regard to the submissions of interested parties, the Authority considers that DBP’s proposed change to clause 17.9(c)(iii) is not a “minor/drafting change” and DBP has not provided adequate justification for its proposed amendment. The Authority is therefore of the view that the proposed change to clause 17.9(c)(iii) should be rejected unless proper justification for it is provided.

Required Amendment 57

Clause 17.9(c)(iii) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the priority of curtailment, should not be deleted from the proposed terms and conditions.

Clause 20.5 – Adjustment to T1 tariff

850. Clause 20.5 of the proposed terms and conditions outlines the circumstances in which adjustments to the T1 tariff can be made. DBP proposes to amend this clause to specify the circumstances in which the T1 tariff may be varied as follows:
- a) The Parties acknowledge that:

²³⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

²³⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

- i) as at the commencement of this Contract, the T1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism;
- ii) the T1 Tariff may be further varied for:
 - (A) CPI Changes;
 - (B) Tax Changes;
 - (C) New Costs;
 - (D) Revenue cap adjustments undertaken in accordance with clause 11.5 of the Access Arrangement;
 - (E) The annual update of the trailing average cost of debt calculation in accordance with clause 11.6 of the Access Arrangement; and
 - (F) any other type of cost variation that the Regulator may approve from time to time,

arising after the date of this Contract, that meet the relevant criteria in the Reference Tariff Variation Mechanism; and
- b) the T1 Tariff shall be re-set to reflect any new T1 Tariff approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.
 - ~~(ii) any adjustment of the T1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.~~

851. Consequential amendments that arise from the proposed changes to clause 20.5 are indicated by DBP to be the deletion of clause 20.7, which relates to tax change variations, and several changes to clause 1 of the proposed terms and conditions. Changes to clause 1 include: (1) the insertion of the term “new costs”; (2) an amendment to the term “tax change”; and (3) the deletion of the term “tax change notice” as follows:

New Costs means costs arising due to a change in Law and additional costs not included in the forecast operating expenditure that arise from a change in the type or level of 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.

...

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 Tax which was in force and validly imposed on the Operator or any of its Related Bodies Corporate as at the commencement of the Current Access Arrangement Period is repealed;
- c) any Carbon Cost...
- d) the rate at which a Tax...
- e) the basis on which a Tax... Execution Date.

~~**Tax Change Notice** has the meaning given to it in clause 20.7(c).~~

852. DBP indicates several reasons for the proposed changes to clause 20.5 and consequential amendments, which are outlined below.²³⁸
- The proposed changes to clause 20.5 will make reference to the tariff variation mechanism in the proposed revised access arrangement and remove duplication of parts of the mechanism from the proposed terms and conditions. These changes will:
 - avoid duplication of parts of the access arrangement;
 - avoid confusion from having only the parts of the access arrangement relating to tax changes incorporated in the terms and conditions; and
 - prevent changes being made in the terms and conditions that are not reflected in the access arrangement (and vice versa).
 - With the proposed changes to clause 20.5, clause 20.7 of the proposed terms and conditions that deals with tax change variations is no longer required. Detailed tax change and new cost variation provisions are all contained within the proposed revised access arrangement under the tariff variation mechanism (at clauses 11.4 and 11.5).
 - The insertion of the term “new costs” at clause 1 of the proposed terms and conditions is identified as a consequential amendment arising from the proposed changes to clause 20.5, with the definition taken from clause 11.4(b) [*sic*]²³⁹ of the access arrangement.
 - The amendment to the term “tax change”, by inserting the words “*b) any Tax which was in force... as at the commencement of the Current Access Arrangement Period is repealed*”, is proposed to ensure that where a tax is repealed the reduction in tax expense is passed through to the shipper.
 - With the proposed changes to clause 20.5, the term “tax change notice” is no longer required and can be deleted from clause 1 of the proposed terms and conditions.
853. CPMM notes the term “CPI changes”, as proposed to be included by DBP at clause 20.5(a)(ii), is not a defined term in the proposed terms and conditions. CPMM further notes the following inconsistencies with DBP’s proposed changes to clause 20.5 and reasoning for the changes:²⁴⁰
- Revenue cap adjustments and trailing average cost of debt are covered in the Access Arrangement at clauses 11.6 and 11.7 respectively, rather than at clauses 11.5 and 11.6.
 - The Operator’s rationale for this proposed change is to avoid duplication and confusion... [h]owever, clause 20.5 introduces some inconsistency in that Carbon Costs are dealt with as a Tax Change in the Access Contract but as a New Cost under clause 11.5 of the [access arrangement].

²³⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 11-12.

²³⁹ The Authority notes DBP’s reference to clause 11.4(b) of the proposed revised access arrangement is incorrect. The definition of “new costs” appears to be derived from clause 11.5(c) of the proposed revised access arrangement.

²⁴⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 49-50.

- The Operator's rationale also refers to the new method of setting the tariff proposed by DBP being reflected in subclauses 20.5(a)(iv) and (v), which subclauses do not exist in the proposed amended Access Contract terms and conditions. *[sic]*
854. WESCEF notes DBP's proposed amendment to include "CPI changes" in clause 20.5(a)(ii) and submits that the term does not appear to be defined. WESCEF believes that the term "CPI changes" should be a defined term.²⁴¹
855. Having regard to the submissions of interested parties, the Authority agrees with DBP's stated aims to avoid duplication, confusion and inconsistency by having the tariff variation mechanism in the access arrangement as the "sole source of truth" with a cross-reference to it, rather than re-stating it in the proposed terms and conditions. However, the Authority is of the view that the drafting currently offered by DBP contains inaccuracies and inconsistencies and risks causing the very problems that DBP claims it is seeking to overcome. The Authority considers that the drafting of DBP's proposed change to clause 20.5 requires improvement so that it more simply cross-refers to the tariff variation mechanism in the proposed revised access arrangement (without listing, in clause 20.5, any components of that mechanism). The Authority therefore recommends that DBP's proposed clause 20.5(a)(ii) be replaced with the following words:
- (ii) the T1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and

Required Amendment 58

Clause 20.5(a)(ii) of the proposed terms and conditions, relating to the adjustment of the T1 tariff, should be amended to read:

"the T1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and"

Clause 25.5 – Pipeline Trustee's acknowledgments and undertakings

856. Clause 25.5 of the proposed terms and conditions detail the acknowledgements and undertakings of the pipeline trustee. DBP proposes to amend these acknowledgements and undertakings by deleting subclause 25.5(f) from the proposed terms and conditions:
- 25.5 Pipeline Trustee's Acknowledgments and Undertakings
 - (a) In this clause...
 - (b) The Pipeline Trustee...
 - (c) The Pipeline Trustee...
 - (d) The Shipper acknowledges...
 - (e) The Pipeline Trustee...
 - (f) ~~Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, the Pipeline Trustee shall not~~

²⁴¹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

~~dispose of the whole or any part of its right, title or interest in the DBNGP without requiring the disposee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:~~

- ~~(i) assumes all, or the relevant portion, of the Pipeline Trustee's obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be 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 Operator's obligations under the Relevant Agreements,~~

~~consistent with this clause 25.5.~~

~~(g)~~(f) Subject to clause 25.5(g)...

~~(h)~~(g) If the dispose... beyond the project structure.

857. DBP believes this proposed amendment is a "minor/drafting change" as the provisions of clause 25.5(f) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3) are already covered by clause 25.4.²⁴²
858. WESCEF believes DBP's proposal to delete clause 25.5(f) of the current terms and conditions to be unreasonable and submits the clause should be retained in its current form. In particular, WESCEF believes DBP's proposal will "*remove the certainty that was previously provided to shippers that the DBNGP won't be disposed of leaving the Operator with no ability to meet its contractual obligations under the shipper contract [sic]*".²⁴³
859. The Authority also notes that while DBP's stated rationale for the proposed deletion of clause 25.5(f) is that it is "*already covered by existing clause 25.4*", this does not appear to be the case. Clause 25.4 of the terms and conditions deals with "assignment" by a "party" (which, as defined, may or may not include the pipeline trustee depending on context) of "rights and interests under this contract", whereas clause 25.5(f) deals with "disposal" (different and potentially wider than "assignment") by the pipeline trustee of any of its "right, title or interest in the DBNGP" (different from "rights and interests under this contract").
860. Having regard to the submissions of interested parties, the Authority considers that DBP's proposed deletion of clause 25.5(f) is not a "minor/drafting change" and DBP has not provided adequate justification for its proposed deletion of clause 25.5(f). The Authority is therefore of the view that the proposed deletion of clause 25.5(f) should be rejected.

²⁴² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

²⁴³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

Required Amendment 59

Clause 25.5(f) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the Pipeline Trustee's acknowledgements and undertakings, should not be deleted from the proposed terms and conditions.

Clause 26 – General right of relinquishment

861. Clause 26 of the current terms and conditions, applying to the access arrangement for the third access arrangement period (AA3), sets out provisions relating to relinquishment rights.
862. DBP proposes to remove these provisions from the terms and conditions, by deleting clause 26 in its entirety. DBP submits that the general right of relinquishment should be removed for the following reasons:²⁴⁴
- the term of these contracts are potentially as low as 2 years. There is no call for relinquishment rights in this circumstance; and
 - shippers have the right to trade their capacity under clause 27 if for some reason they need less than they have contracted for.
863. CPMM submits the following in response to DBP's proposal to delete clause 26 from the proposed terms and conditions.²⁴⁵
- Relinquishment rights should only be deleted if the Operator can offer assurances that flexible Access Contract periods will be offered to prospective shippers seeking access so that they are not locked-in to excessively long contracts for capacity services.
864. The Authority is concerned to see that any change is properly justified based on a real need for the change in order to promote the NGO. The Authority is of the view that the shipper's right of relinquishment improves the efficiency of the reference service by better allowing unutilised capacity to be utilised. DBP has provided no justification for how the right of relinquishment could reduce efficiency.
865. The Authority is also of the view that DBP's proposed deletion of clause 26 would represent a substantial change to the terms of the reference 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. DBP has not provided any such demonstration. Further, the Authority notes that the SSC retains this right of relinquishment clause unchanged.
866. Having regard also to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed deletion of

²⁴⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 13.

²⁴⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 51.

clause 26. The Authority is therefore of the view that the proposed change should be rejected.

Required Amendment 60

Clause 26 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the general right of relinquishment, should not be deleted from the proposed terms and conditions.

Clause 28.6 – Information received by operator

867. Clause 28.6 of the proposed terms and conditions sets out provisions relating to information received by the operator. The Authority notes that clause 28.6(a)(i)(B) contains a reference to “*clauses 0 and 28.5*”, which appears to be a drafting error and should be changed so that it refers to “*clauses [28.4](#) and 28.5*”.

Required Amendment 61

Clause 28.6 of the proposed terms and conditions and conditions, relating to information received by the operator, should be amended to replace a reference to “*clauses 0 and 28.5*” with a reference to “*clauses [28.4](#) and 28.5*”.

