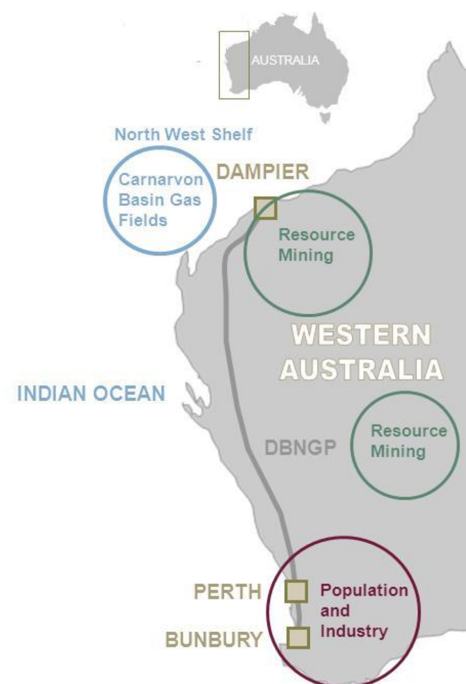
Proposed Revisions
DBNGP Access Arrangement

2016 – 2020 Access Arrangement Period
Supporting Submission: 57
Response to Draft Decision Other Tariff Amendments

Date Submitted: 22 February 2016



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

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

Trent Leach
Manager Regulatory & Government Policy
P: (08) 9223 4357
M: 0429 045 320

Nick Wills-Johnson
Manager Economic Regulation
P: (08) 9223 4902
M: 0477 374 246

DBNGP (WA) Transmission Pty Limited
ABN 69 081 609 190
Level 6
12-14 The Esplanade
PERTH WA 6000
P: +61 8 9223 4300
F: +61 8 9223 4301

Table of Contents

1. INTRODUCTION 3

2. RESPONSE TO AMENDMENT 7 – DEMAND FORECASTS 5

3. RESPONSE TO AMENDMENT 16 – ESTIMATED CORPORATE INCOME TAX 15

4. RESPONSE TO AMENDMENT 17 – NON-REFERENCE SERVICE REVENUE 18

5. RESPONSE TO AMENDMENT 18 – CAPACITY AND COMMODITY CHARGE 24

6. RESPONSE TO AMENDMENT 19 – CPI FORMULA VARIATION 25

7. RESPONSE TO AMENDMENTS 20, 21 AND 22 26

8. RESPONSE TO AMENDMENT 23 – REVENUE CAP 37

9. RESPONSE TO AMENDMENT 24 – TRAILING AVERAGE COST OF DEBT VARIATION 40

10. RESPONSE TO AMENDMENT 2 – TARIFF VALUES 41

APPENDIX A: PIPELINE CAPACITY AND FULL HAUL PIPELINE CAPACITY 42

APPENDIX B: DISTANCE FACTORS 45

APPENDIX C: DUET MIR RECONCILLIATION 46

APPENDIX D: NON REFERENCE FORECAST 47

APPENDIX E: REVISED FORECAST TABLES 48

APPENDIX F: SHIPPER DF COMPARISON 49

APPENDIX G: KPMG CORPROATE TAX ADVICE 50

List of Tables

TABLE 1: FORECAST UNDER THE SPAC 6
TABLE 2: PROJECTS CONSIDERED BY THE NOVEMBER 2015 GSOO 8
TABLE 3: RECONCILIATION OF TAX ASSET BASE 16
TABLE 4: ACTUAL NON-REFERENCE SERVICE REVENUE % SPLIT 20
TABLE 5: FORECAST NON-REFERENCE SERVICE REVENUE FOR AA4 (NOMINAL, $M) 20

1. INTRODUCTION

1.1 On 22 December 2015, the Economic Regulation Authority (**ERA**) made its draft decision (**Draft Decision**) in relation to the full access arrangement proposal filed by DBNGP (WA) Transmission Pty Ltd (**DBP**) on 31 December 2014 (**Original AA Proposal**).

1.2 The Draft Decision indicates that the ERA:

(a) is not prepared to approve the Original AA Proposal; and

(b) requires 74 amendments to the Original AA Proposal in order to make the access arrangement proposal acceptable to the ERA.

1.3 The Draft Decision also fixes a period for amendment of and/or addition to the Original AA Proposal (**revision period)**, which revision period expires on 22 February 2016.

1.4 On 22 February 2016, pursuant to Rule 60 of the NGR, DBP submitted the following documents which make up the amended access arrangement proposal (**Amended AA Proposal**):

(a) Amended Proposed Revised Access Arrangement; and

(b) Amended Proposed Revised Access Arrangement Information.

1.5 Rule 59(5)(c)(iii) of the NGR requires the ERA to allow at least 20 business days from the end of the revision period for submissions to be made (in relation to both the Draft Decision and the Amended AA Proposal). The ERA has advised that interested parties are able to make submissions on the ERA's Draft Decision up until 4:00pm (WST) 22 March 2016.

1.6 While DBP has submitted to the ERA that the Amended AA Proposal contains the information that the NGA (which includes the WA National Gas Access Law text (**NGL**) and the National Gas Rules (**NGR**) requires to be included in order to enable it to be approved by the ERA, DBP also advised that it will be filing the following supporting submissions that explain and substantiate the amendments and additions in the Amended AA Proposal that have been made to address various matters raised in the Draft Decision:

(a) Submission 50 – Amended AA Proposal

(b) Submission 51 – Response to Pipeline Services Amendments

(c) Submission 52 – Response to Terms and Conditions Amendments

(d) Submission 53 – Response to Opening Capital Base Amendments

(e) Submission 54 – Response to Forecast Capital Expenditure Amendments

(f) Submission 55 – Response to Forecast Operating Expenditure Amendments

(g) Submission 56 – Response to Rate of Return Amendments

(h) Submission 57 – Response to Other Tariff Related Amendments (this submission)

(i) Submission 58 – Response to Other Non Tariff Related Amendments

1.7 In this Submission, DBP both substantiates its amendments and additions made in the relation to the following other tariff elements of the Amended AA Proposal and responds to aspects of the reasoning in the Draft Decision for the required amendments relating to each of these elements:

(a) Demand forecasts (Amendment 7) – see section 2

(b) Estimated Corporate Income Tax for AA4 (Amendment 16) – see section3

(c) Non Reference Service Revenue (Amendment 17) – see section 4

(d) The Capacity / Commodity Charge split (Amendment 18) – see section 5

(e) Each of the tariff variation mechanisms proposed by DBP (Amendments 19 – 22) – see sections 6 & 7

(f) The Revenue Cap proposal (Amendment 23) – see section 8

(g) The trailing average cost of debt variation mechanism (Amendment 24) – see section 9

(h) The values of the reference tariffs (Amendment 2) – see section 10

2. RESPONSE TO AMENDMENT 7 – DEMAND FORECASTS

Amendment 7 and Reasons for Amendment

2.1 Draft Decision Amendment 7 requires DBP to provide updated demand forecasts together with additional information detailed in paragraphs 131 to 138 of the Draft Decision.

2.2 DBP has clarified with the ERA the correctness of the paragraph references in Amendment 7 and the ERA advised that the paragraphs of the Draft Decision referenced in Amendment 7 should be paragraphs 131 to 137 of the Draft Decision only.

2.3 On that basis, the additional information categories the ERA requires from DBP in order for Amendment 7 to be complied with is listed below (**Additional Information Categories**):

(a) Category #1 - Capacity volumes in relation to the Special Purpose Access Contract (SPAC) should be included in DBP's capacity forecast as well as in the forecast throughput (paragraph 131);

(b) Category #2 - Provide a reconciliation of DBP's demand forecasts with the volumes reported to the Gas Bulletin Board (paragraph 132);

(c) Category #3 - Demonstrate that the projects identified in the GSOO, to the extent that they impact DBP's demand, have been accounted for (paragraphs 133 to 135); and

(d) Category #5 - Following a review of the data used to calculate the distance factors used for converting part haul and back haul loads to full haul equivalent loads, DBP is to provide the updated data, together with evidence to support the distance factors used (paragraph 136), noting that the distance factors used by the ERA in the tariff model used to support the Draft Decision already correct the error in DBP's tariff model where volumes related to two customers were not included in the calculation of full haul equivalent volumes; and

2.4 Paragraphs 128 to 138 of the Draft Decision contain what appears to be the ERA's only statement of reasons for requiring both the additional information and the amendment. However, it is not apparent from these paragraphs that there is any reasoning to explain the part of the amendment that requires DBP to provide "updated demand forecasts". Notwithstanding this, because of the requirements of Rule 73 of the NGR, this submission includes updated demand forecasts for AA4, with substantiation of the updated forecasts being made on an exceptions basis.

Response to Reasons for Amendment 7

2.5 DBP has grouped its response by reference to each of the Additional Information Categories. So, DBP firstly responds to the reasons for requiring the first type of Additional Information Category, then the reasons for the second type of Additional Information Category, and so on.

2.6 DBP's response then also addresses the updated demand forecasts for AA4 included in the Amended AA Proposal.

Response to reasons requiring the capacity forecasts to also include capacity volumes in relation to the Special Purpose Access Contract (SPAC)

2.7 The ERA concludes, at paragraph 131 of the Draft Decision, that notwithstanding the fact that the additional information DBP provided to explain the reduction in the level of the forecasts proposed for AA4 (relative to the level of the forecasts approved by the ERA for AA3) appeared broadly reasonable, it requires DBP to include capacity volumes in relation to the SPAC as part of its AA4 forecast of contracted capacity.

2.8 The ERA's only stated reason for requiring this is that DBP has, in past AA forecasts, included the SPAC capacity and throughput volumes in its forecasts.

2.9 DBP notes that the ERA imposes this requirement notwithstanding:

(a) the conclusions reached in the EMCa Report about the reasonableness of DBP's capacity forecasts; and

(b) DBP's initial submissions made in submission 11 to explain why it is not reasonable to include the SPAC capacity in the AA4 forecasts[1].

2.10 It is not apparent from the reasoning of the Draft Decision that the ERA has had regard to DBP's initial submissions in submission 11 on this point. The reasons previously given by DBP were:

(a) There is no certainty that any capacity will be made available under the SPAC to the relevant shipper. The capacity to be made available under the SPAC is totally dependent on the extent to which the quality of the comingled stream of the gas at the WLPG Plant exceeds the assumptions that was used to determine the capacity of the DBNGP – primarily an assumed HHV of 37.0MJ/m^3.

(b) The capacity contracted under the SPAC is therefore not the same as the capacity contracted for under either the T1SSC or the T1 Reference Service in that:

(i) it is not subject to concepts such as the T1 curtailment limit;

(ii) the capacity to be made available under the SPAC is not a set amount determined at the start of the contract. Rather, the capacity under the SPAC is:

- only determined after the relevant gas day by reference to a formula that means the amount of capacity able to be used by the relevant shipper varies from day to day;
- only made available to the relevant shipper when the gas stream has a HHV over 37.0MJ/m^3; and

(iii) there is no reservation charge payable by the shipper under the SPAC like is the case under the T1 reference service or the T1 SSC. The tariff payable under the SPAC is payable only when capacity is used by the relevant shipper.

2.11 While DBP considers that the arguments above alone support the conclusion being drawn that it would more consistent with the national gas objective for the forecasts to not include any forecast of capacity contracted under the SPAC, there are additional reasons why this is the case:

(a) In calculating the level of firm full haul capacity of the pipeline, a key assumption in the design parameters is that all gas being delivered on the pipeline has a minimum HHV content of 37.0 MJ/m3. The capacity forecasts for all other shippers have been estimated based on this assumption. Given this, it would be inconsistent to then assume a different HHV assumption for the purposes of determining the forecast of capacity under the SPAC. It would not be reasonable to come up with a forecast of contracted capacity for one set of shippers based on one set of assumptions but to then come up with a forecast of contracted capacity for other sets of shippers based on a different set of assumptions.

(b) to further reinforce the submission that the nature of the service provided by DBP under the SPAC is not akin to a T1 reference service, the tariff payable under the SPAC is significantly discounted to the T1 SSC tariff. This reflects the interruptible nature of the service.

