

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

Submitted by DBNGP (WA) Transmission Pty Limited

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FINAL DECISION

1. On 31 December 2014, DBNGP (WA) Transmission Pty Limited (**DBP**) submitted to the Economic Regulation Authority (**Authority**) proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) (herein referred to as DBP's "original proposal").¹ The proposal covers the period 1 January 2016 to 31 December 2020 (herein referred to as the fourth access arrangement period, or **AA4**).
2. The proposed revised access arrangement was submitted by DBP pursuant to rule 52 of the National Gas Rules (**NGR**) and comprises a proposed revised access arrangement and revised Access Arrangement Information. The role of the Authority is to approve, or not approve, the proposed revised access arrangement in accordance with the requirements of the National Gas Law (**NGL**), as implemented in Western Australia by the *National Gas Access (WA) Act 2009* (**NGL(WA)**), and the **NGR**.²
3. On 22 December 2015, the Authority published its Draft Decision to not approve DBP's proposed revised access arrangement.³ The Draft Decision included a statement of reasons for the decision and set out 74 amendments that were required before the Authority would be prepared to approve the proposed revised access arrangement.
4. Under rule 59(3) of the NGR, the Authority fixed a period ("revision period") within which DBP may, under rule 60, submit additions or other amendments to the proposed revised access arrangement to address matters raised in the Draft Decision. The Authority fixed the revision period from the date of the Draft Decision and to expire on 22 February 2016.
5. On 22 February 2016, DBP submitted an amended revised access arrangement proposal (herein referred to as DBP's "amended proposal").⁴ DBP also made several submissions of supporting information to the Authority. A full list of submissions made by DBP is provided at Appendix 3 of this Final Decision. DBP's amended proposal and other submissions (except for confidential information which is redacted), are available from the Authority's website.
6. The Authority invited public submissions on its Draft Decision and on DBP's amended proposal, with a closing date for submissions of 22 March 2016. Submissions were received from the following parties:⁵

¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Proposal – Supporting Submission 1*, 31 December 2014. Herein referred to as DBP's "proposed revised access arrangement" or "original proposal".

² As enacted by the *National Gas (South Australia) Act 2008* and as implemented in Western Australia by the *National Gas Access (WA) Act 2009* as the *National Gas Access (Western Australian) Law* (**NGL(WA)**).

³ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015.

⁴ DBNGP (WA) Transmission Pty Ltd, *DBNGP Access Arrangement – Amended Access Arrangement Revision Proposal*, 22 February 2016. The amended proposal and related documents are available from the Authority's website: www.erawa.com.au

⁵ Submissions are available from the Authority's website: www.erawa.com.au

- Wesfarmers Chemicals, Energy and Fertilisers (**WESCEF**);
 - Perron Developments Pty Ltd;
 - DBP (*Response to Australian Competition Tribunal Decision – Supporting Submission 60*); and
 - BHP Billiton⁶
7. The Authority invited further submissions from interested parties on 1 June 2016, following the identification of an issue relating to clause 7.3 of the access arrangement, which was not considered in the Draft Decision.⁷ The closing date for submissions was 9 June 2016. Public submissions were received from DBP and BHP Billiton.⁸
8. Under rule 62 of the NGR, the Authority is required to make a Final Decision on DBP's amended proposal either to approve, or to refuse to approve, the amended proposal.
9. Section 28(1) and (2) of the NGL(WA) were substantially amended in 2013 to require the Authority to specify how the constituent components of this Final Decision related to each other and how the Authority has taken those interrelationships into account. Subsequent to these amendments, the NGL now anticipates that there may be more than one possible decision that will or is likely to contribute to the achievement of the NGO. In such cases, the Authority must make the decision that will or is likely to contribute to the achievement of the NGO to the greatest degree, and provide reasons.
10. The NGL(WA) does not prescribe how the Authority is to apply the requirements and, as a result, the Authority has used its regulatory judgement. The Authority has applied these requirements by determining total revenue and reference tariffs in accordance with the detailed requirements of the NGR.
11. The Authority's Final Decision is complex and many of the components of the decision are interrelated. The adoption of a value for a component has implications for other elements or values elsewhere in the decision. For example:
- the value of imputation credits (gamma) has an impact on the estimated cost of corporate income tax;
 - the value of imputation credits (gamma) has an impact on the estimate of the return on equity, through the estimates of the market risk premium;
 - the definition of the benchmark efficient entity has strong links to all aspects of the rate of return, including:
 - the composition of the benchmark efficient sample;
 - the relevant estimation methods, financial models and market data and other evidence used for estimating the return on equity and the return on debt;
 - the gearing;

⁶ Received on 18 April 2016 and accepted as a late submission.

⁷ Economic Regulation Authority, *Notice – "Access Arrangement for the DBNGP – Proposed Requirement for Final Decision"*, 1 June 2016.

⁸ Submissions are available from the Authority's website: www.erawa.com.au

- beta;
 - the credit rating; and
 - the debt risk premium;
- the return on debt is considered in conjunction with the return on equity, to ensure consistency;
 - the definition of the benchmark efficient entity also has implications for whether to revalue the RAB at each access arrangement revision;
 - the service provider's governance arrangements and risk management will affect most aspects of the proposal, including capital and operating expenditure forecasts; and
 - the approved demand forecasts will affect the calculation of reference tariffs.
12. In making its decision in accordance with the detailed requirements of the NGR and being mindful of any interrelationships between components, the Authority considers that it has made a Final Decision that will or is likely to contribute to the achievement of the NGO to the greatest degree. The Authority's assessment is set out in the following sections of this Final Decision.
13. After considering DBP's amended proposal and its supporting submissions, the submissions from other interested parties, and advice from the Authority's technical and economic advisors, the Authority's Final Decision is not to approve the amended proposal. The Authority's reasons for refusing to approve the amended proposal are set out in this Final Decision.
14. Under rule 64 of the NGR, when the Authority refuses to approve an access arrangement proposal, the Authority is required to itself propose revisions to the access arrangement and make a decision giving effect to its proposal within two months of its Final Decision.

ERA Approved Access Arrangement

15. Rule 64 of the NGR states the following.
64. [Authority's] power to make or revise access arrangement on refusing to approve an access arrangement proposal
- (1) If, in an access arrangement Final Decision, the [ERA] refuses to approve an access arrangement proposal (other than a variation proposal), the [ERA] must itself propose an access arrangement or revisions to the access arrangement (as the case requires) for the relevant pipeline.
 - (2) The [ERA's] proposal for an access arrangement or revisions is to be formulated with regard to:
 - (a) the matters that the Law requires an access arrangement to include; and
 - (b) the service provider's access arrangement proposal; and
 - (c) the [ERA's] reasons for refusing to approve that proposal.
 - (3) The [ERA] may (but is not obliged to) consult on its proposal.
 - (4) The [ERA] must, within 2 months after the access arrangement Final Decision, make a decision giving effect to its proposal.

- (5) When the [ERA] makes a decision under this rule, it must:
 - (a) give a copy of the decision to the service provider; and
 - (b) publish the decision on the [ERA's] website and make it available for inspection, during business hours, at the [ERA's] public offices.
 - (6) The access arrangement or the revisions to which the decision relates takes effect on a date fixed in the determination or, if no date is so fixed, 10 business days after the date of the decision.
16. The Authority has, as part of this Final Decision, published its proposed revisions to the access arrangement for the DBNGP (Appendix 7 of this decision) and related access arrangement information (Appendix 8 of this decision). In preparing these documents the Authority has regard to the requirements of the NGL(WA), DBP's amended proposal and the Authority's reasons for refusing to approve the amended proposal.
17. The amendments that the Authority has made to DBP's amended proposal to construct its own access arrangement proposal documents for the DBNGP are set out in this Final Decision. Further to these amendments, the Authority has made numerous drafting edits to correct typographical, grammatical and/or formatting errors. The Authority has considered that these drafting edits are minor in nature and, for this reason, they are not detailed in this Final Decision.
18. As provided under rule 64(3) of the NGR, the Authority has decided not to consult on its access arrangement proposal. Hence, the Authority considers this Final Decision gives effect to its access arrangement proposal for the DBNGP for the fourth access arrangement period (AA4 – 2016 to 2020).
19. Pursuant to rule 64(6) of the NGR, the revisions to the access arrangement for the DBNGP will take effect from 1 July 2016.

REASONS

Introduction

Regulatory Framework

20. The purpose of an access arrangement for a gas pipeline is to provide details of the terms and conditions, including price, upon which an independent third party (user) can gain access to the pipeline.
21. The requirements for an access arrangement are established by the NGL(WA) and NGR.
22. Section 23 of the NGL(WA) sets out the National Gas Objective (**NGO**). Under rule 100 of the NGR all provisions of an access arrangement are required to be consistent with the NGO.
 23. National gas objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.
23. Sections 28(1) and (2) of the NGL(WA) specify the manner in which the Authority must perform or exercise its economic regulatory functions or powers.
 28. Manner in which [ERA] must perform or exercise [ERA] economic regulatory functions or powers
 - (1) The [ERA] must, in performing or exercising an [ERA] economic regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.
 - (2) In addition, the [ERA]—
 - (a) must take into account the revenue and pricing principles—
 - (i) when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff; or
 - (ii) when making an access determination relating to a rate or charge for a pipeline service; and
 - (b) may take into account the revenue and pricing principles when performing or exercising any other [ERA] economic regulatory function or power, if the [ERA] considers it appropriate to do so.
24. During the course of the third access arrangement (**AA3**) period, the AEMC made numerous changes to the NGR. In particular, rule 87 of the NGR was updated

extensively. The Authority addressed some of these changes, including the changes to rule 87, in its *Rate of Return Guidelines* published on 16 December 2013.⁹

25. At the time, when the proposed revisions for the third access arrangement (AA3) period were submitted by DBP, rule 87(1) of the NGR stated the following:¹⁰

87. Rate of return

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

26. The current (updated) rule 87 of the NGR states as follows:¹¹

87. Rate of return

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

⁹ Economic Regulation Authority, *Rate of Return Guidelines – Meeting the requirements of the National Gas Rules*, 16 December 2013.

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

¹¹ Rule 87 of the National Gas Rules.

- (a) relevant estimation methods, financial models, market data and other evidence;
- (b) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and
- (c) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

Return on equity

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

Return on debt

- (8) The return on debt for a regulatory year is to be estimated such that it contributes to the achievement of the allowed rate of return objective.
- (9) The return on debt may be estimated using a methodology which results in either:
 - (a) the return on debt for each regulatory year in the access arrangement period being the same; or
 - (b) the return on debt (and consequently the allowed rate of return) being, or potentially being, different for different regulatory years in the access arrangement period.
- (10) Subject to subrule (8), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
 - (a) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the time when the [Authority's] decision on the access arrangement for that access arrangement period is made;
 - (b) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the commencement of a regulatory year in the access arrangement period; or
 - (c) some combination of the returns referred to in subrules (a) and (b).
- (11) In estimating the return on debt under subrule (8), regard must be had to the following factors:
 - (a) the desirability of minimising any difference between the return on debt and the return on debt of a benchmark efficient entity referred to in the allowed rate of return objective;
 - (b) the interrelationship between the return on equity and the return on debt;

- (c) the incentives that the return on debt may provide in relation to capital expenditure over the access arrangement period, including as to the timing of any capital expenditure; and
 - (d) any impacts (including in relation to the costs of servicing debt across access arrangement periods) on a benchmark efficient entity referred to in the allowed rate of return objective that could arise as a result of changing the methodology that is used to estimate the return on debt from one access arrangement period to the next.
- (12) If the return on debt is to be estimated using a methodology of the type referred to in subrule (9)(b) then a resulting change to the service provider's total revenue must be effected through the automatic application of a formula that is specified in the decision on the access arrangement for that access arrangement period.

Rate of return guidelines

- (13) The [ERA] must, in accordance with the rate of return consultative procedure, make and publish guidelines (the Rate of Return Guidelines).
- (14) The Rate of Return Guidelines must set out:
- (a) the methodologies that the [ERA] proposes to use in estimating the allowed rate of return, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent with the allowed rate of return objective; and
 - (b) the estimation methods, financial models, market data and other evidence the [ERA] proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in rule 87A.
- (15) There must be Rate of Return Guidelines in force at all times after the date on which the [ERA] first publishes the Rate of Return Guidelines under these rules.
- (16) The [ERA] must, in accordance with the rate of return consultative procedure, review the Rate of Return Guidelines:
- (a) at intervals not exceeding three years, with the first interval starting from the date that the first Rate of Return Guidelines are published under these rules; and
 - (b) at the same time as it reviews the Rate of Return Guidelines under clauses 6.5.2 and 6A.6.2 of the National Electricity Rules.^[12]
- (17) The [ERA] may, from time to time and in accordance with the rate of return consultative procedure, amend or replace the Rate of Return Guidelines.
- (18) The Rate of Return Guidelines are not mandatory (and so do not bind the [ERA] or anyone else) but, if the [ERA] makes a decision in relation to the rate of return (including in an access arrangement Final Decision or an access arrangement Final Decision) that is not in accordance with them, the [ERA] must state, in its reasons for the decision, the reasons for departing from the guidelines.
- (19) If the Rate of Return Guidelines indicate that there may be a change of regulatory approach by the decision maker in future decisions,

¹² The National Electricity Rules are not applicable in Western Australia.

the guidelines should also (if practicable) indicate how transitional issues are to be dealt with.

27. In line with the changes to the NGR in 2013, Section 28(1) and (2) of the NGL(WA) were substantially amended. Section 28(1)(b)(ii) of the NGL(WA) now requires the Authority to specify how the constituent components of this Final Decision relate to each other and how the Authority has taken those interrelationships into account in making its Final Decision. Further, section 28(1)(b)(iii) of the NGL(WA) now requires that if there are two or more possible designated reviewable regulatory decisions that will or are likely to contribute to the achievement of the NGO, then the Authority must make the decision (and provide reasons for it), that it is satisfied will or is likely to contribute to the achievement of the NGO to the greatest degree.
28. The NGL(WA) does not prescribe how the Authority is to apply these requirements and as a result, the Authority has exercised its regulatory judgement in applying them. The Authority also notes that, in *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1 (**PIAC-Ausgrid**), the Tribunal approved and adopted the approach used by the Australian Energy Regulator (**AER**) in that matter.¹³ The Authority has therefore sought to adopt a similar approach to the AER in this matter and has applied the section 28 requirements by determining total revenue and reference tariffs in accordance with the detailed requirements of the NGR.
29. The Authority's Final Decision is complex and many of the components of the decision are interrelated. The adoption of a value for a component has implications for other elements or values elsewhere in the decision. As identified by the AER in the *PIAC-Ausgrid* matter, interrelationships can take various forms, including:
- underlying drivers and context which are likely to affect many constituent components of our decision
 - direct mathematical links between different components of a decision
 - trade-offs between different components of revenue
 - trade-offs between forecast and actual regulatory measures. The reasons for one part of a proposal may have impacts on other parts of a proposal
 - the service provider's approach to managing its network. The service provider's governance arrangements and its approach to risk management will influence most aspects of the proposal, including capex/opex trade-offs.
30. The Authority has considered these types of interrelationships in its analysis of the constituent components of this Final Decision. For example:
- the value of imputation credits (gamma) has an impact on the estimated cost of corporate income tax;
 - the value of imputation credits (gamma) has an impact on the estimate of the return on equity, through the estimates of the market risk premium;
 - the definition of the benchmark efficient entity has strong links to all aspects of the rate or return, including:
 - the composition of the benchmark efficient sample;

¹³ *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1 at [1202] to [1203].

- the relevant estimation methods, financial models and market data and other evidence used for estimating the return on equity and the return on debt;
 - the gearing;
 - beta;
 - the credit rating;
 - the debt risk premium;
- the return on debt is considered in conjunction with the return on equity, to ensure consistency;
 - the term of the estimates influences the return on equity and the return on debt, including, for example, through the estimate of the risk free rate;
 - the definition of the benchmark efficient entity also has links to the value of the RAB, and relevant considerations about whether it reflects the net present value of the expected future cash flows; and
 - the approved demand forecasts will affect the calculation of reference tariffs.
31. The Authority considers that, in making its decision in accordance with the detailed requirement of the NGR and being mindful of any interrelationships between components, the Authority has made a Final Decision which will or is likely to contribute to the achievement of the NGO to the greatest degree. The Authority's assessment is set out in the following sections of this Final Decision.

Special Circumstances of the Dampier to Bunbury Natural Gas Pipeline

32. Access contracts between DBP and users of the DBNGP – the DBNGP shipper contracts – are currently substantially independent of the access terms and reference tariffs under the access arrangement for the DBNGP. With the exception of an access contract with the foundation customer (Alcoa), the contracts with shippers have taken the form of the “Standard Shipper Contract” (**SSC**). The terms of the SSC were originally negotiated in 2004 (**previous SSC**). DBP renegotiated the terms of the previous SSC with most of its customers in 2014 (**current SSC**). A copy of the current SSC can be found on DBP's website.¹⁴
33. Clause 20.5 (subclauses (d) to (g)) of the previous SSC made provision, as at 1 January 2016, for gas transmission tariffs to be adjusted, to a tariff equal to the reference tariff for the closest equivalent service to the service provided to the relevant customer under the SSC.¹⁵

20.5 Adjustment to Base T1 Tariff

...

- d) With effect from 08:00 hours on 1 January 2016, the Base T1 Tariff must be adjusted so that the Base T1 Tariff, T1 Capacity Reservation Tariff and T1

¹⁴ <http://www.dbp.net.au/>

¹⁵ Following the publication of the Draft Decision, DBP advised the Authority of a number of matters that it considered to be “errors of fact” (letter of 8 January 2016). Having considered these “errors of fact” the Authority has clarified the drafting of this paragraph 33.

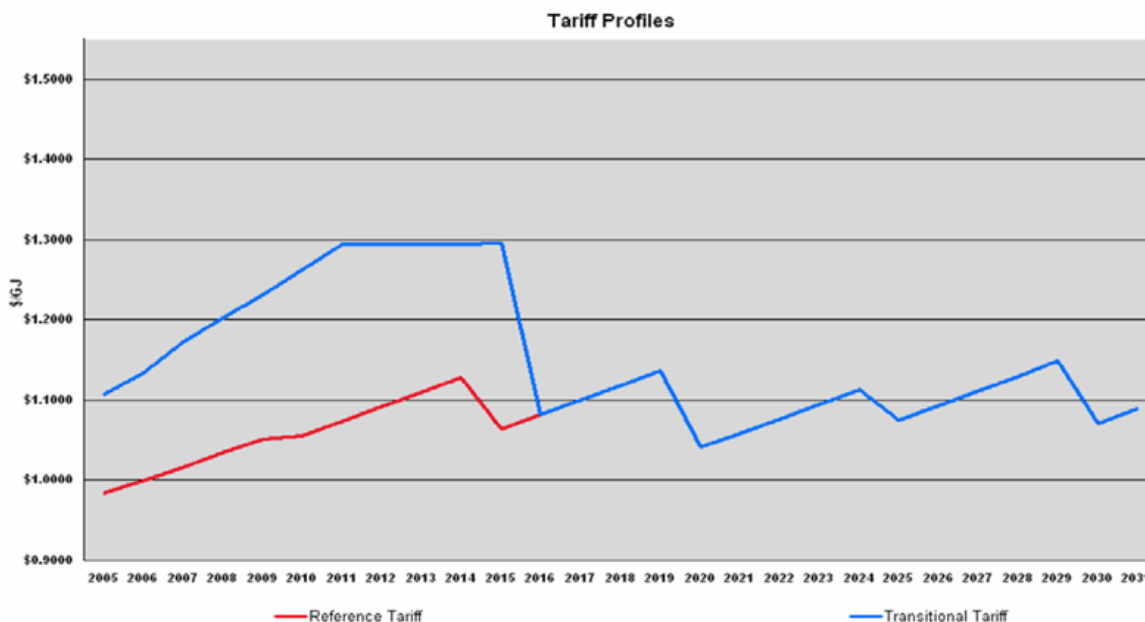
Commodity Tariff is at any time the same as the Firm Service Reference Tariff (or equivalent) at that time.