Clause 29.3 – Notice generally

868. DBP has proposed a “minor/drafting change” to clauses 29.3(a) and 29.3(b) to include provision for giving notices by email. DBP claims the rationale for this change is “*in line with [the] Electronic Communications Act, and reinforces [clause] 29.4(d)*”.²⁴⁶ The proposed change is as follows:

29.3 Notices generally

- a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, [or is sent by email to](#), or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses, [email addresses](#) and facsimile numbers of the Parties are as set out in the Access Request Form.
- c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

²⁴⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

869. No third parties made submissions on this proposed change.
870. DBP's stated rationale of being "*in line with [the] Electronic Communications Act*" is unclear as no such Act exists. While legislation does exist at both State and Federal levels to enable electronic transactions to be effective at law (see the *Electronic Transactions Act 2011 (WA)* and the *Electronic Transactions Act 1999 (Cth)*), the Authority is not aware of any statutory requirement that contracts between commercial parties that must allow notices to be given by email if the parties do not consent to it.
871. DBP's stated rationale also claims the proposed change "*reinforces [clause] 29.4(d)*". However, while clause 29.4(d) does contemplate that notices may be sent by email, it expressly requires that "*any notice sent by email must be sent by and to the email addresses set out in the Access Request Form (Dedicated Email Address)*." There is no provision in clause 29.4(d) for an email address to be changed from that set out in the access request form. The current drafting of DBP's proposed changes to clause 29.3(a) and 29.3(b) would therefore be inconsistent with clause 29.4(d) (as currently drafted) in that the changes seem to allow a party to change its email address from that set out in the access request form, whilst clause 29.4(d) does not permit that to happen.
872. While the Authority agrees in principle that it is likely to be convenient for the parties to be able (subject to clauses 29.1 and 29.2) to give notices by email and change their "dedicated email address" under clause 29.4(d), the current changes proposed by DBP do not completely achieve this aim. Changes would be required to clauses 29.3(c) and 29.4(d) to make expressly clear that while a "dedicated email address" must be used, it can be changed by subsequent notice.
873. Considering DBP's stated rationale for the proposed change, the Authority believes that the use of the words "or is sent by email to the Dedicated Email Address" in clause 29.3(a) (rather than the words "or is sent by email to" as proposed by DBP) and "Dedicated Email Addresses" in clause 29.3(b) (rather than the words "email addresses" as proposed by DBP) would better achieve this rationale.

Required Amendment 62

Clause 29.3 of the proposed terms and conditions, relating to the communication of notices generally, should be amended to:

- make expressly clear that while a dedicated email address must be used, the dedicated email address can be changed by subsequent notice;
- at clause 29.3(a), use the words "or is sent by email to the Dedicated Email Address" instead of the words "or is sent by email to"; and
- at clause 29.3(b), use the words "Dedicated Email Addresses" instead of the words "email addresses".

Clause 45 – Non-discrimination clause

874. Clauses 45.1 and 45.2 of the current terms and conditions, applying to the access arrangement for the third access arrangement period (AA3), set out provisions relating to non-discrimination.

- Clause 45.1 provides that access to DBNGP information, other than information relating to an inlet point, outlet point or gate station which is specific to an individual shipper, must be provided to shippers at substantially the same time and in the same format.
 - Clause 45.2 provides that the operator (and system operator) must, in operating and expanding the DBNGP, treat all shippers (including shippers which are associates of a relevant company) on an arms' length basis.
875. DBP proposes to remove these non-discrimination provisions from the terms and conditions, by deleting clause 45 in its entirety and making a consequential amendment to clause 1 to delete the term "relevant company". DBP submits clauses 45.1 and 45.2 are not required for the following reasons.²⁴⁷
- Clause 45.1 is not required as:
 - information relevant to the shipper regarding maintenance is provided under the other terms of this contract;
 - this information is largely available on the internet or on the IMO bulletin board;
 - CRS largely controls information provided to shipper regarding gas flows and this is in a pre-set real time format that all shippers have access to. *[sic]*
 - Clause 45.2 is not required as:
 - there is no longer any ring fencing requirement between the Operator and its owners as WestNet and Alinta are no longer owners or involved in operation of the DBNGP;
 - it is accepted that Alcoa as foundation shipper has a different shipper contract to other shippers, and that non-discrimination provisions do not apply to Alcoa;
 - provisions in the NGL prevent information being provided to a person who is carrying on a related business and prevents entry into associate contracts (ss. 140, 147 NGL). *[sic]*
876. CPMM, WESCEF and BHP Billiton all comment on DBP's proposal to delete the non-discrimination provisions (clauses 45.1 and 45.2) from the proposed terms and conditions.
877. Whist CPMM indicates that it has no in-principle objection to the proposed deletion of clause 45, it believes that consideration should be given as to whether the proposed revised access arrangement will contain adequate protections:
- for shippers on regulated access contracts, as compared with recontracting shippers; and
 - against favourable treatment toward any shipper related to DBP or its owners.²⁴⁸

²⁴⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 13.

²⁴⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 51-52.

878. WESCEF submits the non-discrimination clause should be retained to ensure fairness between all shippers.²⁴⁹ Similarly, BHP Billiton also submits the clause should be retained as the reasons provided by DBP “*provide no basis for the wholesale deletion of the protections afforded to shippers under clause 45*”.²⁵⁰
879. The Authority notes that the wording of clause 45.1 appears to have originated from undertakings given by DBP and others to the ACCC in 2004 under section 87B of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*).²⁵¹ Those ACCC undertakings are no longer in force.²⁵² When in force, amongst other things, they required that DBP ensure the SSC offered by DBP for the T1 service include confidentiality and non-discrimination obligations as set out in schedule 1 to the ACCC undertaking dated 25 October 2004 (which included at item 45.2 of that schedule, the wording now found in clause 45.1 of the existing terms and conditions and in clause 45.2 of the SSC).²⁵³
880. Given that the ACCC undertakings that originally required the inclusion of clause 45.1 in DBP's T1 service shipper contracts are no longer in force, there is a strong argument for allowing DBP's proposed deletion of clause 45.1. However, as pointed out by CPMM and WESCEF, while a substantially identical provision remains in the SSC (at clause 45.2), if clause 45.1 is deleted from the proposed terms and conditions then shippers on regulated access contracts will have lower protection from discrimination, as compared with recontracting shippers.
881. With regards to DBP's proposed deletion of clause 45.2, the Authority notes that, as DBP claims, much of the protection provided by clause 45.2 in relation to dealings with associates is already covered by provisions in the NGL (WA). However, the fundamental protection in clause 45.2 requiring treatment of all shippers (whether or not associates) on an arms' length basis is not replicated in the NGL (WA). Further, the Authority notes that the SSC contains a substantially identical provision to clause 45.2 of the existing terms and conditions (at clause 45.3 of the SSC). Once again therefore, as pointed out by CPMM and WESCEF, while a substantially identical provision remains in the SSC (at clause 45.3), if clause 45.2 is deleted from the proposed terms and conditions then shippers on regulated access contracts will have lower protection from discrimination, as compared with recontracting shippers.

²⁴⁹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

²⁵⁰ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

²⁵¹ Undertaking dated 25 October 2004 to the ACCC given under section 87B of the *Trade Practices Act 1974* by Alinta Limited, Alinta Network Services Pty Ltd, Alcoa of Australia Limited, AMPCI Macquarie Infrastructure Management No.1 Limited as the responsible entity of the Diversified Utility and Energy Trust No. 1, AMPCI Macquarie Infrastructure Management No.2 Limited as the responsible entity of the Diversified Utility and Energy Trust No. 2 and DBNGP Holdings Pty Limited (as varied on 10 March 2010). **(First DBNGP Undertaking)**

Undertaking dated 1 November 2004 to the ACCC given under section 87B of the *Trade Practices Act 1974* by Epic Energy (WA) Transmission Pty Ltd (ABN 69 081 609 190) (as varied on 10 March 2010). **(Second DBNGP Undertaking)**

²⁵² The First DBNGP Undertaking was withdrawn on 24 November 2011. The Second DBNGP Undertaking terminated in accordance with its terms (section 3.2) on the date on which the First DBNGP Undertaking terminated.

²⁵³ See section 5.5(d) of the original First DBNGP Undertaking, which became section 5.2 of the First DBNGP Undertaking as varied on 10 March 2010. See also section 4 of the Second DBNGP Undertaking.

882. Having regard to the submissions of interested parties, the Authority considers that DBP has not provided adequate justification for its proposed deletion of clause 45 from the proposed terms and conditions. The Authority is therefore of the view that the proposed change should be rejected.

Required Amendment 63

Clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to non-discrimination, should not be deleted from the proposed terms and conditions.

Proposed changes to the P1 Service

883. Further to the above proposed amendments to the terms and conditions that will apply to the T1, P1 and B1 reference services, DBP proposes two additional amendments to the proposed terms and conditions that will apply to the P1 Service. The proposed amendments comprise:
- the insertion of clause 20.6 (with subclauses (a) to (h)) that set out the provisions relating to the “goods and services tax”; and
 - amendments to clause 22.3 and 22.7 to amend the number of working days in which a default is to be remedied:
 - the number of working days in which a default is to be remedied by the shipper, after a shipper default notice has been given, has been changed from 40 to 20 working days (clause 22.3(b)(ii)); and
 - the number of working days in which a default is to be remedied by the operator, after an operator default notice has been given, has been changed from 20 to 40 working days (clause 22.7(b)(i)).
884. DBP indicates that these proposed amendments were inadvertently omitted from the current terms and conditions for the P1 Service that apply for the current (AA3) access arrangement period. The amendments will align the P1 Service terms and conditions with the terms and conditions for the T1 Service.²⁵⁴
885. CPMM notes DBP’s amendments to the proposed terms and conditions to apply to the P1 Service and queries why the default rectification periods should be different for the operator and the shipper.²⁵⁵
886. The Authority is of the view that CPMM’s submission raises a valid query, and requires that the default rectification periods in the terms and conditions applying to the P1 Service be the same for both the operator and shipper. As DBP has not provided any rationale for the discrepancy in these rectification periods, the Authority is of the view that the rectification period for both the operator and shipper be the lesser of 20 working days (and not 40 working days).

²⁵⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 17.

²⁵⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 57.

887. Further, the Authority is also of the view that the default rectification periods in the terms and conditions applying to the P1 Service, T1 Service and B1 Service should be consistent with each other. Hence, the Authority requires that the default rectification periods in the proposed terms and conditions applying to the T1 Service and B1 Service (at clauses 22.3 and 22.7) be changed to match the rectification periods specified in the proposed terms and conditions applying to the P1 Service (at clauses 22.3 and 22.7).

Required Amendment 64

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service, relating to the number of working days in which a fault should be remedied, should be amended so that the default rectification periods are the same for both the operator and shipper, and being 20 working days.

Required Amendment 65

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the T1 Service and B1 Service, relating to the number of working days in which a fault should be remedied, should be amended to be consistent with clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service.