2.12 If the ERA does not accept the above submissions then the maximum amount of contracted capacity under the SPAC that should be included in DBP's capacity forecasts is the same amount as is forecast as throughput under the SPAC, being:

Table 1: Forecast under the SPAC

2016	2017	2018	2019	2020
10.5	10.5	10.5	10.5	10.5

[1] *DBP Submission 11, paragraphs 4.15 & 4.16*

Response to reasons requiring DBP's demand forecasts to be reconciled with the volumes reported to the Gas Bulletin Board

2.13 The ERA concludes, at paragraph 132 of the Draft Decision, that the robustness of DBP's forecasts would be improved by it providing a reconciliation of DBP's demand forecasts with the volumes reported to the Gas Bulletin Board. No reasons are given for requiring this additional information other than the ERA and CPMM have difficulty in undertaking the reconciliation task themselves. Although it may be inferred that because the Gas Bulletin Board is, according to the ERA and CPMM, showing volume movements that have been above the pipeline's full haul capacity, the ERA may be concerned that this undermines the robustness of forecasts which are at levels below the pipeline's full haul capacity.

2.14 There are three responses DBP makes to this reasoning.

2.15 Firstly, it is not possible to undertake a meaningful reconciliation of the GBB information with DBP's forecasts that can be relied on to substantiate the reasonableness of DBP's demand forecasts for a number of reasons, including:

(a) In relation to contracted capacity – DBP does not provide contracted capacity information to the operator of the Bulletin Board and so, there is no information on the Gas Bulletin Board (either in relation to actual or forecast contracted capacity) that can be reconciled with the contracted capacity forecasts provided by DBP to the ERA as part of AA4; and

(b) In relation to throughput - the volumes reported to the Gas Bulletin Board by DBP are actual throughput volumes whereas DBP has provided the ERA with forecast throughput for a different period (being AA4).

2.16 Secondly, to the extent that the GBB information might be relevant to substantiating the reasonableness of DBP's demand forecasts, it is only relevant if DBP uses its actual throughput as a starting point for determining its forecast throughput. In such a case, the GBB information can only be used to validate the accuracy of DBP's stated actual throughput that is used as the starting point for its forecast. In this regard, it should be noted that DBP's initial submission made in the current approvals process for AA4,[2] did already undertake this task. In the Jacobs report that was attached to DBP's initial submission #11, Jacobs was asked to validate the forecast starting point – being the actual throughput data for the DBP in 2013 (2013 was chosen because, at the time of DBP's submission, there was not available a full year's worth of actual throughput information for the 2014 calendar year). The report concluded that the actual full haul throughput was able to be reconciled with a margin of error of less than 1%. Section 2.3.3.3 of the Jacobs report states:

> *Jacobs considers it important to validate the forecast starting point and has therefore used the IMO Gas Bulletin Board (GBB) data to calculate an appropriate starting point for the DBNGP Full Haul + CS7 forecast, which we take to be equivalent to South West or SWIS in the GSOO. Data for the period 1/8/2013 (when the GBB commenced) to 31/12/2013 have been used as this is understood to be the data period used in the GSOO. Using the GBB "end-user" data and including metro, south west and mid-west (CS7) categories, the average GBB values is 658 TJ/day, which strongly supports the DBP figure of 652 TJ/day for 2013.*

2.17 It is not clear whether the ERA had considered this information before requiring this additional information.

2.18 The third response DBP makes is that DBP believes that it is important to explain that the publicly available information represented on the GBB is represented as total pipeline capacity/total energy deliveries whereas, the forecasts DBP provided as part of AA4 were for firm full haul capacity, part haul capacity and back haul capacity. It is important therefore for the ERA to understand the following:

---

[2] *See DBP's submission 11, in particular Appendix B to submission 11, being the report prepared by Jacobs, dated 20 October 2014*

(a) how total pipeline capacity interrelates with firm full haul capacity; and

(b) how throughput information relating to the DBNGP is reported on the Gas Bulletin Board and how it differs from the way that throughput information is forecast for the purposes of the access arrangement.

2.19 This ensures that any comparison of the GBB information with DBP's forecasts of demand is put into its proper context (and limited relevance).

2.20 The Firm Full Haul capacity of the DBNGP is the engineering capacity to transport gas downstream of CS9 and delivered at Kwinana Junction at a 98% probability of supply. This capacity is primarily a function of the delivery pressure, volume, temperature and gas quality supplied to CS9 but, as has been made in earlier submissions, is also dependent on a number of other factors. Firm Full Haul capacity is therefore closely related to the reliability of operation of all upstream compressor stations.

2.21 Total pipeline capacity is a different concept. It is the capacity to deliver gas anywhere along the DBNGP and is higher than firm full haul capacity, but it is not a steady number from day to day (or even intra-day). Total pipeline capacity varies based on the amount of gas supplied by the production facilities (and the pressure at which it is supplied), the number of these facilities, their location in relation to customer demands, the number of compressor stations operating on the pipeline and gas quality. Total capacity is not necessarily constrained by the design of the pipeline whereas firm full haul capacity is limited by the design of the pipeline.

2.22 Appendix A: to this submission contains three examples to demonstrate how total pipeline capacity and firm full haul capacity interrelate but are not correlated.

2.23 The GBB records all gas received from production facilities and all gas delivered to DBNGP shippers. The sum of production is equal to the total gas shipped, plus the gas stored in the DBNGP plus the gas consumed by pipeline operations. The flow reported on the GBB for the DBNGP is the sum of gas delivered to outlet points. It is the same as the sum of all inlet point receipts and all outlet point receipts (regardless of whether they are full haul, part haul and back haul deliveries (with no regards to the type of transportation service)).

Response to reasons requiring DBP to demonstrate that the projects identified in the 2015 GSOO, to the extent that they impact DBP's demand, have been accounted for in DBP's demand forecasts

2.24 The IMO issued its November GSOO after DBP's original proposal provided at December 2014. Many of the projects referred to in the GSOO therefore have now been commented on and updated elsewhere in this submission.

2.25 Nevertheless, to specifically respond to the ERA's reason for amendment, DBP provides the following table to outlines its position on each of the projects mentioned in paragraphs 133 to 135 of the Draft Decision and how each project is reflected in DBP's updated demand forecasts included in its Amended AA Proposal. Where DBP has submitted that these projects are relevant to the updated demand forecasts, paragraphs 2.36 to 2.61 below contain some further substantiation related to these projects.

Table 2: Projects considered by the November 2015 GSOO

Project/ Event	DBP's approach to AA4 demand forecast

Project/ Event	DBP's approach to AA4 demand forecast

Project/ Event	DBP's approach to AA4 demand forecast

Response to reasons requiring DBP to provide updated distance factor data, together with evidence to support the distance factors used

2.26 The ERA notes, at paragraph 136 of the Draft Decision, that following a review of the data used by DBP in its proposed tariff model to calculate the distance factors used for converting part haul and back haul loads to full haul equivalent loads, DBP omitted to include the distance factors and the part haul deliveries for each of MMO (GGP) and FMG (FRGP) in the throughput tab of the model.

2.27 The revised tariff model submitted by DBP as part of its Amended AA Proposal has now included these distance factors and the throughput forecasts for these two shippers.

2.28 While noting that the impact of distance factors is small, the ERA has requested that DBP review its data in calculating the reference tariffs and calculations and provide updated data together with evidence to support the distance factors used.

2.29 DBP has completed this task and the result is provided by way of Appendix B: which has been used as the base for the revised reference tariff model.

2.30 In relation to the requirement of Amendment 7 to provide "evidence to support distance factors used", DBP provides the following.

2.31 Firstly, copies of contracts are not reliable evidence to support the distance factors used in the Amended AA Proposal. This is so for a number of reasons:

(a) Under many contracts, the contractual distance factor used for the purposes of calculating the tariff payable under each contract is not the same as the actual distance factor used for the relevant amount of contracted capacity in the reference tariff model submitted as part of the Amended AA Proposal. Appendix F: is a spreadsheet that shows, for each part haul and back haul shipper, the contractual distance factors used to calculate the tariff under each contract and the distance factor determined by the actual distance between inlet and outlet point.

(b) Also, the inlet point and outlet points recorded in the executed version of many of the contracts (which normally would be a reliable source of evidence to confirm the distance between inlet and outlet points and therefore the distance factors used in the reference tariff model) do not reflect the current inlet points and outlet points at which the shipper has contracted capacity. This is because over time, shippers have relocated capacity from one inlet or outlet point to another. The provisions of the contracts relating to relocations do not require the relocations to be recorded in a formal deed of amendment. Accordingly, the contract itself is not a "live" document of the shipper's contracted capacity and therefore can not be used as evidence to support the distance factors used in the Amended AA Proposal.

2.32 To overcome this limitation with the contracts, DBP has relied on evidence from its Customer Reporting System to support the distance factors used in the Amended AA Proposal. The distances contained in Appendix B: are derived from data obtained from DBP's Customer Reporting System. This system is used for daily interfacing between DBP and each of its shippers. It contains all of the information to enable tax invoices to be issued to shippers, nominations to be made by shippers, and imbalance reports and delivered quantities reports to be accessed by shippers. It is used by the shippers to verify the supporting information provided in the monthly tax invoices. Shippers also use the information from the delivered quantities reports and the real time information in it to undertake trades between shippers.

2.33 Accordingly, shippers verify the information available in the CRS, including the details of inlet and outlet points, on at least a daily basis.

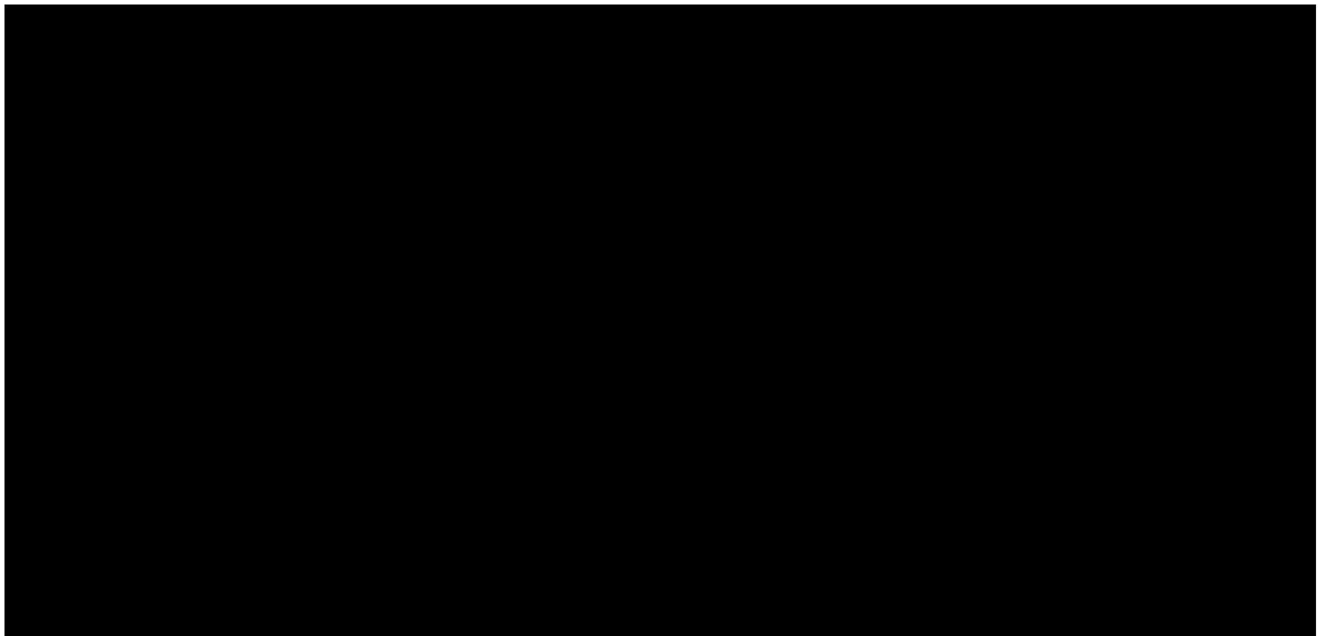
2.34 To further underscore the integrity of the data contained in the CRS (including but not limited to a shipper's inlet and outlet points and the distance between each of them), data from the CRS is provided to the AEMO for the purposes of the gas bulletin board and REMCo for the retail market operation. DBP is obligated under the relevant statutory regimes governing both the retail market and the gas bulletin board to not provide misleading information.