- e) In this clause 20.5, Firm Service Reference Tariff means the Reference Tariff for the Reference Service under the Access Arrangement that is, at 100% load factor, the closest equivalent Full-Haul Service to the T1 Service as at 1 January 2016 (T1 Equivalent Reference Service).
- f) The Parties agree the following in relation to the Reference Tariff:
 - i) The present intention of the Parties is that, with effect from 08:00 hours on 1 January 2016, the tariff payable by the Shipper under clause 20.5 (d) will be a Reference Tariff based on the Reference Tariff Policy in clause 7 of the Access Arrangement as that clause was in force at 27 October 2004 (for the purposes of which that clause 7 is to be read as though references to "Firm Services" were replaced with "T1 Service");
 - ii) The diagram and the financial model assumptions in Schedule 9, being the forecast tariff post 2016, illustrate the Parties' current expectations as to the effect of clause 20.5(f)(i). The Parties agree that the tariff levels depicted in Schedule 9 are based on certain assumptions about the inputs and methodology for determining tariffs under the approach approved by the ERA in the Reference Tariff Policy referred to in clause 20.5(f)(i), and that the actual tariff levels payable under clause 20.5(d) may differ from the tariff levels shown in Schedule 9 if the inputs and methodology are different at 2016. The Parties acknowledge that this clause 20.5 and Schedule 9 may be provided to the Regulator in making any submission referred to in clause 20.5(f)(iii) or clause 20.5(f)(iv);
 - iii) Subject to clause 20.5(f)(v), the Operator agrees as soon as it considers is appropriate after 27 October 2004 to endeavour as a Reasonable and Prudent Person to have the Regulator approve amendments to the Access Arrangement that have the following outcomes (and the Shipper agrees to support those amendments (provided such amendments are not inconsistent with the intention of the Parties as at the date of this Contract in respect of the Firm Service Reference Tariff as of 1 January 2016, as reflected by Schedule 9) if necessary by making written submissions to the Regulator):
 - A. the Full Haul T1 Service to be included as a Reference Service;
 - B. the Base T1 Tariff as adjusted under clauses 20.5(b) and 20.5(c) to be the Reference Tariff for the Reference Service referred to in clause 20.5(f)(iii)A for the periods identified in clauses 20.5(b) and 20.5(c); and
 - C. the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iii)B to be 80%/20%.
 - iv) Subject to clause 20.5(f)(v), the Parties must not make any submission to the Regulator which is inconsistent with the following outcomes:
 - A. the tariff described in clause 20.5(f)(i) becoming the Reference Tariff for the Reference Service described in clause 20.5(f)(iii)A from 1 January 2016; and
 - B. the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) for the Reference Tariff referred to in clause 20.5(f)(iv)A to be 80%/20%.
 - v) The Parties agree that should the regulatory methodology for calculation of the Reference Tariff assumed in Schedule 9 be one that is considered by the Regulator not to be appropriate for use on the DBNGP from 1 January 2016 or is not consistent with pipeline regulatory practice

within Australia, the Parties will endeavour as Reasonable and Prudent Persons to work together to achieve a tariff path outcome which as close as possible delivers the outcomes described in clause 20.5(f)(ii). However, the Parties agree that nothing in this clause 20.5(f), requires the Parties to make a submission which:

- A. means the Operator is unable to recoup its full operating and capital costs to the full extent permitted by the Gas Access Code in Schedule 2 to the Access Regime (Code);
 - B. means the return on capital (debt and equity) to the Operator is outside the range permitted by the Code having regard to reasonable market requirements, including those deemed by the relevant Regulator as being reasonable, at the relevant point in time;
 - C. means the Operator is unable to perform any of its obligations under the Alcoa Exempt Contract; or
 - D. is otherwise inconsistent with the provisions of the Code; and
- vi) The Parties intend this clause 20.5 to have effect as a contractual right for the purposes of clauses 2.47 and, if applicable, 6.18(c) of the Gas Access Code in Schedule 2 to the Access Regime.
- g) If on 1 January 2016, and during any time thereafter, the capacity reservation charge/commodity charge split (i.e. fixed/variable charge split) is not 80%/20% of the Firm Service Reference Tariff, the capacity reservation charge/commodity charge split of the Base T1 Tariff will be the same percentage split as the Firm Service Reference Tariff at and during that time.
34. As specified in subclause 20.5(f)(ii) of the previous SSC, Schedule 9 indicated the expectation of the parties, at the time the previous SSC was signed (2004), about the tariff in 2016 based on the access arrangement and law that was in force at the time. The diagram referred to in subclause 20.5(f)(ii) is reproduced in Figure 1 below.¹⁶

¹⁶ Following the publication of the Draft Decision, DBP advised the Authority of a number of matters that it considered to be “errors of fact” (letter of 8 January 2016). Having considered these “errors of fact” the Authority has clarified the drafting of this paragraph.

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

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

35. In a submission to the Authority, DBP notes that, during the first half of 2014, it engaged all firm full haul shippers in negotiations to renegotiate their SSCs. The majority of shippers agreed to amend their contracts in a number of respects. The key amendments identified by DBP are as follows:¹⁷
- All Participating Shippers agreed to extend the period during which the tariff payable under the contract sits outside the regulatory framework of the NGL (WA) and NGR. Effective from 1 July 2014, the parties have agreed to a fixed tariff and tariff path until 1 January 2021 at which time, the tariff under the contract will revert to the reference tariff for the reference service that is the most similar to the service provided under the SSCs.
 - Certain Participating Shippers also were allowed to reduce the amount of contracted capacity - effectively bringing forward relinquishment rights that they would have had from 1 January 2016 had the SSCs not been amended. These reductions - totalling ██████████ of contracted capacity (on an annual average basis) took effect mostly from 1 July 2014.
 - All Participating Shippers agreed to defer the right to relinquish capacity that they would have had from 1 January 2016 had the SSCs not been amended. This right has largely been deferred to 1 January 2021.
36. The Authority notes the DUET Group ASX release on 7 August 2014¹⁸ that indicates that approximately 85 per cent of the aggregate firm full haul contracted capacity had been recontracted, resulting in less than 15 per cent of DBP's firm full haul contracted capacity being subject to the 2016 regulatory tariff determination. Furthermore, the tariff payable under the current SSCs represented an initial reduction of

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

¹⁸ Duet Group, ASX Release "DBP recontracts with its shippers", 7 August 2014, <http://www.duet.net.au/ASX-releases/2014/DBP-recontracts-with-its-Shippers.aspx> (accessed 26 November 2015).

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

37. Consistent with previous decisions, the Authority considers that the existence and terms of the SSC do not have a direct bearing on the access arrangement for the DBNGP. However, the Authority has regard to the terms of the SSC as evidence relevant to the Authority's assessment of some elements of DBP's original and amended access arrangement proposals, such as the demand for certain pipeline services and the terms and conditions to apply under the access arrangement. In this regard, the Authority notes that DBP has expressed its intentions to review the SSC following the access arrangement review/approval process to:
- identify and incorporate any potential omissions from the SSC that have been identified by the Authority;¹⁹ and
 - make relevant modifications to the SSC (notwithstanding the dichotomy of services offered under the SSC and reference service terms and conditions).²⁰

Content of an Access Arrangement

38. Under section 2 of the NGL(WA), a "full access arrangement" means an access arrangement that provides for price or revenue regulation as required by the NGR; and deals with all other matters for which the NGR require provisions to be made in an access arrangement. The required content of a full access arrangement proposal is specified in rule 48 of the NGR.

48. Requirements for full access arrangement (and full access arrangement proposal)

- (1) A full access arrangement must:
- (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected; and
 - (b) describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and
 - (c) specify the reference services; and
 - (d) specify for each reference service:
 - (i) the reference tariff; and
 - (ii) the other terms and conditions on which the reference service will be provided; and
 - (e) if the access arrangement is to contain queuing requirements – set out the queuing requirements; and
 - (f) set out the capacity trading requirements; and
 - (g) set out the extension and expansion requirements; and

¹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 12, paragraph 2.52.

²⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 28, paragraph 2.160 and p. 30, paragraph 2.174.

- (h) state the terms and conditions for changing receipt and delivery points; and
 - (i) if there is to be a review submission date – state the review submission date and the revision commencement date; and
 - (j) if there is to be an expiry date – state the expiry date.
 - (2) This rule extends to an access arrangement proposal consisting of a proposed full access arrangement.
- 39. Pursuant to rule 43 of the NGR, the service provider must submit access arrangement information with a full access arrangement proposal, and that must include the information as specifically required in the NGL(WA).²¹ Access arrangement information is reasonably necessary for users to understand the background to the access arrangement or the access arrangement proposal, and the basis and derivation of various elements of the access arrangement or the access arrangement proposal.²²
- 40. The DBNGP access arrangement is a full access arrangement, for which a proposed revised access arrangement and revised access arrangement information have been submitted by DBP.²³ The reasons for the Authority’s Final Decision address elements of DBP’s amended proposal in the following order:
 - A description of the pipeline;
 - Pipeline services, including the specification of reference services;
 - Revenue requirements;
 - Reference tariffs; and
 - Non-tariff components.

²¹ Rule 42(2) of the NGR.

²² Rule 42(1) of the NGR.

²³ DBNGP (WA) Transmission Pty Ltd, *DBNGP Access Arrangement – Access Arrangement Revision Proposal*, 31 December 2014. All related revision proposal documents submitted by DBP are available from the Economic Regulation Authority website at: <https://www.erawa.com.au/gas/gas-access/dampier-to-bunbury-natural-gas-pipeline/access-arrangements/proposed-access-arrangement-for-period-2016-2020>

Pipeline Description

Regulatory Requirements

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

DBP's Original Proposal

42. Clause 2 of the proposed revised access arrangement identified the DBNGP as the pipeline to which the access arrangement relates. The DBNGP was indicated to comprise assets that are described in the following Pipeline Licences (**PL**) issued under the *Petroleum Pipelines Act 1969 (WA)*, as amended or varied before the date the revisions to the access arrangement commence to have effect under clause 14.1 of the access arrangement.
- Pipeline Licence 40;
 - Pipeline Licence 41;
 - Pipeline Licence 47;
 - Pipeline Licence 69;
 - Pipeline Licence 91;
 - Pipeline Licence 94;
 - Pipeline Licence 95;
 - Pipeline Licence 100;
 - Pipeline Licence 101; and
 - the Burrup Extension Pipeline (**BEP**) Capacity.
43. A detailed description of the DBNGP was provided at Attachment 1 to the proposed revised access arrangement,²⁴ with maps showing the pipeline system annexed to the access arrangement information. Further, DBP indicated that a description of the pipeline was also available from DBP's website at <http://www.dbp.net.au>.
44. DBP's original proposal included changing the description of the pipeline with the addition of assets described in PL 91, PL 94, PL 95, PL 100 and PL 101. DBP indicated the part(s) of the DBNGP to which each of the licences relate as follows.²⁵
- New Pipeline Licence 91 refers to the section of DBNGP Loop 0 (constructed as part of the Stage 5B expansion project) that crosses the Fortescue River.²⁶

²⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 1 – Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014)*.

²⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, ERA05 and ERA06 Response – Supporting Submission 36*, 2 October 2015.

²⁶ DBP further indicate that "A New Pipeline Licence was required to be granted for this crossing because the loop had to be constructed outside the confines of the DBNGP Corridor because of the constant

- New Pipeline Licence 94 refers to the Mondarra storage facility interconnect pipeline which connects the APA Mondarra Storage Facility Meter Station outlet pipe with the western boundary of the DBNGP corridor.
 - New Pipeline Licence 95 refers to the Brown Range Interconnect Gas Pipeline connecting the DBNGP to the Brown Range outlet point and pig receiver compound.
 - New Pipeline Licence 100 refers to a short lateral pipe referred to as 'Wagerup Cogeneration Meter Station' connecting an offtake pipe within PL 40 with the Alcoa Wagerup Meter Station.
 - New Pipeline Licence 101 refers to what is known as 'Pinjarra Cogeneration Meter Station' which connects an offtake pipe within PL40 with the Alcoa Pinjarra Meter Station.
45. DBP further indicated that the above pipeline assets are proposed to form part of the covered pipeline. However, with the exception of the assets regulated by PL 91, the capital costs associated with each set of assets are not proposed to be added to the capital base as conforming capital expenditure. DBP indicated that this is because the capital costs were contributed to by shippers (as capital contributions) under third party agreements with those shippers.²⁷

Submissions

46. No submissions were made to the Authority that addressed the description of the pipeline.

Draft Decision

47. The Authority observed that the DBNGP description document attached to the proposed revised access arrangement was dated 1 January 2013 and was inclusive of an August 2014 interim update. It appeared to be the same DBNGP description document that was available from DBP's website, however, the website version was dated 1 January 2015.²⁸
48. The Authority indicated that it was aware the information contained within DBP's proposed revised access arrangement was prepared sometime in advance to meet the access arrangement review submission date of 1 January 2015, and that documents on DBP's website are maintained outside of the access arrangement regulatory process. For this reason the Authority accepted that the DBNGP description document submitted as part of the proposed revised access arrangement on 31 December 2014 and the DBNGP description document available on DBP's website may differ.
49. The Authority considered that the DBNGP description document used to describe the DBNGP in detail for the purpose of the access arrangement should be the most

movement, over time, of the bed and banks of the Fortescue River at the original pipeline location. PL 40 (being the original pipeline) only covers the part of the DBNGP system that lies within the geographical bounds of the DBNGP Corridor”.

²⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, ERA05 and ERA06 Response – Supporting Submission 36*, 2 October 2015, p. 3.

²⁸ DBNGP (WA) Transmission Pty Ltd, *Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2015*, <http://www.dbp.net.au>, (accessed 8 December 2015).

current and up-to-date version available at the time the access arrangement is approved. The Authority required the following amendment:

Required Amendment 1

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

DBP’s Amended Proposal

50. In response to the Authority’s Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 1.²⁹ In addition, DBP has indicated that it accepts the Authority’s requirement at (Draft Decision) Required Amendment 3 for it to include a reference to the location of main line value 31 (MLV31) in its detailed description and map of the DBNGP.³⁰
51. In its amended proposal, DBP has updated the wording of clause 2.2 of the amended access arrangement and the version of the DBNGP description document that is provided at Attachment 1 to the access arrangement.³¹ This description document contains a reference to the location of MLV31 on the schematic of the DBNGP. Reference is also made to the description of the DBNGP being available on DBP’s website.³²

Further Submissions

52. No further submissions were made to the Authority that addressed the description of the pipeline.

Considerations of the Authority

53. The Authority notes that whilst Attachment 1 is referenced at clause 2.2 of the amended access arrangement (and subsequently provided as a separate document to the access arrangement), there is no reference to Attachment 1 in the access arrangement “Table of Contents”. The Authority considers that any (separate) attachments to the amended access arrangement should be documented in its table of contents to ensure completeness and assist with reader useability. Notwithstanding this formatting anomaly, the Authority is satisfied that DBP’s amended proposal incorporates the required amendment (Draft Decision RA 1).

²⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 7.

³⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 7.

³¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 1 “Description of the DBNGP System as at 1 January 2016”*.

³² DBP website: <http://www.dbp.net.au>

Pipeline Services

Regulatory Requirements

55. A “pipeline service” is defined in section 2 of the NGL(WA).

Pipeline service means –

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

56. Under rule 48(1) of the NGR, a full access arrangement proposal must, *inter alia*:

- (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected; and
- (b) describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and
- (c) specify the reference services; and
- (d) specify for each reference service:
 - (i) the reference tariff; and
 - (ii) the other terms and conditions on which the reference service will be provided.

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

- (1) A full access arrangement must specify as a reference service:
 - (a) at least one pipeline service that is likely to be sought by a significant part of the market; and
 - (b) any other pipeline service that is likely to be sought by a significant part of the market and which the [ERA] considers should be specified as a reference service.

58. The Authority is required to take into account the revenue and pricing principles when deciding whether to specify a pipeline service as a reference service.³³ The revenue and pricing principles are set out in sections 24(2) to 24(7) of the NGL(WA) and are considered in detail elsewhere in this decision document.³⁴

³³ Rule 101(2) of the NGR.

³⁴ Refer “Total Revenue” and “Reference Tariffs” chapters of this Final Decision (commencing page 68 and 173 respectively).

DBP's Original Proposal

59. Clause 3.1 of the proposed revised access arrangement included a description of the pipeline services to be offered by means of the DBNGP (as defined in clause 15 of the proposed revised access arrangement). These pipeline services included three reference services and several non-reference services. Detailed descriptions of each of the pipeline services were provided in clauses 3.3 to 3.6 of the proposed revised access arrangement. DBP also provided additional information in a separate supporting submission justifying the inclusion of the proposed reference services.³⁵ The terms and conditions relating to the reference services were outlined in clause 4 and Attachments 2, 3 and 4 of the proposed revised access arrangement.³⁶
60. The proposed reference services included:
- a full haul T1 service (the “**T1 Service**”);
 - a part haul P1 service (the “**P1 Service**”); and
 - a back haul B1 service (the “**B1 Service**”).
61. DBP's proposal included several changes to the three proposed reference services described in the current access arrangement applying for AA3. These were:
- The reference tariffs for each reference service (the “**T1 Tariff**”, “**P1 Tariff**” and “**B1 Tariff**”) were changed to specify that the tariffs would come into effect on 1 January 2016.
 - The T1 Service was described as a full haul service and defined in clause 15 of the proposed revised access arrangement. The definition of “full haul service” was changed from that in AA3 to specify that it is a forward haul pipeline service where the outlet point is downstream of compressor station 9 (**CS9**), regardless of the location of the inlet point, but does not include back haul. In contrast, the definition of “full haul service” in AA3 specifies that the “inlet point” is upstream of the main line valve 31 (**MLV31**) on the DBNGP and there is no reference to “back haul”.
 - The P1 Service was described as a part haul service and defined in clause 15 of the proposed revised access arrangement. The definition of “part haul service” was changed from that in AA3 to specify that it is a service to provide forward haul on the DBNGP where the outlet point is upstream of CS9, regardless of the location of the inlet³⁷ point, but does not include back haul. In contrast, the definition of “part haul service” in AA3 is inclusive and refers to the position of the “inlet point” in relation to MLV31 and CS9; there is also no reference to “back haul”.
 - The description of the B1 Service was changed from that in AA3 to specify that the service is a back haul service in which the operator delivers a quantity of

³⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014.

³⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Services Terms and Conditions; Attachment 3 – P1 Reference Services Terms and Conditions; Attachment 4 – B1 Reference Services Terms and Conditions*.

³⁷ DBP's access arrangement proposal states “outlet” as opposed to “inlet”. The Authority has confirmed with DBP (email response of 30 November 2015, “*Re: Information Request – ERA11*”) that this is a typographical error and the correct reference should be to “inlet”.

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

62. Paragraphs 4.5 to 4.16 of DBP's supporting submission provided justification for DBP's proposed change to the definition of part haul.³⁸ DBP submitted that the following original definition of part haul, which has been the basis of the part haul service on the DBNGP since the 1990s, should be reinstated.

[Part Haul means] Gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Outlet Point^[39], but does not include Back Haul.

63. DBP submitted that there was no evidence of significant demand in the market for the P1 Service on the basis of the current definition of part haul, but it was demonstrably evident that there was demand in the market for a P1 Service that was provided on the basis of the original definition (as set out above).⁴⁰ DBP's reasoning for the original definition to be reinstated was as follows:⁴¹

- DBP has not had a single access request for the P1 Service with the [current part haul definition⁴²], nor does it expect to receive future requests.
- During the [c]urrent [third access arrangement] [p]eriod, there have been four access requests for Part Haul services inclusive of the Original Definition of Part Haul.
- Shippers who utilise the MGSF [Mondarra Gas Storage Facility] who have existing contracted capacity under their T1 Standard Shipper Contracts continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement...
- Additionally, the majority of shippers (approximately 85 per cent) with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and are therefore unlikely to use any other service to use the MGSF during the [p]roposed [access arrangement] [p]eriod. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF.
- To the extent that an existing or prospective shipper would like to contract for a P1 Service in the [access arrangement] period, the existence of the Parmelia Gas Pipeline ensures that competition exists for services that support the MGSF and therefore this will continue to drive efficient outcomes for consumers for that particular form of service on the DBNGP.

³⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, pp. 6-8.

³⁹ DBP's access arrangement proposal states "outlet point" as opposed to "inlet point". The Authority has confirmed with DBP (email response of 30 November 2015, "Re: Information Request – ERA11") that this is a typographical error and the correct reference should be to "inlet point".

⁴⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.13, p. 7.

⁴¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.14, p. 7.

⁴² The current (AA3) definition of part haul is "a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP".

64. DBP's proposed non-reference services would be offered subject to either the availability of capacity (as defined in section 15 of the proposed revised access arrangement) or operational availability.⁴³
65. The non-reference services that would be subject to the availability of capacity included:
- spot capacity service;
 - park and loan service; and
 - seasonal service.
66. The non-reference services that would be subject to operational availability included:
- metering and temperature service;
 - odourisation service;
 - peaking service;
 - co-mingling service;
 - pipeline impact agreement service; and
 - interconnection service.⁴⁴
67. A third non-reference service proposed by DBP was a pipeline service provided under access contracts entered into prior to the commencement of the access arrangement period.⁴⁵
68. DBP's proposal in respect of the non-reference services included a change to the principles of the spot capacity service at clause 3.6(b)(vii) of the proposed revised access arrangement. The change related to the bidding of spot capacity and specified that if an operator entity, Alcoa or a related body corporate of Alcoa, bids and is allocated spot capacity, then the operator entity must indicate this on its customer reporting system without disclosing the identity of the operator entity, Alcoa or a related body corporate of Alcoa. The proposed clause 3.6(b)(vii) also removed references to WestNet.