Queuing Requirements

Regulatory Requirements

888. Under section 2 of the NGL(WA) “queuing requirements” mean the *“terms and conditions providing for the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity and developable capacity”*.
889. Under rule 48(1)(e) of the NGR, if an access arrangement is to contain queuing requirements, the access arrangement must set out the queuing requirements. Pursuant to rule 103(1)(a) of the NGR the access arrangement for a transmission pipeline must contain queuing requirements. As the DBNGP is a transmission pipeline, its access arrangement must contain queuing requirements.
890. Rule 103 of the NGR states as follows:
- 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 AER [ERA] notifies the service provider that the access arrangement must contain queuing requirements.
 - 2) If the AER [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 AER [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.
891. The Authority has full discretion in relation to queuing requirements.²⁵⁶
892. Rule 112 of the NGR describes the process for a prospective user of a covered pipeline (such as the DBNGP) to request a pipeline service. Pursuant to rule 112(2), the request must be made in writing and must:

²⁵⁶ Refer to r. 40(3) of the NGR.

- 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 or, if the requested service is a haulage service, both entry and exit points; and
 - state the relevant technical details (including the proposed gas specification) for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to, or from, the pipeline.
893. Pursuant to rule 112(3) of the NGR 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.

DBP's Proposed Changes

894. Clause 5 of the proposed revised access arrangement deals with the submission and consideration of access requests and queuing requirements as follows.
- Clause 5.1 – Informal requests and reports
 - Clause 5.2 – Submission of access requests
 - Clause 5.3 – Assessment of access requests
 - Clause 5.4 – Queuing requirements
895. The requirements relating to the submission and consideration of access requests (clauses 5.1, 5.2, 5.3) remain largely consistent with the requirements under the existing access arrangement applying for the current access arrangement period (2011 to 2015), with the exception of a new “creditworthiness requirement” that DBP proposes to include.
896. DBP proposes to include a new creditworthiness requirement at clause 5.2 of the proposed revised access arrangement (new clause 5.2(c)(vi)) as follows:

5.2 Submission of Access Request

...

- c) An Access Request must be made in writing and must state:
- i) whether the service requested ...
 - ii) in the case of an Access Request ...
 - iii) a Commencement Date for the Service ...
 - iv) a Capacity End Date for the Service ...
 - v) relevant technical details ...
 - vi) [Relevant financial information that would be required by a reasonable and prudent person to assess the Prospective Shippers' ability to meet financial obligations made under the Access Contract.](#)
 - vii) ~~v)~~ In the case of a ...

897. DBP outlines its justification for the proposed amendment in a separate supporting submission to the Authority.²⁵⁷ DBP provides several reasons as to why it is reasonable to introduce a creditworthiness requirement. These reasons are summarised as follows:²⁵⁸

- The requirement will apply to all prospective shippers, thereby ensuring all users are treated on a fair and reasonable basis.
- DBP's return on the capital base is based on it being a benchmark efficient entity, which as per the Authority's *Rate of Return Guidelines*²⁵⁹ is an entity with a credit rating in the BBB range. A service provider's credit rating is largely dependent on the entity having sufficient revenue to service its debt. DBP proposes to recover its revenue from reference service shippers, and hence, any shipper that is unlikely to meet its financial obligations will increase the risk of DBP not recovering its revenue and servicing its debt. This in turn exposes DBP's ability to be a credit rated benchmark efficient entity.
- Given the above reasoning, it is consistent with the national gas objective to insert a creditworthiness requirement into the access arrangement.
- A creditworthiness requirement has not been required in past access arrangements because pipeline capacity has been fully contracted. DBP was able to manage the prudential requirements of shippers as part of the access contract for developable capacity execution process (and as part of DBP's decision to fund any expansion of pipeline capacity).
- It is envisaged that there will be spare capacity during the forthcoming (AA4) access arrangement period. Under the current queuing requirements, and in circumstances where there is spare capacity, DBP is required to accept any prospective shippers' access request for a reference service within a certain period if the access request is compliant. The creditworthiness requirement will ensure financial information is available to DBP so it can perform its assessment of access requests under clause 5.3.

²⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014.

²⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 2.

²⁵⁹ Economic Regulation Authority, *Rate of Return Guidelines – Meeting the requirements of the National Gas Rules*, 16 December 2013.

898. The queuing requirements of clause 5.4 of the proposed revised access arrangement are consistent with the queuing requirements under the existing access arrangement applying for the current (AA3) access arrangement period (2011 to 2015). The queuing requirements provide for:
- a single queue for access to all services, both reference and non-reference services; and
 - a priority of access in accordance with the time that a compliant access request is received or deemed to be received by DBP.

Submissions

899. No submissions were received by the Authority about DBP's proposed changes to introduce a creditworthiness requirement at clause 5.2 of the proposed revised access arrangement.

Considerations of the Authority

900. The Authority has considered 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 queuing requirements of access requests (clause 5.4).
901. The NGR do not require a full access arrangement proposal to include information about the processes for access requests. However, as the proposed revised access arrangement contains such processes and DBP has proposed an amendment to these processes, the Authority has given consideration to whether the information is consistent with the provisions of the NGR and with the NGO.
902. The Authority notes DBP's proposed creditworthiness requirement is in effect just one of the "other terms and conditions on which the reference service will be provided" that must be specified in the access arrangement.²⁶⁰ The existing terms and conditions for the T1, P1 and B1 reference services already contemplate that the creditworthiness of the shipper will be assessed in this way (and security obtained from the shipper in appropriate cases) – for example, see:
- Clause 1 – definition of "Approved Prospective Shipper"
 - Clause 30.4 – Creditworthiness of Shipper
 - Clause 30.5 – Failure to Satisfy Operator of Creditworthiness
 - Schedule 1 (item 5 (Creditworthiness) of template Access Request Form)
903. Further, the Authority notes DBP's reasoning for the proposed amendment, in particular, that the creditworthiness requirement will apply to all prospective shippers, thereby ensuring all users are treated on a fair and reasonable basis. Given this reasoning, the Authority is of the understanding that shippers with the same credit rating (including any associates of DBP) who are required to provide security should be required to provide the same level of security. For example, a shipper who is an associate of DBP should also be required to bear the cost of

²⁶⁰ Refer to rule 48(1)(d)(ii) of the NGR.

providing security, if DBP requires security from a non-associated shipper with the same (or better) credit rating as the DBP associate.

904. Taking the above matters into account, the Authority considers DBP's proposed amendment to insert new clause 5.2(c), to include a requirement for an access request to include relevant financial information to enable an assessment of the prospective shipper's ability to meet its financial obligations under the access contract, is appropriate and consistent with the existing access regime.
905. As a minor drafting point, the Authority notes that DBP has misplaced the apostrophe in *Prospective Shippers'* in its drafting of proposed new section 5.2(c)(vi), which should be changed to read "Prospective Shipper's".

Required Amendment 66

Clause 5.2(c)(vi) of the proposed revised access arrangement, relating to queuing requirements, should be amended to read:

"Relevant financial information that would be required by a reasonable and prudent person to assess the Prospective ~~Shippers'~~Shipper's ability to meet financial obligations made under the Access Contract."

906. In the absence of any proposed material revisions to the queuing requirements, and subject to the minor required amendment above, the Authority is satisfied that the queuing requirements under clause 5 of the proposed revised access arrangement satisfy the requirements of rule 103 of the NGR.

Capacity Trading Requirements

Regulatory Requirements

907. A full access arrangement must, inter alia, set out capacity trading requirements (section 48(1)(f) of the NGR).
908. Rule 105 of the NGR provides for capacity trading requirements in an access arrangement.
105. Capacity trading requirements
- 1) Capacity trading requirements must provide for transfer of capacity:
 - a) if the service provider is registered as a participant in a particular gas market – in accordance with rules or Procedures governing the relevant gas market; or
 - b) if the service provider is not so registered, or the relevant rules or Procedures do not deal with capacity trading – in accordance with this rule.
 - 2) A user may, without the service provider's consent, transfer, by way of subcontract, all or any of the user's contracted capacity to another (the **third party**) with the following consequences:
 - a) the transferor's rights against, and obligations to, the service provider are (subject to paragraph (b)) unaffected by the transfer; but
 - b) the transferor must immediately give notice to the service provider of:
 - i) the subcontract and its likely duration; and
 - ii) the identity of the third party; and
 - iii) the amount of the contracted capacity transferred.
 - 3) A user may, with the service provider's consent, transfer all or any of the user's contracted capacity to another (the **third party**) with the following consequences:
 - a) the transferor's rights against, and obligations to, the service provider are terminated or modified in accordance with the capacity trading requirements; and
 - b) a contract arises between the service provider and the third party on terms and conditions determined by or in accordance with the capacity trading requirements.
 - 4) The service provider must not withhold its consent under subrule (3) unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
 - 5) An adjustment of rights and liabilities under subrule (3) does not affect rights or liabilities that had accrued under, or in relation to, the contract before the transfer took effect.
 - 6) The capacity trading requirements may specify in advance conditions under which consent will or will not be given, and conditions to be complied with if consent is given.
909. As an overriding consideration, pursuant to rule 100(a) of the NGR, the capacity trading requirements must also be consistent with the NGO (as set out in section 23 of the NGL(WA)).

DBP's Proposed Changes

910. Clause 6 of the proposed revised access arrangement details the capacity trading requirements that will apply. DBP propose to amend these requirements as follows:

6.1 A Shipper of any Haulage Service may transfer all or any of the Shipper's contracted capacity:

- a) Where the Operator is registered as a participant in a particular gas market – in accordance with the rules or procedures governing the relevant gas market; or
- b) Where the Operator is not registered for the purposes of clause 6.1(a) - in accordance with NGR 105 and clauses 6.2 to 6.5.

6.2 A Shipper of any Haulage Service may:

- a) without the Operator's consent transfer by way of subcontract, all or any of the Shipper's contracted capacity to another Shipper in accordance with clause 27.2 of the Access Contract Terms and Conditions for each reference service.
- b) Subject to any [Pre-existing Contractual Right], with the Operator's prior written consent transfer all or any of the Shipper's contracted capacity to another (Third Party) in accordance with clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service and clause 6.3.

6.3 ~~6.2.~~ Operator must not withhold its consent under clause ~~6.1(b)~~6.2(b) unless it has reasonable grounds, based on technical or commercial grounds for doing so.

6.4 ~~6.3.~~ In addition to any conditions outlined in clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service, and without limitation, the following are examples of reasonable technical or commercial grounds that the Third Party and the Shipper must comply with before Operator will consent under clause ~~6.1(b)~~6.2(b):

- a) The Third Party must comply with the Queuing Requirements in clause 5.4.
- b) The Shipper must reimburse Operator for all reasonable costs incurred by Operator in processing and determining the Shipper's consent request (including legal costs, internal costs and other costs as reasonably determined) whether or not the transfer proceeds to completion, subject to Operator providing, if requested by the Shipper, an estimate for the costs that Operator expects to incur (which estimate will not limit the costs which must be reimbursed under this clause ~~6.3(b)~~).