2.35 Given the above, the information in this system is therefore one of, if not, the most reliable sources of information that verifies the inlet points and outlet points of each shipper and the distance between each point. It therefore can reliably be used by the ERA as evidence to support the distance factors used in the Amended AA Proposal.

Response to the relevance of the additional information to the substantiation of the overall demand forecasts provided by DBP

2.36 DBP has made a number of updates to its forecast of throughput and contracted capacity submitted to the ERA in December 2014. The following response will discuss only the updates that have been made from the version of the forecasts included as part of the Original AA Proposal on the bases that EMCa found the forecast in the Original AA Proposal to be derived on a reasonable assessment of the information available to DBP.

2.37 Each of DBP's individual updates to forecast throughput and contracted capacity are highlighted in green in the tab of the spreadsheet attached at Appendix E: called 'Updated Forecast'. The following information explains the updates for each of the shippers referenced in those highlighted rows of the spreadsheet. Otherwise, the forecasts for shippers in the non highlighted rows are the same as in DBP's Original AA Proposal.



DBP's proposed amendments to the AA to address Amendment 7

2.62 DBP has included in its Amended AA Proposal the updated capacity and throughput forecasts for each year of the AA4 period, provided as Appendix E: .

3. RESPONSE TO AMENDMENT 16 – ESTIMATED CORPORATE INCOME TAX

3.1 Draft Decision Amendment 16 requires:

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

3.2 The ERA's key reasons for requiring this amendment can be summarised as follows:

(a) Pursuant to Table 47, the ERA's Tax Asset Lives translate to 5% and 6.67% straight line depreciation rates for assets with 20 and 15 year lives respectively. These depreciation rates have been applied to all historical years, commencing 1998, to determine an opening tax asset base (TAB) and tax depreciation amount for the current AA period.

(b) While the ERA accepts DBP's use of the TAB for regulatory purposes as the TAB reported in corporate income tax returns at paragraph 552-553, the ERA opts to estimate the TAB for 2000 for regulatory purposes by using the opening capital base value for the DBNGP and deducting two years of depreciation based on a 20 year life and straight-line depreciation. The result is an opening TAB as at 1 January 2000 of $1.395b compared with the value of $645.5m proposed by DBP.

(c) The reason the ERA elected to not follow its usual practice of adopting the TAB was that it did not understand the reasons for the significant reduction in the TAB during 1998 and 1999[3].

Response to Reasons for Amendment 16

3.3 DBP submits that the ERA's has made a number of errors in requiring Amendment 16. Furthermore, it submits that adopting DBP's methodology for estimating the costs of corporate income tax for each year of the AA4 period is the correct methodology to adopt. The following are DBP's reasons.

3.4 Firstly, the ERA was wrong to dismiss DBP's methodology for setting the TAB at 2000 by reference to the verified reported income tax returns for 2000 solely on the basis that there was a lack of information regarding two particular tax deductions. It had the opportunity to ask DBP for that information but chose not to. It is not clear why the ERA didn't ask. Nevertheless, DBP now provides the following additional explanation for the following two particular tax deductions prior to 2000:

(a) Sale and lease back – As part of privatisation arrangements in 1998, following the purchase of DBNGP assets, the owner of the pipeline (which is the current entity, formerly known as Epic Energy (WA) Nominees Pty Limited) sold the DBNGP compressor assets to a third party and immediately entered into an arrangement to lease those assets back. Such arrangements were not uncommon at the time as part of corporate structuring. The arrangement was subject of an Australian Taxation Office ruling that confirmed the tax implications of the arrangement.

In line with income tax return treatment, the tax asset base of the compressor assets were removed from DBP's calculation, however separate adjustments were made annually to reflect the tax deductibility of the lease payments for the years that the lease remained on foot (terminated circa October 2004).

(b) Identification of assets as non-depreciable - DBP's fixed asset registers for the period early 1998 to 31 December 2003 included a number of non-depreciable items included within closing written down balances. These non-depreciable items were not depreciated in given

[3] *Paragraphs 552 and 553 of the Draft Decision*

years, rather their asset totals were simply carried forward, undepreciated, on asset registers.

Such assets include land, airstrips, site improvement works and easements totalling [redacted] strategic spare parts of [redacted] and Intellectual Property (goodwill) not depreciated of [redacted] The majority of these assets were removed from tax return fixed asset registers by 30 June 2005 following the sale of the DBNGP companies by Epic Energy to a consortium of DUET, Alcoa Australia and Alinta Ltd in October 2004.

3.5 Therefore the decrease in the regulatory tax asset base as verified by reported income tax returns between early 1998 and 31 December 1999 can be reconciled on the following basis.

Table 3: Reconciliation of tax asset base

	Opening tax asset base at privatization	**$1,411,686,150**
Less:	Depreciation in the 1998 calendar year	[redacted]
Less:	Items sold as part of a sale & leaseback	[redacted]
Less:	Disposal WDV for the 1998 calendar year	[redacted]
Add:	Additions in 1999 calendar year	[redacted]
Less:	Depreciation in the 1999 calendar year	[redacted]
Less:	Disposal WDV for the 1999 calendar year	[redacted]
Less:	Non-depreciable items removed	[redacted]
Less:	WDV of shipper funded works @ 31 December 1999	[redacted]
	Closing tax asset base @ 31 December 1999	$645,489,242

3.6 DBP's opening tax asset base for 2000 of $645.5m has been determined from DBP's actual tax asset base as reported in income tax returns. Given the above reconciliation and explanation of the two tax loss items and the ERA giving no other reason why this methodology can not be adopted to establish DBP's TAB for regulatory purposes, DBP's proposed value of the TAB for regulatory purposes for 2000 should be adopted by the ERA for the purposes of estimating the costs of corporate income tax for each year of the AA4 period.

Incorrect use of asset lives

3.7 Notwithstanding the submissions made above about which is the correct methodology to be used to set the value of the TAB for 2000 for regulatory purposes, regardless of which methodology is used, it would still have resulted in the TAB (for regulatory purposes) for 2016 being fully depreciated. The ERA however, has not reached this conclusion. Rather it has included that in 2016, the TAB (for regulatory purposes) would not have been fully depreciated. This is because the ERA has used incorrect asset depreciation for tax purposes for the period 1998 to 2000.

3.8 Should the tax asset base for 2000 as submitted by DBP not be used but instead a value determined by reference to the capital base for regulatory purposes be used (as was done by the ERA in the Draft Decision) – and regardless of whether that value be given effect from early 1998 or 1 January 2000 - the ERA must also use the prevailing tax lives at that time to determine the tax depreciation to be used for the period for 1998 to 2000 for those assets that were in operation in 2000.

3.9 The ERA has not used the correct effective tax lives and therefore has used the wrong tax depreciation for the period from 1998 to 2000. It is because of this error that the ERA erroneously concludes that the TAB would not be fully depreciated by 2016. This is explained in the following paragraphs.

3.10 All assets installed ready for use prior to 1 January 2001 should be depreciated on a 13% straight line method basis. Effective lives should be translated into a depreciation rate consistent with the relevant tax law in place at the relevant acquisition date. Taxation Ruling IT 2685 provides the relevant effective lives and tax depreciation rate for each class of assets acquired prior to 1 January 2001. Importantly, under that ruling, the 20 year effective life identified for gas pipelines,

compression assets and other gas plant related assets translates into a 13% annual prime cost depreciation rate.

3.11 The ERA has used a 5 - 6.67% prime cost depreciation rate in the Draft Decision for these assets.

3.12 At paragraph 553 of the Draft Decision, the ERA outlines its approach to manipulating DBP's tax asset base by adopting the opening RAB value in 2000 and by deducting two year's tax depreciation based on a 20 year life and straight-line depreciation. The ERA's approach, while being incorrect on the basis of substituting DBP's opening RAB value in place of the verified TAB based on the filed tax returns (see above), is therefore also incorrect on the basis that it did not use the correct statutory tax asset lives for deprecation purposes from 1998 to 2000.

3.13 Correcting depreciation for that period by using the correct statutory tax asset lives for depreciation purposes would see all assets being fully depreciated prior to 1 January 2016.

3.14 The ERA's methodology does not achieve this and so, is in error.

KPMG expert advice

3.15 DBP engaged KPMG to verify DBP's methodology for estimating corporate income tax for each year of the AA4 period. A copy of the report prepared by KPMG is attached as Appendix G: . In summary, KPMG considers:

(a) DBP's approach to estimating corporate income tax outlined in its original submission continues to be one that is correct and consistent with the relevant tax legislation.

(b) the asset lives contained in table 47 of the ERA's Draft Decision are correct and are broadly consistent with the effective lives used by DBP which were based on actual tax schedules calculated in accordance with the relevant tax laws as they applied at the time of acquisition of the underlying assets;

(c) Effective lives should be translated into a depreciation rate consistent with the relevant tax law in place at the relevant acquisition date. Taxation Ruling IT 2685 provides the relevant effective lives and tax depreciation rate for each class of assets acquired prior to 1 January 2001. Importantly, under that ruling, the 20 year effective life identified for gas pipelines, compression assets and other gas plant related assets is translates into a 13% annual prime cost depreciation rate. This advice is at odds with the 5 - 6.67% prime cost depreciation rates applied by the ERA in the Draft Decision.

(d) DBP's source tax documentation confirms that the tax asset base reconciliation provided in the table above and agrees to DBP's tax returns for the relevant period.

(e) Notwithstanding, KPMG's view that the DBP's proposed estimated corporate income tax has been carried out correctly due to the application of the 13% annual prime cost depreciation rate to all assets installed ready for use prior to 1 January 2001, these assets are fully depreciated prior to 1 January 2016. As such any adjustments made to the tax base of these assets in line with the ERA's Draft Decision would not affect estimated corporate income tax it the AA4 period.

4. RESPONSE TO AMENDMENT 17 – NON-REFERENCE SERVICE REVENUE

Amendment 17 and Reasons for Amendment

4.1 Draft Decision Amendment 17 requires DBP to:

> *"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."*

4.2 In making this amendment, the ERA's key reasons for requiring this amendment can be summarised as follows:

(a) The ERA has had regard to the DUET published management information reports (**MIR**) for the 2014/15 financial year which shows that DBP earned about $15m from "other services";

(b) The ERA is not sure whether revenue described in the DUET MIR as "Transportation Revenue" only includes revenues received under the SSCs or whether it also includes revenue from other arrangements such as non-firm contracts; and

(c) The ERA has reviewed the IMO's GSOO for 2015 which claims that DBP has shipped more than its nameplate capacity during winter 2014 and summer 2015.

Response to Reasons for Amendment 17

4.3 DBP will respond to this amendment in two parts as follows:

(a) The requirement to provide details of:

(i) all non-reference services provided during AA3 and its forecast for AA4; and

(ii) any costs relating to such services; and

(b) The requirement that, if the details provided in relation to (a) are found to be significant, to include 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.

Response to reasons associated with requirement to provide non reference service and related cost details

4.4 As a preliminary issue, it is noted that this part of the amendment is a request for information rather than a requirement to change DBP's Original AA Proposal. DBP notes that it did not receive a request from the ERA for the information that is now being sought via amendment 17 at any time prior to the Draft Decision.

4.5 As the ERA's did not request this information from DBP prior to the Draft Decision, the second part of the amendment:

(a) is not stating that an amendment must be made – at best it is a conditional amendment; and

(b) is worded in a way that makes it impossible for DBP to know how to respond.

Both of these matters give rise to procedural fairness issues that in turn require the ERA to amend its process for its assessment of the Access Arrangement Proposal.