Submissions

69. WESCEF raised concerns over DBP's proposal to change the definition of "part haul" and submitted that the change should not be approved.⁴⁶ WESCEF was of the view that:
- ... there is no justification for a shipper to be required to pay a full haul tariff when it wishes to obtain a forward haul service to transfer gas only part of the way down the

⁴³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 5.1, p. 9.

⁴⁴ The Draft Decision (at paragraph 58, p. 18) incorrectly listed the non-reference services to be subject to operational availability as: peaking services; metering information service; pressure and temperature control service; odourisation service; co-mingling service; pipeline impact agreement service; and interconnection service.

⁴⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 5.1(c), p. 9.

⁴⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 3.

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

70. WESCEF also noted that, based on current and previous submissions, existing and potential shippers believe that there was a likelihood of demand for such a service, including services for:
- the transfer of gas from upstream of MLV31 to the MGSF; and
 - the transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9.
71. In its submission to the Authority, CPMM stated that it had no objection to the proposed amendment to the definition of "part haul".⁴⁷

Draft Decision

Reference Services

72. In assessing DBP’s proposal to amend the reference services to be offered under a revised access arrangement, the Authority considered DBP’s supporting submission that provided additional information and reasoning for the proposed amendments.⁴⁸ The Authority also considered the submissions from WESCEF and CPMM.
73. The reference tariff for each reference service (the T1 Tariff, P1 Tariff and B1 Tariff) was specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the proposed revised access arrangement. DBP amended each reference tariff to be applicable as at 1 January 2016. The actual value and calculation of DBP’s proposed reference tariffs was discussed elsewhere in the Draft Decision. The Authority did not approve the value of the reference tariffs proposed by DBP. Clauses 3.3(c), 3.4(c) and 3.5(c) of the approved revised access arrangement would need to be amended to reflect this. The Authority required the following amendment:

Required Amendment 2

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

Full haul T1 Service

74. Clause 3.3 of the proposed revised access arrangement described the T1 Service as being a full haul service. DBP proposed the following change to the definition of “full haul” at clause 15 (Definitions) of the proposed revised access arrangement.

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

⁴⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 34.

⁴⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014.

75. No third parties made submissions on DBP's proposed change to the definition of "full haul".
76. The Authority noted that DBP's proposed amendments to the definition of "full haul" were as follows, and that there was no clear rationale for the proposed changes:
- The insertion of the word "Service" to make the term read "*Full Haul Service means...*".
 - The insertion of the defined term "Forward Haul" to replace some of the existing wording that is encompassed by the definition of forward haul.
 - The deletion of the requirement for the receipt point to be upstream of MLV31.
77. With respect to DBP's proposal to add the word "*Service*" to the defined term (i.e. "*Full Haul Service*" not just "*Full Haul*"), it appeared that the insertion of the word "service" was made for consistency with the terms "part haul service" and "back haul service". Whilst the proposed amendment made these terms consistent within clause 15 of the proposed revised access arrangement, the Authority noted that the definition in the Standard Shipper Contract (**SSC**) was for "Full Haul" only.
78. With respect to inserting the defined term "forward haul" to replace some of the existing wording that is encompassed by the definition of forward haul, the Authority noted that to this extent the proposed amendment may simplify the definition of full haul by eliminating words duplicated in the definition of forward haul. However, by incorporating the defined term "forward haul" within the definition of "full haul", the Authority was of the view that DBP's proposed addition of the closing words "*but does not include Back Haul*" was not necessary.
79. With respect to deleting the requirement for the receipt point to be upstream of MLV31 so that the inlet point can now be anywhere on the DBNGP, so long as the service remains forward haul (and not back haul), the Authority noted that this change was consistent with the definition of "full haul" in the SSC. DBP's proposed deletion of the requirement for the receipt point to be upstream of MLV31 means that the full haul service would effectively include any forward haul so long as the outlet point is downstream of CS9. That change would create a risk of overlap with the existing definition of "part haul", which currently includes forward hauls from an inlet point downstream of MLV31 to an outlet point downstream of CS9. Whilst DBP proposed amending the definition of "part haul" to remove deliveries downstream of CS9, the Authority rejected this proposed amendment (refer paragraphs 81 to 92 below). Given the Authority's decision to reject DBP's proposed amendments to the definition of part haul, and in the absence of any justification for the proposed amendment to delete the requirement for the receipt point to be upstream of MLV31, the Authority required the definition of full haul to maintain this requirement (i.e. for the receipt point to be upstream of MLV31).
80. The Authority noted that there was no explicit reference to the location of MLV31 within the pipeline description document that is used to describe (and identify) the DBNGP for the purpose of rule 48(1)(a) of the NGR.⁴⁹ Absent such a reference, it could be difficult for prospective users to know what is meant by "full haul" under the definition required by the Authority. Hence the Authority required DBP to make it

⁴⁹ The description of the pipeline (i.e. the DBNGP) is discussed at paragraph 41 and following of the Draft Decision.

clear in its description of the DBNGP where MLV31 is located on the DBNGP and required the following amendment to the proposed revised access arrangement:

Required Amendment 3

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

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

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

Part Haul P1 Service

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

Part Haul Service means a service to provide Forward Haul on the DBNGP which is not a ~~full haul~~Full Haul service and ~~which includes, without limitation, Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP, Services where the Inlet Point is downstream~~regardless of the location of main line valve 31 on the DBNGP and the Outlet [Inlet⁵⁰] Point ~~is downstream of Compressor Station 9 on the DBNGP, and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP,~~ but does not include Back Haul.

82. The Authority noted that the proposed change, if approved, would reinstate the original definition for part haul service that was proposed by DBP (and subsequently not approved by the Authority) in its proposed revised access arrangement for AA3. DBP detailed its reasoning for the proposed change to the definition of part haul service in paragraphs 4.5 to 4.16 of its supporting submission, as summarised at paragraphs 62 and 63 above.
83. DBP also submitted:⁵¹
- The change in definition underpinning the P1 reference service is fundamentally different to the SSC P1 service that operates on the DBNGP. Further background was provided by DBP in the Submission 73 provided to the ERA on 13 December 2011 - a copy of which is attached as Appendix A;
 - Utilisation of the P1 Service as defined under the Current ERA Definition would reduce the amount of T1 capacity available on the DBNGP and therefore is not in the interests of consumers of natural gas;

⁵⁰ The Authority has confirmed with DBP (email response of 30 November 2015, “Re: Information Request – ERA11”) that the reference to “Outlet” point is a typographical error and the correct reference should be to “Inlet” so that the proposed definition to Part Haul Service means “a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul”.

⁵¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 4.15, pp. 7-8.

- Utilisation of the P1 Service as defined under the Current ERA Definition would increase the required fuel gas required on the DBNGP for the [access arrangement] [p]eriod;
- The current ERA Definition has brought uncertainty because a part haul service with an outlet point downstream of CS9 will fall within the definitions of both “part haul” and “full haul” services. While the Current ERA Definition states that “part haul service” is a service “to provide Forward Haul on the DBNGP which is not a full haul service” , it goes on to list a number of examples, one of which is a service with an outlet point downstream of CS9. Yet the definition of full haul service then also defines a service as being one with an outlet point downstream of CS9;
- If DBP were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, it would put DBP in breach of one of its key obligations owed to at least one shipper under an existing contract - being to not discriminate in respect of price between shippers who have outlet points downstream of CS9 [herein referred to as DBP’s “**Discrimination Claim**”]; and
- If DBP were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, this could also trigger most favoured nation (or MFN) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers [herein referred to as DBP’s “**MFN Claim**”].

84. In its submission to the Authority, WESCEF submitted that:⁵²

[s]ubmissions made historically, and now, make it clear that existing and potential shippers believe that there is a likelihood of demand for such a service, including for the transfer of gas from upstream of MLV31 to the Mondarra Gas Storage Facility (“MGSF”) and the transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9.

85. Clearly, there was disagreement between DBP and WESCEF about whether the current definition of the “part haul” service (including deliveries downstream of CS9) satisfied the requirements of rule 101 of the NGR to qualify as a “reference service”.
86. The Authority was generally of the view that having a wider, more flexible part haul service that included the ability for deliveries downstream of CS9 was, absent other evidence to the contrary, more likely than not to promote the efficient operation and use of natural gas services consistent with the NGO and revenue and pricing principles. The Authority also noted that, even if (as DBP claims) there is no evidence that a significant part of the market has so far sought the part haul service in its current form, that does not necessarily mean that this service is not “likely to be sought by a significant part of the market” (as required by rule 101 of the NGR and claimed by WESCEF).
87. With regard to DBP’s claim that the definition of part haul service in the current access arrangement “is confusing”, the Authority considered that the definition was sufficiently clear in its meaning. If improvements were to be made to the definition of part haul service to enhance and clarify the meaning, such improvements should be made without substantially altering the more flexible nature of the current definition of the part haul service.

⁵² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 3.

88. The Authority was mindful that DBP's proposed change would effectively require shippers to take and pay for a full haul service (or else expose shippers to paying for an unregulated non-reference part haul service) when they only need to transport gas partway down the pipeline for deliveries downstream of CS9. Operating the pipeline in that way could result in added unnecessary expense for shippers, which could flow through to gas consumers. On that basis, and absent other evidence to the contrary, the Authority considered there was a higher risk of DBP's proposed change being contrary to the NGO than if the existing definition of "part haul" service in the current access arrangement for the third access arrangement (AA3) period was retained.
89. With respect to DBP's "Discrimination Claim" and "MFN Claim" as at paragraph 83 above, the Authority noted section 321(1) of the NGL(WA) would, in effect, prohibit DBP's access arrangement having the *"effect of depriving a person of a relevant protected contractual right"*. A "relevant protected contractual right" is in effect a pre-existing contractual right "other than a relevant exclusivity right". A "relevant exclusivity right" is defined in section 321 to mean an express contractual right that arose on or after 30 March 1995 that —
- (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or
 - (b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,
- but does not include a user's contractual right to obtain a certain amount of pipeline services.
90. With regard to DBP's Discrimination Claim, DBP did not provide sufficient information to enable the Authority to be satisfied that:
- it would "discriminate" against the shipper with the non-discrimination right if a P1 Service customer were offered a price for part haul delivery to an outlet point downstream of CS9 that is different to the price payable by the pre-existing right holder for its service;
 - the non-discrimination right that DBP owes to the existing shipper is a "relevant protected contractual right" within the meaning of that term in section 321(2) of the NGL(WA). If the non-discrimination right DBP claims it owes to the customer arose on or after 30 March 1995, then it would be a "relevant exclusivity right" because it would limit or control DBP's ability to supply the P1 Service to third party customers by effectively limiting or controlling DBP's pricing to those customers. If so, the non-discrimination right would not be within the definition of a "relevant protected contractual right" and would not be protected by section 321(1) of the NGL(WA); or
 - the access arrangement would in fact have the effect of "depriving" the holder of the pre-existing non-discrimination right.
91. Similarly, with regard to DBP's MFN Claim, the Authority was of the view that:
- DBP did not provided adequate justification for its claim that if DBP were required to enter into a contract for a P1 Service with a contracted outlet point downstream of CS9, on the basis of the current (ERA) definition, this could trigger most favoured nation (or **MFN**) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers;

- DBP would need to show more clearly how entering into a contract for a P1 Service with a contracted outlet point downstream of CS9 would trigger these MFN arrangements;
 - DBP would need to show more clearly what the consequences of triggering the MFN arrangements would actually be;
 - if the MFN "arrangements" are express contractual rights that arose on or after 30 March 1995 and would have the consequence (if triggered) of "limiting or controlling" DBP's ability to supply pipeline services to persons who are not parties to the contract, then they may be "relevant exclusivity rights" (as defined in section 321(2) of the NGL(WA)). That in turn would mean that the MFN "arrangements" are not protected as "relevant protected contractual rights" by section 321(1) of the NGL(WA). DBP did not provide adequate information to establish whether or not this is the case; and
 - even if DBP could establish that the MFN "arrangements" are "relevant protected contractual rights", for section 321(1) protection to apply, DBP would need to show more clearly how the access arrangement had the "effect of depriving" the holders of the MFN rights of those rights. In this regard, if as DBP claims, the access arrangement would merely "trigger" the MFN rights, DBP did not establish how that would in any way have the "effect of depriving" the MFN rights from those who hold them.
92. Accordingly, having regard to the submissions of interested parties and for the reasons provided above, the Authority considered that DBP did not provide adequate justification for the proposed change. Hence, the Authority was of the view that DBP's proposed amendments to the definition of "part haul service" should not be accepted, and required the following amendment to the proposed revised access arrangement:

Required Amendment 4

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

"a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation: Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP; Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP."

Back Haul B1 Service

93. Clause 3.5 of the proposed revised access arrangement specified the B1 Service was a back haul service, with "back haul" defined in section 15 (Definitions) of the proposed revised access arrangement as "*the haulage of gas from [an] inlet point which is downstream of the outlet point*". DBP proposed changes to clause 3.5(a)(ii) of the proposed revised access arrangement to specify that the outlet point was an outlet point located upstream of the relevant inlet point.

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

...

- (ii) delivers to the Shipper at ~~one or more~~ an Outlet Points Point located upstream of the relevant Inlet Point on that Day a quantity of gas not exceeding the Shipper's

MDQ, without interruption or curtailment except as permitted by the Access Contract.

94. The Authority noted that no changes were proposed to the definition of the term “back haul” in clause 15 of the proposed revised access arrangement. The Authority was of the view that the proposed change to clause 3.5(a)(ii) of the proposed revised access arrangement to substitute the words “one or more” with words “*an [Outlet Point] located upstream of the relevant Inlet Point...*” aimed to clarify that the B1 Service is a back haul service whereby gas is delivered to the shipper from an inlet point that is located downstream of the outlet point (based on the definition of back haul), or put another way gas is delivered to the shipper at an outlet point that is located upstream of the inlet point.

Non-Reference Services

95. DBP proposed to include the same non-reference services that are currently included in the access arrangement for the third access arrangement (AA3) period. The “spot capacity service” was one such service and was described in clause 3.6(a) of the proposed revised access arrangement as “*a pipeline service available on an interruptible basis (and at varying levels of interruptibility), subject to availability of capacity in accordance with [eight] principles*”.
96. The eight principles applying to a spot capacity service were specified in clause 3.6(b) of the proposed revised access arrangement. DBP proposed to amend the principle specified in clause 3.6(b)(vii) relating to the bidding and reporting of spot capacity as follows.
- b) Until otherwise advised by Operator, the following principles apply to Spot Capacity and Spot Transactions (as the case may be) (which principles form the basis of the Spot Market Rules):
- ...
- vii) Operator will not bid for Spot Capacity and if an Operator Entity, Alcoa, ~~WestNet~~ or a Related Body Corporate of ~~either Alcoa or WestNet~~ bids and is allocated Spot Capacity, Operator must indicate on its electronic customer reporting system that the relevant Spot Capacity has been allocated to an Operator Entity, Alcoa or a Related Body Corporate of Alcoa without disclosing the identity of the Operator Entity, Alcoa or a Related Body Corporate of Alcoa.
97. The proposed amendment specified that if an operator entity, Alcoa or a related body corporate of Alcoa bids and is allocated spot capacity, then the operator must indicate this on its electronic customer reporting system without disclosing the identity of the bidder. The terms of clause 3.6(b)(vii) of the current (AA3) access arrangement suggested that only the operator entity will be allocated spot capacity if either it, Alcoa or a related body corporate of Alcoa bids. In other words, the current terms do not distinguish between the operator entity or Alcoa or a related body corporate of Alcoa being allocated spot capacity.
98. Further, references to WestNet were removed from clause 3.6(b)(vii) of the proposed revised access arrangement.

99. The Authority was of the understanding that WestNet⁵³ was from October 2004 until July 2011 a part owner of the DBNGP. The need to include a reference to WestNet in clause 3.6(b)(vii) would have ceased when WestNet divested its interest in the DBNGP. Given this, the Authority accepted DBP's proposed amendments to clause 3.6(b)(vii) to remove all references to WestNet.

Bundling of Services

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

Rule 109(1) of the NGR states:

“A scheme service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.”

101. The Authority was not aware of any bundling of services by DBP, and assuming this to be the case, was satisfied the access arrangement met the criteria of rule 109(1).

DBP's Amended Proposal

102. DBP does not accept the Authority's (Draft Decision) required amendments and instead addresses the Authority's decisions and reasoning for not approving its proposed amendments to:

- amend the value of the T1 Tariff, P1 Tariff and B1 Tariff as specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the access arrangement (Required Amendment 2);
- change the nature of the full haul (“T1”) service by amending the definition of “full haul” (Required Amendment 3); and
- change the nature of the part haul (“P1”) service by amending the definition of “part haul” (Required Amendment 4).

Reference Service Tariffs

103. In response to the Authority's Draft Decision, DBP indicates that it does not accept (Draft Decision) Required Amendment 2.⁵⁴ DBP advises that its position is a consequence of:⁵⁵

- Not being able to presently ascertain the “reference tariffs approved by the ERA in its Final Decision”; and
- DBP not accepting many of the amendments required in the Draft Decision relating to the building blocks used to estimate the Total Revenue and volume forecasts.

104. DBP further advises that it has “*calculated reference tariffs in accordance with the reference service tariff calculation in the revised version of the [access arrangement*

⁵³ WestNet Infrastructure Group Ltd, ABN 40 087 857 001.

⁵⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 7.

⁵⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, paragraph 10.2.

information] submitted to the ERA as part of DBP's Amended [Access Arrangement] Proposal in response to the Draft Decision".⁵⁶

105. Accordingly, DBP has updated the T1 Tariff, P1 Tariff and B1 Tariff, as specified in clauses 3.3(c), 3.4(c) and 3.5(d) respectively, in the amended access arrangement. In addition, and relating to the P1 and B1 Tariffs only, DBP specifies (at new clauses 3.4(d) and 3.5(d)) that:

3.4(d) Reference to 'km' is the distance, specified in the DBNGP Pipeline Description from I1 -01 to the outlet point at which shipper has contracted capacity.

...

3.5(d) Reference to 'km' is the distance, specified in the DBNGP Pipeline Description from the inlet point to the outlet point at which shipper has contracted capacity.

Full Haul Service

106. In response to the Authority's Draft Decision, DBP indicates that it does not accept (Draft Decision) Required Amendment 3.⁵⁷ In support of its position, DBP addresses the following matters relating to the reasoning of the Authority's decision in its supporting submission.⁵⁸

- DBP has not provided any clear rationale for the proposed change (DBP supporting paragraphs 2.4 to 2.6)
- The inclusion of the word "Service" needs to be justified (DBP supporting paragraphs 2.7 to 2.10)
- The use of the phrase "but does not include Back Haul" is unnecessary (DBP supporting paragraphs 2.11 to 2.13)
- Deleting the reference to MLV31 would create an overlap with the Authority's required definition of Part Haul (DBP supporting paragraphs 2.14 to 2.17)

Part Haul Service

107. In response to the Authority's Draft Decision, DBP indicates that it does not accept (Draft Decision) Required Amendment 4.⁵⁹ In support of its position DBP provides the further information to address the Authority's reasoning for not approving its proposed amendments to the definition of part haul; namely:

- it is likely that there will be a market for the part haul service as defined in (Draft Decision) Required Amendment 4, and
- the provision of such a service is consistent with the principles of the NGO.

⁵⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, paragraph 10.3.

⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 7.

⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.4 to 2.17, pp. 5-10.

⁵⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 7.

108. DBP submits:⁶⁰

- 3.6 DBP's submissions in respect of [Draft Decision Required] Amendment #4 deal only with that part of the definition of Part Haul that allows it to include gas received at an Inlet Point downstream of MLV31 and delivered to an Outlet Point downstream of CS9. For ease of reference, in this submission, DBP has called this the "Short Southern Deliveries limb" (**SSD Limb**).
- 3.7 For the reasons set out below, DBP submits that the ERA would be in error were it to approve an access arrangement that includes the SSD Limb in the definition of Part Haul:
- (a) The ERA has misinterpreted the law relating to reference services by reversing the onus of establishing that there is a significant part of the market likely to seek a pipeline service that falls within the SSD Limb.
 - (b) The ERA has failed to establish that a pipeline service for the DBNGP that includes the SSD Limb meets the criteria for a reference service under the NGA for the DBNGP. *[sic]*
 - (c) The ERA has failed to take into account the revenue and pricing principle that the service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services. DBP has incorporated additional evidence to show the impact of the ERA's preferred definition of Part Haul upon the existing firm full haul capacity of the DBNGP to support this contention – see paragraph 3.30 below.
 - (d) The ERA has taken into account irrelevant considerations in support of the contention that the criteria for a reference service is met.
 - (e) The ERA has failed to take into account relevant considerations as to why the SSD Limb should be removed from the definition of Part Haul by failing to consider the evidence provided by DBP that no prospective shipper had sought or accessed a service of the kind covered by the SSD Limb and all demand that has been sought for part haul services was of the kind covered by one of the other limbs of the definition of Part Haul.
 - (f) The ERA has failed to take into account that there is not likely to be any disadvantage suffered by prospective shippers as a result of this service not being a reference service because of the existence of the Parmelia Pipeline as a competitor for gas transportation services from the Perth Basin (including the Mondarra Gas Storage Facility) to downstream of CS9 and the competitive pressure that would place on transportation prices if a non-reference part haul service for the SSD Limb service was required by a shipper.