6.5 ~~6.4.~~ If Operator consents to the transfer of all or any of the Shipper's contracted capacity to a Third Party under clause ~~6.1(b)~~6.2(b), the following consequences arise:

- a) the Shipper's rights and obligations are terminated except that any rights or liabilities that accrued under, or in relation to, the Access Contract before the date on which Operator grants consent are not affected; and
- b) an Access Contract arises between the Operator, DBNGP (WA) Nominees Pty Ltd (in its capacity as Trustee for the DBNGP WA Pipeline Trust) and the Third Party on terms and conditions determined by or in accordance with this section 6.

911. DBP submits that the proposed amendments to the capacity trading requirements aim to:²⁶¹
- recognise that a secondary trading market may be established during the access arrangement period; and
 - add clarity to the costs that the shipper must reimburse to the operator for processing consent requests.

Submissions

912. Alinta Energy does not support provisions being made in the proposed revised access arrangement for a formal gas capacity trading market. Alinta Energy submits that there are no current plans for a formal compulsory trading market, and that the proposed provisions are therefore speculative. Further, Alinta Energy considers that it would be more appropriate to use the cost pass through mechanism contained within the proposed revised access arrangement if a market is implemented in the future.²⁶²
913. WESCEF notes DBP's proposed amendment to clause 6.2(b) to include the words "*subject to any [Pre-existing Contractual Right]*" and indicate that the term "pre-existing contractual right" does not appear to be defined within the access arrangement. WESCEF believes that DBP should provide a proposed definition for this term and give interested parties an opportunity to comment on the proposed definition.²⁶³

Considerations of the Authority

914. In assessing DBP's proposed changes to the capacity trading requirements in clause 6 of the proposed revised access arrangement, the Authority has given consideration as to whether the proposed amendments are consistent with the NGO and the requirements of rule 105.
915. The Authority notes that DBP's proposed amendments to clause 6.1 substantially reproduces what is required by rule 105(1). However, the Authority is of the view that the addition of the words "*and clauses 6.2 to 6.5*" at the end of clause 6.1(b) extends the provision beyond what is required by rule 105(1)(b), and raises the question as to whether the proposed amendments in these clauses are in accordance with rule 105.
916. With respect to (new) clause 6.2(a) of the proposed revised access arrangement the Authority notes it substantially reproduces what is required by rule 105(2) and is

²⁶¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, paragraph 4.5, p. 4.

²⁶² Alinta Energy, *Submission in response to Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 2 June 2015, paragraph 7.1, p. 5.

²⁶³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, paragraph (i), p. 5.

hence consistent with the rule, provided clause 27.2 of the proposed terms and conditions (to which clause 6.2(a) refers) is also consistent with rule 105(2).²⁶⁴

917. With respect to the proposed amendments to (new) clause 6.2(b), that is the addition of the words “*Subject to any [Pre-existing Contractual Right]*” and “*prior written*”, DBP has not provided an explanation as to why the drafting changes have been made and how the changes are consistent with rule 105 of the NGR.
918. As has been noted by WESCEF in its submission, DBP has not defined the term “pre-existing contractual right”, so it is unclear what it is intended to cover. Amongst other things, it is unclear whether it is meant to refer just to a pre-existing right accrued under the particular haulage contract where capacity is being traded, or whether it can also refer to a right under any other contract between DBP and the shipper. If the former, it may already be covered by rule 105(5) and clause 6.5(a) of the proposed revised access arrangement, and hence there would be no need to insert the words “*Subject to any [Pre-existing Contractual Right]*” in clause 6.2(b). In any event, as indicated by WESCEF, the term “pre-existing contractual right” should be explained and interested parties given an opportunity to comment.
919. The Authority also notes rule 105 does not expressly require the service provider's consent to a transfer to be “prior” or “written”. Whilst both those things may evidence a prudent approach, the proposed amendment could potentially prevent a shipper having the flexibility to obtain consent in some unwritten form and/or after the event. Furthermore, the requirement for consent to be in writing is arguably inconsistent with clause 27.4(f) of the proposed terms and conditions, which allows for consent to be deemed (and therefore not in writing) where DBP does not give notice to reject a transfer request within the time limit set by clause 27.4(d) of the proposed terms and conditions.
920. In the circumstances, and in the absence of any sound justification for the insertion of the words “*Subject to any [Pre-existing Contractual Right]*” and “*prior written*” the Authority is of the view that DBP’s proposed changes to (new) clause 6.2(b) should be rejected.

Required Amendment 67

Clause 6.2(b) of the proposed revised access arrangement, relating to the transfer of a shipper’s contracted capacity with the operator’s consent, should be amended to remove the words “*Subject to any [Pre-existing Contractual Right]*” and “*prior written*”.

921. With respect to the proposed amendment to (new) clause 6.4(b), that is the insertion of the words “*(including legal costs, internal costs and other costs as reasonably determined) whether or not the transfer proceeds to completion,*” the Authority makes the following observations.

²⁶⁴ With regard to clause 27.2(b) of the proposed terms and conditions to apply to the T1, P1 and B1 reference services, the Authority believes that the reference to “other shipper” should be changed to “third party”.

- DBP's stated rationale for making this amendment is that it is *"aimed at... adding clarity to costs that the Shipper must reimburse Operator in processing consent requests"*.²⁶⁵
 - The proposed words appear to clarify the existing requirement in clause 6.4(b) for a shipper to reimburse DBP for all reasonable costs incurred by DBP in processing and determining the shipper's consent request as a pre-condition to DBP giving its consent, by specifying that the costs to be reimbursed can include "legal costs, internal costs and other costs as reasonably determined" and must be reimbursed "whether or not the transfer proceeds to completion."
 - Rule 105(6) of the NGR allows DBP to specify in advance its "conditions under which consent will or will not be given, and conditions to be complied with if consent is given." However, NGR rule 105(4) requires that DBP must not withhold its consent to a transfer of capacity under rule 105(3) unless it has "reasonable grounds, based on technical or commercial considerations, for doing so."
922. Noting the observations above, DBP is in effect claiming that if it is not reimbursed for its "legal costs, internal costs and other costs as reasonably determined, whether or not the transfer proceeds to completion", then that would (in DBP's view) be a reasonable ground (based on commercial considerations) for refusing to give consent to the transfer.
923. The Authority considers that it is reasonable and consistent with the NGR for DBP to recover the costs incurred by it in processing and determining a shipper's transfer consent request, and that these costs be recovered direct from the shipper (user) making the request (provided the costs have not already been recovered elsewhere). Furthermore, the Authority considers that it is reasonable to expect the shipper (user) to pay these costs irrespective of whether or not consent to the transfer is given, provided DBP can demonstrate that the costs in question have been reasonably and properly incurred.

Required Amendment 68

Clause 6.4(b) of the proposed revised access arrangement, relating to reasonable technical or commercial grounds that must be complied with before the operator will consent to a transfer, should be amended to indicate that the shipper must reimburse the operator for all costs incurred irrespective of whether or not consent to the transfer is given, only where DBP can demonstrate that the costs have been reasonably and properly incurred.

924. The Authority notes clause 27 ("Trading or Transferring Contracted Capacity") of DBP's proposed terms and conditions, which are to apply to the T1, P1 and B1 reference services, contains provisions for dealing with capacity trading that remain unchanged from the existing terms and conditions applying for the third access arrangement (AA3). The Authority considers that the provisions in clause 27 the proposed terms and conditions should be consistent with the amended capacity trading provisions under clause 6 of the proposed revised access arrangement.

²⁶⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, paragraph 4.5, p. 4.

Required Amendment 69

Clause 27 of the proposed terms and conditions, relating to the trading or transferring of contracted capacity, should be consistent with the proposed amendments to clause 6 (“Capacity Trading Requirements”) of the proposed revised access arrangement.

Extensions and Expansions

Regulatory Requirements

925. The NGR provides for extension and expansion requirements.

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.

926. 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; ...

927. In addition to the definitions under section 2 of the NGL(WA), the NGL(WA) also provides for extension and expansion requirements.

18. Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a covered pipeline

For the purposes of this Law—

- 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 as extended or expanded.

928. Under rule 100 of the NGR, the extension and expansion policy must also be consistent with the National Gas Objective (**NGO**).

DBP's Proposed Changes

929. Clause 7 (“Extensions and Expansions”) of the proposed revised access arrangement sets out 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.
930. DBP proposes several amendments to these extension and expansion provisions, which DBP indicates will:²⁶⁶
- clarify when an extension or enhancement becomes part of the covered pipeline;
 - implement a timeline for determining whether an expansion is (or is not) part of the covered pipeline;
 - provide additional guidance on matters that should be addressed in a coverage notice;
 - require detailed reasoning to support the determination of whether an expansion is (or is not) part of the covered pipeline;
 - clarify that works completed under the gas quality regime and funded by a third party is not an expansion of capacity; and
 - improve the drafting of provisions that relate only to extensions or enhancements.
931. Clause 7.3 of the proposed revised access arrangement sets out provisions relating to extensions, expansions and enhancements of the DBNGP for a purpose other than meeting obligations to the holder of a capacity expansion option. DBP proposes to amend clause 7.3 such that:
- an extension or enhancement becomes part of the covered pipeline immediately from when consent is granted to the operator to operate the extension or enhancement under the *Petroleum Pipelines Act*,²⁶⁷ unless the operator elects otherwise (clause 7.3(a)); and
 - an expansion becomes part of the covered pipeline immediately from when consent is given to the operator to operate the expansion under the *Petroleum Pipeline Act* (clause 7.3(b)), except:
 - where the operator notifies the regulator, in an “expansion non-coverage request notice” that the expansion is not to become part of the covered pipeline; and
 - the regulator advises the operator, within 30 business days of receiving the expansion non-coverage request notice, that it is “not reasonably satisfied” that application of the access arrangement to such an expansion is

²⁶⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 3.

²⁶⁷ *Petroleum Pipelines Act 1969 (WA)*.

inconsistent with the national gas objective and coverage criteria, with detailed reasons for its decision outlined.

932. Clause 7.10 of the current access arrangement applying for the third access arrangement period (AA3) details the treatment of any expansion that is undertaken as a result of the application of provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*. DBP proposes to amend this clause to:
- specify that any extension, enhancement or expansion to be undertaken as a result of the application of this Act is to be part of the covered pipeline, and
 - in circumstances where the funding of the extension, enhancement or expansion is made by a third party, the operator will not benefit, through increased revenue, from any amounts of third party expenditure that has been rolled into the capital base.
933. Further to the above proposed amendments, DBP proposes the following drafting amendments to clauses 7.4 and 7.5 of the proposed revised access arrangement.
- Clause 7.4 details several factors that the operator may have regard to when considering whether to treat an extension or enhancement as part of the covered pipeline. DBP proposes to amend subclauses 7.4(a), (b) and (d) to remove references to “expansion”, as clause 7.4 is only relevant to extensions or enhancements.
 - DBP proposes to add the words “*for the next access arrangement*” to clause 7.5 to specify that any extensions, expansions or enhancements of the DBNGP that become part of the covered pipeline will not affect the reference tariff before the revisions commencement date for the next access arrangement.
 - DBP proposes to add the words “*at any time*” to clause 7.5(b) so that, if an extension, expansion or enhancement becomes part of the covered pipeline, then the operator may submit proposed revisions to the access arrangement under rule 50 of the NGR “at any time”.