4.6 There are three aspects of uncertainty associated with the amendment, being uncertainty as to:

(a) what is meant by “significant”;

(b) whether a cost allocation methodology or a rebate mechanism should be used; and

(c) what type of methodology or mechanism is required to comply with this amendment?

4.7 The ERA has failed to articulate its intent in relation to and its reasons in respect of each of the matters set out in paragraph 4.6 above. Its failure to outline this information has denied DBP the opportunity to respond to the ERA’s position on each matter. If the ERA reaches a position on any of these matters in the final decision which is adverse to DBP and without giving DBP a prior opportunity to respond, the ERA will have failed to afford procedural fairness to DBP.

4.8 A second preliminary issue is that the ERA should not consider revenue earned by DBP from 1 July 2005 to 31 December 2015 from any service because the law prohibits the ERA from doing so. Section 13 of the Current Access Arrangement contains a fixed principle (**Fixed Principle**). It provides the following:

> *“the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:*
>
> *(A) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and*
>
> *(B) the revenue actually earned from the sale of those services which were services other than Full Haul Services,*
>
> *must not:*
>
> *(C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or*
>
> *(D) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.*

4.9 The Fixed Principle is mandated by law as a result of section 21(5) of the National Gas Access (WA) Act 2005 (Act) and clause 26 of Part 4 of the Schedule to the NGL.

4.10 Taking into account this revenue information for any of the above purposes would result in the ERA taking into account irrelevant considerations, thereby compromising the validity of any decision it makes that relies on the information.

4.11 Without detracting from the importance of the above submissions and in an effort to ensure the ERA does not further delay in its assessment process, DBP now turns to the ERA’s reasons for requiring the additional information. At paragraph 579 of the Draft Decision, the ERA concludes that ‘other service’ revenue is $15m, being approximately 4 per cent of total revenue earned by DBP in the period covered by the MIR. Further, the ERA indicates that it isn’t apparent what revenue is included in the ‘Transportation Revenue’ line item of the MIR– in particular whether it is revenue only from Standard Shipper Contracts or whether it also includes revenue from interruptible services.

4.12 DBP first notes that the DUET MIR are not prepared for the purposes of aligning with the ERA’s assessment or to inform the access arrangement process for the covered DBNGP. The DUET MIR are prepared for the purpose of reporting on all of DBP’s revenue and costs to DUET investors.

4.13 As the ERA is aware, DBP has a cost allocation mechanism that excludes certain expenditure that DBP incurs in connection with non-reference services from the expenditure included in an access arrangement proposal, including by way of example:

(a) labour costs incurred in providing services to DDG;

(b) undertaking shipper funded works on the DBNGP and capital projects on the DBNGP; and

(c) other operation and maintenance revenue contracts DBP is a party to.

These costs have not been included in the forecast operating expenditure for AA4. Yet, the revenue earned by DBP for the above activities is included in the MIR.

4.14 As DBP's consolidated reporting provided to DUET is not prepared on the same basis nor does it exclude the costs that are excluded by DBP's cost allocation methodology it logically follows that DBP's consolidated reporting does not match revenue modelled for regulatory purposes.

4.15 Notwithstanding the comments in paragraphs 4.8 & 4.9, the following table shows the percentage of revenue earned by DBP over each year of the AA3 period that is attributable to the provision of non-reference services.

4.16 The resulting percentage of non-reference service revenue to other revenue is provided in the following table:

Table 4: Actual Non-reference service revenue % split

2011	2012	2013	2014	2015

4.17 To explain these percentages, DBP has attached as Appendix C: a spreadsheet. This spreadsheet assumes the following:

(a) All revenue earned by DBP from the sale of services under its T1, P1 and B1 SSCs and the Alcoa Exempt Contract is treated as "reference service revenue", although, for the purposes of the NGL, the services provided under each of the SSCs are technically non-reference services. DBP has made this assumption because it is consistent with the way that DBP has treated the capacity and throughput from these contracts and therefore calculated the reference tariffs in its AA Proposal;

(b) where certain categories of expenditure have been excluded from the operating expenditure that has been provided for regulatory purposes (eg expenditure via DBP's cost allocation methodology) the revenue that is earned by DBP for accounting purposes is also therefore excluded from categorisation as either reference or non-reference service revenue; and

(c) All other remaining revenue is attributable to non-reference services.

4.18 Non-reference service revenue is a small proportion of overall revenue as demonstrated by Appendices D & E which show that it has been on average around over the AA3 period and is likely to remain at (or below) that level during AA4. It is more likely to sit below that level because there are no new production or demand facilities forecast for construction during AA4, so there should be a reduction in interruptible, commissioning and storage services.

4.19 As required by the Amendment, DBP's forecast of non-reference service revenue for AA4 is provided in Appendix D: . The total amount of non-reference service revenue forecast to be earned by DBP during each year of AA4 is shown in the table below:

Table 5: Forecast non-reference service revenue for AA4 (Nominal, $m)

2016	2017	2018	2019	2020

4.20 While the percentage that this forecast bears to the Total Revenue that DBP has proposed in its Amended AA Proposal for each year of AA4 is consistent with the percentages outlined above for each year of AA3, DBP cautions the ERA about comparing these percentages in AA3 with percentages for AA4 – it is not a like for like comparison.

4.21 In order to compare historical with forecast "non-reference service revenue", the ERA must compare percentages between AA3 and AA4 by comparing on the same basis for each period. Theoretically that could be done by comparing either:

(a) non-reference service revenue as a percentage of actual (for AA3) with forecast non-reference service revenue (for AA4) as a percentage of forecast DUET MIR reported total revenue (for AA4); or

(b) non-reference service revenue as a percentage of actual (for AA3) with forecast non-reference service revenue (for AA4) as a percentage of forecast Regulated Total Revenue (for AA4).

4.22 However, in reality this is not possible as:

(a) DBP is unable to provide the comparison under paragraph (a) above because DUET does not report forecast revenue for the AA4 period and

(b) DBP also is unable to provide the comparison under paragraph (b) above because "non-reference service revenue" is not included in forecast Regulated Total Revenue for AA4.

Response to reasons associated with requirement to provide cost allocation information

4.23 The ERA's amendment requires DBP to *"provide details of any costs related to such services [non-reference services] during AA3 and its forecast for AA4. It should also provide details of any costs relating to such services …..*"

4.24 As per submissions already made by DBP, there are a range of types of expenditure that are excluded by DBP from the expenditure included in the access arrangement proposal (see the 'cost allocation methodology' outlined in Section 4 of Submission 6). As envisaged by the ERA's amendment those costs are then recovered by DBP and reflected as revenue.

4.25 So, DBP already has allocated costs linked to a large portion of the "non reference service revenue" being for the following services included in the revenue category identified in the DUET MIR as "Other Revenue":

(a) Shipper funded works;

(b) Third party operation and maintenance contracts;

(c) Costs in providing services under the shared service contract with DBP Development Group;

(d) Unrealised foreign exchange gains/losses;

(e) Land management revenue.

4.26 The associated revenue is outlined in rows 70 to 78 in the "Analysis" tab of Appendix C: . For the period 2011 to 2015, the annual revenue from the above accounts for about 70% of the total of the "other revenue" reported in the DUET MIR.

4.27 It logically follows that there should also be no rebate mechanism included for this type of revenue, otherwise DBP would be deprived of an opportunity of recovering its efficient costs and this would be inconsistent with both the revenue and pricing principles and the national gas objective.

4.28 As to the remaining revenue that is reported in the DUET MIR, it should also be noted that DBP's demand forecast for AA4 have also included a consideration of the likely usage of the following services that are part of the T1 service provided under the Standard Shipper Contract:

(a) Spot, and

(b) Overrun.

4.29 Throughput from the provision of these services is included in the forecast of T1/B1/P1 capacity in DBP's forecasts.

4.30 The remaining 'non-reference' service revenue is for the provision of services such as inlet sales services, interruptible services, data service and storage services. The costs of providing these services either are not discernible or there are no incremental costs incurred by DBP in providing each service that DBP wouldn't otherwise incur in the provision of the traditional T1/P1/B1 services.

4.31 DBP submits that it would be inappropriate to include a cost allocation methodology to allocate some costs to these services because the services are expected to be used by all shippers who have services that are classified in the forecasts as reference services.

4.32 DBP also submits that it would also be an error for the ERA to include any form of rebate mechanism in respect of any revenue to be earned from the sale of these services, in the access arrangement period for the AA4 period for the reasons proposed below.

Cost allocation methodology and Rebate mechanisms

4.33 Given the small percentage of DBP's actual revenue that relates to the provision of 'non reference pipeline services', DBP submits that the revenue is not "significant" and therefore there should be no additional cost allocation methodology or rebate mechanism included in the access arrangement for AA4.

4.34 To the extent that the revenue from the sale of these "non-reference services" is considered by the ERA to be significant (which DBP does not agree with), DBP submits that an additional cost allocation methodology would not be consistent with the national gas objective and the revenue and pricing principles. This is so, given the uncertainty associated with the provision of "non reference services" during AA4. If the ERA were to allocate more costs to these services but the market for these services did not eventuate, DBP would be deprived the opportunity of recovering its efficient costs.

4.35 Similarly, DBP believes that the inclusion of a rebate mechanism would be inconsistent with the national gas objective and the revenue pricing principles for the reasons outlined above.

4.36 There are some other reasons for why a rebate mechanism should not be allowed:

(a) First, regulatory practice has observed that rebate mechanisms are not considered appropriate in circumstances where there is such a small percentage of revenue to be earned from the sale of these services such as is the case with the DBNGP.

(b) Secondly, a rebate mechanism would be invalid if the ERA were to include a mechanism that provides rebates of revenue earned by a service provider to be made to users of services that are "in the nature of reference services". The NGR only allows a rebate mechanism to provide for rebates to users of reference services.

(c) In the case of the DBNGP, the "users of reference services" for whom the NGR allows a rebate mechanism to be provided for in an access arrangement is a very specific category of users. It does not extend to cover "users of services that are in the nature of reference services".

(d) The NGR has not been drafted in a manner which would permit an interpretation that allowed the category of users to be expanded beyond "users of reference services" to include users who are not using reference services but are using services which are "like" or are of a similar nature to reference services. There does not appear to be any justification for this interpretation.

(e) On this basis, it would mean that there would be a very small number of shippers who would be entitled to be paid a rebate of this non reference service revenue. In the AA4 period there is only likely to be one shipper that has contracted for a reference service on the DBNGP. This accounts for 0.0731% of the full haul equivalent capacity forecast for the AA4 period.

(f) Thirdly, given the above, it would lead to a very unfair outcome if, as a result of the operation of the rebate mechanism, that reference service shipper would be entitled to a rebate that is of a greater amount than the annual charges it has to pay DBP under the reference service contract.

(g) Finally, there is no certainty that any mechanism would provide DBP with the opportunity to recover its efficient costs of providing these services.

Consultation

4.37 While DBP's view is that the requirement for the inclusion of a rebate mechanism has not been triggered (for the above reasons), a rebate mechanism would be invalid if imposed by the ERA without further consultation by the ERA before the release of the Final Decision on such matters as:

(a) details on how such a mechanism could potential work in DBP's circumstances;

(b) revenue from what types of non reference services would be considered for inclusion in the rebate mechanism;

(c) what percentage of non reference service revenue would be included in the mechanism;

(d) when the rebate would be payable.

4.38 DBP therefore requests that, if the ERA does decide to require changes to DBP's cost allocation methodology or include a rebate mechanism, that it first consults with DBP and other interested stakeholders before issuing a final decision.

5. RESPONSE TO AMENDMENT 18 – CAPACITY AND COMMODITY CHARGE

5.1 The ERA's amendment 18 requires that "*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 [ERA's] Decision*".

Amendment 18 and Reasons for Amendment

5.2 The ERA reasons for requiring amendment 18 are provided at paragraphs 595 to 597 of the draft decision and seem to be that:

(a) DBP did not provide substantiation for its proposed capacity and commodity split of 80/20;

(b) The ERA's preferred tariff split is based on fixed and variable costs; and

(c) DBP's proposed split increases the daily T1 reference tariff calculated by the ERA to $1.233 per GJ from $1.217 per GJ.