109. In its supporting submission, DBP addresses each of the above stated claims in further detail under the following headings,⁶¹

- Criteria for a reference service under rule 101 (DBP supporting paragraphs 3.9 to 3.12);
- Misinterpretation of the law by the ERA (DBP supporting paragraphs 3.13 to 3.15);

⁶⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.6 and 3.7, pp. 11-12.

⁶¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016.

- No evidence that a significant part of the market is likely to seek a part haul service with the SSD Limb (DBP supporting paragraphs 3.16 to 3.23);
 - Evidence that there is, in fact, a significant part of the market likely to seek a part haul reference service without the SSD Limb (DBP supporting paragraphs 3.24 to 3.28);
 - Impact of the SSD Limb on efficient use of pipeline capacity and on DBP's cost recovery – evidence that the revenue and pricing principles haven't been taken into account (DBP supporting paragraph 3.29);
 - Inefficient use of firm full haul pipeline capacity (DBP supporting paragraphs 3.30 and 3.31);
 - Inability to recover efficient costs (DBP supporting paragraphs 3.32 to 3.40); and
 - ERA's justification based upon irrelevant considerations (DBP supporting paragraphs 3.41 to 3.44).
110. Further to the information provided by DBP to substantiate its claims that the Authority would be in error if it were to approve an access arrangement that includes the SSD Limb in the definition of part haul, DBP advises that it:⁶²

has reconsidered the submissions [concerning DBP's Discrimination Claim and MFN Claim] and no longer relies on them as relevant to the assessment of whether the P1 service required by the ERA should be a reference service on the DBNGP for AA4.

Bundling of Services

111. In its amended proposal, and in response to the Authority's Draft Decision assessment of DBP's original proposal with rule 109 of the NGR that prevents the bundling of pipeline services unless reasonably necessary, DBP draws to attention parts of its original proposal where DBP does actually require the bundling of pipeline services.
112. Clause 3.6(c) of the proposed revised access arrangement, specifies a "Park and Loan Service" must be bundled with a "Haulage Service".
- Park and Loan Service: Shippers or Prospective Shippers serving end users with Gas demands that are difficult to predict from day to day, or who face the prospect of outages of their Gas suppliers, may find the maintenance of their Accumulated Imbalances within the tolerance specified in the Access Contract for the Reference Service (or any other Haulage Service as the case may be) difficult. To assist these Shippers and Prospective Shippers, Operator will offer a Park and Loan Service, permitting limited Gas storage in the DBNGP, and/or taking of additional Gas from the DBNGP when required. Operator's ability to offer a Park and Loan Service is restricted by the operating characteristics of the DBNGP. A Shipper must also contract for a Haulage Service when contracting for a Park and Loan Service.
113. DBP indicates that it had previously submitted (and continues to submit) that it is reasonably necessary to require the bundling of these services in supporting information provided with its original proposal.⁶³

⁶² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 3.46, p. 19.

⁶³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 3.2, p. 4.

Section 3 of the Proposed Revised [Access Arrangement] describes only one pipeline service – the Park and Loan Service – as being conditional upon the shipper for that pipeline service having to accept another non-gratuitous service from DBP – being any type of haulage service. DBP submits that it is reasonably necessary to bundle these pipeline services – and therefore Rule 109 of the NGR is met. It is reasonably necessary to bundle these pipeline services for the following reasons:

- (i) To enable gas to be either parked in or loaned from the DBNGP under a Park and Loan Service, it will need to be transported along the pipeline;
- (ii) It is envisaged that the only entities seeking to access the Park and Loan Service will be shippers with a haulage service;
- (iii) The terms and conditions of the proposed Park and Loan Service do not contain terms and conditions relating to transportation or haulage;
- (iv) There is no requirement in the Proposed Revised [Access Arrangement] for a shipper seeking access to a haulage service to also enter into an access contract for a park and loan service; and
- (v) By allowing a prospective user to only enter into a Park and Loan Service significantly increases the risk that DBP is involved in the sale or purchase of natural gas in a way that amounts to a related business (as that term is defined in the NGL). This is prohibited under the NGL.

Further Submissions

114. In its submission subsequent to the Authority's Draft Decision, WESCEF reiterates its previous submissions on DBP's proposed changes to the nature of pipeline services under the access arrangement, and indicates support for the Authority's (Draft Decision) Required Amendments 3, 4 and 32.⁶⁴ In particular, WESCEF resubmits *"that there is likely to be demand for a part haul service in the future and that there is no valid justification for requiring a shipper who only requires a part haul service to pay a full haul tariff"*.

Considerations of the Authority

Reference Services

Reference Tariffs

115. DBP's proposed reference tariff, as at 1 January 2016, for each reference service (the T1 Tariff, P1 Tariff and B1 Tariff) is specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the amended access arrangement. The actual calculation and value of DBP's proposed tariffs are discussed in the chapter on "Reference Tariffs" of this Final Decision.
116. The Authority notes that in updating the reference tariffs in its amended proposal, DBP has added (new) clauses 3.4(d) and 3.5(d) to the amended access arrangement to specify:
- in relation to the P1 Tariff, *"reference to 'km' is the distance specified in the DBNGP Pipeline Description from I1 -01 to the outlet point at which shipper has contracted capacity"* (new clause 3.4(d)); and

⁶⁴ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, p. 1-2.

- in relation to the B1 Tariff, *“reference to the ‘km’ is the distance specified in the DBNGP Pipeline Description from the inlet point to the outlet point at which shipper has contracted capacity”* (new clause 3.5(d)).
117. The Authority considers that DBP’s proposed new clauses 3.4(d) and 3.5(d) help support the understanding of the P1 Tariff and B1 Tariff by clarifying the reference to “km” in clauses 3.4(c) and 3.5(c) respectively. However, it is not clear why DBP has selected “I1-01” as the only inlet point for calculating the relevant distance for the P1 Tariff (see proposed new clause 3.4(d)). If at any time during the access arrangement period, inlet points downstream of I1-01 are used for part haul, it is unclear how it is consistent with the achievement of the NGO and/or revenue and pricing principles for shippers to pay for kms they do not use. Conversely, where gas is injected at an inlet point upstream of I1-01, it is unclear what basis there is for shippers not to pay for all the kms they use. The Authority cannot find any explanation in DBP’s submissions for the choice of “I1-01” in proposed new clause 3.4(d) that would justify its use here based on the NGO and/or revenue and pricing principles.
118. For this reason, the Authority accepts, in principle, DBP’s proposed (new) clauses in the amended access arrangement, provided that the reference to “I1-01” is deleted from proposed new clause 3.4(d) and is replaced with the words *“the inlet point”* (as is the case with proposed new clause 3.5(d)).
119. Consistent with the Authority’s decision to not approve DBP’s calculation and value of the reference tariffs explained elsewhere in this Final Decision, clauses 3.3(c), 3.4(c) and 3.5(c) of the amended access arrangement must be changed to reflect the Authority’s reference tariff calculations and values in this Final Decision.

Required Amendment 1

The reference to “I1-01” in clause 3.4(d) of the amended access arrangement must be deleted and replaced with the words *“the inlet point”*.

The value of the T1 Tariff, P1 Tariff and B1 Tariff specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the amended access arrangement must be changed to reflect the values set out in Table 86 in this Final Decision.

Full Haul T1 Service

120. Clause 3.3 of the amended access arrangement describes the T1 Service as being a “Full Haul service”. In its amended proposal, DBP maintains its position to define full haul service in the access arrangement (at clause 15 – Definitions) as follows:

Full Haul service means a Forward Haul pipeline service on the DBNGP where the Outlet Point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.

121. In assessing DBP's amended proposal, the Authority has given consideration to the information provided by DBP in support of its position and in response to the Authority's Draft Decision that:⁶⁵
- DBP has not provided any clear rationale for the proposed change;
 - the inclusion of the word "Service" needs to be justified;
 - the use of the phrase "but does not include Back Haul" is unnecessary; and
 - deleting the reference to MLV31 would create an overlap with the Authority's required definition of "part haul".
122. DBP's (above) submissions against the Authority's Draft Decision reasoning are considered in turn in the following paragraphs. In considering these submissions, the Authority has also had regard to the further submission from WESCEF, which reiterated its objections to DBP's proposed amendments.

No clear rationale⁶⁶

123. DBP rejected the Authority's conclusion that it did not provide a rationale for the proposed change to the definition of full haul. In support of its view, DBP provides the following information:
- 2.4 DBP does not understand how the ERA could reach the conclusion that DBP has not provided any clear rationale for the proposed change. In DBP's submission 3, DBP made the following points to justify the proposed change to the definition of "Full Haul":
- (a) The provisions of the NGR require the reference service to be the service that is likely to be sought by a significant part of the market. The proposed changes were to therefore make the proposed T1 reference service one that is likely to be sought by a significant part of the market (i.e. to ensure it meets the requirements under the NGR for a reference service).
 - (b) The following evidence pointed to the relevant "market":
 - (i) In the Final Decision made by the ERA in its approval of the current access arrangement for the DBNGP (Current AA), the ERA determined that the "market" referred to is the total market for pipeline services provided by DBNGP, including any expected increase in provision of services during the access arrangement period for which the approved access arrangement will apply.
 - (ii) For the period of the proposed access arrangement (being 2016-2020), no increase in the provision of services is expected. Therefore, the relevant market is all shippers with any pipeline service on the DBNGP...
 - (c) To determine whether a "significant part" of the relevant market is likely to seek a particular pipeline service such that it must be included in the access arrangement as a reference service, the ERA has, in the past, had regard to existing contracts between DBP and its Shippers as well as evidence of new services demanded by a significant number of users and prospective users, without regard

⁶⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.4 to 2.17, pp. 5-10.

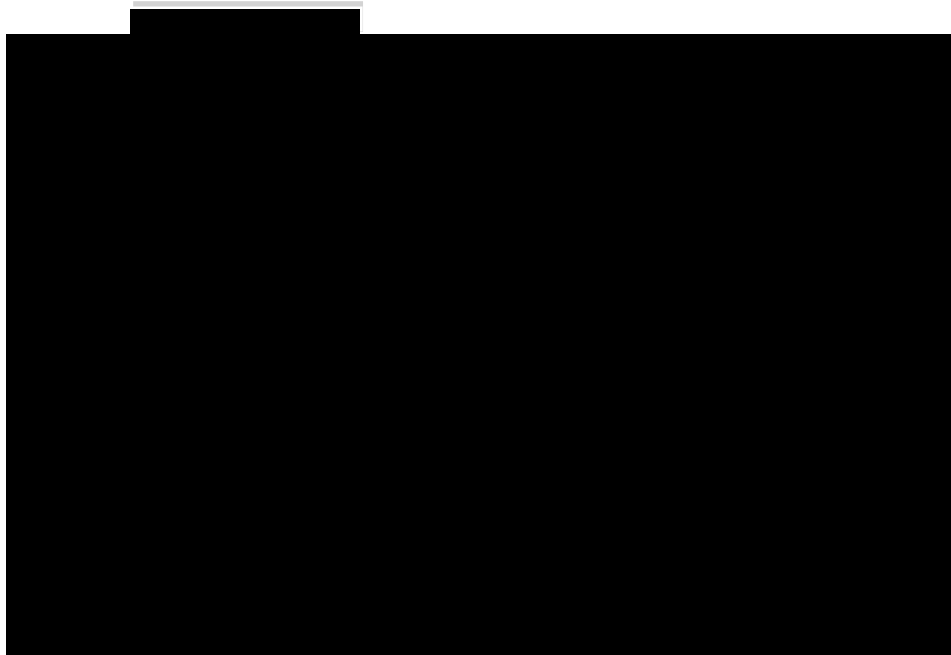
⁶⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.4 to 2.6.

to pipeline capacity. Past reference services were also determined by having regard to the nature of services obtained by a significant number of users under contracts entered into just prior to the ERA's consideration of the proposed revisions to the access arrangement.

- (d) The following evidence pointed to why the T1 service, as proposed by DBP, was "likely to be sought by a significant part" of the market:
- (i) The recontracting negotiations concluded with Standard Shipper Contract (SSC) shippers in 2014 confirmed that the existing demand is overwhelmingly for a firm full haul service of the definition proposed by DBP in its Original AA Proposal;
 - (ii) The defining characteristic of the service is the 'firmness' offered, and the firmness of the Proposed T1 Reference Service is consistent with the firmness of the T1 Service the subject of each T1 Standard Shipper Contract entered into between DBP and each existing shipper;
 - (iii) Forecasts of contracted capacity and throughput provided by DBP (see submission 11) indicates that a service that is positioned in the curtailment plan with the same level of priority as the T1 Service provided under the Standard Shipper Contracts is likely to continue to be sought by a significant part of the market;
 - (iv) DBP has a contractual commitment under the T1 SSC to offer a T1 full haul firm service on the same terms as defined in the T1 SSC.
 - (v) Access requests received during the Current AA Period for firm full haul services have only been for the T1 service containing the definition proposed by DBP (albeit on different terms and conditions and at a different tariff to that proposed in the Original AA Proposal).

2.5 The following are additional reasons for why DBP's proposed definition of Full Haul should be accepted by the ERA and the ERA's definition of Full Haul should be rejected:

- (a) Firstly, all of the existing T1 SSCs (being both the SSCs that were renegotiated in 2014 and those that were not) adopt the same definition for Full Haul as that proposed by DBP. The capacity contracted under these T1 SSCs represents approximately [REDACTED] of the total amount of firm full haul capacity currently contracted on the pipeline [REDACTED]. [REDACTED] This represents a significant part of the market. The following table summarises how "Full Haul" is defined in each of the T1 SSCs DBP has entered into with shippers:



- (b) Secondly, of the remainder of the total pipeline capacity currently contracted that is not contracted under either a T1 SSC or the Alcoa Exempt Contract, all of the contracts for this capacity adopt the same definition for "Full Haul" as that proposed by DBP.
- (c) Thirdly, no shipper has entered into an access contract (whether for a firm full haul service or otherwise) where the definition of Full Haul is as defined in the Draft Decision, nor does DBP have in its possession (or expect to have in its possession) an access request from a prospective shipper seeking such a service or an access contract where the definition of Full Haul is as defined in the Draft Decision.

2.6 DBP notes that no shipper has made submissions regarding this change in the proposed access arrangement. The fact that no shipper argued for a rejection of the changes should be a strong indicator that no shipper was concerned about the changes to the definition of Full Haul Service. The ERA should have placed more weight on this fact in its assessment.

124. The Authority has considered DBP's (above) submissions concerning the rationale for its proposed definition of "full haul service". DBP claims that it defines a firm service which is "likely to be sought by a significant part" of the market and relies heavily on a perceived need for it to match the definition for "full haul" under its (unregulated) T1 SSC. In support of this claim, DBP refers to the 2014 renegotiation of SSCs, its forecasts of contracted capacity and throughput and DBP's contractual commitment under the T1 SSC to offer a T1 full haul firm service on the same terms as defined in the T1 SSC. DBP also notes that :

[a]ccess requests received during the [c]urrent [access arrangement] [p]eriod for firm full haul services have only been for the T1 service containing the definition proposed by DBP (albeit on different terms and conditions and at a different tariff to that proposed in the [o]riginal [access arrangement] [p]roposal).

125. The Authority accepts that the existing SSCs may indicate evidence of demand for certain pipeline services "likely to be sought by a significant part" of the market, which may be relevant in relation to rule 101 of the NGR. However, the existence or terms of SSCs or other shipper contracts agreed by DBP with third parties should not

dictate the terms of the access arrangement unless there is some legitimate justification for this under the NGL. To do otherwise could undermine the NGO.

Evidence that service “likely to be sought by a significant part” of the market

126. While the Authority accepts that the SSCs may provide evidence that DBP's proposed definition of "full haul service" is “likely to be sought by a significant part” of the market for the purposes of rule 101, as both the Authority and the Tribunal have previously noted:

the SSCs are but one source of evidence about the nature of the services demanded by users.⁶⁷

127. With regard to DBP's claims that:

- the SSC recontracting negotiations concluded with shippers in 2014 *"confirmed that the existing demand is overwhelmingly for a firm full haul service of the definition proposed by DBP in its [o]riginal [access arrangement] [p]roposal"*;
- all of the existing T1 SSCs (being both the SSCs that were renegotiated in 2014 and those that were not) adopt the same definition for full haul as that proposed by DBP and that this represents a significant part of the market [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; and
- no shipper has entered into an access contract (whether for a firm full haul service or otherwise) where the definition of full haul is as defined in the Draft Decision, nor does DBP have in its possession (or expect to have in its possession) an access request from a prospective shipper seeking such a service or an access contract where the definition of full haul is as defined in the Draft Decision,

the Authority notes that the product of an unregulated commercial negotiation between DBP and shippers does not necessarily indicate what shippers wanted, but rather what they were able to achieve as a negotiated outcome in the circumstances.

128. However, the Authority also notes DBP's observation that no shipper has made submissions regarding DBP's proposed change in the proposed revised access arrangement, and the fact that no shipper argued for a rejection of the changes, should be a strong indicator that no shipper was concerned about the changes to the definition of full haul service. DBP further claim that the Authority should have placed more weight on this fact in its assessment. The Authority considers, however, that shippers may have had various reasons for not making submissions, and a lack of submissions does not necessarily indicate that DBP's proposed definition of "full haul service" is “likely to be sought by a significant part” of the market.

129. With regard to DBP's claim that *“the defining characteristic of the service is the ‘firmness’ offered, and the firmness of the Proposed T1 Reference Service is consistent with the firmness of the T1 Service the subject of each T1 Standard Shipper Contract entered into between DBP and each existing shipper [sic]”*, the

⁶⁷ See Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14 at [545] and the ERA's Final Decision for AA3 at [134]).

Authority notes that firmness is not a precise concept,⁶⁸ so it is not entirely clear what DBP is claiming other than that (as is typically the case with a firm service), it is a type of service obliging the pipeline operator to provide up to the contracted volume without interruption or curtailment, subject to certain permitted exceptions. For the Authority to place greater weight on this submission, DBP would need to be more explicit about what characteristics of "firmness" under the SSC it considers define a service "likely to be sought by a significant part" of the market, and why.

130. With regard to DBP's claim that "*access requests received during the [c]urrent [access arrangement] [p]eriod for firm full haul services have only been for the T1 service containing the definition proposed by DBP (albeit on different terms and conditions and at a different tariff to that proposed in the [o]riginal [access arrangement] [p]roposal)*", the Authority notes there is insufficient information provided concerning the circumstances of these applications to determine if they necessarily indicate the conclusion DBP is seeking to make. The Authority therefore considers this claim by DBP does not provide sufficient hard information to support DBP's claim that its proposed definition of the full haul service is "likely to be sought by a significant part" of the market.
131. Nevertheless, the Authority considers that the existing SSCs, particularly the terms in the existing SSCs committing DBP to offering a T1 full haul firm service on the same terms as defined in the T1 SSC, when combined with the lack of shipper submissions rejecting the proposed change, do provide some support for DBP's claim that its proposed definition of the "full haul service" is "likely to be sought by a significant part" of the market.
132. However, in considering DBP's proposed amendment to the full haul definition rule 100 of the NGR requires the Authority to have regard to the NGO, including its requirement to "*promote efficient investment in, and **efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.***" (**emphasis added**) On this basis, the Authority must approve the definition of full haul service that it considers best promotes such operational efficiency and other aspects of the NGO.