Submissions

934. Both BHP Billiton²⁶⁸ and WESCEF²⁶⁹ comment on DBP’s proposed amendments to clause 7 of the proposed revised access arrangement.
935. BHP Billiton submits that DBP’s proposed changes should be rejected as the proposed amendments suggest a procedure that is not sufficiently timely; improperly impose an obligation on the regulator (Authority) to demonstrate why an expansion should (or should not) be part of the covered pipeline; and provide inadequate time for the regulator (Authority) to consider any election by DBP for non-coverage of an expansion.²⁷⁰

²⁶⁸ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, pp. 3, 12-14.

²⁶⁹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3-4.

²⁷⁰ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 12.

936. BHP Billiton notes that clause 7.3 of the proposed revised access arrangement gives DBP the ability to elect whether or not an extension, enhancement or expansion is to become part of the covered pipeline. In relation to extensions and enhancements, this election must be made ‘at some point in time’, whereas there is no timeframe specified for elections in relation to expansions. BHP Billiton considers DBP’s proposal to be similar to the “election mechanism” in the extensions and expansions policy proposed by Goldfield Gas Transmission Pty Ltd (**GGT**) for the access arrangement for the Goldfields Gas Pipeline (**GGP**).²⁷¹ BHP Billiton cites its submission on GGT’s proposed election mechanism for the GGP where it submitted that such an approach created risk in “*that users are not given sufficient protection or the Authority is not able to properly consider the implications of a proposed election*”.²⁷² In particular:
- in the case of the Goldfields Gas Pipeline, the ability for the operator to elect ‘at some point in time’ has resulted in the Authority’s decisions on coverage being made after extension/expansion capacity has been contracted, with users not having the opportunity of a clear and efficient contracting path (a negotiated versus a regulated service) and therefore not being able to mitigate against the extraction of monopoly rents. This is inefficient and undermines the rationale for having coverage elections in the first place; and
 - it does not allow the Authority sufficient time to properly consider whether a decision to consent to a proposed election contributes to the achievement of the NGO, which ultimately means the Authority’s election is of limited benefit to users. [*sic*]
937. In order to manage such risk, BHP Billiton submits that the proposed revised access arrangement for the DBNGP should provide for the following:
- if DBP is to elect for an extension, enhancement or expansion not to become part of the Covered Pipeline, it must make this election prior to the extension, enhancement or expansion automatically becoming part of the Covered Pipeline as provided in clauses 7.3(a) and (b) of the proposed extensions and expansions policy (which occurs upon the consent to operate the extension, enhancement or expansion being granted under the Petroleum Pipelines Act); and
 - until the Authority has made a determination in relation to any election by DBP for an extension, enhancement or expansion not to become part of the Covered Pipeline, or the extension, enhancement or expansion automatically becomes part of the Covered Pipeline by operation of the extensions and expansions policy (as discussed above), DBP should be prevented from entering into agreements with users in respect of the additional capacity. [*sic*]
938. BHP Billiton also comments on DBP’s proposed changes that require the Authority (as the regulator) to justify coverage and detail the way in which the justification is made.²⁷³
- BHP Billiton notes the current provisions of the access arrangement that provide for all expansions to automatically become part of the covered pipeline, unless DBP can demonstrate to the Authority that an expansion should not. BHP Billiton submits that “*this is an appropriate approach to the assessment of expansions, and is consistent with the [NGR] and the NGO*”. BHP Billiton

²⁷¹ Goldfield Gas Transmission Pty Ltd’s proposed access arrangement for the Goldfields Gas Pipeline and other related documents are available from the Authority’s website: <https://www.erawa.com.au/gas/gas-access/goldfields-gas-pipeline> (accessed 19 October 2015).

²⁷² BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 13.

²⁷³ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 14.

indicates that it does not support DBP's proposal to change this approach by placing the onus on the Authority to determine whether an expansion should (or should not) become part of the covered pipeline where DBP elects for an expansion to be uncovered.

- BHP Billiton also notes that in addition to placing the onus on the Authority to justify why an expansion should (or should not) be covered, DBP proposes that where the Authority determines that an expansion should become part of the covered pipeline it must: (1) provide detailed reasons and (2) provide these reasons within 30 business days of receiving an expansion non-coverage request notice from DBP. BHP Billiton considers a period of 30 business days to be materially inadequate.

939. WESCEF notes DBP's proposed amendments to clause 7.3(a), which allows the operator to elect (at some point in time) for an extension or enhancement to not become part of the covered pipeline. WESCEF submits that the timing of the election should be clarified to provide certainty as to whether an extension or enhancement will be part of the covered pipeline within an appropriate timeframe, for example, no later than 30 business days before the consent to operate the extension or enhancement is granted.²⁷⁴

Considerations of the Authority

940. The Authority considers that whilst DBP has provided a summary of its view of the "effects" of its proposed changes to clause 7 of the proposed revised access arrangement,²⁷⁵ DBP has not provided any statement of the rationale for its proposed changes with reference to the NGO, and in particular how the proposed changes may further the NGO. In contrast, BHP Billiton has in its submission indicated how DBP's proposed changes may undermine the gas access regime, including the NGO, for example:

- by DBP "gaming" the timing for when DBP can elect that an extension, enhancement or expansion is not to be covered so that prospective users face uncertainty and are channelled into contracting for a negotiated rather than a regulated service, thereby potentially exposing them to the extraction of monopoly rents and undermining the NGO; and
- by effectively reversing the current "default position" that expansions are to be covered unless DBP can show NGO justification why they should not be, by shifting the onus onto the Authority to show NGO justification why the expansion should be covered, and giving the Authority only a very limited time (30 business days) in which to do so.

941. The Authority notes that if there is an NGO-based justification for tightening up the timing for when DBP can elect for an extension or expansion to be uncovered, then the proposal put forward by BHP Billiton in its submission (i.e. the election must be made before consent to operate is granted) appears to be more consistent with the NGO than that proposed by DBP. Furthermore, consistent with what WESCEF

²⁷⁴ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3-4.

²⁷⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, paragraph 3.6, p. 3.

suggests in its submission, the election should be made a reasonable time before consent to operate is granted under the *Petroleum Pipelines Act*.²⁷⁶

942. In any case, the Authority considers the drafting of DBP's proposed amendment to clause 7.3(b) is poorly drafted and would seem to contain a significant error, which renders it effectively contrary to what the Authority believes DBP is probably attempting to achieve. That is, on DBP's currently proposed drafting, clause 7.3(b) effectively provides that an expansion is taken to be covered except where:
- DBP notifies the Authority (by way of an "expansion non coverage request form") that DBP does not want it to be covered (i.e. clause 7.3(b)(i)); and
 - the Authority gives DBP a notice that the Authority is "not reasonably satisfied" that coverage of the expansion is "inconsistent" with the NGO (i.e. clause 7.3(b)(ii)).
943. Due to the double negative used by DBP in proposed clause 7.3(b)(ii) (i.e. "not" satisfied that coverage is "inconsistent" with NGO), the drafting seems to be saying that the exception from coverage sought by DBP will only apply if the Authority is satisfied that it would be consistent with the NGO for it to be covered (which is illogical and inconsistent with the philosophy behind the gas access regime).
944. Furthermore, the Authority has identified several other drafting issues with DBP's proposed changes to clause 7.3 of the proposed revised access arrangement that should be addressed.
- There is no correct full citation of the "*Petroleum Pipelines Act*" (i.e. the "*Petroleum Pipelines Act 1969 (WA)*").
 - There is no definition for the term "*Coverage Criteria*", which is proposed to be used in clause 7.3(b)(ii).
 - There appears to be a grammatical/typographical error in the proposed drafting of clause 7.3(b)(ii) (the Authority believes the words "*of the Coverage Criteria*" should probably be "or the Coverage Criteria").
945. In light of DBP's failure to provide adequate justification for its proposed changes, the submissions from interested parties and matters raised above, the Authority is of the view that the proposed changes to clause 7.3 should be rejected.

Required Amendment 70

Clause 7.3 of the proposed revised access arrangement, relating to when an extension (or enhancement) or expansion is to become part of the covered pipeline, should remain as currently drafted in the access arrangement applying to the third access arrangement period (AA3).

946. Further to the above, the Authority notes DBP's proposed drafting change to clause 7.4, to remove references to "expansion" in sub-clauses 7.4(a), (b) and (d), as clause 7.4 is only relevant to extensions or enhancements. In line with this proposed drafting change (and DBP's rationale for the change) the Authority

²⁷⁶ *Petroleum Pipelines Act 1969 (WA)*.

believes the drafting of clause 7.3(a) should be amended to remove the reference to “expansion”, as clause 7.3(a) is also only relevant to extensions (or enhancements).

Required Amendment 71

Clause 7.3(a) of the proposed revised access arrangement, relating to when an extension (or enhancement) is to become part of the covered pipeline, should be amended to remove the reference to “expansion” as this clause only relates to extensions (or enhancements).

947. In relation to clause 7.5(b), the Authority notes DBP’s proposal to add the words “*at any time*” so that, if an extension, expansion (or enhancement) becomes part of the covered pipeline, then the operator may submit proposed revisions to the access arrangement under rule 50 of the NGR “at any time”. As with its other proposed changes, DBP has provided no justification (NGO-based or otherwise) why this change has been made, nor explained what effect(s) it is intended to have.
948. No submissions have been made specifically regarding this change to clause 7.5(b).
949. While it is not clear as to why the change has been made, it appears to allow DBP to circumvent the revision submission date set in the access arrangement in accordance with rule 50 of the NGR. The Authority believes that DBP may have intended to refer to rule 65, which deals with applications to vary the access arrangement and permits such an application to be made at any time, save during the revision submission date and the commencement of the new access arrangement period (rule 65(2)). As DBP has not put forward any basis why the requirements in rule 65 for variations to the access arrangement should not apply, the Authority is of the view that the proposed change to clause 7.5(b) to add the words “*at any time*” should be rejected.

Required Amendment 72

Clause 7.5(b) of the proposed revised access arrangement, relating to the submission of proposed revisions to the access arrangement when an extension, expansion or enhancement of the DBNGP becomes part of the covered pipeline, should be amended to remove the words “*at any time*”.

950. Further to the considerations of the Authority above, the Authority notes DBP’s use of the words “extensions or enhancements”, when referring to changes to the covered pipeline that are not expansions of the capacity of the pipeline. The Authority considers the use of these words together may cause confusion as it is not expressly apparent what the differences are between an “extension” and “enhancement”. In the absence of any clear definition for the term “enhancement” the Authority is of the view that references to the word “enhancement” should be deleted from clause 7 of the proposed revised access arrangement.

Required Amendment 73

Clause 7 of the proposed revised access arrangement, relating to extensions and expansions, should be amended to remove references to “*enhancement*”.