Response to Reasons for Amendment 18

5.3 While DBP does not agree with the ERA that the perceived increase in tariff that result from changing the capacity/ commodity split is a reason to require the ERA's preferred split (as the result over the access arrangement period would clearly be NPV neutral) DBP's revised proposal accepts the ERA's amendment by adopting a tariff split that reflects the fixed and variable costs associated with operating the DBNGP.

5.4 DBP's Original AA Proposal included a 80/20 capacity/commodity split as it had a view that Standard Shipper Contract required it to make certain submissions to the ERA. However, DBP is now of the view that continuing to propose the capacity/commodity split that is consistent in the Standard Shipper Contract would mean that DBP as operator may be unable to recoup its operating and capital costs to the full extent permitted by the National Gas Law. If actual throughput during the AA4 period is lower than forecast then under the 80/20 proposal DBP will be unable to recover a proportion of its fixed costs. In paragraph 596 of the draft decision, ERA has proposed a 90/10 capacity/commodity split and DBP accepts this amendment.

6. RESPONSE TO AMENDMENT 19 – CPI FORMULA VARIATION

Amendment 19 and Reasons for Amendment

6.1 Draft Decision Amendment 19 requires the following amendments to be made to DBP's AA Proposal in order to make it acceptable to the ERA:

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

6.2 In its reasons for requiring the amendment, the ERA states that it has not accepted DBP's proposed revenue cap price control and consequently it does not accept the proposed changes to the CPI formula variation.

Response to Reasons for Amendment 19

6.3 DBP refers to its submission regarding the revenue price cap. If the ERA accepts DBP's reasons for implementation of the revenue price cap, ERA should reinstate the CPI formula variation set out in clause 11.2 of the proposed revised access arrangement.

7. RESPONSE TO AMENDMENTS 20, 21 AND 22

Amendments 20, 21 and 22 and Reasons for Amendment

7.1 Draft Decision Amendment 20 requires that DBP give consideration to the following amendments to be made to DBP's AA Proposal in order to make it acceptable to the ERA:

> *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.*

7.2 Draft Decision Amendment 21 states that subject to Required Amendment 20, paragraph 11.4 of the proposed revised access arrangement (**Tax Change Variation Mechanism**) should effectively restate old paragraph 20.7 (Tax Changes) of the T1 Terms and Conditions, with the changes tracked below:

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.*

7.3 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).

7.4 Draft Decision Amendment 22 states that subject to Required Amendment 20, paragraph 11.5 of the proposed revised access arrangement (**New Cost Variation Mechanism**) should revert to the New Cost Variation Mechanism contained in clause 11.4 of the previous Access Arrangement with the changes tracked below:

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

11.5~~11.4~~. New Costs Pass Through Variation means the following mechanism:

(a) The Operator may recover certain expenses it or its Related Bodies Corporate incur or are to incur 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)~~11.4(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 11.5~~11.4~~ 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 11.5~~11.4~~, 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).*

7.5 DBP notes that amendments 21 and 22 do not actually show the amendments in comparison with the proposed provisions in clauses 11.4 and 11.5 of the proposed Access Arrangement but instead show amendments as against former clause 20.7 of the Access Contract terms and conditions (Tax Changes) and as against former clause 11.4 of the Current Access Arrangement (New Costs).

7.6 As Amendments 20, 21 and 22 are related, DBP deals with them together in this submission.

7.7 The ERA's reasons for requesting Amendments 20, 21 and 22 can be summarised as follows:

(a) [paragraphs 628 and 634] It is unclear why there is a need for separate variations for "Tax Changes" and "New Costs".

(b) [paragraph 628] 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.

(c) [paragraph 629 and 637] DBP's proposed revisions to the approval process for Tax Changes result in the Regulator being required to object to the proposed variation for it not to take effect and prescribe the form and criteria for how the Regulator can object.

(d) [paragraph 629 and 637] The ERA does not consider that the proposed revisions to the Tax Change Variation mechanism provide the Regulator with adequate oversight or powers of approval in relation to tariff variations as required by NGR 97(4).

(e) [paragraph 631 and 639] The ERA has rejected DBP's proposal to reduce the notice period for tariff variations from 30 business days to 20 business days for both Tax Changes and New Costs. ERA's reasons were that:

- (i) DBP has not provided any reason for reduction in the notice period for tariff variations from 30 business days to 20 business days,
- (ii) tariff changes can have a substantial impact on DBP and its customers;
- (iii) the proposed 20 business day notice period does not provide adequate notice to customers of a tariff variation.

(f) [paragraph 632 and 640] the ERA supports CPMM's submission that direction be given to apply the tariff variation to the Commodity Charge (if the Tax Change relates to a variable cost) or to the Capacity Charge (if the Tax Change relates to a fixed cost).

(g) [paragraph 635] in relation to New Costs, ERA has rejected DBP's submission seeking to change the requirement that a New Cost "could not be predicted prior to the [approved Access Arrangement]" from section 11.5(a)(iii) and replace it with a New Cost that "was not included in [the approved Access Arrangement]". ERA is of the view that the existing wording better reflects the intent of the tariff mechanism, being to ensure any legitimate new

costs in relation to changes in circumstance outside the control of DBP can be passed through to customers.

(h) [paragraph 636] in relation to New Costs, ERA has rejected DBP's proposal to broaden the types of costs that the New Cost variation mechanism applies to, on the basis that this type of cost pass through should only apply to costs resulting from new laws or changes in fees payable to the Land Access Minister. The ERA notes that in its view it is not necessary or appropriate to expand the New Cost Tariff Variation Mechanism beyond new law changes or changes in Access Right fees.

Response to Reasons for Amendments 20, 21 and 22

7.1 DBP has accepted some of the changes proposed by the ERA but has rejected others and proposes some further amendments to the access arrangement. DBP addresses the matters raised by the ERA. In summary, DBP:

(a) Rejects the suggestion to collapse 11.4 and 11.5 into one paragraph as suggested in Amendment 20;

(b) Rejects amendment 21 regarding Tax Change variations and seeks to maintain the clause 11.4 as drafted in the proposed access arrangement with some changes; and

(c) Rejects amendment 22 regarding New Cost Pass Through variations and seeks to maintain the clause 11.5 as drafted in the proposed access arrangement with some changes.

Relevant NGR provisions

7.2 NGR 97(1)(c) provides that a reference tariff variation mechanism may provide for variation of a reference tariff as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax).

7.3 NGR 97(3) provides that in deciding whether a particular reference tariff variation mechanism is appropriate to a particular access arrangement, the [ERA] **must** have regard to:

a) the need for efficient tariff structures; and

b) the possible effects of the reference tariff variation mechanism on administrative costs of the [ERA], the service provider, and users or potential users; and

c) the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed reference tariff variation mechanism; and

d) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and

e) any other relevant factor.

7.4 NGR 97(4) provides that a reference tariff variation mechanism must give the [ERA] adequate oversight or powers of approval over variation of the reference tariff.

Reasons for distinction between Tax Change and New Costs being required

7.5 In response to the issues raised by the ERA as summarised in paragraph 7.7(a) above, DBP submits that the assessment of Tax Changes and New Costs involve different considerations.

7.6 Tax Changes are changes in costs imposed by government that DBP is obligated to pay at law. Accordingly questions of whether such costs are prudent and efficient under NGR 91 should not arise. The process for oversight of the incorporation of such costs should be simple compared with the process for New Costs. Whilst the ERA should have oversight of such cost pass through to verify the amount paid, ERA should not be able to reject a Tax Change cost pass through on the qualitative basis that such cost would not be incurred by a prudent and efficient operator, as to do so would imply that DBP has to incur expenditure to contest taxes imposed by the government.

7.7 New Cost Pass Through claims involve qualitative assessment of whether the relevant costs were incurred were prudent and efficient. Accordingly, DBP considers that it is appropriate for ERA to have greater powers of interrogation of the justification for incurring the relevant expenditure (ie qualitative as well as quantitative evaluation platforms). The New Costs Pass Through Variation Mechanism in clause 11.5 of the proposed Access Arrangement requires the same level of justification as under the Current Access Arrangement and provides for such investigation by the ERA. For the New Cost to be a "Cost Pass Through Event", it must satisfy the criteria in paragraph 11.5(a) of the access arrangement. These criteria include satisfaction of the prudency and efficiency requirements in NGR 91(1).

Response to ERA's assertion that combining the variation mechanism for Tax Changes and New Costs results in simpler administration and ensures approval process for both is identical

7.8 In response to the ERA's reasons in paragraph 628 of the draft decision, paragraphs 7.6 and 7.7 above set out the reasons why the assessment of cost pass through for Tax Changes and cost pass through for New Costs should differ. The steps involved in progressing through the variation mechanism for Tax Changes and New Costs proposed by DBP are identical save for the considerations to be taken into account in assessing the validity of the relevant variation claim. The only substantive difference is the inclusion of qualitative assessment by the Regulator of whether the New Cost qualifies as a Cost Pass Through Event.

7.9 The proposed Tax Change Variation Mechanism in paragraph 11.4 of DBP's proposed Access Arrangement simplifies the Tariff Variation mechanism for Tax Changes to bring it in line with the existing mechanism for assessment of New Cost pass through claims and therefore reduce the administrative costs and complexity for the Regulator, DBP and its customers when assessing the impact of Tax Changes. The mechanisms set out in proposed Access Arrangement clauses 11.4 and 11.5 are mechanically identical already. However combining the two would conflate two different types of assessments into a single process and add unnecessary complication to assessments of Tax Changes. As proposed by DBP, the mechanisms result in substantially less review costs and time for all parties, without compromising either the validity of each type of cost pass through or the ability of the ERA and Shippers to challenge a cost pass through.

Reason for the mechanism requiring that (i) the Regulator needs to object to the proposed variation for it not to take effect, and (ii) prescribe the form and criteria for how the Regulator can object

7.10 In summary the process proposed is that:

(a) DBP must provide its justification for the tariff change requested in line with the NGR for there to be a valid Notice;

(b) ERA review the Notice and assess the information provided by DBP to validate the tariff change request;

(c) If ERA is satisfied, the ERA does not need to respond and the change kicks in. If ERA is not satisfied, ERA sets out why there is an error or the Tax Change should not affect DBP or the New Cost is not a valid claim, and DBP reconsiders its request.

7.11 The ERA has not provided reasons as to why the proposal is objectionable, other than stating that DBP has not explained why the tariff change should take effect without the Regulator giving its approval. DBP refers to paragraph 7.16 below and reiterates that the law (NGR 97(4)) provides that the mechanism must give the ERA adequate oversight **or** powers of approval, not adequate oversight **and** powers of approval. In any event, the mechanism proposed by DBP does provide the ERA with the power of veto.

7.12 The changes proposed by DBP provide the Regulator with time to assess the information provided by DBP to justify its cost pass through request and then object in the event that it forms a view that DBP has erred in what it is seeking. The basis for objections proposed by DBP include:

(a) For a Tax Change (in clause 11.4 (d)):

(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;

(b) For a New Cost (clause 11.5(d)):

(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;

(c) In relation to cost pass through sought by reason of a Tax Change, it is difficult to determine what additional bases the ERA could have to object. That said, DBP has now included two additional grounds for the ERA to reject a Tax Change variation as follows:

(i) First, an objection may be made on the basis that DBP has not provided sufficient information to justify its tariff variation.

(ii) Secondly, a “catch all” sub-clause here to compromise and allay the ERAs concerns that it may be limited as to the grounds upon which it could object to the Tax Change Cost Pass through.

These changes have been made to clauses 11.4 and 11.5 of the proposed access arrangement.

7.13 The requirement that the ERA provide its reasons for the rejection of the cost pass through claim simply aims to ensure that the process is efficient and the parties get to the nub of any issue raised by the ERA quickly and with minimal expenditure and delay. DBP has amended its proposed access arrangement to remove the requirement that the ERA’s reasons be “concise”.