Consistency with the national gas objective and revenue and pricing principles

133. The Authority notes that, while DBP has claimed in effect that the definition of the full haul service in the access arrangement needs to match the definition of full haul in its T1 SSCs, DBP has not explicitly stated any justification based on the NGO or revenue and pricing principles for why the definition of full haul service in the access arrangement should match the definition of full haul in its T1 SSCs. However, DBP does rely on the 2014 renegotiated SSCs, which it claims use its proposed definition and that "*DBP has a contractual commitment under the T1 SSC to offer a T1 full haul firm service on the same terms as defined in the T1 SSC*". As previously discussed

⁶⁸ In Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14 at [544], the Tribunal approved the following submission by counsel for Verve and Alinta: "*A description such as "firm, forward, full haul" is not enough. Indeed, even the description "firm", for example "firm service", is meaningless unless the terms and conditions accompany it. Just saying it's firm provides no real guidance on how firm it is, how interruptible it is, what the curtailment rates are, where it stands in the curtailment plan; all of these are important and describing or specifying a service in any meaningful way requires that terms such as those and many others be specified.*"

in the Authority's Draft Decision,⁶⁹ DBP has agreed with participating SSC shippers that tariffs under their SSCs will eventually (currently, as at 1 January 2021) revert to the reference tariff for the reference service that is the most similar to the service provided under the SSCs.

134. Further, in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14*, the Tribunal noted (at [504]):

The SSCs were originally negotiated to enable the pipeline to be purchased out of receivership and in order to fund expansion of the pipeline. It was Alinta and Verve's submission that absent the higher tariff under the SSCs, not only would the pipeline not have been expanded after 2004, it is most likely that the pipeline would not have been purchased out of receivership at all. They also submitted that the offering of the services under the SSCs was therefore fundamental to the continued operation of the pipeline and what they described as the very significant expansion and investment in it that has occurred since 2004.

135. Accordingly, the Authority is prepared to accept that certain contractual provisions in the SSCs (such as the eventual reversion of the tariff to the reference service that is the most similar to the service provided under the SSCs and/or its claimed "*contractual commitment under the T1 SSC to offer a T1 full haul firm service on the same terms as defined in the T1 SSC*") were a necessary part of procuring investment in the DBNGP (to enable the pipeline to be purchased out of receivership and/or in order to fund expansion of the pipeline). Accordingly, if regard is not had to these SSC provisions when defining the tariff under the access arrangement, this may be contrary to achieving the NGO (i.e. potentially contrary to the promotion of "*efficient investment... for the long term interest of consumers*").
136. However, this reasoning may not apply to all of the terms of the SSCs that DBP is seeking to rely on. For example, it may be that there is only an NGO basis for requiring the full haul service under the access arrangement to be *similar* to, not the *same* as, under the SSC. Further, this should not be a matter for speculation by the Authority. As the Tribunal noted in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14* (at [548] and [554]), DBP should provide "*hard information*" to support its assertions that its proposed reference service would offer a more efficient utilisation of the pipeline's capacity.
137. The Authority does not consider that DBP has adequately justified (in its rationale or otherwise) that its proposed definition of "full haul service" best promotes such operational efficiency, or otherwise would achieve the NGO, better than the definition required by the Authority in (Draft Decision) Required Amendment 3. The Authority is of the view that its definition of full haul service meets the demands and requirements of such a service, without creating other inefficiencies for services of a part haul nature, particularly where the outlet point is located south of CS9. That is, the Authority's definition of full haul service better promotes operational efficiency by supporting the availability of forward haul services that better reflect the length of pipeline actually required by a Shipper.

⁶⁹ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 25 to 30.

Inclusion of the word “Service”⁷⁰

138. DBP submits that it has reviewed its original proposal and notes that, in addition to the inconsistencies identified by the Authority in using the word “Service” to make the term “Full Haul Service”, there are other inconsistencies. For example, DBP has used the term “Service” on its own (in the definition of the T1 Service) without defining the term. Accordingly, DBP proposes to adopt the following approach to remove all inconsistencies.

2.9 [T]o remove all inconsistencies, DBP has, in its Amended [Access Arrangement] Proposal, adopted the following approach:

- (a) In all of the definitions of “Part Haul”, “Back Haul” and “Full Haul” in both the access arrangement and the terms and conditions for each reference service, DBP has removed the reference to “Service” and replaced it with “service”. This then:
- (i) ensures consistency with the definitions in the SSCs;
 - (ii) ensures consistency across all three types of services; and
 - (iii) does not create any uncertainty as to what each defined term means.

2.10 DBP also proposes to not define “service”, although, if the ERA were to require one to be included, it should use the same definition as “pipeline service” in the NGR.

139. The Authority has considered the above approach proposed by DBP and considers that it is acceptable. Further, the Authority considers there is no need to define “service” as, in the case of each of the definitions of “Back Haul service”, “Full Haul service” and “Part Haul service”, there is already a reference to it being a service “on the DBNGP” (effectively clarifying that it would fall within the definition of a “pipeline service”), and the definition of “Full Haul service” already expressly states it is a “pipeline service”. For consistency with this aspect of the definition of “Full Haul service”, the Authority considers it would be prudent to amend each of the definitions of “Back Haul service” and “Part Haul service” in the amended access arrangement as follows, so that they also refer to a “pipeline service”.

Back Haul service means a [pipeline](#) service to provide Back Haul on the DBNGP.

Part Haul service means a [pipeline](#) service to provide Forward Haul on the DBNGP which...

Use of the words “but does not include Back Haul”⁷¹

140. Whilst DBP indicates that it does not object to the Authority’s reasoning concerning the removal of the words “*but does not include back haul*” in the definition of full haul (given the Authority’s required amendments), DBP submits the words are necessary and should remain if its proposal to change the definition of full haul is to be implemented. Specifically, DBP submits:

2.11 At paragraph 71 of the Draft Decision, the ERA concludes that by incorporating the defined term “Forward Haul” within the definition of “Full Haul”, the phrase “but does not include Back Haul” is unnecessary.

⁷⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.7 to 2.10.

⁷¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.11 to 2.13.

- 2.12 While DBP does not object with the ERA's reasoning if all of the ERA's changes to the definition of Full Haul were to be implemented (in particular the requirement to include a requirement that the inlet point be upstream of MLV31), the wording is necessary if DBP's proposal is to be implemented. This is so, because, under DBP's proposal, a T1 reference service shipper would be able to have an inlet point at any location of the pipeline (whether upstream or downstream of the outlet point) without such wording being included.
- [2.13] That this phrase is required is demonstrated by the fact that it is included in the definition of "Full Haul" in every T1 SSC, P1 SSC and B1 SSC that DBP has entered into with its shippers...
141. The Authority has considered DBP's above claims, but does not understand the logic of DBP's claim that the wording is necessary because *"under DBP's proposal, a T1 reference service shipper would be able to have an inlet point at any location of the pipeline (whether upstream or downstream of the outlet point) without such wording being included"*. The Authority notes that, irrespective of whether DBP's proposed definition of "full haul service" or the Authority's (Draft Decision) Required Amendment 3 to the definition of "full haul service" is used, both definitions clearly state that the full haul service is a *"forward haul pipeline service"*. In both cases "forward haul" is clearly defined as *"the haulage of Gas on the DBNGP where the inlet point is upstream of the outlet point"* (emphasis added). So, by definition, a "full haul service" cannot have an inlet point that is downstream of the outlet point.
142. "T1 service" is defined in clause 3.3(a) of the amended access arrangement as a "full haul service", so it is by definition a *"forward haul pipeline service"* and, consequently, wherever its inlet points are located, they cannot be downstream of its outlet points. It therefore automatically cannot be a "back haul service" and there is no need to say so. It is therefore unnecessary to add the phrase "but does not include Back Haul" to the definition of "full haul service", regardless of how "full haul" is defined in DBP's T1, P1 and B1 SSCs.
143. Accordingly, the Authority is still not convinced that the addition of the phrase "but does not include Back Haul" to the definition of "full haul service" is required.

Reference to MLV31⁷²

144. DBP indicates that it has addressed the reasoning of the Authority for requiring the definition of full haul to maintain the reference to inlet points being upstream of MLV31.
- 2.14 In paragraph 72 of the Draft Decision, the ERA gives two reasons why it will not allow the deletion, from the definition of Full Haul, of the requirement for the inlet points to be upstream of MLV 31 (i.e. so that the inlet point could be anywhere on the pipeline):
- (a) Firstly, it creates a risk of overlap with the definition of "part haul" in the Current AA; and
 - (b) Secondly, DBP has not provided any justification for the deletion of this requirement.
- 2.15 In response to the first reason, based on DBP's Amended AA proposal, there is no risk of overlap between the part haul and full haul definitions proposed by DBP. Even if there were, DBP submits that it would be more

⁷² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 2.14 to 2.16.

appropriate to correct for the overlap in the definition of part haul only. This is so because:

- (a) of the reasoning outlined in paragraph 2.16(a) below;
- (b) the majority of the demand is for full haul load. The reference service for that part of the market should be more broadly defined to cover the desires of the largest part of the market. It would therefore be more appropriate to broaden the definition of this service than a service that has a smaller demand, such as the Part Haul service.

2.16 In response to the second reason, DBP's justification for the deletion of the requirement, in the definition of Full Haul, for the inlet point to be upstream of MLV31 is based on two grounds:

- (a) Firstly, MLV31 is an arbitrary location that would appear to have been chosen by the ERA (given that it was the ERA that inserted this requirement in the definition of Full Haul as part of its approval of the access arrangement for AA3) only because it is the most recognisable point on the pipeline sufficiently downstream from the most southerly inlet point that currently exists before the Mondarra inlet point. It would appear that the consequence of choosing this point is that it would mean that there would be no competitive advantage afforded to one Carnarvon producer over the others when assessing the delivered price of gas for each producer, given that all inlet points used to receive Carnarvon Basin gas are presently upstream of MLV31 (the most southerly being Wheatstone gas).
- (b) However, by creating this delineation so close to the inlet point to where Wheatstone gas enters the system (MLV31 is 276km downstream from I1-01 whereas Wheatstone inlet point is 274km downstream from I1-01), it could lead to perverse investment decisions being made by producers to locate the interconnect with the DBNGP downstream of MLV31 so as to reduce transportation costs but to price the gas such that any benefits on reduced transportation costs to shippers (as a result of the service being a part haul service as opposed to a full haul service) are not realised by the shipper, rather the benefits are retained by the producers. This would be contrary to the NGO.
- (c) While DBP acknowledges that the development of new gas reserves in the Carnarvon Basin that might interconnect with the DBNGP downstream of MLV31 seem unlikely during the proposed access arrangement period, the Gas Statement of Opportunities issued by IMO in November 2015 (GSOO) (a copy of which is attached in Appendix A) acknowledges that there are ongoing opportunities. As outlined in section 5.2 of that document, there are other opportunities in this Basin being explored (both for conventional and unconventional gas). These include opportunities located as far downstream as Carnarvon and include:
 - (i) Tap Oil and Rusa Resources undertaking exploration within acreage covered by tenements SPA 5 AO and SPA 6 AO, which are located as far south as Carnarvon⁴;
 - (ii) Tap Oil undertaking exploration within acreage covered by tenements WA-320-P and WA-155-P (Part II);
 - (iii) Tap Oil has other interests in the offshore part of the Carnarvon Basin, including the WA-351-P permit, which contains the Tallaganda gas discovery drilled during the second quarter of 2012. The Tallaganda-1 well was a new field gas discovery in the Triassic Mungaroo Formation.

Tap Oil also holds the WA-290-P permit immediately South of the Gorgon field. In early 2011, the joint venture drilled the Zola gas discovery and in August 2012, a retention lease, WA-49-R, was granted over the Zola and Antiope discoveries. In July 2013, a gas discovery was confirmed at Bianchi-1 which was drilled in WA-49-R.

- (d) Secondly, as is outlined in more detail in paragraphs 3.29 to 3.39 in section 3 of this submission, the use of the pipeline as a part haul service, where the inlet point is as far downstream of MLV31 as the Mondarra Inlet Point and the outlet point is downstream of CS9, has the same impact on the capacity of the pipeline to deliver firm gas under a traditional full haul service where the inlet point is in the Carnarvon Basin and the outlet point is downstream of CS9. Yet, based on the ERA's proposed definition, the reference tariff would not afford DBP the opportunity to charge a tariff to recover all of the efficiently determined total revenue.
145. The Authority has considered the above claims by DBP. A detailed consideration of DBP's proposed part haul (P1) service is contained in the following section of this Final Decision (refer paragraph 156 and following).
146. With regard to DBP's claim that *"based on DBP's [a]mended [access arrangement] proposal, there is no risk of overlap between the part haul and full haul definitions proposed by DBP"*, and that, *"[e]ven if there were overlap between the part haul and full haul definitions proposed by DBP, it would be more appropriate to correct for the overlap in the definition of part haul only"*, the Authority considers that DBP appears to misunderstand the Authority's position. The Authority accepts that there is no overlap between the part haul and full haul definitions *as proposed* by DBP. The question of overlap only arises because the Authority did not accept the changes proposed by DBP to the current (AA3) definition of part haul and required DBP to retain that current definition. This meant that DBP's proposed definition of full haul potentially overlapped with the current (AA3) definition of part haul, which also included forward hauls from an inlet point downstream of MLV31 to an outlet point downstream of CS9. Given the Authority's decision to reject DBP's proposed amendments to the definition of part haul, and in the absence of any justification for the proposed amendment to delete the requirement for the receipt point to be upstream of MLV31, the Authority required the definition of full haul to maintain this requirement (i.e. for the inlet point to be upstream of MLV31).⁷³
147. With regard to DBP's claim that it would be more appropriate to correct for the overlap in the definition of part haul only, because *"the majority of the demand is for full haul load"*, and *"it would therefore be more appropriate to broaden the definition of this service than a service that has a smaller demand, such as the Part Haul service"*, the Authority accepts that full haul is a significant part of the market. However, as stated in the Draft Decision,⁷⁴ the Authority is generally of the view that having a wider, more flexible part haul service that includes the ability for deliveries downstream of CS9 is more likely than not to promote the efficient operation and use of natural gas services consistent with the NGO and revenue and pricing principles. The Authority also notes that, even if (as DBP claims) there is no evidence that a

⁷³ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraph 72 and Required Amendments 3 and 4.

⁷⁴ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraph 81.

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

148. Further, the Authority does not consider the NGO is best served by potentially stifling the efficiencies of a more flexible part haul service by amending the full haul service to make the full haul more flexible. As the significant demand for the full service shows, the full haul service is already well established as it is, without the need for greater flexibility, whereas a part haul service does require flexibility in order to optimise the efficient operation and use of pipeline capacity. The Authority does not consider that DBP has adequately justified that its proposed definition of "full haul service" best promotes such operational efficiency or otherwise would achieve the NGO better than the definition required by the Authority in (Draft Decision) Required Amendment 3. The Authority considers this to be the case for reasons outlined in paragraph 137 above.
149. With regard to DBP's claim that *"by creating this delineation [i.e. between part haul and full haul] so close to the inlet point where Wheatstone gas enters the system... it could lead to perverse investment decisions being made by producers to locate the interconnect with the DBNGP downstream of MLV31 so as to reduce transportation costs"* (without passing through those reduced transportation costs to shippers), the Authority notes DBP has not provided any hard information to support its assertions. In the absence of such evidence, the Authority considers this is a remote prospect which, if it were to occur, could potentially be addressed by revising the MLV31 to a more southerly MLV. Accordingly, the Authority is of the view that DBP's assertion does not amount to adequate justification.
150. With regard to DBP's claim that the Gas Statement of Opportunities issued by IMO in November 2015 (GSOO) acknowledges that there are ongoing opportunities in the Carnarvon Basin being explored, the Authority notes that DBP *"acknowledges that the development of new gas reserves in the Carnarvon Basin that might interconnect with the DBNGP downstream of MLV31 seem unlikely during the proposed access arrangement period"*. The Authority therefore does not consider this submission by DBP provides a reasonable basis for limiting the flexibility of the part haul definition in favour of widening the flexibility of the full haul definition during the fourth access arrangement (AA4) period.
151. With regard to DBP's claim that under the Authority's proposed part haul definition, *"the reference tariff would not afford DBP the opportunity to charge a tariff to recover all of the efficiently determined total revenue"*, the Authority considers that this will depend on the level of back haul and over what section of the pipeline the part haul was being used. If the pipeline is not fully utilised (and the Authority understands that this will be the case over the course of the fourth access arrangement (AA4) period based on the available demand forecasts provided by DBP) then this should not be a significant issue. A further, more detailed, consideration of the definition of part haul is discussed in the following section of this Final Decision (at paragraph 156 and following).
152. The Authority also notes that DBP's above claim appears inconsistent to some extent with DBP's claim that *"the economic reality is that in the event that there is any increase in demand for deliveries of gas to outlet points downstream of CS9 (which are not forecast), it is far more cost efficient for customers to utilise excess or spare*

capacity in existing firm full haul contracts than it would be to enter into a P1 Service for the SSD Limb".⁷⁵

153. Further to the above matters, the Authority notes that DBP submits as part of its amended proposal that reference to the term "receipt point" should be a reference to the term "inlet point" (should the Authority maintain its own position and definition of full haul).⁷⁶

2.17 As a final matter, DBP has proposed an amendment that the ERA has not specified in the Draft Decision that it be made. DBP submits that this amendment addresses a matter raised in the Draft Decision. The amendment is that, in the definition of "Full Haul", "receipt point" is to be changed to read "inlet point". DBP submits that even if amendment #4 is to be accepted by DBP, which it is not, "inlet point" should be used instead of "receipt point" in the definition of Full Haul. This is so for these reasons:

- (a) The term "receipt point" is not used in the access arrangement, terms and conditions of the reference service or the access arrangement information;
- (b) The use of the term "inlet point" will ensure consistency in terminology throughout the access arrangement documentation
- (c) The use of the term "receipt point" has the capacity to create confusion in the market in circumstances where that term is used in connection with arrangements for upstream facilities

154. The Authority agrees with DBP's reasoning with respect to this matter, namely that the term "receipt point" is not used elsewhere and that the use of the term "inlet point" is consistent with other terminology in the access arrangement.

155. Given the considerations outlined above, the Authority is of the view that DBP's amended proposal to change the definition of "full haul service" should not be accepted. The Authority is of the view that the definition of full haul service in the amended access arrangement (and associated terms and conditions for reference services offered under the access arrangement) should be updated as follows:

Full Haul service means a Forward Haul pipeline service on the DBNGP where the [Inlet Point is upstream of mainline valve 31 \(MLV31\) on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP](#), ~~regardless of the location of the Inlet Point, but does not include Back Haul.~~

⁷⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 3.28(c).

⁷⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 2.17.

Required Amendment 2

The term “Full Haul service” as specified in clause 1 (Definitions) of the amended access arrangement (and associated terms and conditions) must be amended to read:

Full Haul service means a Forward Haul pipeline service on the DBNGP where the Inlet Point is upstream of mainline valve 31 (MLV31) on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP.

For consistency, the terms “Back Haul service” and “Part Haul service” must be amended in the amended access arrangement as follows, so that the terms also refer to a “pipeline service”:

Back Haul service means a pipeline service to provide Back Haul on the DBNGP.

Part Haul service means a pipeline service to provide Forward Haul on the DBNGP which...

Part Haul P1 Service

156. Clause 3.4 of the amended access arrangement describes the P1 Service as being a part haul service. In its amended proposal DBP maintains its position to define the part haul service in the access arrangement (at clause 15 – Definitions) as follows:

Part Haul service means a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.

157. In assessing DBP’s amended proposal, the Authority has given consideration to the information provided by DBP in support of its position as well as submissions from interested parties on this matter.
158. The Authority notes that DBP indicates its supporting submissions in respect of (Draft Decision) Required Amendment 4 “*deal only with that part of the definition of Part Haul that allows it to include gas received at an Inlet Point downstream of MLV31 and delivered to an Outlet Point downstream of CS9*”.⁷⁷ DBP refers to this particular aspect as the “Short Southern Deliveries [L]imb” (**SSD Limb**) and submits the Authority would be in error if it were to approve an access arrangement that includes the SSD Limb in the definition of “part haul” for a number of reasons. These reasons are considered in turn below.

Reference service criteria under rule 101⁷⁸

159. DBP submits that “*where the [Authority] asserts that a particular outcome “achieves the NGO” it must ensure that in reaching that conclusion, it has: (a) considered the revenue and pricing principles, not just the interests of consumers; and*

⁷⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 3.6.

⁷⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.9 to 3.12.

(b) demonstrated in its reasoning how these principles have been considered.” DBP is of the opinion that the Authority has failed to do this, and in support of its opinion, DBP notes (and references) considerations of the Australian Competition Tribunal.

3.9 Before doing so... it is relevant to note that the Australian Competition Tribunal, in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14*, quoted with approval from *Application by Energy Australia [2009] ACompT 8* (Energy Australia), where the Tribunal considered the revenue and pricing principles in s 7A of the National Electricity Law (NEL) which is in similar terms to s 24(2) of the NGL and the reference, in those principles, to the service provider being given an opportunity to recover “at least” its efficient costs incurred. At [81], the Tribunal quotes:

“... The regulatory framework does not guarantee recovery of costs, efficient or otherwise. Many events and circumstances, all characterised by various uncertainties, intervene between the ex ante regulatory setting of prices and the ex post assessment of whether costs were recovered. But if, as it were, the dice are loaded against the [service provider] at the outset by the regulator not providing the opportunity for it to recover its efficient costs (eg, by making insufficient provision for its operating costs or its cost of capital), then the [service provider] will not have the incentives to achieve the efficiency objectives, the achievement of which is the purpose of the regulatory regime.”