Trigger Events

Regulatory Requirements

951. Rule 51 of the NGR contains provisions for “trigger events”, which allow the review submission date that is fixed in an approved access arrangement 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:²⁷⁷
- 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.
952. 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.
953. The Authority has full discretion in relation to trigger events.²⁷⁸

DBP’s Proposed Revisions

954. As per the current access arrangement applying for the third access arrangement period (AA3), DBP’s proposed revised access arrangement does not include any trigger events that are to apply during the fourth access arrangement period (AA4).²⁷⁹

Submissions

955. No submissions made to the Authority address the provisions for trigger events.

²⁷⁷ Refer to rule 52(2) of the NGR.

²⁷⁸ Refer to rule 40(3) of the NGR.

²⁷⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Proposal – Supporting Submission 1*, 31 December 2014, p. 5.

Considerations of the Authority

956. Consistent with the current access arrangement applying for the third access arrangement (AA3) period no trigger events are specified in DBP's proposed revisions.
957. In approving this aspect of the current access arrangement (i.e. no trigger events to be contained in the access arrangement), the Authority gave consideration to DBP's forecast capital and operating expenditures and the contracted capacity of the pipeline.²⁸⁰

The Authority has scrutinised the figures in the proposed revisions in relation to forecast capital and operating expenditure, and forecast demand, and is satisfied they are consistent with the NGR. As such, the forecasts should not vary substantially from actual expenditure. Therefore, a trigger mechanism to enable adjustment of the reference tariff in the next access arrangement should not be necessary.

Also, as the pipeline is currently fully contracted and is likely to remain so until the existing shipper contracts expire, the Authority is of the view that a trigger event is not necessary as the provisions of the access arrangement are unlikely to be utilised until sometime after 2016. However, if the Authority was to be presented with evidence that pipeline capacity will become available during 2011 - 2015 then it would consider imposing a trigger mechanism in the proposed revised access arrangement. The Authority is of the view that it is likely a trigger event will be necessary for the next access arrangement period.

958. The Authority is of the understanding that some spare (uncontracted) pipeline capacity has become available since the last access arrangement review, following the renegotiation of existing Standard Shipper Contracts (**SSCs**) in August 2014, with the renegotiated contracts having contract terms until 2025 and beyond. Whilst this is the case, the Authority is now of the view that a trigger event is unnecessary for the forthcoming access arrangement period for the following reasons.
- The Authority has given detailed consideration to DBP's forecast capital and operating expenditures for the fourth access arrangement (AA4) period elsewhere in this Draft Decision.²⁸¹ Similarly, detailed consideration of DBP's demand forecasts for the AA4 period are discussed elsewhere in this Draft Decision.²⁸² Consistent with the Authority's determination on these matters, the Authority is satisfied that the respective forecasts are reasonable. Hence, a trigger mechanism to adjust the reference tariff during the fourth access arrangement should not be necessary.
 - The Authority is not aware of any current access arrangements applying to gas transmission pipelines with Australia that have specified trigger events. The Authority notes that the only open access arrangement, currently under review by the AER, applying to the Amadeus Gas Pipeline (**AGP**) in the Northern Territory may be required to specify a trigger event in relation to the interconnection of another pipeline (i.e. the North Eastern Gas Interconnector)

²⁸⁰ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 14 March 2011 (reprinted 5 May 2011), paragraph 1655 and 1656, p. 379.

²⁸¹ Refer paragraph 149 and following.

²⁸² Refer paragraph 113 and following.

with the AGP.²⁸³ Consistent with the example provided in rule 51(2) of the NGR,²⁸⁴ the Authority considers that the interconnection of another pipeline would constitute a trigger event and in such circumstances the Authority would require a trigger event to be included in an access arrangement. Given the interconnection of another pipeline with the DBNGP is unlikely (and the other examples specified in rule 51(2) are unlikely to occur) the Authority is of the view that trigger events should not be necessary for the access arrangement applying to the DBNGP.

959. Taking the above matters into consideration, the Authority accepts DBP's proposal to not include any trigger events in the access arrangement for the fourth access arrangement (AA4) period.

²⁸³ Australian Energy Regulator, *Draft Decision Amadeus Gas Pipeline Access Arrangement 2016 to 2021 Attachment 12 – "Non-tariff components"*, November 2015, p. 27.

²⁸⁴ The examples provided in rule 51(2) include: (1) A re-direction of the flow of natural gas through the pipeline, (2) A competing source of natural gas becomes available to customers served by the pipeline, and (3) A significant extension, expansion or interconnection occurs.

Review, Commencement and Expiry Dates

Regulatory Requirements

960. Rules 49 and 50 of the NGR detail the requirements relating to the submission, commencement and expiry dates of an access arrangement.
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 AER [ERA] must accept that part of the proposal.
 - 3) The AER [ERA] has no discretion under subrule (2).
 - 4) The AER [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.

DBP's Proposed Changes

961. Clause 14 of the proposed revised access arrangement specifies the review (submission) and commencement dates that are to apply to the access arrangement. DBP has proposed the following:
- the revised access arrangement is to commence on the later of 1 January 2016, or the date specified by the Authority when making its final decision on the proposed revised access arrangement;
 - the review submission date is four years after commencement of the revised access arrangement; and

- the revision commencement date for the next access arrangement is the later of five years after the commencement of the revised access arrangement, or the date the Authority specifies when making its final decision on the proposed revised access arrangement.

Submissions

962. WESCEF notes DBP's proposal to increase the period of time between access arrangement proposal reviews from three to four years, and considers the change to be unjustified. WESCEF submits that the increased period (of four years) between access arrangement proposal reviews will not allow interested parties sufficient time to review and evaluate the proposal.²⁸⁵ WESCEF also indicates that, based on past experience, the review process can take considerably longer than 12 months to complete.

Considerations of the Authority

963. The Authority notes the comments provided by WESCEF on DBP's proposal to increase the review submission date, from three, to four years after the commencement of the revised access arrangement. Whilst the Authority is aware that the timing and duration of an access arrangement review can extend beyond a 12 month period, the Authority believes that there are adequate consultation provisions within the NGR, which allow for interested parties to review, evaluate and make submissions during an access arrangement review.

964. Furthermore, the Authority has no discretion in relation to the review submission date, if the service provider proposes to fix the date in accordance with the general rule provided for under rule 50(1).²⁸⁶

965. However, the Authority notes that it is now likely that setting a review submission date of four years after the commencement of the revised access arrangement for the fourth access arrangement period (AA4) will result in a date less than 12 months prior to the date the next access arrangement period (i.e. AA5) would normally be expected to start. The Authority also notes the potential for the next access arrangement review to be undertaken by the AER.²⁸⁷

966. Although DBP's proposed clause 14 is consistent with the requirements of rule 49 and rule 50 of the NGR, the Authority considers DBP should revise clause 14 to ensure there is sufficient time for the next (fifth) access arrangement review.

²⁸⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 5.

²⁸⁶ Refer to rule 50(3) of the NGR.

²⁸⁷ Following the transfer of regulatory functions from the Economic Regulation Authority to the Australian Energy Regulator.

Required Amendment 74

Clause 14 of the proposed revised access arrangement, relating to revision and commencement dates for the access arrangement, should be revised to ensure there is sufficient time for the next (fifth) access arrangement review.

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Appendix 1 Summary of Required Amendments

Required Amendment 1

The proposed revised access arrangement should be amended so that the detailed description of the DBNGP (that is, the document titled “*Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014)*”) is current as of the date of the approval of the revised access arrangement.

Required Amendment 2

The value of the T1 Tariff, P1 Tariff or B1 Tariff specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the proposed revised access arrangement will need to be amended to reflect the reference tariffs approved by the Authority in its final decision.

Required Amendment 3

Subject to DBP justifying the insertion of the word “Service”, the term “full haul”, as specified in clause 1 (Definitions) of the proposed revised access arrangement, should be amended as follows:

“Full Haul Service means a ~~Gas transportation~~Forward Haul pipeline service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the ~~delivery point~~Outlet Point is downstream of Compressor Station 9 on the DBNGP; ~~regardless of the location of the Inlet Point, but does not include Back Haul.~~”

DBP must include a reference to the location of main line valve 31 (MLV31) in its detailed description and map of the DBNGP.

Required Amendment 4

The term “part haul service” should retain the same meaning as currently drafted in clause 1 (Definitions) of the existing access arrangement for the third access arrangement (AA3) period. That is 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.”

Required Amendment 5

The Authority requires DBP to amend the values for total revenue (in nominal terms) to reflect the values in Table 4 (Authority Approved Total Revenue Building Blocks) of this Draft Decision.

Required Amendment 6

DBP must amend the inflation assumptions in its proposed revised access arrangement to reflect the values in Table 7 (Authority Actual Inflation for AA3) and Table 8 (Authority Forecast Inflation for AA4) of this Draft Decision.

Required Amendment 7

DBP must provide updated demand forecasts together with the additional information detailed in paragraphs 131 to 138 of this Draft Decision.

Required Amendment 8

DBP must include an operational expenditure KPI based on \$/km, or similar, to support its proposed operating expenditure forecast.

Required Amendment 9

The Authority requires DBP to amend its forecast operating expenditure for the AA4 period to the values set out in Table 24 (Authority Approved Operating Expenditure Forecast by Cost Category) of this Draft Decision.

Required Amendment 10

The opening capital base for 1 January 2016 in the proposed revised access arrangement must be amended to reflect the values in Table 29 (Authority Approved Opening Capital Base at 1 January 2016) of this Draft Decision.

Required Amendment 11

The value of conforming capital expenditure for 2016 to 2020 access arrangement period must be amended to reflect the values shown in Table 35 (Authority Approved Capital Expenditure Forecast by Asset Class for the Fourth Access Arrangement Period) of this Draft Decision.

Required Amendment 12

The projected capital base in the proposed revised access arrangement must be amended to reflect the values in Table 36 (Authority Approved Projected Capital Base) of this Draft Decision, which shows the Authority's required amended values for the projected capital base as at 31 December 2020. This takes into account the Authority's required amendments to capital expenditure and the amendments to depreciation that are relevant to this calculation.

Required Amendment 13

Forecast depreciation must be amended to reflect the values (in nominal terms) in Table 41 (Authority's Forecast Depreciation for AA4) of this Draft Decision.

Required Amendment 14

The Authority requires that the rate of return be estimated consistent with the method used to develop the estimates set out in Table 42 (Rate of return for the Draft Decision) of this Draft Decision. The *indicative* nominal post tax rate of return for 2016 is 6.02 per cent. This estimate needs to be updated for the Final Decision. The Authority requires that DBP nominate, as soon as practicable, the averaging period for 2016 to be used in estimating the rate of return for the Final Decision.

The Authority requires an annual adjustment to be applied to the debt risk premium to be incorporated in each subsequent tariff update during the fourth access arrangement period. The first annual update will apply for the tariff variation for the 2017 calendar year, and should be determined based on the automatic formula set out in Appendix 4G of this Draft Decision. The resulting annual adjustment to the rate of return should be incorporated in the Annual Tariff Variation.

The Authority requires that DBP nominate, as soon as practicable, the averaging periods for each annual update applying for 2017, 2018, 2019 and 2020. The averaging periods for each year must be a nominated 40 trading days in the window 1 June to 31 October in the year prior to the relevant tariff variation, which will allow estimation of the updated DRP for inclusion in the relevant annual tariff variation. The nominated 40 trading day averaging period for each of the four years do not need to be identical periods, only that they occur in the period 1 June to 31 October in each relevant year, and are nominated prior. The nominated averaging periods for the annual updates will remain confidential.