The ERA does not consider that the proposed revisions provide the Regulator with adequate oversight or powers of approval in relation to tariff variations as required by NGR 97(4)

7.14 DBP considers that this assertion by the ERA is simply incorrect. For DBP to be able to seek a cost pass through tariff variation, it must provide either a Tax Change Notice or a Cost Pass Through Event Notice that sets out all information that the ERA should need to assess the validity of the cost pass through being sought, including the following:

(a) For a Tax Change:

(i) the amount of any relevant Included Tax that was included in the forecast operating expenditure in the Current Access Arrangement Period (if any);

(ii) the expected annual increase or decrease in the Operator's forecast operating expenditure as a result of the Tax Change together with the Operator's assumptions, reasons and available evidence 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; and

(iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change.

(b) For a New Cost:

(i) the actual or expected increase in the Operator's actual or forecast operating expenditure (as applicable) as a result of the New Cost, together with the Operator's assumptions, reasons and available evidence that justify its estimate of the financial impact of the New Cost on the operation of the DBNGP;

(ii) the Operator's assumptions, reasons and available evidence to show that the expenses associated with the Cost Pass Through Event 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) the amount by which the Reference Tariff is to be varied;

(iv) the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event; and

(v) the effective date for the variation to the Reference Tariff to take effect.

7.15 The ERA then has 30 business days (6 weeks) to assess this information and to assess whether the cost pass through claimed is justified. If the claim is not justified in the ERA's view, they provide notice setting out what they consider the flaws to be.

7.16 NGR 97(4) provides that a reference tariff variation mechanism must give the [ERA] *adequate oversight* **or** *powers of approval* over variation of the reference tariff. The NGR does **not** require that the ERA have adequate oversight **and** powers of approval over variation of the reference tariff. Where the issues of cost pass through are simple and do not involve an assessment under NGR91 (as with Tax Changes), the ERA should not require more than adequate oversight of the relevant cost pass through.

7.17 DBP submits that the proposed mechanism squarely places the onus on DBP to provide sufficient clear justification for the claimed cost pass through and then establishes a clear and administratively simple mechanism for the ERA to undertake an assessment and if required, prevent it from taking effect.

Reduction in notice period from 20 business days to 30 business days

7.18 The ERA has rejected DBP's proposal to reduce the notice period for tariff variations from 30 business days to 20 business days. ERA's reasons were that:

(a) DBP has not provided any reason for reduction in the notice period for tariff variations from 30 business days to 20 business days,

(b) tariff changes can have a substantial impact on DBP and its customers;

(c) the proposed 20 business day notice period does not provide adequate notice to customers of a tariff variation.

7.19 DBP submits that 20 business days to assess a simple Tax Change notification when set out in the manner proposed by DBP in a valid Tax Change Notice should be more than sufficient if the Regulator is acting in an efficient manner. However, DBP concedes that 30 business days may be required for the qualitative assessment of a New Cost pass through. The reduction of time to assess the cost pass through claim was instigated to bring the variation into line with DBP's invoice cycle.

7.20 DBP is prepared to restore the notice period to 30 Business Days for both assessments. A corresponding amendment has been made to clauses 11.4 and 11.5 of the proposed Access Arrangement.

Direction as to accounting treatment for application of Tariff Variations

7.21 The ERA supports CPMM's submission that direction be given to apply the tariff variation to the Commodity Charge (if the Tax Change relates to a variable cost) or to the Capacity Charge (if the Tax Change relates to a fixed cost).

7.22 In principle DBP accepts this comment in circumstances where a new Tax or a New Cost has not been imposed upon DBP prior to the relevant Current Access Arrangement Period, however where

the New Tax Cost Pass Through results from a variation of a Tax that was in place at the time of the Current Access Arrangement, then the impact of the variation should be treated in the same manner as the treatment applicable to the original included tax. A corresponding amendment has been made to clause 11.4 and 11.5 of the proposed Access Arrangement.

Definition and application of New Cost

7.23 In response to the issues raised by the ERA in paragraphs 635 and 636 of the Draft Decision and summarised in paragraph 7.7(g) and 7.7(h) above, in its Original AA Proposal, DBP sought to widen the application of what the New Cost Tariff Variation Mechanism could apply to by:

(a) inclusion of clause 11.5(c)(iv) to capture any cost that satisfies the criteria for a New Cost in paragraph 11.5(a); and

(b) replacing the words "*could not be predicted prior to the time at the revisions to the Access Arrangement were approved*" the words "*Were not included in the Operator's forecast operating expenditure at the time the Current Access Arrangement was approved*" in paragraph 11.5(a)(iii).

7.24 DBP does not accept the ERA's rejection of these amendments.

7.25 The criteria in clause 11.5(a) proposed by DBP for a cost to be a "New Cost" limit such cost pass through events to expenses that are incurred in the following circumstances:

(a) By reason of circumstances beyond the control of the Operator or a relevant Related Body Corporate;

(b) Satisfy the prudency and efficiency tests in NGR91(1);

(c) Were not included in the Operator's forecast operating expenditure at the time the Current Access Arrangement was approved; and

(d) Were not included in the Total Revenue for one or more years of the Current Access arrangement.

7.26 The ERA seeks to delete the words "*Were not included in the Operator's forecast operating expenditure at the time the Current Access Arrangement was approved*" and return paragraph 11.5(a)(iii) to the previous formula that required that for a cost to be a New Cost, in addition to the other criteria in paragraph 11.5(a), it:

> *"could not be predicted prior to the time at the revisions to the Access Arrangement were approved".*

7.27 DBP has made the amendment to clause 11.5(a)(iii) of the Amended AA Proposal on the basis that costs that "*were not included in the Operator's forecast operating expenditure*" seems a more sensible test than costs that "*could not be predicted*". Absolutely anything can be predicted in theory, so DBP considers that the test is meaningless and unnecessarily excludes events that DBP did not foresee. This sort of wording is likely to lead to a significant number of disputes between DBP and its shippers. Further, this clause needs to be read in the context of clause 11.5(a) as a whole and DBP submits that if DBP was able to predict an event then such an event would arguably be within the control of DBP, resulting in no event ever amounting to a New Cost and the clause having no effect.

7.28 DBP submits that without the change to clause 11.5(a)(iii) requested in the proposed Access Arrangement, the clause is meaningless as no cost can ever be a New Cost and the paragraph can never achieve the intent of the NGR, being to ensure any legitimate new costs in relation to changes in circumstance outside the control of DBP can be passed through to customers.

Clause 11.5(c)

7.29 In relation to paragraph 11.5(c) of the proposed Access Arrangement, the wording proposed by DBP better implements the NGR's intention than the wording of the AA3 access arrangement. As set out by the ERA in paragraph 635 of its draft decision, the intent of the tariff variation mechanism is to ensure that "*any legitimate new costs in relation to changes in circumstance outside the control of DBP can be passed through to customers*".

7.30 Under the AA3 access arrangement, the New Costs Pass Through Variation mechanism is limited to circumstances where New Costs are incurred only by reason of (i) a change in law; or (ii) an increase in fees payable to the Land Access Minister. It is not clear how this limitation developed, however it clearly does not implement the intention of the tariff variation mechanism to pass through any legitimate New Costs.

7.31 DBP submits that the criteria for a New Cost in paragraph 11.5(a) alone are sufficient to protect the interests of Shippers and limit the costs that the New Cost tariff change variation mechanism can apply to. Either DBP's proposed clause 11.5(c)(iv) should remain in paragraph 11.5(c) to correct the limitation in the Current Access Arrangement and ensure that legitimate new costs are passed through to customers, or paragraph 11.5(c) should be deleted in its entirety.

7.32 DBP does not accept BHP's submission that expanding the breadth of expenses that are potentially covered by DBP's proposed pass through regime has the potential to lower risks of the DBNGP to the extent that it should be reflected in a lower rate of return. Under the proposed access arrangement for a cost to be a "New Cost" it must be an expense or cost prudently incurred, arising from an event beyond DBP's control. Accordingly the expanded definition does not broaden the scope of the costs beyond what is envisaged under the NGL.

7.33 The following points underpin DBP's position:

(a) The intent of the NGL is to ensure any legitimate new costs in relation to changes in circumstance outside the control of DBP can be passed through to customers [ERA draft decision paragraph 635];

(b) Under the NGL, DBP is entitled to recover at least its efficient costs of providing the pipeline services (revenue and pricing principles); and

(c) the NGL allows DBP to seek a new access arrangement at any time during the four year term of the access period. So taking an extreme example, if a force majeure event occurred, absent the changes being sought DBP could and would submit a new access arrangement to recover costs incurred as a result. The changes proposed enable focus on particular costs arising from a particular event to be assessed by the ERA and the Shippers. These changes enable costs arising from such an event to be passed through in the tariff in a streamlined manner focusing on just the justification for one particular cost without the administrative burden, costs and time involved in an entire access arrangement process to be incurred.

Further Changes to the AA

7.34 As a result of its review of the ERA's comments, DBP has identified some additional changes required to the tariff variation mechanisms in clauses 11.4 and 11.5 of the proposed access arrangement (and associated definitions).

7.35 As a result of the exclusion of Carbon Costs from Tax Change Variation Mechanism in paragraph 11.4 of the proposed Access Arrangement, the definition of Tax Change in the access arrangement should be amended to delete sub-clause (c); existing sub-clause (d) should become (c); existing sub-clause (e) should become (d):

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) the rate at which a Tax is levied is validly varied from the rate prevailing as at the commencement of the Current Access Arrangement Period; or

(d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the Execution Date,

7.36 The definition of Tax Change Notice in the access arrangement should be changed to correct a cross reference as follows:

Tax Change Notice has the meaning given to it in clause 11.4(c) of this Current Access Arrangement.

7.37 The definition of Tax Changes Variation in the access arrangement should be changed to correct a cross reference as follows:

Tax Changes Variation has the meaning given to it in clause 11.4 of this Current Access Arrangement.

7.38 As drafted, the words in paragraph 11.4(b) of the proposed Access Arrangement "*If a Tax Change occurs in relation to the Included Taxes in during the Current Access Arrangement Period…"* could be interpreted to exclude the Tax Change Variation Mechanism from applying to a new tax imposed on DBP. "Included Taxes" is defined to mean "*Taxes for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure*". However, sub-clause (a) of the definition of "Tax Change" includes a new Tax that becomes applicable to DBP's operations. DBP submits that Clause 11.4 should be amended to ensure that any new Taxes that are imposed upon DBP during the access period can properly be captured by the Tax Change Variation Mechanism, in addition to changes to "Included Taxes". This is consistent with the intent of the tariff variation mechanism. To effect this change, DBP submits that the words in paragraph 11.4(b) be amended to provide:

"If a Tax Change occurs ~~in relation to the Included Taxes~~ 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, then:

… [continues as drafted]"

This amendment has been made to clause 11.4 of the proposed Access Arrangement.

7.39 Paragraph 11.4(c)(i) in the access arrangement should be amended to add the words *"(if any)"* at the end of that sentence, to capture the situation where there is a new Tax not previously imposed.

7.40 Paragraph 11.5(c) of the access arrangement has been deleted in its entirety, for the reasons set out in paragraphs 7.29 to 7.33 above. If this is unacceptable then the alternative position should be to maintain paragraph 11.5(c) as proposed by DBP in its initial proposed access arrangement for the reasons discussed in paragraphs 7.29 to 7.33 above.

7.41 The definition of "Tax Change" in the Shipper Contract Terms and Conditions should be deleted.

7.42 The definition of "New Costs" in the Shipper Contract Terms and Conditions deleted.

8. RESPONSE TO AMENDMENT 23 – REVENUE CAP

Amendment 23 and Reasons for Amendment

8.1 Draft Decision Amendment 23 requires the following amendment to be made to DBP's Amended AA Proposal in order to make it acceptable to the ERA:

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

8.2 The ERA's reasons for rejecting DBP's proposed amendments in clause 11.6 of the proposed Access Arrangement and requesting Amendment 23 can be summarised as follows:

(a) [Paragraph 645] - Risk allocation moved from shipper to customer. 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.