3.10 Further at [77] the Tribunal states:

“Inevitably, a regulator such as the ERA has a public watchdog function. It is directed by the applicable rules such as ss 23 and 24 of the NGL and rule 87(1) of the NGR to attend to the proper interests of the covered pipeline service provider on the one hand, but on the other hand it is required to be mindful of the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and the security of supply of natural gas and the concept of economic efficiency in setting tariffs under an access arrangement The national gas objective itself in s23 of the NGL refers to promoting efficiency for the long term interests of consumers of natural gas (inter alia) with respect to price. That objective, focused on the interests of consumers, is balanced and informed also by the revenue and pricing principles to be applied by the regulator, but still in the context of ensuring the covered pipeline service provider acts efficiently.”

3.11 DBP submits that the extracts above provide guidance as to how the revenue and pricing principles and the NGO are to be achieved. That is, the NGO is to be achieved within the constraints of ensuring the continued ability of the pipeline service provider to recover at least its efficient costs and operate efficiently in line with the pricing principles in s24 of the NGL...

160. The Authority notes the extracts from *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14* quoted by DBP above. The Authority further notes it was recently affirmed by the Tribunal in *Applications by Public Interest Advocacy Centre Ltd and Ausgrid [2016] ACompT 1* (at [718] (PIAC-Ausgrid)), that the NGO and the revenue and pricing principles are complementary and that their collective significance is explained in *Re Application by ElectraNet Pty Limited (No 3) [2008] ACompT 3* at [15] and in *Application by Energy Australia and Others [2009] ACompT 8* at [74]-[78] (see below).

In *Application by ElectraNet Pty Limited (No 3) [2008] ACompT 3* at [15], the Tribunal stated:

[15] The national electricity objective provides the overarching economic objective for regulation under the Law: the promotion of efficient investment in the long term interests of consumers. Consumers will benefit in the long run if resources are used efficiently, i.e. resources are allocated to the delivery of goods and services in accordance with consumer preferences at least cost. As reflected in the revenue and pricing principles, this in turn requires prices to reflect the long run cost of supply and to support efficient investment, providing investors with a return which covers the opportunity cost of capital required to deliver the services.

In *Application by Energy Australia and Others [2009] ACompT 8* at [74]-[78], the Tribunal stated:

[74] The Transitional Rules provide the context for the proposing of an averaging period, but the proposal must be in accordance with the NEL, and more specifically with the national electricity objective and the revenue and pricing principles set out in s 7 and s 7A, respectively.

[75] *The principles in s 7A can be taken to be consistent with and to promote the objectives in s 7. The principles are themselves stated normatively in the form of what is intended to be achieved. They state that the price charged by a Network Service Provider ('NSP') for its service should allow a return commensurate with the regulatory and commercial risks involved in providing the service in the context that the NSP should be provided with a reasonable opportunity to recover at least the efficient costs it incurs and with effective incentives in order to promote economic efficiency with respect to the services it provides. Economic efficiency includes efficient investment in the system with which it provides services, efficient provision of services, and efficient use of the system.*

[76] *It is well accepted in the literature of regulatory economics and in regulatory practice that all these efficiency objectives are in principle met by setting prices for services that allow the recovery of efficient costs, including the cost of capital commensurate with the riskiness of the investment in the assets (infrastructure or 'system', as the term is used in the NEL) used to provide services.*

[77] *It might be asked why the NEL principles require that the regulated NSP be provided with the opportunity to recover at least its efficient costs. Why 'at least'? The issue of opportunity is critical to the answer. The regulatory framework does not guarantee recovery of costs, efficient or otherwise. Many events and circumstances, all characterised by various uncertainties, intervene between the ex ante regulatory setting of prices and the ex post assessment of whether costs were recovered. But if, as it were, the dice are loaded against the NSP at the outset by the regulator not providing the opportunity for it to recover its efficient costs (e.g. by making insufficient provision for its operating costs or its cost of capital), then the NSP will not have the incentives to achieve the efficiency objectives, the achievement of which is the purpose of the regulatory regime.*

[78] *Thus, given that the regulatory setting of prices is determined prior to ascertaining the actual operating environment that will prevail during the regulatory control period, the regulatory framework may be said to err on the side of allowing at least the recovery of efficient costs. This is in the context of no adjustment generally being made after the event for changed circumstances.*

In PIAC-Ausgrid the Tribunal elaborated on this further at [787], as follows:

[787] *...the NEO and the RPP operate together. It is not the case that the NEO means that, where the long term interests of consumers is relevant, the RPP must be ignored or suppressed. The assumption in the regulatory scheme is that the long term interests of consumers is served by ensuring that monopoly infrastructure providers are permitted to recover at least the efficient costs of providing those services and, broadly speaking, the AER's role is to fix those efficient costs by reference to the proxy of the efficient costs of the competitive market. That is, of course, an oversimplification. But, as the AER said (for instance, in Attachment 3 to the Ausgrid Final Decision at p 3-434), it applied a "regulatory judgment" in that context to best satisfy the RoR Objective, and it considered that its conclusion is consistent with the NEO/NGO and the RPP.*

161. The Authority is therefore fully cognisant that the service provider must be given an opportunity to recover "at least" its efficient costs and has considered this carefully when making its decision. As noted by the Tribunal in the extract from the PIAC-Ausgrid decision above (at [787]), the Authority's role is to fix those efficient costs by reference to the proxy of the efficient costs of the competitive market. To this extent, the Authority has conducted a detail review of DBP's proposed "efficient" costs (i.e. opex and capex), having regard to independent advice from its technical advisor – EMCa. The Authority's detailed considerations of these costs are discussed elsewhere in this Final Decision.⁷⁹

Interpretation of the law⁸⁰

162. DBP submits that the Authority has misinterpreted the law in relation to its decision as to whether a particular pipeline service should be a reference service. DBP submits the following information in support of its claim.

3.13 DBP submits that in deciding whether a particular pipeline service should be a reference service, the proper interpretation of the requirements of the NGL and NGR is that:

⁷⁹ The Authority's consideration of operating and capital costs are discussed in the "Total Revenue" chapter of this Final Decision.

⁸⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.13 to 3.15.

- (a) It is for the service provider to demonstrate that, in the market for pipeline services serviced by the DBNGP (relevant market):
- (i) a significant part of the relevant market is likely to seek the service/s that the service provider has proposed as a reference service; and
- (ii) there is no other service that a significant part of that market is likely to seek.
- (b) If the ERA forms the view that the service provider has not provided sufficient evidence on the above matters or that it believes that a preferable alternative exists, the ERA must, in deciding what that preferable alternative is:
- (i) identify a particular pipeline service that is likely to be sought by a significant part of the market and to provide evidence to that effect in its reasoning; and
- (ii) demonstrate that it is consistent with the applicable criteria prescribed by the NGL & NGR.
- 3.14 In its Draft Decision at [81], the ERA has misinterpreted the law by reversing this onus...
- 3.15 In any circumstances, but particularly in circumstances where DBP has demonstrated a detriment to the efficiency of its operations and its ability to recover its costs, it is wrong for the ERA to say:
- (a) in the absence of evidence that a service that fits within the SSD Limb [Short Southern Deliveries Limb⁸¹] is likely to be sought by a significant part of the market; and
- (b) where there is evidence that the service proposed by DBP is likely to be sought by a significant part of the market,
- that DBP has failed to demonstrate that there is no market, and therefore it considers that there "could be" a market for the service within the SSD Limb.
163. The Authority accepts that it must provide reasons to support any pipeline service that it considers is likely to be sought by a significant part of the market. The Authority rejects DBP's assertion that the Authority in its Draft Decision reversed the onus of proof in rule 101(1) of the NGR. In its Draft Decision, the Authority made the point that, even if a significant part of the market has not yet sought a part haul service, the test in rule 101(1) is whether the pipeline service that is specified as a reference service is "likely to be sought" by a significant part of the market.⁸²
164. As confirmed by the Tribunal in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14* (at [545] and [546]):
- The assessment required by rule 101(2) of whether a pipeline service is likely to be sought by a significant part of the market is not confined to a narrow class of users or prospective users who are likely to wish to enter contracts for further services during the access arrangement period.

⁸¹ In its Supporting Submission 51, DBP refers to that part of the definition of Part Haul that allows it to include gas received at an Inlet Point downstream of MLV31 and delivered to an Outlet Point downstream of CS9 as the "SSD Limb".

⁸² Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraph 81.

- It is not just the incremental demand above the SSC users which is to be taken into account in determining whether a pipeline service is likely to be sought by a significant part of the market.
 - As the word “*market*” used in rule 101(2) is not a word defined in the NGL or the NGR, the ordinary meaning of the word is to be applied in the context of NGR 101(2) and the regulatory scheme as a whole. The Tribunal considered that the ordinary meaning in that context was “... a demand for a commodity or service” (The Australian Concise Oxford Dictionary).
 - Applying that ordinary meaning, the Tribunal found *“the ERA was correct in having regard to the totality of the market and not just a segment of it artificially conceived by DBP to suit its construction”*.
165. For the reasons stated below (refer paragraphs 167 to 178), the Authority considers that a service that fits within the SSD Limb is “likely to be sought” by a significant part of the market. Further, while DBP asserts that it has demonstrated a detriment to the efficiency of its operations and its ability to recover its costs, the Authority does not consider DBP has provided sufficient hard information to justify this assertion. The Authority is therefore of the view that it has not misinterpreted the law and remains of the view set out in its Draft Decision that:
- DBP has not satisfied the Authority that its amended proposed part haul service is “likely to be sought” by a significant part of the market throughout the fourth access arrangement (AA4) period; and
 - the Authority is satisfied that the P1 service, based on the current (AA3) definition of part haul, is “likely to be sought” by a significant part of the market throughout the fourth access arrangement (AA4) period.

Part haul service with the SSD Limb⁸³

166. DBP states that “[r]ule 101 of the NGR requires that for the ERA to include a service as a reference service, (i) the service must be likely to be sought by a significant part of the market; and (ii) the ERA must consider the revenue and pricing principles”. It is DBP’s opinion that the Authority has failed to address this criteria in respect of the SSD Limb, and that there is no evidence that the first criteria is met. In support of its position, DBP provides the following information.
- 3.18 Firstly, in the Tribunal’s review of the definition of Part Haul following the 2011-2015 Access Arrangement, the primary justification for the inclusion of the SSD Limb in the definition of Part Haul was that it would facilitate development of the market for usage of the Mondara Gas Storage Facility (MGSF) and would allow shippers to efficiently utilise the MGSF. At the time, APA submitted evidence that there were discussions between DBP and prospective customers of the facility that would lead to implementation of part haul contracts for a service within the SSD Limb. That evidence was cited by the Tribunal as “hard evidence” in support of the assertion that pipeline services that would provide for the delivery of gas into and out of the MGSF were likely to be sought by a significant part of the market.
- 3.19 However, DBP submits that this is no longer valid evidence to sustain the retention of the SSD Limb in the definition of Part Haul in the form approved by the Tribunal for the 2016-2020 access arrangement period. There is no

⁸³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.16 to 3.23.

such “hard evidence” in existence for the proposed access arrangement period.

- 3.20 Secondly, even with the SSD Limb being included in the definition of the P1 reference service since 2012, no reference service contract for the delivery of gas from MGSF to the South West or Metropolitan areas (that is, utilising the SSD Limb) has materialised nor has one ever been sought by a prospective shipper.
- 3.21 DBP submits that the ERA should also exercise its statutory powers to enquire of APA Group as to the status of the capacity of the MGSF, whether it is fully contracted, how many customers have contracted for that capacity in the MGSF and whether these customers already have a gas transportation agreement on the DBNGP that would be able to be used to receive gas from and deliver gas to the MGSF.
- 3.22 Thirdly, shippers with existing T1 SSC contracted capacity are significantly underutilising this capacity. Given the nature of the tariff structure under these contracts (which generally require 80% of the tariff to be paid as a reservation charge irrespective of whether the capacity is utilised or not, it is reasonable to assume that should these shippers seek to access a pipeline service with an inlet point at Mondarra (or any other inlet point downstream of MLV31) and an outlet point downstream of CS9, they will use their existing unutilised capacity under the T1 SSC contracts before seeking an additional part haul service that includes the SSD Limb.
- 3.23 Fourthly, the recent announcement by AWE that:
- (a) it has entered into a gas sales agreement with Alinta Energy for 10TJ/d, with that gas to be delivered to the Parmelia pipeline for domestic consumption; and
 - (b) it expects to be producing 100TJ/day from the Waitsia Gas Field for domestic consumption by 2020, equivalent to 10% of domestic consumption requirements,
- is not of itself evidence that a significant part of the market is likely to seek a part haul service with the SSD Limb included because:
- (c) the statement provides that this gas will be transported through the Parmelia Pipeline and not the DBNGP;
 - (d) DBP has not been approached by any prospective shipper for additional transportation services for deliveries to downstream of CS9; and
 - (e) even if this statement about gas transportation solutions proves to be incorrect and AWE’s development of the Waitsia Gas Field in the Perth Basin ramps up to 100TJ/d of gas supplies by 2020, the AEMO’s GSOO indicates that the likely customer base will be in the Pilbara rather than at an outlet point on the DBNGP downstream of CS9.

167. With regard to DBP's claim that the Authority has failed to address rule 101 criteria (i.e. the service must be likely to be sought by a significant part of the market and consideration of the revenue and pricing principles) in respect of the SSD Limb, the Authority is of the view that the P1 service, based on the current (AA3) definition of part haul, is "likely to be sought" by a significant part of the market throughout the fourth access arrangement (AA4) period because, as DBP has indicated in its supporting submissions,⁸⁴ it is reasonable to assume that shippers with existing T1 SSC contracted capacity would, to the extent that this contracted capacity is

⁸⁴ See for example, DBP *Supporting Submission 51*, 22 February 2016, paragraph 3.22.

underutilised, use this contracted capacity to undertake part haul deliveries rather than enter into an additional part haul (P1) service contract. Hence, it would be reasonable to assume that services in the nature of part haul services are being sought after and utilised by shippers. In instances where an existing shipper's T1 SSC contracted capacity is fully utilised, or where a (new) shipper does not have a T1 SSC, it would also be reasonable to assume that where a part haul service is required, the shipper would only seek to contract (and pay) for the part haul service required (and not enter into a full haul service if it is not needed).

168. In reaching this conclusion the Authority has taken the revenue and pricing principles into account. The Authority considers that, on the basis that the current capacity is not fully utilised, retaining the current (AA3) P1 service on the DBNGP is likely to better promote the efficient use of the pipeline and the efficient provision of pipeline services in accordance with section 24(2) and (7) of the NGL(WA) as it is likely to be more efficient to make some use of unutilised (spare) capacity via any part haul (or other) service required at the time, rather than to have the spare capacity remaining idle.
169. DBP claims that previous evidence,⁸⁵ cited by the Tribunal as “hard evidence” in support of the assertion that pipeline services that would provide for the delivery of gas into and out of the MGSF were likely to be sought by a significant part of the market, is no longer valid evidence to sustain the retention of the SSD Limb in the definition of part haul in the form approved by the Tribunal for the fourth access arrangement period as there is no such “hard evidence” in existence for the proposed access arrangement period. With regard to this claim, the Authority has contacted APA concerning the MGSF in relation to demand for the part haul service as currently defined. APA has confirmed that:⁸⁶
- The useable storage capacity of the MGSF is 18 petajoules (18 PJ).
 - The firm storage capacity of the MGSF is currently fully contracted. Storage contract details are commercially sensitive, although it is publically known that Synergy has a long term (20 year+) contract in place. Storage capacity and associated contracts for that storage capacity are considered to be dynamic as the facility is a relatively new addition to the Western Australian gas infrastructure market and hence, many parties have contracted for short terms.
 - Services provided by the MGSF can be divided into three types: (1) injection services (from a pipeline into the MGSF), (2) storage services and (3) withdrawal services (from the MGSF into a pipeline). Each service is either provided on a “firm” or “as available” basis.
 - Firm injection and withdrawal services reserve injection and withdrawal capacity for a particular customer, subject to overall facility availability. Firm storage services reserve storage capacity for a customer.
 - As available services (injection, storage and withdrawal) are “as available”, being of a lower level priority than firm services.
 - Further to the above types of services, customers are able to access “flexible transport options” which refers to the MGSF being willing to work with

⁸⁵ Evidence to the effect that the SSD Limb in the definition of part haul would facilitate development of the market for usage of the MGSF and would allow shippers to efficiently utilise the MGSF, including evidence previously submitted by APA that there were discussions between DBP and prospective customers of the facility that would lead to implementation of part haul contracts for a service within the SSD Limb.

⁸⁶ Email correspondence from APA/Mondarra (*Re: Information sought on the MGSF*), 10 June 2016.

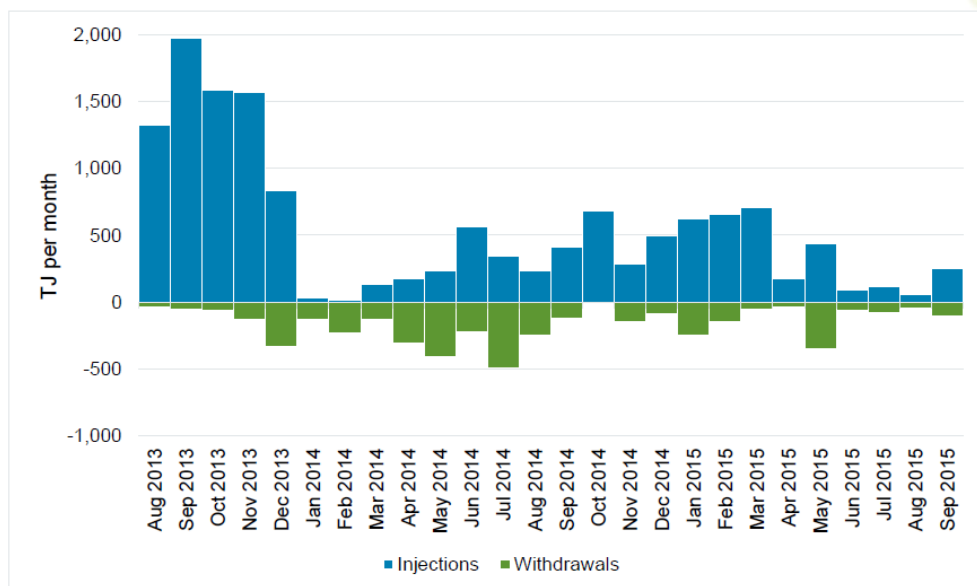
customers to provide flexible transport services on the Parmelia Gas Pipeline (PGP), and to help customers understand and access DBP transport options (this has been particularly relevant for smaller customers, or those without a dedicated gas team).

- At present, the injection of gas into the MGSF (up to 70 TJ/day) must come via the DBNGP inlet point as there is no other inlet point. The facility is undergoing an upgrade, however, that will allow gas to flow into the facility from the PGP as well as the DBNGP in the future. Gas can be withdrawn from the MGSF (up to 150 TJ/day) through either a DBNGP outlet point or PGP outlet point. Gas injection and withdrawal data is provided to the Gas Bulletin Board.

170. Further, the Authority notes the following information provided in the latest (2015) GSOO report concerning the MGSF.⁸⁷

APA Group's Mondarra Gas Storage Facility (MGSF) is currently the only operational multi-user storage facility in WA. Figure 2.17 shows the volume of gas injected into and withdrawn from the MGSF aggregated by month.

Figure 2.17: MGSF injections and withdrawals, 1 August 2013 to 30 September 2015



Source: GBB data

The large injections in late 2013 were due to the initial fill of gas required to operate the MGSF, and a contractual agreement with Synergy to inject gas into the facility.

The quantities of gas transferred rarely reach the MGSF's maximum injection capacity of 70 TJ per day and maximum withdrawal capacity of 150 TJ per day. This suggests there is scope for market participants to use this facility to manage their gas requirements and/or contractual obligations to a greater extent.

171. The Authority considers the above information concerning the MGSF indicates that there is current demand for storage services offered by the facility and that there is prospect for additional activity and/or demand given the current facility upgrades and usage levels. This additional demand and/or activity may suggest prospective demand for part haul services that include gas deliveries within the SSD Limb.

⁸⁷ Independent Market Operator, *Gas Statement of Opportunities*, November 2015, p. 33.