For each annual update for 2017, 2018, 2019 and 2020, the Authority will estimate the updated rate of return following the relevant annual averaging period and then notify DBP of the outcomes as soon as practicable. Following that notice, DBP is required to respond on any issues as soon as practicable, in order to allow the updated estimate to be

finalised prior to submission by DBP of its proposed annual tariff variation within the required timeframe.

Required Amendment 15

DBP is required to adopt a gamma of 0.4.

Required Amendment 16

Taxation costs must be amended to reflect the values (in nominal terms) in Table 49 (Authority Approved Calculation of Estimated Cost of Corporate Income Tax) of this Draft Decision.

Required Amendment 17

DBP must provide details (including revenue and volumes) of all non-reference services provided (in addition to full haul, part haul and back haul non reference services) during AA3 and its forecast for AA4. It should also provide details of any costs relating to such services and, if found to be significant, either a cost allocation methodology which ensures such costs are recovered from the parties receiving the services, or a rebate mechanism as permitted under the National Gas Rules.

Required Amendment 18

DBP must provide evidence to support its proposed split between the capacity and commodity charge, including demonstrating that the proposed split is consistent with an efficient tariff structure.

DBP must amend its proposed reference tariffs to reflect the Authority's Draft Decision.

Required Amendment 19

The proposed CPI formula variation set out in clause 11.2 of the proposed revised access arrangement must be deleted.

Required Amendment 20

The Authority requires DBP to consider merging clauses 11.4 and 11.5 of the proposed revised access arrangement to cover both "tax changes" and "new cost pass through" variations to simplify the drafting of the access arrangement and to ensure approval processes for both variation processes are consistent.

Required Amendment 21

Subject to Required Amendment 20, clause 11.4 of the proposed revised access arrangement should be amended as follows:

11.411-3. Tax Changes Variation means the following mechanism:

- (a) The Operator has established the Reference Tariff for the Reference Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure (Included Taxes and Carbon Costs).
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:
 - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are 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 (Rule 91 Criteria) and the changed amount of the relevant Included Tax ~~and Carbon Cost~~ is lower than the amount for that relevant Included Tax ~~and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator must vary the Reference Tariff to deal with the financial impact of the Tax Change; and

(ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax ~~and Carbon Cost~~ is higher than the amount for that relevant Included Tax ~~and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator may vary the Reference Tariff to recover the financial impact of the Tax Change.

(c) Before the Operator varies the Reference Tariff under clause 11.4(b) ~~11.3(b)~~, the Operator must provide a written notice to the Regulator (Tax Change Notice) which:

(i) in the case of a Tax Change where the changed amount of the relevant Included Tax ~~and Carbon Cost~~ is lower than the amount for that relevant Included Tax ~~and Carbon Cost~~ that was included in the forecast operating expenditure for the Current Access Arrangement Period – is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;

(ii) outlines the amount of the relevant Included Tax ~~and Carbon Cost~~ that was included in the forecast operating expenditure in the Current Access Arrangement Period;

(iii) provides evidence of the amount of the Tax Change;

(iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;

(v) specifies the scope of the financial impact of the Tax Change;

(vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and

(vii) states the effective date for the variation to the Reference Tariff to take effect.

(d) The Operator must not vary the Reference Tariff under clause 11.3(b)(ii) unless:

(i) the Operator provides a Tax Change Notice to the Regulator; and

(ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.

(e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.

(f) The minimum notice period for a Tax Change Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.

(g) If the Tax Change Notice results in a reduction in the Reference Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a Reference Service an amount equal to the difference between:

(i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and

(ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.

(h) If the Tax Change Notice results in an increase in the Reference Tariff, the Operator may, within 50 Business Days of the date of the Tax Change Notice invoice each Shipper for a Reference Service an amount equal to the difference between:

(i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and

(ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.

(i) Any variation to the Reference Tariff under this clause 11.4 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

Required Amendment 22

Subject to Required Amendment 20], clause 11.5 of the proposed revised access arrangement should be amended as follows:

11.544.4. 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 if (but only if) the expenses:

(i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;

(ii) satisfy the Rule 91 Criteria;

(iii) could not be predicted prior to the time at the revisions to the Access Arrangement were approved;

(iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.

Expenses which satisfy all criteria in this clause 11.5(a)44.4(a) result in a Cost Pass Through Event.

(b) Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause 11.544.4 are:

(i) Carbon Costs (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs);

(ii) ~~(i)~~-a Change in Law; and

(iii) ~~(ii)~~-[Deleted]; and

(iv) 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 11.544.4, the Operator must obtain written approval from the Regulator to vary the Reference Tariff by providing a 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 –

A. 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, and

B. that the expenses associated with the Cost Pass Through Event satisfy the Rule 91 Criteria;

(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 30 Business Days.
- (f) The Operator must not vary the Reference Tariff under clause 11.4(a) unless:
 - (i) the Operator provides a Cost Pass Through Event Notice to the Regulator; and
 - (ii) the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.
- (g) If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:
 - (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event ~~Tax Change~~ and the date that the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (h) If the New Costs Pass Through Variation results in an increase in the Reference Tariff by an amount of one per cent or greater, the Operator may, within 50 Business Days of the date of the Cost Pass Through Event Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
 - (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (i) Any variation to the Reference Tariff under this clause 11.5 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

Required Amendment 23

The Authority requires the existing price cap price control mechanism to be retained in the proposed revised access arrangement.

Required Amendment 24

The Trailing Average Cost of Debt Tariff Variation must be amended to reflect the method and automatic formulas set out in Appendix 4G of this Draft Decision and to include calculation of the revised reference tariffs and submission to the Authority for approval.

Required Amendment 25

The Authority requires DBP to delete clause 13.1(c), relating to the trailing average mechanism, from the proposed revised access arrangement.

Required Amendment 26

The Authority requires that clauses 10.2 and 10.3, relating to the speculative capital expenditure account and speculative investment rate respectively, be deleted from the proposed revised access arrangement.

Required Amendment 27

The term “access request form”, under clause 1 of the proposed terms and conditions, should retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3).

Required Amendment 28

The term “carbon cost”, under clause 1 of the proposed terms and conditions, should be amended as follows:

“Carbon Cost means any costs ~~(for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law)~~(excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law) 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. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits.”

Required Amendment 29

The term “major works”, under clause 1 of the proposed terms and conditions, should be amended to exclude planned maintenance, and consequential amendments to clauses 17.2(d), 18(e) and 18(g) should not be made.

Required Amendment 30

The term “original capacity”, under clause 1 of the current terms and conditions applying to the access arrangement for the third (AA3) period, should not be deleted from the proposed terms and conditions.

Required Amendment 31

The term “outlet station”, under clause 1 of the proposed terms and conditions, should be amended as follows:

“Outlet Station means either a Gate Station or the Metering Equipment site associated with an Outlet Point, and includes ~~gate stations as well as~~ any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and service.”

The term “gate station” should be added to clause 1 of the proposed terms and conditions, using the same terms that are used in the Standard Shipper Contract, that is:

“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.”

Required Amendment 32

The term “part haul”, under clause 1 of the proposed terms and conditions, should retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3).

Required Amendment 33

Clause 2.5(e) of the proposed terms and conditions, relating to ring fencing compliance, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 34

Clause 3.2 of the proposed terms and conditions, relating to capacity service, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 35

The following clauses of the current terms and conditions applying to the access arrangement for the third (AA3) period, which set out provisions relating to the duration of the contract, should not be deleted from the proposed terms and conditions.

- Clause 4.3 (Option to renew contract)
- Clause 4.4 (Conditions to be satisfied before exercising an option)
- Clause 4.5 (Notice exercising an option)
- Clause 4.6 (First option period)
- Clause 4.7 (Second option period)

Required Amendment 36

Clause 5.3(e) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should be amended as follows:

~~“subject to determination by the Operator as a Reasonable and Prudent Person~~ to the extent that it is reasonably necessary to do so (as determined by the Operator acting as a Reasonable and Prudent Person), 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;

Required Amendment 37

Clause 5.3(g) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should retain the words: *“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,”*.

Required Amendment 38

Clause 5.5 of the proposed terms and conditions, relating to the circumstances in which the refusal to receive gas is to be considered a curtailment under the contract and taken into account in determining whether the permissible curtailment limit has been exceeded, should retain the cross reference to clause 5.3(d).

Required Amendment 39

Clause 5.7(b) of the proposed terms and conditions, relating to the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point, should retain the words: *“to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas,”*.

Required Amendment 40

Clause 5.10 of the proposed terms and conditions should be amended as follows:

~~“Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, 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, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies.”~~

Required Amendment 41

Clauses 5.13(b) and 5.13(c) of the proposed terms and conditions, relating to additional rights to refuse to receive or deliver gas, should be amended to replace references to “clause 5.12(a)” with references to “clause 5.13(a)”.

Required Amendment 42

Clause 5.14 of the proposed terms and conditions, relating to shipper’s gas installations, should be amended as follows:

- Clause 5.14(a) should be amended to replace a reference to “clause 5.13” with a reference to “clause 5.14”.
- Clauses 5.14(b)(ii) and 5.14(c) should be amended to replace references to “clause 5.13(b)(i)” with references to clause “5.14(b)(i)”.

Required Amendment 43

Clause 6.3(e) of the proposed terms and conditions, relating to multi-shipper inlet and outlet points, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 44

Clause 6.5 of the proposed terms and conditions, relating to the allocation of gas at outlet points, should be amended as follows:

- Subclause 6.5(c) should be amended to remove the words “*at a constant rate over that Gas Day*”, and
- Subclause 6.5(d) should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 45

Clause 6.16 of the proposed terms and conditions, relating to the compliance of certain installations, should be amended to replace the cross-referencing to “clauses 6.6 to 6.11” with cross-referencing to “clauses 6.6 to 6.9”.

Required Amendment 46

Clause 7.8 of the proposed terms and conditions, relating to the shipper’s liability for out-of-specification gas, should be amended to indicate that if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

Required Amendment 47

Clause 8.2(a) of the proposed terms and conditions, relating to requests for advance information, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 48

Clauses 9.5(c) and 9.5(d), relating to the accumulated imbalance limit, should not be deleted from the proposed terms and conditions.

Required Amendment 49

Clause 9.5(e) of the proposed terms and conditions, relating to the payment of an excess imbalance charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 50

Clause 9.5(a) of the proposed terms and conditions, relating to the shipper's accumulated imbalance limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 51

Clause 9.9 of the proposed terms and conditions, relating to the cashing out of imbalances, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 52

Clause 10.3 of the proposed terms and conditions, relating to the consequences of exceeding an hourly peaking limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 53

Clause 10.5 of the proposed terms and conditions, relating to the concept of an outer hourly peaking limit, should be deleted from the proposed terms and conditions.