(b) [Paragraph 646 and 647] – The proposed change actually has little impact on DBP's revenue. 85% of customers are on negotiated tariffs (based on a price cap mechanism) and 80% 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.

(c) [Paragraph 648] – Proposal to adjust revenue based on non-reference service volumes is complex and DBP hasn't provided a mechanism for certifying non-reference service volumes;

(d) [Paragraph 648] – 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 revenue from new load whilst increasing reference tariffs for any reductions in load;

(e) [Paragraph 649] – as current capacity is nearly all contracted, the ERA considers the risk of under recovery in relation to reference services in AA4 is low. Revenues will be rebased at the next access arrangement review so the period of any potential over or under recovery is short.

(f) [Paragraph 650] – the current price cap control results in the best incentives for utilisation of the pipeline and meets the NGO. Change to revenue cap would not improve incentives or better meet the NGO.

(g) [Paragraph 650] – The change to a revenue cap would create practical difficulties in administering the price control mechanism.

Response to Reasons for Amendment 23

8.3 DBP rejects this required amendment for the reasons set out in its proposed Access Arrangement and responds to the ERA's specific reasons below.

Risk Allocation

8.4 In response to the points raised in paragraph 645 of the draft decision, DBP submits that the regime established by the NGL is designed to ensure that DBP is incentivised to provide the pipeline services to its customers at a fair price (incorporating a fair return) and DBP should at least have the opportunity to recover its efficient costs of provision of the services (consistent with the revenue and pricing principles in s24 of the NGL).[4] The logical result of the revenue and pricing principles (upon which investors in DBP rely to underpin their investment) is that provided DBP

[4] *Refer also to Submission 51 at paragraphs 3.10 and 3.11 for judicial comment on interpretation of the NGO in within the constraints of the revenue and pricing principles.*

opex and capex is proven to be efficient and prudent, demand risk should lie with customers rather than with DBP.

Impact on DBP Revenue

8.5 In response to the points raised in paragraphs 646, 647 and 649 of the draft decision, DBP submits that whilst it is currently correct that 85% of the current firm full haul contracted capacity of the DBNGP accepted renegotiated tariffs in 2014, the remaining proportion of revenue is significant. DBP's proposal has been designed to reflect that DBP's actual revenue is different to that determined by the ERA for the purposes of the Access Arrangement. As determined by the ERA, DBP's total revenue determined by the reference tariff would be in the order of $330m over the access arrangement period. If the forecast contracted capacity and forecast throughput approved by the ERA prove to be overly optimistic there would be a significant impact to DBP's actual revenue.

8.6 Specifically, in regards to the ERA claim at paragraph 649 that the DBNGP is nearly fully contracted, DBP refers to the ERA to the spare capacity register on DBP's website that shows that there is 88.5TJ's of spare capacity available and that the time of writing this submission DBP had also reviewed a further two additional relinquishment notices for small part and back loads.

8.7 A move to the revenue cap proposed results in no over recovery and no under recovery, ensures that DBP will at least recover its efficient costs and better meets the revenue and pricing principles. It is not a valid argument for the ERA to state that any under recovery would only be for a short time so therefore it is of no concern [paragraph 649 of the DD] – this clearly does not satisfy the revenue and pricing principles. Investors in infrastructure assets such as the DBNGP rely upon stability and revenue certainty to underpin their investment.

Complexity and Lack of Certification of Non Reference Volumes

8.8 In response to the points raised in paragraph 648 of the draft decision regarding the complexity of the revenue cap, DBP submits that a revenue cap mechanism is clearly contemplated by the legislation in NGR 97(2) and the fact that it is complex is not a reason for the ERA to reject it.

8.9 One of the reasons ERA has given for rejecting the change is that DBP intends to adjust revenue based on non-reference service volumes, but has not provided a mechanism for certification of non-reference service volumes [paragraph 648].

8.10 It is correct that the mechanism proposes a "true up" adjustment each year. The proposed mechanism envisages that at the start of each year the regulated tariff is to be adjusted based on actual capacity and throughput for the prior year.

8.11 There is a public gas notice board that the ERA can use to verify DBP's actual capacity and throughput for the prior year, therefore DBP does not need to provide a separate verification mechanism. Refer to paragraphs 2.23 and 2.34 above for further information about information available on the gas bulletin board. DBP does consider it appropriate that actual capacity and throughput volumes would be justified to the ERA before any true up tariff adjustment is made.

Ability of DBP to manipulate classification of loads to earn higher revenue

8.12 DBP rejects the other points raised in paragraph 648 to the effect that the provisions proposed by DBP are vague and potentially could enable DBP to (i) classify new load as being on services that are outside of the cap, and (ii) classify reductions in load as pertaining to services within the cap, thus allowing DBP to retain revenue from new load whilst increasing reference tariffs for any reductions in load. DBP's intention is not to manipulate or game the system but to ensure that it recovers at least its efficient costs and DBP's view is that the mechanism that it has suggested for a revenue cap prevents gaming from occurring.

8.13 In DPB's opinion the formula in Clause 11.6 prevents gaming. The elements comprising the formula are as follows:

(a) initial total revenue;

(b) WACC;

(c) regulatory earned revenue;

(d) reservation portion of the reference tariff; and

(e) forecasts for capacity and throughput made each year.

The first three elements of the formula determine the Annual Revenue for a given year. That Annual Revenue is divided by forecast capacity and forecast throughput for the relevant year to determine the tariff for the coming year. The WACC, the initial total revenue and the reservation portion of the reference tariff are all determined in the ERA's Final Decision and cannot be gamed by DBP.

8.14 The ERA's concern appears to be based on a misunderstanding of the concept of the "regulatory earned revenue". "Regulatory earned revenue" means the revenue that DBP would have earned if *all services* were at the regulated tariff. Thus, if DBP attempts to game the system by claiming new services are outside the cap, and existing services that are reduced are within the cap, then this will simply not work, because the regulatory earned revenue treats all services as though they are regulated. "*Regulatory earned revenue*" is described in a footnote on page 22, immediately below Clause 11.6.

8.15 The reason for introducing the concept of regulatory earned revenue was precisely to prevent reductions and additions to throughput and contracted capacity outside the cap from adversely affecting those on regulated services, and the structure of the mechanism also means that DBP itself cannot manipulate contracts to game the cap.

Ability to meet the NGO and practical difficulties

8.16 In response to the points raised by the ERA in paragraph 650 of the draft decision:

(a) The statements that:

> "*the current price cap control results in the best incentives for utilisation of the pipeline and meets the NGO*"; and
>
> "*change to revenue cap would not improve incentives or better meet the NGO*."

are merely statements of opinion that are not backed up by any detail or evidence. The revenue cap mechanism must better meet the NGO given the NGO is to be read against the context of the revenue and pricing principles[5] – that is, that the pipeline service provider is entitled to at least recover its efficient costs. Pushing demand risk onto the service provider is the antithesis of this key principle.

(b) The statement that:

> *"The change to a revenue cap would create practical difficulties in administering the price control mechanism."*

is not helpful in that the ERA provides no detail of the practical difficulties the ERA fears, so DBP is not able to address those difficulties in this response. Where this type of mechanism is clearly anticipated in the legislation, the issue of as yet undefined practical difficulties are not relevant.

[5] *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14 at 77*

9. RESPONSE TO AMENDMENT 24 – TRAILING AVERAGE COST OF DEBT VARIATION

Amendment 24 and Reasons for Amendment

9.1 Draft Decision Amendment #24 requires the following amendment to be made to DBP's AA Proposal in order to make it acceptable to the ERA:

> *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.*

9.2 DBP rejects this proposed amendment, as it proposes to use capex weights, rather than the even weights of one tenth per annum. The relevant formulae which implement this approach, and would replace the ERA's formulae from Appendix 4G are contained in Clause 11.7 of DBP's Amended AA Proposal, and background to the use of the capex weights is contained in submission 56, which deals with rate of return matters.

9.3 DBP notes that its rejection of the ERA's proposed amendment in this instance is a matter of form over substance as the fact that proposed capital expenditure by DBP over the forthcoming AA period will be less than the minimum threshold required for the capex weights approach to influence weights away from the one-tenth per annum proposed by the ERA.

10. RESPONSE TO AMENDMENT 2 – TARIFF VALUES

Amendment 2 and Reasons for Amendment

10.1 Draft Decision Amendment #2 requires the following amendment to be made to DBP's AA Proposal on the basis that the ERA has not approved :

> *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.*

10.2 DBP has rejected this amendment as a consequence of:

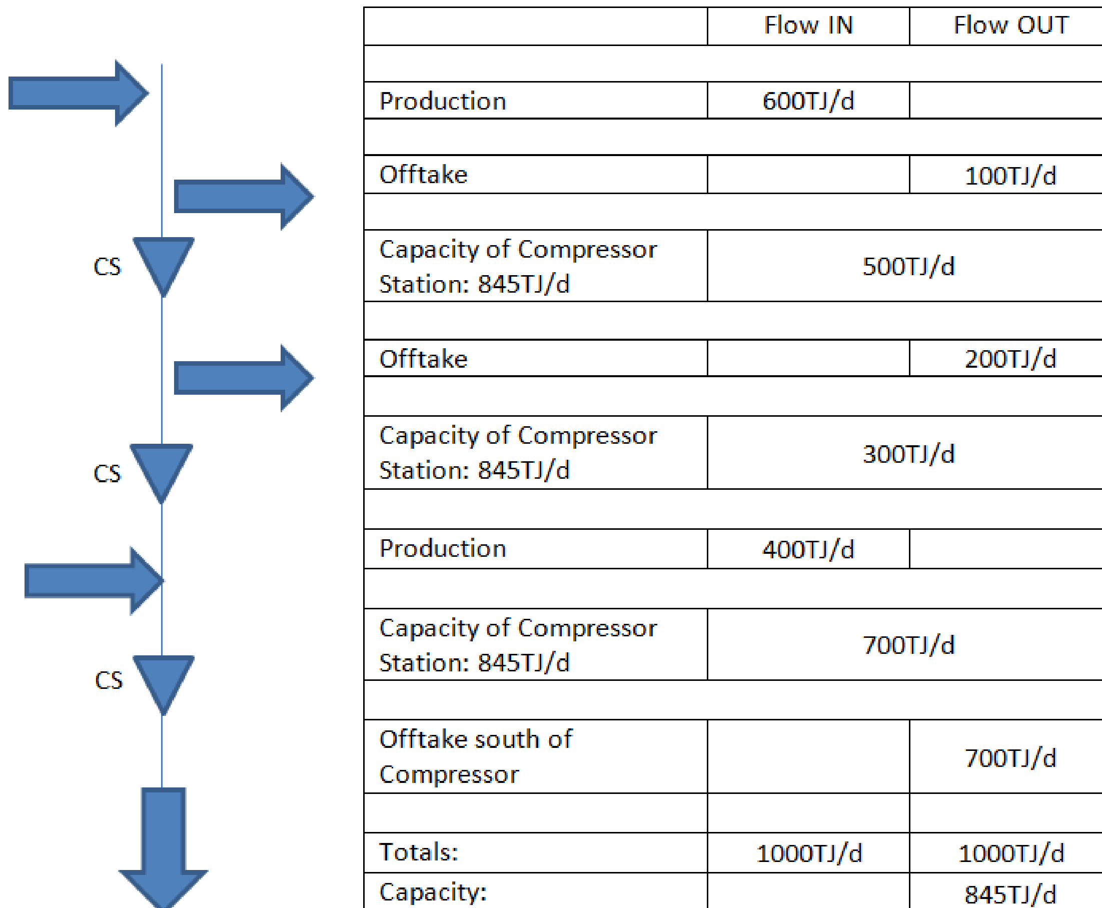
(a) Not being able to presently ascertain the "reference tariffs approved by the [ERA] in its final decision"; and

(b) DBP not accepting many of the amendments required in the Draft Decision relating to the building blocks used to estimate the Total Revenue and the volume forecasts.