172. With regard to DBP's claim that *"even with the SSD Limb being included in the definition of the P1 reference service since 2012, no reference service contract for the delivery of gas from MGSF to the South West or Metropolitan areas (that is, utilising the SSD Limb) has materialised nor has one ever been sought by a prospective shipper"*, the Authority considers that this does not amount to conclusive evidence that there is no relevant likelihood of demand. Historical demand does not dictate likely future demand during the fourth access arrangement (AA4) period. As indicated by the Tribunal in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14* (at [546]), it is appropriate for the Authority to have regard to the totality of the market and not just a segment of it artificially conceived by DBP to suit its construction.
173. With regard to DBP's claim that the Authority should *"exercise its statutory powers to enquire of APA Group as to the status of the capacity of the MGSF, whether it is fully contracted, how many customers have contracted for that capacity in the MGSF and whether these customers already have a gas transportation agreement on the DBNGP that would be able to be used to receive gas from and deliver gas to the MGSF"*, the Authority has contacted APA concerning the MGSF in relation to demand for the part haul service as currently defined (refer paragraph 169 above).
174. With regard to DBP's claim that it is reasonable to assume that, if existing shippers with unutilised T1 SSC contracted capacity *"seek to access a pipeline service with an inlet point at Mondarra (or any other inlet point downstream of MLV31) and an outlet point downstream of CS9, they will use their existing unutilised capacity under the T1 SSC before seeking an additional part haul service that includes the SSD Limb"*, the Authority accepts that is a reasonable assumption to make. However, the Authority does not consider that this is a reasonable basis for denying those who do not have unutilised T1 SSC contracted capacity the opportunity to obtain a forward haul service that includes the SSD Limb, without having to go to the extra expense of acquiring a full haul service.
175. DBP's claim may explain why some market participants may not use the part haul service, but DBP's proposed solution does not adequately address the needs of all potential market participants. DBP appears to be arguing that prospective shippers should be denied a regulated part haul service, including the SSD Limb, because they may be able to do the same thing with a full haul service if they have one that has underutilised capacity (if they don't, then such shippers would be required to acquire a full haul service, and pay more for it, even though they may only require a part haul). Unless it can be established that there is an NGO-based need (consistent with the revenue and pricing principles) for making the change proposed by DBP (which, as proponent of the change, DBP has, so far, failed to justify), the Authority considers that shippers should not be denied the right that they have under the current (AA3) definition of part haul service to acquire a part haul service including delivery downstream of CS9, without having to pay more to acquire a full haul service to enable delivery downstream of CS9.
176. With regard to DBP's claims to the effect that the recent announcement by AWE is not of itself evidence that a significant part of the market is likely to seek a part haul service with the SSD Limb:
- the Authority acknowledges DBP's claim that this gas will be transported through the Parmelia Pipeline and not the DBNGP, but is not aware of all of the relevant facts why that decision was made by AWE. In particular, whether AWE's service requirement included aspects that could only be met by the Parmelia Pipeline or, if it could have been met by the DBNGP, whether the existence of the current (AA3) part haul service on the DBNGP provided a

pricing ceiling for AWE's negotiations with Parmelia Pipeline. DBP would need to provide more detail concerning the actual circumstances of the arrangement if it is to satisfactorily justify its claim that it is evidence of a lack of demand for the current (AA3) part haul service on the DBNGP;

- the Authority notes DBP's claim that it has not been approached by any prospective shipper for additional transportation services for deliveries to downstream of CS9, and in this regard the Authority refers to its response at paragraphs 163, 164 and 167 above; and
- the Authority notes DBP's claim that, even if AWE's statement about gas transportation solutions proves to be incorrect and AWE's development of the Waitsia Gas Field in the Perth basin ramps up to 100TJ/d of gas supplies by 2020, the AEMO's GSOO indicates that the likely customer base will be in the Pilbara rather than at an outlet point on the DBNGP downstream of CS9. However, the Authority is of the view that the AEMO's GSOO is just one view (which is updated annually) and that, given the early stage of development, it is not possible at this time to predict accurately how AWE gas will be used and where the outlets will be located. The Authority therefore does not consider the AEMO's GSOO amounts to hard information justifying DBP's claim that it evidences a lack of demand for the current (AA3) part haul service on the DBNGP.

177. Accordingly, for the reasons stated in this decision, the Authority is of the view that:

- it has not failed to address the criteria of rule 101 (that the service must be likely to be sought by a significant part of the market and consideration of the revenue and pricing principles) in respect of the SSD Limb, or failed to provide evidence that the first of those criteria (that the service must be likely to be sought by a significant part of the market) is met; and
- DBP has failed to provide adequate hard information to justify its proposed changes to the current (AA3) definition of part haul service (including removal of the SSD Limb).

178. The Authority has set out its reasons and supporting evidence why the P1 Service, based on the current (AA3) definition of part haul, is "likely to be sought" by a significant part of the market throughout the fourth access arrangement period, together with how the Authority took the revenue and pricing principles into account when making that decision, at paragraphs 167 to 176 above.

Part haul service without the SSD Limb⁸⁸

179. DBP submits that there is evidence that a significant part of the market is likely to seek a part haul service without the SSD Limb (that is, for delivery of gas above CS9; being DBP's original part haul definition) and that the demand for this type of service is likely to be sought during the fourth access arrangement (AA4) period. DBP believes that the Authority may have failed to take this into account when making its decision.

180. DBP outlines three types of evidence to support its position.

- 3.25 Firstly, during the Current [Access Arrangement] Period, four access requests have been received by DBP for a Part Haul service matching the

⁸⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.24 to 3.28.

Original Definition. As DBP has consistently stated, DBP does not dispute the inclusion of a reference service for a part haul service where the outlet point is upstream of CS9.

3.26 Secondly, during 2014 and 2015, DBP sought to renegotiate every one of its then existing part haul contracts with each part haul shipper. [REDACTED]

[REDACTED]

3.27 Thirdly, the AEMO 2015 Gas Statement of Opportunities (GSOO) concludes that over the next 10 years:

- (a) Overall domestic demand for gas will remain almost flat at 0.1%pa (base case) to 0.9%pa (high case);
- (b) there will be no growth of gas demand in the South West, in fact there will be a decrease in gas-fired electricity generation in the South West Interconnected System;
- (c) the IMO is not aware of any new large industrial projects commencing operations in the South West and Metropolitan regions during the forecast period and if any large industrial users do commence operation, they are likely to connect to the SWIS for their energy needs rather than require independent gas-fired electricity generation; and
- (d) it is likely that there will be growth of gas demand in the Pilbara.

3.28 Finally, DBP reiterates the other points made in its Access Arrangement submission to the ERA in support of the Original Part Haul Definition:

- (a) The majority of existing shippers under utilise their contracted capacity. Shippers who utilise the MGSF have existing contracted capacity under their T1 Standard Shipper Contracts. They continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement for deliveries to and from the Mondarra outlet point. As the Reservation Charge for a T1 Service is a sunk cost, the incremental cost of transporting gas from the MGSF to outlet points located downstream of Compressor Station 9 is the Commodity Charge only (being 20% of the overall tariff cost under each Standard Shipper Contract).
- (b) Additionally, the majority of shippers with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and therefore are unlikely to use any other service to use the MGSF during the Proposed [Access Arrangement] Period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF. The evidence supporting this theory is that despite uncontracted capacity existing on the DBNGP and the SSD Limb being in place as a reference service since 2012, there has been no request for transportation of gas over the area covered by the SSD Limb.
- (c) Accordingly the economic reality is that in the event that there is any increase in demand for deliveries of gas to outlet points downstream of CS9 (which are not forecast), it is far more cost efficient for customers to utilise excess or spare capacity in existing firm full haul contracts than it would be to enter into a P1 Service for the SSD Limb.

181. With regard to DBP's claim that there is evidence that a significant part of the market is likely to seek a part haul service without the SSD Limb (that is, for delivery of gas above CS9; being DBP's original part haul definition), and that the demand for this type of service is likely to be sought during the fourth access arrangement (AA4) period, the Authority notes that the existence of demand for part haul with delivery of gas upstream of CS9 is not evidence that there is not demand for part haul with delivery of gas downstream of CS9.

182. With regard to DBP's claims that:

- the demand for a part haul service without the SSD Limb is evidenced by four access requests received by DBP during the current access arrangement period for a part haul service matching the original definition; and
- during DBP's attempts in 2014 and 2015 to renegotiate its then existing part haul contracts with each part haul shipper, none of those shippers discussed the desire to include the SSD Limb in the definition of the part haul service,

the Authority does not consider this is evidence that there is not demand for a part haul service with the SSD Limb (i.e. with delivery of gas downstream of CS9). At best, it indicates that those particular shippers did not require the SSD Limb. It does not take into account other prospective shippers' needs. Nor does it take into account the fact that the current (AA3) definition of the part haul service would not be inconsistent with DBP's original (preferred) definition in terms of providing a part haul service with delivery upstream of CS9, but it would offer greater scope for access and achieving the NGO because the Authority considers that the best way of ensuring promotion of access consistent with the NGO is to include a broad definition of part haul, which also facilitates deliveries downstream of CS9.

183. With regard to DBP's claims concerning the conclusions in the AEMO's GSOO, the Authority repeats its views outlined above (at paragraph 176) that the GSOO is just one view, which is updated annually.

184. With regard to DBP's reiteration of its earlier claims to the effect that:

- the majority of existing T1 SSC shippers with unutilised contracted capacity, who utilise the MGSF, use their T1 contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement for deliveries to and from the Mondarra outlet point;
- the majority of shippers with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and therefore are unlikely to use any other service to use the MGSF during the proposed access arrangement period;
- it would therefore not be economically rational to contract for an alternative service to utilise the MGSF; and
- this is evidenced by the fact that, despite uncontracted capacity existing on the DBNGP and the SSD Limb being in place as a reference service since 2012, there has been no request for transportation of gas over the area covered by the SSD Limb,

the Authority does not consider this amounts to good justification for denying those who do not have unutilised T1 SSC contracted capacity the opportunity to obtain a forward haul service that includes the SSD Limb without having to go to the extra expense of acquiring a full haul service. It does not evidence that there is not demand for a part haul service with the SSD Limb (i.e. with delivery of gas downstream of CS9). At best, it indicates that those particular shippers did not require a part haul

service with the SSD Limb. It does not take into account other prospective shippers' needs. The Authority refers to and repeats its considerations above at paragraph 182.

185. With regard to DBP's claim to the effect that, in the event that there is any increase in demand for deliveries of gas to outlet points downstream of CS9 (which are not forecast), it is more cost efficient for customers to utilise excess or spare capacity in existing firm full haul contracts than it would be to enter into a P1 Service for the SSD Limb, the Authority notes that this ignores future access seekers that do not have contracts or may have reasons for having their own part haul contract. DBP's argument to some degree also contradicts DBP's earlier argument in its supporting submission⁸⁹ that retaining the current (AA3) definition of part haul would compromise the firmness/availability of the full haul capacity.

Efficient use of pipeline capacity and cost recovery⁹⁰

186. DBP indicates that, despite DBP's claims above, if the Authority continues to justify the inclusion of the SSD Limb into the definition of part haul, DBP submits that proper consideration of the revenue and pricing principles would lead a regulator to conclude that the part haul service should not include the SSD Limb. DBP provides the following reasons to support its conclusion.

3.29 ...

- (a) The inclusion of the SSD Limb in the part haul definition and the entry into of an access contract for a part haul service including the SSD Limb would lead to a greater reduction in the pipeline's firm full haul capacity than would be the case if an access contract for a part haul service for the Original Definition were entered into – this would lead to an inefficient utilisation of the pipeline's capacity; and
- (b) The inclusion of the SSD Limb in the part haul definition would, based on the tariff structure proposed in the Draft Decision and assuming that the ERA will insist on all other amendments from the Draft Decision being made to the access arrangement, not provide DBP with a reasonable opportunity to recover at least the efficient costs DBP incurs in providing such a reference service in two respects:
 - (i) It would mean DBP would earn an amount of revenue that would be insufficient to afford DBP the opportunity of recovering the Total Revenue given that the tariff allocation methodology for the Part Haul Service assumes less cost to deliver a part haul service because less capacity is required; and
 - (ii) DBP would need to incur further capital expenditure to enable Compressor Station 9 to offset the reduction in full haul capacity caused by the entry into of the service, which expenditure is not provided for in the Total Revenue calculation.

187. With regard to DBP's claim that proper consideration of the revenue and pricing principles would lead a regulator to conclude that the part haul service should not

⁸⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 2.16(d).

⁹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraph 3.29.

include the SSD Limb and should be defined to match the original (pre-AA3) definition for the "two key reasons" stated by DBP, the Authority has considered the NGO and revenue and pricing principles in this context and does not consider that retaining the current (AA3) definition of part haul service (including the SSD Limb) would be inconsistent with the NGO or revenue and pricing principles. The Authority's reasons for this conclusion are as follows.

- While it may be arguable that an access contract including the SSD Limb would lead to a greater reduction in the pipeline's firm full haul capacity than one that does not include the SSD Limb (and that this could lead to an inefficient utilisation of the pipeline's capacity) the Authority considers this is unlikely to be an issue to the extent that such contracting would only occur if there was available capacity. Further, the Authority notes that any form of part haul service is likely to result in a reduction in the availability of some spare pipeline capacity that could otherwise be available for full haul service, but that does not necessarily equate with a less efficient utilisation of pipeline capacity in economic terms. In any case, by DBP's own admission in arguing for its definition, there is little prospect of any form of part haul service crowding out full haul access seekers.
- The Authority is of the view that inclusion of the SSD Limb in the part haul definition does not prevent DBP having a reasonable opportunity to recover its total revenue or other efficient costs because the tariffs have been calculated to recover DBP's total efficient costs as determined by the Authority in this decision and take account of the latest demand forecasts provided by DBP. This is discussed further in the Authority's consideration of DBP's demand forecast.
- The Authority is also of the view that inclusion of the SSD Limb in the part haul definition would not prevent DBP having a reasonable opportunity to recover any efficient costs which meet the requirements of the NGR.

Inefficient use of firm full haul pipeline capacity⁹¹

188. DBP provides modelling information to demonstrate the impact of the two alternative part haul service definitions on the available full haul capacity of the DBNGP. DBP's modelling assumptions are stated as follows.

- An assumption that 50 TJ/day is switched from firm haul capacity (that is, provided under the T1 Service) to the P1 Service under two different scenarios:
 - *Scenario 1*: DBP's proposed part haul definition (that excludes the SSD Limb)
 - *Scenario 2*: The Authority's preferred part haul definition (that includes the SSD Limb).
- The modelling assumes for each scenario that the 50TJ of part haul gas flows over 1100km, through an identical number of compressor stations (7 stations in both cases, however in scenario 1 the gas is delivered to an outlet point downstream of CS7 and in scenario 2 the gas is delivered to an outlet point downstream of CS9) and other operating parameters are constant.

⁹¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.30 and 3.31.

189. The impact of the incremental part haul service on firm haul capacity is demonstrated by DBP in the table below (DBP Table 2).

Table 2: Impact of Incremental Part Haul Service on Firm Full Haul Capacity

	Name plate firm full haul capacity – no incremental Part Haul	Scenario 1:	Scenario 2:
T1 [SSC] Capacity	845 TJ/d	801 TJ/d	795 TJ/d
Reduction in T1 [SSC] Capacity	NA	44 TJ/d	50 TJ/d

190. With regard to DBP's modelling, the Authority considers it is flawed and therefore its results (including those in Table 2 above) are unreliable because while DBP's model is based on an assumption that 50 TJ/day is "switched from firm haul capacity (that is, provided under the T1 Service) to the P1 Service", the Authority considers that if spare capacity is available then no such "switching" would occur.

Inability to recover efficient costs⁹²

191. DBP submits that it would be unable to recover efficient costs if a shipper contracts for the Authority's (defined) P1 reference service for the delivery of gas to an outlet point downstream of CS9. DBP provides the following information in support of this claim.

3.32 Table 3 and Table 4 below demonstrate that DBP would be prevented from having the opportunity to earn \$17.7m per annum if, instead of a shipper contracting for a T1 Service (as that service is proposed to be defined by DBP), it contracts for the ERA's P1 reference service (as proposed in the Draft Decision) where both arrangements provide for delivery of gas to an outlet point downstream of CS9. Table 3 shows the revenue available to DBP if the ERA's P1 Reference Service is contracted for. Whereas, Table 4 shows the revenue available to DBP if the proposed T1 Reference Service were entered into.

3.33 The Total Revenue established by the ERA in the Draft Decision has been set on the basis that any delivery to an outlet point downstream of CS9 is to be treated as a T1 reference service.

Table 3: Impact on DBP's Revenue as a result of ERA's Part Haul Service being entered into

	Capacity	Tariff Assumption	Regulated Revenue to be earned
T1 [SSC] Capacity	795 TJ/d	\$1.30	\$377.227M
50TJ/d contracted Part Haul	50 TJ/d	\$0.33	\$6.038M
Total Capacity	845TJ/d		\$383.265M

⁹² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.32 to 3.40.

- 3.34 The table below highlights the impact based on DBP's proposed definition of Part Haul.

Table 4: Revenue based on Full Haul Service for outlet points downstream of CS9

	Name plate firm full haul capacity – no Part Haul	Tariff Assumption	Revenue
T1 [SSC] Capacity	795 TJ/d	\$1.30	\$377.227M
50TJ/d contracted Part Haul	50 TJ/d	\$1.30	\$23.725M
Total Capacity	845TJ/d		\$400.953M

- 3.35 In the above example, the Part Haul tariff is distance factored from Mondarra (1043.678km) to 1400km (\$0.33/GJ). This service would then render the capital invested in capacity from MLV31 to CS8 as unnecessary. DBP would receive \$17.7M less revenue.
- 3.36 The capacity not utilised could not easily be resold as there is very little part haul demand for gas between CS3 and CS9, the bulk of capacity utilised in this region is full haul capacity to deliver south of CS9 or to Mondarra. DBP understands Mondarra is nearly (if not totally) fully contracted.
- 3.37 Whilst demand south of CS9 would remain at current levels the financial incentive for DBP would result in capacity being removed between CS3 and CS8, which could be required by Shippers at any time, simply as a result of a shipper with capacity south of CS9 wishing to change to any alternative gas supplier given they are all north of MLV31 and require full haul transport.
- 3.38 An alternative scenario is DBP could invest at CS9 to relieve the capacity constraint, but this would be inefficient in the current market where there is available full haul capacity.
- 3.39 The above scenario demonstrates that the proposed part haul definition including the SSD Limb would lead to inefficient outcomes, which would also work against providing competitive tension for upstream gas marketing.
- 3.40 Rule 101 of the NGR requires that when determining whether or not to include a type of service as a reference service, the regulator must take into account the revenue and pricing principles (RPP). The RPP exist to guide the Regulator in assessment of what will achieve the NGO and to provide balance in the assessment of the interests of end consumers of gas and the interests of investors in the relevant infrastructure. Clearly the revenue and pricing principles are not met by this outcome, in particular, the outcome:
- removes an opportunity for DBP to recover its efficient capital costs;
 - does not efficiently utilise the pipeline under existing contracts; and
 - increases the risk of potential over investment by DBP if it is deemed necessary to build in additional capacity.
192. With regard to DBP's modelling, the Authority considers it is flawed and therefore its results (including those in Tables 3 and 4 above) are unreliable because there appears to be issues with the timing assumptions made. That is, DBP assumes that there is actually demand for full haul at the time when the spare (unutilised) capacity is available on the DBNGP. DBP does not appear to make any allowance in its calculations or conclusions for the possibility that part haul may utilise spare capacity at a time when there is no demand for full haul. If there is no demand for full haul when spare capacity becomes available and that spare capacity is used by part haul (when it would otherwise remain idle), then that may actually provide DBP with an opportunity to recover its efficient costs that it would not otherwise have had if it was only relying on supplying full haul (for which at the relevant time, there was no demand).

193. With regard to DBP's claim that the outcome increases the risk of potential over investment by DBP if it is deemed necessary to build in additional capacity, the Authority considers this is unlikely given the requirements of conforming capex under Rule 79 of the NGR.

Irrelevant considerations⁹³

194. DBP considers the Authority took into account a number of irrelevant considerations in justifying the inclusion of the SSD Limb in the definition of part haul.

3.42 Firstly, in the Draft Decision, the ERA pointed out that Wesfarmers made submissions in favour of maintaining ERA's preferred definition and claimed that there is a likelihood of demand for a service for transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9 (see paragraphs 79 and 81 of the Draft Decision). It appears that ERA has inappropriately relied upon Wesfarmers claim to establish the "likelihood of a significant part of the market seeking a service for the SSD Limb" and to therefore justify it being a reference service. In response to this, DBP points out that:

- (a) The claim by Wesfarmers is a mere assertion and not backed up by any evidence of such demand.
- (b) Wesfarmers itself has not sought from DBP (directly or otherwise) nor evidenced any intention to seek such a service.
- (c) Wesfarmers' submission referred to submissions made historically to support the demand for such a service, when in fact those submissions have never been borne out.