Required Amendment 54

Clause 11.2(a) of the proposed terms and conditions, relating to the issuing of an unavailability notice, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 55

Clause 17.4 of the proposed terms and conditions, relating to the refund of the capacity reservation charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 56

Clause 17.5 of the proposed terms and conditions, relating to the operator's rights to refuse to receive or deliver gas, should retain the cross reference to clause 5.9 of the proposed terms and conditions; and

Clause 5.9 ("Refusal to Deliver Gas is a Curtailment in limited circumstances") of the proposed terms and conditions should not be deleted from the proposed terms and conditions.

Required Amendment 57

Clause 17.9(c)(iii) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the priority of curtailment, should not be deleted from the proposed terms and conditions.

Required Amendment 58

Clause 20.5(a)(ii) of the proposed terms and conditions, relating to the adjustment of the T1 tariff, should be amended to read:

"the T1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and"

Required Amendment 59

Clause 25.5(f) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the Pipeline Trustee's acknowledgements and undertakings, should not be deleted from the proposed terms and conditions.

Required Amendment 60

Clause 26 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the general right of relinquishment, should not be deleted from the proposed terms and conditions.

Required Amendment 61

Clause 28.6 of the proposed terms and conditions and conditions, relating to information received by the operator, should be amended to replace a reference to "clauses 0 and 28.5" with a reference to "clauses 28.4 and 28.5".

Required Amendment 62

Clause 29.3 of the proposed terms and conditions, relating to the communication of notices generally, should be amended to:

- make expressly clear that while a dedicated email address must be used, the dedicated email address can be changed by subsequent notice;
- at clause 29.3(a), use the words "*or is sent by email to the Dedicated Email Address*" instead of the words "or is sent by email to"; and
- at clause 29.3(b), use the words "*Dedicated Email Addresses*" instead of the words "email addresses".

Required Amendment 63

Clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to non-discrimination, should not be deleted from the proposed terms and conditions.

Required Amendment 64

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service, relating to the number of working days in which a fault should be remedied, should be amended so that the default rectification periods are the same for both the operator and shipper, and being 20 working days.

Required Amendment 65

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the T1 Service and B1 Service, relating to the number of working days in which a fault should be remedied, should be amended to be consistent with clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service.

Required Amendment 66

Clause 5.2(c)(vi) of the proposed revised access arrangement, relating to queuing requirements, should be amended to read:

"Relevant financial information that would be required by a reasonable and prudent person to assess the Prospective ~~Shippers'~~Shipper's ability to meet financial obligations made under the Access Contract."

Required Amendment 67

Clause 6.2(b) of the proposed revised access arrangement, relating to the transfer of a shipper's contracted capacity with the operator's consent, should be amended to remove the words "*Subject to any [Pre-existing Contractual Right]*" and "*prior written*".

Required Amendment 68

Clause 6.4(b) of the proposed revised access arrangement, relating to reasonable technical or commercial grounds that must be complied with before the operator will consent to a transfer, should be amended to indicate that the shipper must reimburse the operator for all costs incurred irrespective of whether or not consent to the transfer is given, only where DBP can demonstrate that the costs have been reasonably and properly incurred.

Required Amendment 69

Clause 27 of the proposed terms and conditions, relating to the trading or transferring of contracted capacity, should be consistent with the proposed amendments to clause 6 ("Capacity Trading Requirements") of the proposed revised access arrangement.

Required Amendment 70

Clause 7.3 of the proposed revised access arrangement, relating to when an extension (or enhancement) or expansion is to become part of the covered pipeline, should remain as currently drafted in the access arrangement applying to the third access arrangement period (AA3).

Required Amendment 71

Clause 7.3(a) of the proposed revised access arrangement, relating to when an extension (or enhancement) is to become part of the covered pipeline, should be amended to remove the reference to "expansion" as this clause only relates to extensions (or enhancements).

Required Amendment 72

Clause 7.5(b) of the proposed revised access arrangement, relating to the submission of proposed revisions to the access arrangement when an extension, expansion or enhancement of the DBNGP becomes part of the covered pipeline, should be amended to remove the words "*at any time*".

Required Amendment 73

Clause 7 of the proposed revised access arrangement, relating to extensions and expansions, should be amended to remove references to "*enhancement*".

Required Amendment 74

Clause 14 of the proposed revised access arrangement, relating to revision and commencement dates for the access arrangement, should be revised to ensure there is sufficient time for the next (fifth) access arrangement review.

Appendix 2 Abbreviations

AA3	third access arrangement period (2011 to 2015)
AA4	fourth access arrangement period (2016 to 2020)
AAI	Access Arrangement Information
ABS	Australian Bureau of Statistics
ACQ	Annual Contract Quantity
AER	Australian Energy Regulator
ALARP	As low as reasonably possible
AR	Annual revenue
ATO	Australian Tax Office
AWE	Average Weekly Earnings
BEP	Burrup Extension Pipeline
CCA	Current Cost Accounting
CPI	Consumer Price Index
CS9	Compressor station 9
CT	Capacity Tariff
DBNGP	Dampier to Bunbury Natural Gas Pipeline
DBP	DBNGP (WA) Transmission Pty Ltd
EGWWS	Electricity, Gas, Water and Waste Sector
EMCA	Energy Market Consulting associates
ERA	Economic Regulation Authority
FEED	Front End Engineering Design
GEA	Gas Engine Alternator
GSOO	Gas Statement of Opportunities
HHV	Higher Heating Value
HSE	Health, safety and environment
IMO	Independent Market Operator
ICT	Information Communication Technology
IRS	Interest rate swaps
ITR	Initial Total revenue
IT	Information Technology
KPI	Key Performance Indicator
MAOP	Maximum allowable operating pressure
MLV31	Main line valve 31
MGSF	Mondarra Gas Storage Facility
MHQ	Maximum Hourly Quantity
MRP	Market Risk Premium
MSA	Multi-shipper agreement

NGA	National Gas Access (WA) Act 2009
NGL	National Gas Law
NGL(WA)	Western Australian National Gas Law
NGR	National Gas Rules
NGO	National Gas Objective
OEM	Original equipment manufacturer
PPE	Personal Protective Equipment
PTRM	Post-tax revenue model
RAB	Regulatory Asset Base
RER	Regulated earned revenues
RPP	Revenue and Pricing Principles
SECWA	State Energy Commission of Western Australia
SSC	Standard Shipper Contract
SUG	System Use Gas
SWIS	South West Interconnected System
T1 SERVICE	Full haul service
T2 SERVICE	Part haul service
T3 SERVICE	Back haul service
TAB	Tax Asset Base
TJ	Terra Joule
TT	Throughput Tariff
PL	Pipeline License
WACC	Weighted Average Cost of Capital
WPI	Wage Price Index

Appendix 3 DBP Submissions

The following submissions were made by DBNGP (WA) Transmission Pty Ltd (**DBP**) as part of its access arrangement proposal. These submissions are available on the Authority's website.

DBNGP Access Arrangement – Access Arrangement Revision Proposal, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement, Access Arrangement Proposal – Supporting Submission 1, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 1 – Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014).
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Service Terms and Conditions “Full Haul T1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 3 – P1 Reference Service Terms and Conditions “Part Haul P1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 4 – B1 Reference Service Terms and Conditions “Back Haul B1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document – marked-up version, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information – marked-up version, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix A “FinMap-06-060 Budgeting”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix B “Stay in Business – Business Process, Project Priority Scoring, 21 July 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix C “DBNGP Asset Management System Framework TEB-001-002-01, 1 July 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix D “DBNGP Safety Case, Chapter 1: Introduction”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix H “Environment Plan Revision 5.2 Summary Document, November 2013”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix J “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3, 31 December 2014, pp. 6-8.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3, Appendix A “Submission 73: DBP Response to the ERA Final Decision on Proposed Revisions to the Access Arrangement for the DBNGP, 13 December 2011”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A “T1 Reference Service Terms and Conditions – marked-up version”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix B “P1 Reference Service Terms and Conditions – marked-up version”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix C “B1 Reference Service Terms and Conditions – marked-up version”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix B “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016 –2020, Non-tariff related issues – Supporting Submission 5, 31December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, Appendix D “Ernst &Young Report on factual findings, 26 November 2014”.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, Appendix D “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix B “Submission 52: Opening Capital Base, 20 May 2011”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix C1 “Financial Assistance Agreement – Part 1”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix C2 “Financial Assistance Agreement – Part 2”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 3 “Kimber Consultants, Review of Gas Specification for the DBNGP & Determination of an Appropriate Gas Composition for Design of Stage 5 Expansion, 22 February 2006”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 4 “Capex proposal comparison”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 22 “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”

Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 26 “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix D “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8 (Part 1), 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8 (Part 2), 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix A “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix B “Project Management Methodology (PMM) Overview”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 1 “Dampier-Perth Gas Pipeline Communications System Microwave System Upgrade Design Document, November 2006”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 2 “SCADA Functional Design Document – DBNGP SCADA Upgrade”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 3 “GAS Suite Functional Design Document – DBNGP SCADA Upgrade”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 4 “CS2, CS4 & CS7 Gas Turbine Air Inlet Filtration System FEED study and cost estimate report, 29 February 2008”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 5 “Business Case for GTW Works Management Project, 27 February 2007”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 6 “DBP Non Expansion Capital Expenditure Approval Form – TX2 Office Fit Out”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, Appendix A “Project Management Methodology (PMM) Overview”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, Appendix B “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, Appendix A “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, Appendix B “DBNGP Forecast Review, 20 October 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, Appendix C “Confidentiality Table”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix A “Departures from and additions to Guidelines”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix B “The term of the allowed return Report for DBNGP Pty Ltd, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix C “CEG report ERA treatment of asset pricing models, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix D “Model Adequacy Test Background”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix E “ESQUANT Statistical Consulting Report Estimating the Market Risk Premium, 24 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix F “NERA Economic Consulting report Robust Regression Techniques, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix G “CEG report Debt staggering of Australian Businesses, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix H “CEG report on new issue premium, 17 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix I “Report on The Concept of The Impact of a Policy on Economic Efficiency”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix J “Annual update model for return on debt”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix J “Annual update model for return on debt (excel workbook)”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix K “Debt instruments used”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix L “SFG Consulting Report The relationship between the required return on debt and equity, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix M “Impact of interest rates on product prices”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix N “Diebold Mariano tests”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix O “SFG Consulting Report Estimating gamma: Response to ATCO Gas Draft Decision Report for DBP NGP Pty Ltd, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Total Revenue – Supporting Submission 13, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix B “Regulated Tax Depreciation Calculation 1 January 2000 to 31 December 2020”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix C “KPMG Report Establishing opening tax inputs for a Post-tax Wacc methodology, December 2014”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix E “DBNGP AA Proposal Tariff Model”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix F “KPMG Report Peer review of the reference tariff model, December 2014”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix G “Confidentiality Table”.

Appendix 4 Rate of Return

This Appendix is published as a separate publication on the ERA's website.

Appendix 5 Gamma

This Appendix is published as a separate publication on the ERA's website.

Appendix 6 Public Revenue Model

This Appendix is published as a separate publication on the ERA's website.