10.3 DBP has instead calculated reference tariffs in accordance with the reference service tariff calculation in the revised version of the AAI submitted to the ERA as part of DBP's Amended AA Proposal in response to the Draft Decision.

APPENDIX A: PIPELINE CAPACITY AND FULL HAUL PIPELINE CAPACITY

Example 1 – Total Deliveries exceed Full Haul Capacity (ignoring losses and system use gas)



	Flow IN	Flow OUT
Production	600TJ/d	
Offtake		100TJ/d
Capacity of Compressor Station: 845TJ/d	500TJ/d	
Offtake		200TJ/d
Capacity of Compressor Station: 845TJ/d	300TJ/d	
Production	400TJ/d	
Capacity of Compressor Station: 845TJ/d	700TJ/d	
Offtake south of Compressor		700TJ/d
Totals:	1000TJ/d	1000TJ/d
Capacity:		845TJ/d

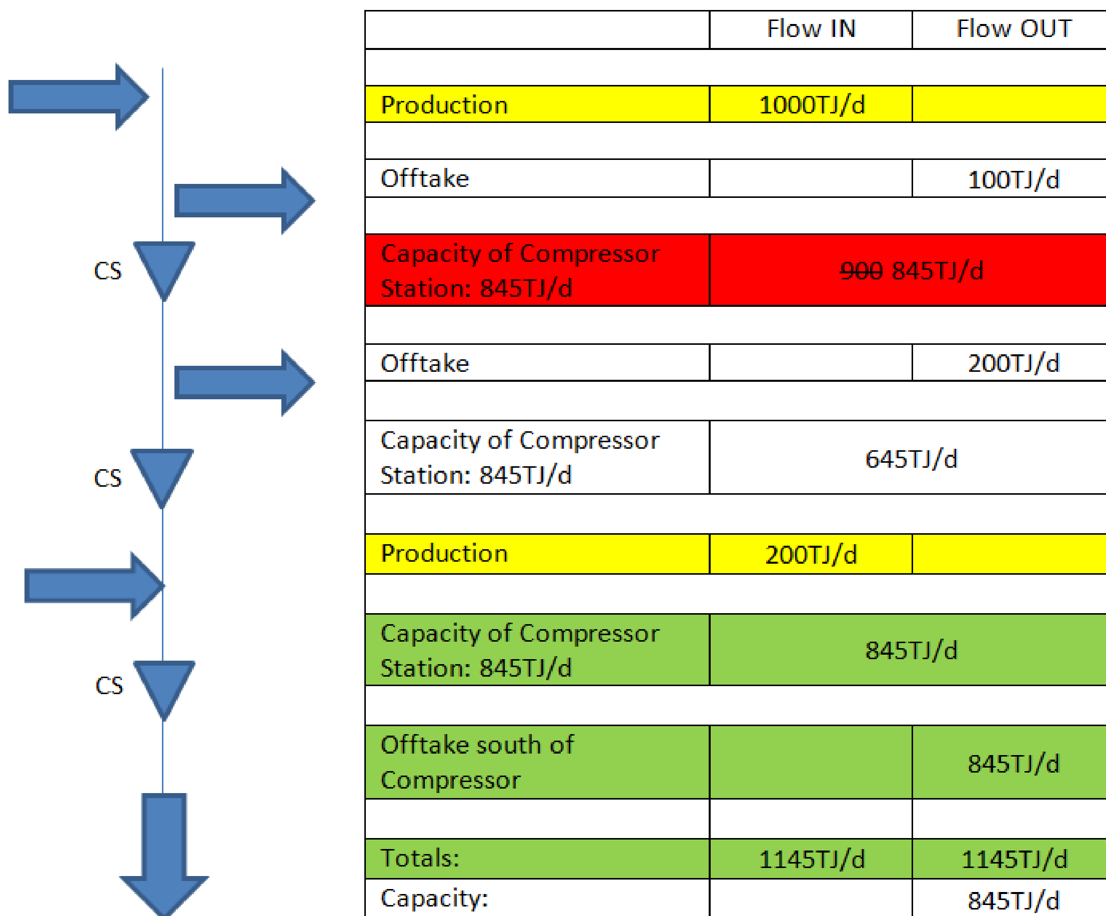
Production from the first facility that is delivered into the pipeline at the relevant inlet point is assumed at 600TJ/d with an off-take of 100TJ/d at one or more outlet points upstream of the first compressor station. The gas flows downstream and reaches the first compressor station (which has capacity of 845TJ/d) but only 500TJ/d of gas passes through the compressor station and so, the compressor station has unutilised capacity.

Downstream of the first compressor station is a second offtake of 200TJ/d that is delivered to one or more outlet points. Therefore only 300TJ/d of gas flows through the second compressor station and so, this compressor station also has unutilised capacity.

Downstream of the second compressor station is a second production facility which delivers into the pipeline at a relevant inlet point an amount of 400TJ/d of gas. The third compressor station can accept all this gas and has unutilised capacity. 700TJ/d flows through this compressor station and is then delivered to a variety of customers downstream.

Based on this scenario, a total amount of 1000TJ/d has been delivered at all outlet points on the pipeline (being part haul and full haul outlet points).

Example 2 –Constrained system



	Flow IN	Flow OUT
Production	1000TJ/d	
Offtake		100TJ/d
Capacity of Compressor Station: 845TJ/d	~~900~~ 845TJ/d	
Offtake		200TJ/d
Capacity of Compressor Station: 845TJ/d	645TJ/d	
Production	200TJ/d	
Capacity of Compressor Station: 845TJ/d	845TJ/d	
Offtake south of Compressor		845TJ/d
Totals:	1145TJ/d	1145TJ/d
Capacity:		845TJ/d

Note that production from the first facility is now 1000TJ/d (highlighted yellow). Off-take at relevant outlet points downstream of this facility is still 100TJ/d, so 900TJ/d is available to pass through the first compressor station. However, as the compressor station has a capacity of 845TJ/d, the compressor station is unable to move (900-845) 55TJ/d and so the first production facility would reduce deliveries to 945TJ/d. Alternatively deliveries at outlet points upstream of the first compressor station could increase by 55TJ.

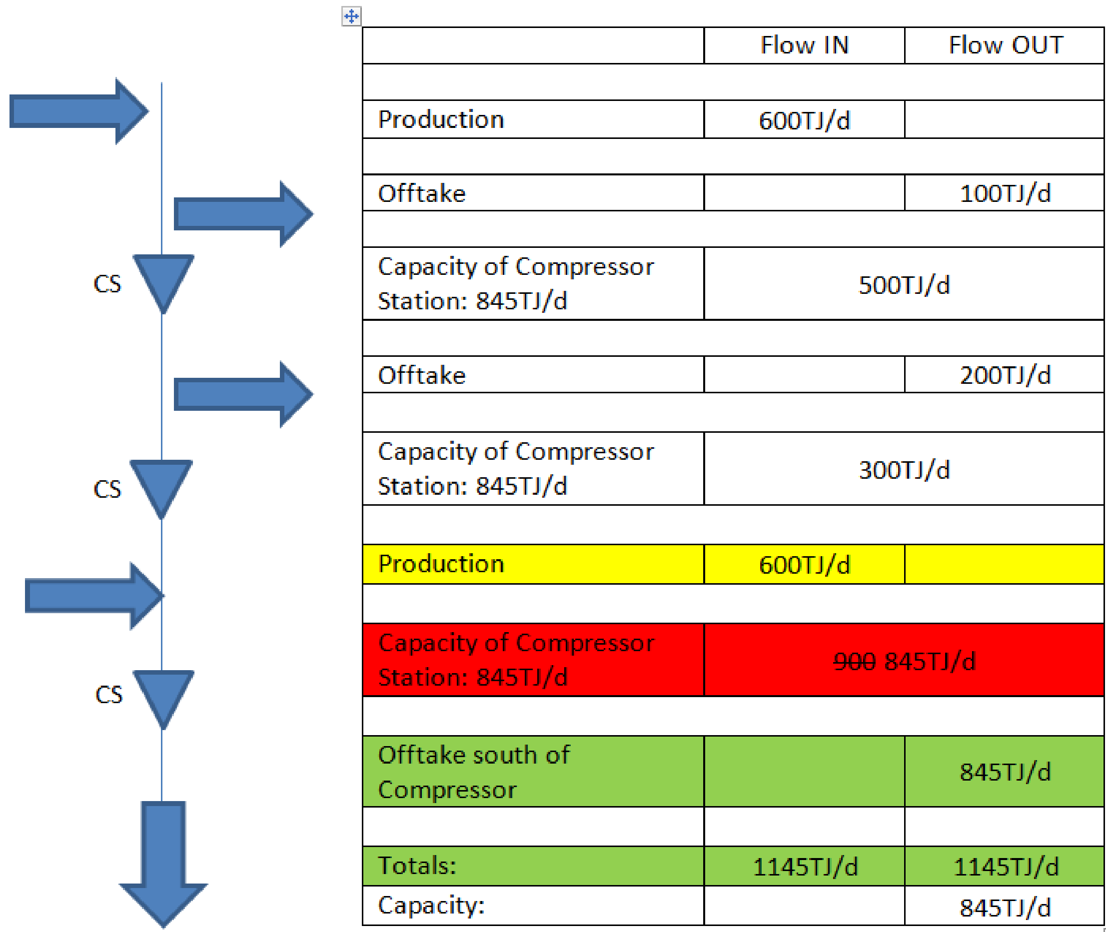
Downstream of the first compressor station is still a second offtake of 200TJ/d that is delivered to one or more outlet points. Therefore only 645/d of gas flows through the second compressor station and so, this compressor station also has unutilised capacity of 200TJ/d.

The second production facility is now delivering 200TJ/d into the pipeline at an inlet point downstream of the second compressor station and so, the third compressor station receives 845TJ/d facility (highlighted green). For the purposes of the example it is assumed there is demand of 845TJ/d downstream of the third compressor station.

Note that in this constrained situation, the pipeline still delivers to all outlet points (both part haul and full haul outlet points) a total amount that exceeds the pipeline's full haul capacity, delivering 1145TJ/d and running the first and third compressor station at its design capacity.

Note that the second off-take could not exceed 845TJ/d unless the second compressor station was designed to operate in a bi-directional mode.

Example 3 –Full Haul Capacity constrained (ignoring losses and system use gas)



	Flow IN	Flow OUT
Production	600TJ/d	
Offtake		100TJ/d
Capacity of Compressor Station: 845TJ/d	500TJ/d	
Offtake		200TJ/d
Capacity of Compressor Station: 845TJ/d	300TJ/d	
Production	600TJ/d	
Capacity of Compressor Station: 845TJ/d	~~900~~ 845TJ/d	
Offtake south of Compressor		845TJ/d
Totals:	1145TJ/d	1145TJ/d
Capacity:		845TJ/d

Note that production from the second facility (highlighted yellow) is now increased so that 600TJ/d (up 200TJ from Example 1) is delivered into the pipeline at the relevant inlet point. This would ordinarily mean that flow into the third compressor station is 900TJ/d, but this compressor has a capacity of 845TJ/d and so only 845TJ/d of gas will flow downstream of the compressor station. For the purposes of the example it is assumed there is demand of 845TJ/d downstream of this compressor station.

In practice, the production facility upstream of the third compressor station will have to reduce production by (900-845) 55TJ/d as there is no capacity to move this amount of excess gas through the compressor station. Alternatively deliveries upstream of the compressor station could increase by 55TJ.

Note that in this constrained situation, the pipeline still delivers a total amount of gas to all outlet points (being full haul and part haul outlet points) in excess of its full haul capacity, delivering 1145TJ/d and running the third compressor station at its design capacity.

APPENDIX B: DISTANCE FACTORS

APPENDIX C: DUET MIR RECONCILLIATION

APPENDIX D: NON REFERENCE FORECAST

APPENDIX E: REVISED FORECAST TABLES

APPENDIX F: SHIPPER DF COMPARISON

APPENDIX G: KPMG CORPROATE TAX ADVICE