3.43 To the extent that these considerations are relevant (which DBP disputes), it is noted that another shipper (CPMM) made submissions that supported the Original Definition proposed by DBP. There is no apparent reason for the ERA to prefer Wesfarmers' submission over CPMM's.

3.44 Secondly, at paragraph [83] of the Draft Decision, the ERA refers to a risk that if demand for the SSD Limb part haul service did eventuate but the service were only a non reference service, shippers would be exposed to an unregulated non-reference part haul service or require use of a full haul service. The ERA has failed to recognise that the Parmelia Gas Pipeline already provides competition for this service. If any new customers seeking delivery to the Perth metropolitan area or the South West do materialise, and an existing or prospective shipper would like to contract for a P1 Service in the [Access Arrangement] Period (which DBP has previously demonstrated is not only not likely, it is not likely to be sought by a significant part of the market), the existence of pipeline services provided by means of the unregulated Parmelia Gas Pipeline ensures that competition will continue to drive efficient outcomes for consumers for that particular form of service on the DBNGP. As to the use of a full haul service for shipping of gas, DBP refers to its submissions above in paragraph 3.28 regarding full utilisation by existing shippers of their firm full haul contracts being more cost effective than under-utilising those contracts and entering into a separate part haul contract.

195. With regard to DBP's claims regarding that:

- the Authority has inappropriately relied upon claims made in the public submission by WESCEF;

⁹³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51*, 22 February 2016, paragraphs 3.41 to 3.44.

- CPMM "made submissions that supported the [o]riginal [d]efinition proposed by DBP"; and
- "there is no apparent reason for the ERA to prefer Wesfarmers' submission over CPMM's",

the Authority had regard to all of the public submissions it received within the relevant submissions period, including those made by WESCEF and CPMM, and did not inappropriately rely upon claims made in the public submission by WESCEF. The Authority notes that, with regard to DBP's proposed amendment to the definition of part haul, CPMM indicated in its submission that it had "no objection to the proposed amendment" and stated no more about the matter – it gave no reasons.⁹⁴

196. On the issue of defining the part haul service, CPMM's submission merely indicates that one shipper (CPMM) did not object to DBP's proposed amendment. WESCEF's submission, on the other hand, not only objected to DBP's proposed amendment, but also provided fairly detailed reasons why it objected to them. WESCEF stated:⁹⁵

WESCEF is concerned with the following proposed revisions to the Access Arrangement.

- DBP's proposed amendments to the definition of Part Haul Service in the Access Arrangement would have the result that a service would only be a Part Haul Service where the Outlet Point is located upstream of CS9. WESCEF submits that the proposed amendment should not be approved and that the previous definition of Part Haul Service be maintained. In WESCEF's view, there is no justification for a shipper to be required to pay a full haul tariff when it wishes to obtain a forward haul service to transfer gas only part of the way down the DBNGP. The calculation of part haul tariffs already take into account the distance the gas is transported (the "Distance Factor"). Submissions made historically, and now, make it clear that existing and potential shippers believe that there is a likelihood of demand for such a service, including for the transfer of gas from upstream of MLV31 to the Mondarra Gas Storage Facility ("MGSF") and the transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9...

WESCEF is concerned with the following proposed amendments to the terms and conditions of the T1 and P1 Reference Services.

- DBP's proposed amendments to Clause 9.9...
- DBP's proposed amendments to the definition of "Part Haul" should not be accepted for the reasons set out earlier in this submission.

197. In the circumstances applicable at the time the Authority made its Draft Decision, the Authority considers it was reasonable to have regard to, and give the weight that it did, to the submissions made by WESCEF and CPMM, including that it considered WESCEF's submission indicated some evidence of likelihood of demand in the market for a part haul service with the current (AA3) definition. The Authority accepts that the availability and relevance of information (and the appropriate weight to be given to it) may change over time. For example, at the time of the Draft Decision, the Authority did not have the benefit of the information provided by DBP and public submissions made since the Draft Decision. To the extent that any of that further information is relevant and valid, the Authority may also take that into account and

⁹⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020, Appendix 9 "CPMM review of DBP proposed Terms and Conditions"*, Table Item No. 2.3, p. 34.

⁹⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3 and 5.

give it appropriate weight. In this regard, the Authority notes DBP's assertions to the effect that:

- WESCEF has not itself sought from DBP (directly or otherwise) nor evidenced any intention to seek a part haul service for the SSD Limb, and
- WESCEF's submission referred to submissions made historically to support the demand for such a service, when in fact those submissions have never been borne out.

198. With regard to DBP's claim that, the Authority *"has failed to recognise that the Parmelia Gas Pipeline already provides competition for this service"*, the Authority notes that the Parmelia Pipeline is only a potential competitor. Whether or not it actually provides a competitive option will depend on the particular circumstances applying at the time when a shipper wants a part haul service, including whether or not the Parmelia Pipeline actually has spare capacity of the kind sought by the prospective shipper (or at all) when the prospective shipper is seeking it. Further, the Parmelia Pipeline does not exactly match the reach of the DBNGP either upstream or downstream of CS9 (e.g. Parmelia Pipeline does not go as far as Bunbury) and so does not run the full length exposed to the DBNGP part haul. The Parmelia Pipeline may therefore not be able to offer a competitive option to the DBNGP part haul in every case.
199. With regard to DBP's claim regarding *"full utilisation by existing shippers of their firm full haul contracts being more cost effective than under-utilising those contracts and entering into a separate part haul contract"*, the Authority notes that if such capacity were made available on a secondary market it would likely shadow the equivalent full haul tariff. It is also clear the shipper would use the existing arrangements as claimed by DBP instead of entering a new part haul contract.
200. In the circumstances applying at the time of making this decision, the Authority does not consider that DBP has provided adequate justification for its proposed amendment to the current (AA3) definition of part haul that would prevent the service including delivery downstream of CS9. For the reasons stated in paragraph 182 above, the Authority is of the view that the necessary demand required by rule 101 of the NGR exists for a part haul service with the current (AA3) definition of part haul.
201. Having regard to the considerations outlined above, concerning the definition of "part haul service", the Authority is of the view that DBP's amended proposal should not be accepted. Accordingly, the term should retain the same meaning as currently drafted in clause 15 (Definitions) of the existing access arrangement for the third access arrangement (AA3) period.⁹⁶ That is, "part haul service" means:
- a pipeline service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation:
- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;
 - services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
 - services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

⁹⁶ Subject to other amendments as required under this Final Decision.

Required Amendment 3

The term “Part Haul service” as specified in clause 1 (Definitions) of the amended access arrangement (and associated terms and conditions) must be amended to read:

Part Haul service means a pipeline service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation:

- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

Bundling of Services

202. Rule 109(1) of the NGR prohibits the bundling of services unless it is reasonably necessary. The Authority indicated in the Draft Decision that it was not aware of any bundling of services by DBP, and assuming this to be case, was satisfied the access arrangement met the criteria of rule 109(1).
203. In its amended proposal and in response to the Authority’s Draft Decision assessment on the bundling of services, DBP draws to attention parts of its original proposal where DBP did (and continues to) require the bundling of pipeline services. Specifically, clause 3.6(c) of the proposed revised access arrangement specified that a “Park and Loan Service” must be bundled with a “Haulage Service”. DBP indicates that it had previously submitted as part of its original proposal (and continues to submit under its amended proposal) it is reasonably necessary to require the bundling of these services for the following reasons.⁹⁷
- (i) To enable gas to be either parked in or loaned from the DBNGP under a Park and Loan Service, it will need to be transported along the pipeline.
 - (ii) It is envisaged that the only entities seeking to access the Park and Loan Service will be shippers with a haulage service.
 - (iii) The terms and conditions of the proposed Park and Loan Service do not contain terms and conditions relating to transportation or haulage.
 - (iv) There is no requirement in the Proposed Revised AA for a shipper seeking access to a haulage service to also enter into an access contract for a park and loan service.
 - (v) By allowing a prospective user to only enter into a Park and Loan Service significantly increases the risk that DBP is involved in the sale or purchase of natural gas in a way that amounts to a related business (as that term is defined in the NGL). This is prohibited under the NGL.

⁹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3*, 31 December 2014, paragraph 3.2, p. 4.

204. The Authority notes the following definitions of “Park and Loan Service” and “Haulage Service” in clause 15 (Definitions) of the amended access arrangement, which remain materially the same as the definitions under the existing access arrangement for the third access arrangement (AA3) period.⁹⁸

Park and Loan Service is a service where the Operator agrees that a Shipper may deliver a quantity of Gas into the DBNGP at an Inlet Point on a Gas Day, without the Shipper taking delivery of that Gas at an Outlet Point on the same Gas Day (Park Service) or where the Operator agrees that a Shipper may take a quantity of Gas at an Outlet Point without supplying an equivalent quantity of Gas at an Inlet Point on the same Gas Day and consequently that Gas is delivered to Shipper out of linepack (Loan Service).

...

Haulage Service means a Pipeline Service involving the contracting of capacity on the DBNGP.

205. Having regard to the information brought to its attention by DBP concerning the bundling of services and the nature of the “Park and Loan Service” and “Haulage Service”, the Authority is satisfied that it is reasonably necessary for these services to be bundled. The Authority is therefore satisfied that the amended access arrangement meets the criteria of rule 109(1) of the NGR.

⁹⁸ The Authority notes that in DBP’s original proposal, DBP did make drafting changes to the definition of “Park and Loan Service”. The Authority considers these changes to be minor (grammatical and/or typographical) in nature.

Total Revenue

Revenue Building Blocks

Regulatory Requirements

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

76. Total revenue

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

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

DBP's Original Proposal

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

Table 1 DBP's Original Total Revenue Building Blocks (AA4), real \$ million

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

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

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

Table 2 DBP's Original Total Revenue Building Blocks (AA4), nominal \$ million

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

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

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

Submissions

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

Draft Decision

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

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

Table 3 Draft Decision Total Revenue Building Blocks (AA4), real \$ million

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

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

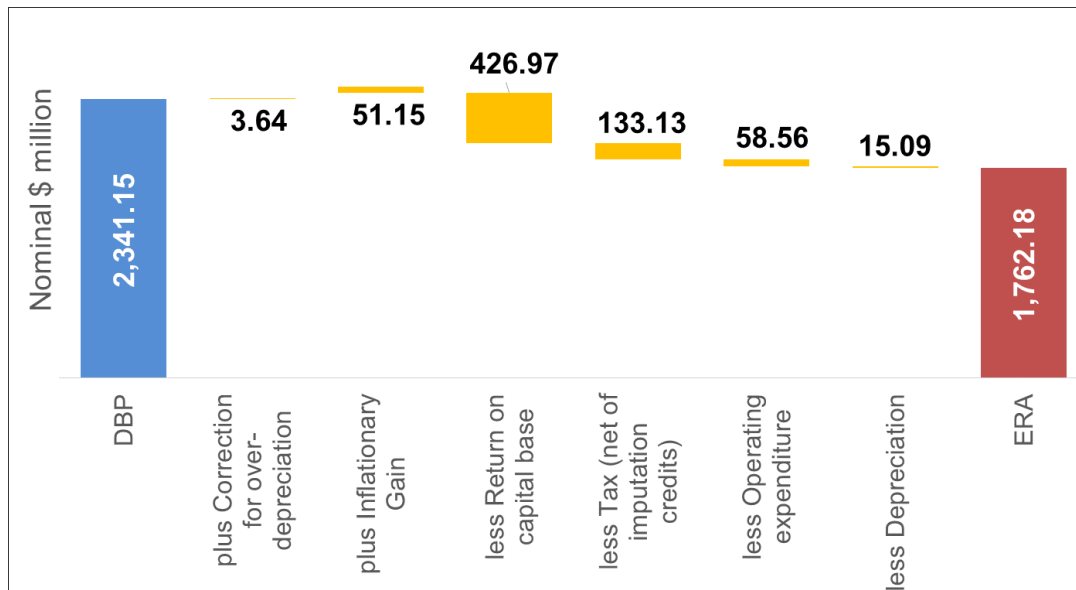
Table 4 Draft Decision Total Revenue Building Blocks (AA4), nominal \$ million

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

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

213. Figure 2 (below) compares DBP's proposed revenue building blocks with the building blocks approved in the Authority's Draft Decision.

Figure 2 Draft Decision: Comparison of DBP's Proposed and Authority Approved Revenue Building Blocks (AA4), nominal \$ million



214. The Authority required the following amendment:

Required Amendment 5

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

DBP's Amended Proposal

215. DBP's response to the Draft Decision did not accept Required Amendment 5. DBP's amended proposed building blocks for the total revenue requirement in real terms for the fourth access arrangement (AA4) period, as set out in its amended Access Arrangement Information, is shown in Table 5 below.

Table 5 DBP's Amended Total Revenue Building Blocks (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Return on capital base	263.34	257.83	253.36	246.98	241.99	1,263.50
Depreciation	102.03	101.12	102.09	96.21	87.23	488.68
Less inflationary gains on RAB	(65.41)	(64.04)	(62.93)	(61.34)	(60.11)	(313.82)
Correction for over-depreciation	(3.41)	-	-	-	-	(3.41)
Tax	25.86	25.23	24.94	25.70	26.71	128.44
Operating expenditure	103.48	104.10	106.78	104.56	106.16	525.09
Total	425.90	424.25	424.24	412.10	401.99	2,088.48

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 21, p. 29.

216. Table 6 below sets out DBP's amended proposed revenue requirement in nominal terms.

Table 6 DBP's Amended Total Revenue Building Blocks (AA4), nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total
Return on capital base	268.37	267.78	268.15	266.40	266.00	1,336.70
Depreciation	103.98	105.02	108.05	103.77	95.88	516.71
Less inflationary gains on RAB	(66.66)	(66.51)	(66.60)	(66.17)	(66.07)	(332.00)
Correction for over-depreciation	(3.47)	-	-	-	-	(3.47)
Tax	26.35	26.20	26.39	27.72	29.36	136.03
Operating expenditure	105.46	108.12	113.02	112.78	116.70	556.07
Total	434.03	440.61	449.02	444.50	441.88	2,210.04

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

Further Submissions

217. WESCEF largely agrees with the Authority's Draft Decision and considers that DBP should adopt the Authority's required amendments.

218. Specific comments made by WESCEF in reference to each element of DBP's total revenue is outlined in the relevant sections.

Considerations of the Authority

219. The Authority's Final Decision on DBP's Total Revenue requirement is documented in the following sections.

- Operating Expenditure;
- Opening Capital Base;

- Projected Capital Base;
- Rate of Return;
- Gamma;
- Depreciation;
- Taxation;
- Incentive Mechanism; and
- Allocation of Total Revenue between Reference Services and Other Services

220. As a result of the Authority's assessment of DBP's proposed total revenue building blocks as per rule 76 of the NGR, set out in detail below, the Authority has not approved DBP's proposed total revenue for the fourth access arrangement (AA4) period. The Authority's Final Decision for approved total revenue by building block in real and nominal dollars is set out in Table 7 and Table 8 respectively.

Table 7 Final Decision Total Revenue Building Blocks (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Return on capital base	151	147	144	140	137	720
Depreciation	98	101	101	96	86	482
Less inflationary gains on RAB						
Correction for over- depreciation						
Tax	12	9	9	10	11	51
Operating expenditure	102	102	105	102	104	515
Total	362	360	360	348	338	1,768

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

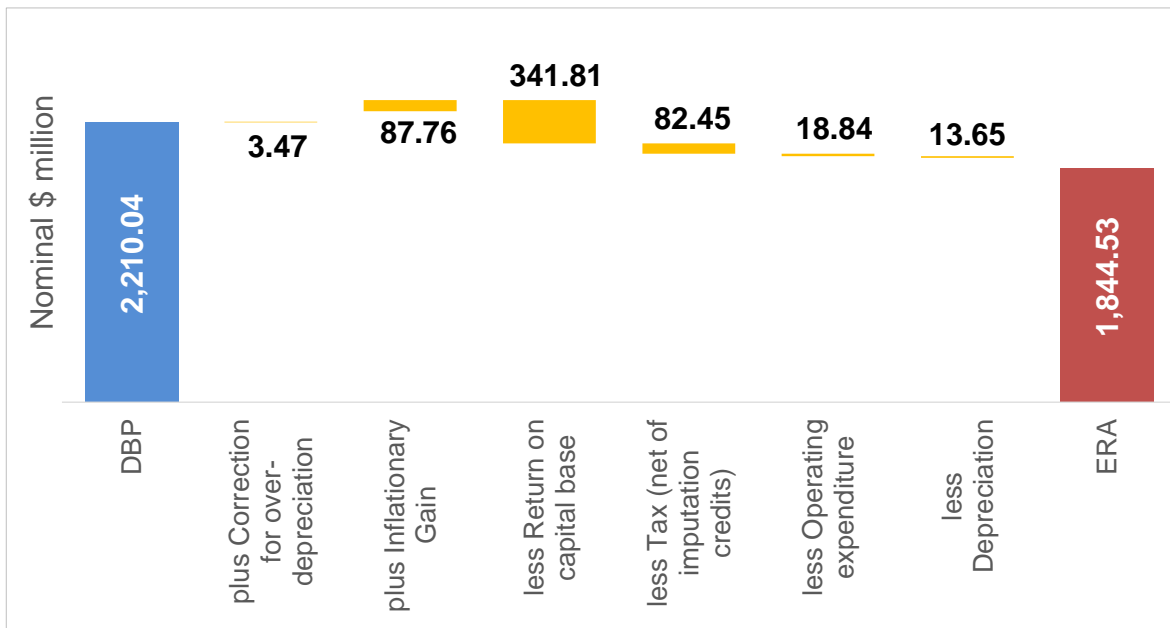
Table 8 Final Decision Total Revenue Building Blocks (AA4), real \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total
Return on capital base	202	201	199	197	195	995
Depreciation	100	104	106	101	93	503
Less inflationary gains on RAB	(50)	(49)	(49)	(48)	(48)	(244)
Correction for over- depreciation						
Tax	12	10	10	11	11	54
Operating expenditure	103	105	109	108	111	537
Total	368	370	375	369	362	1,845

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

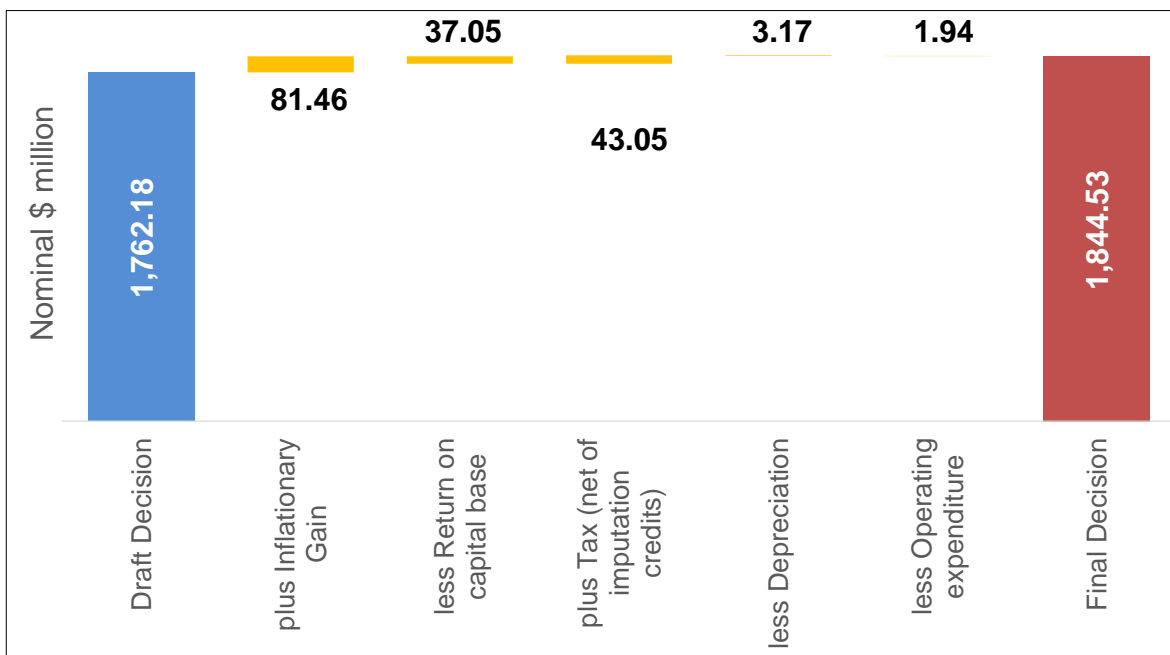
221. Figure 3 compares DBP's proposed revenue building blocks with the building blocks approved in the Authority's Final Decision.

Figure 3 Final Decision: Comparison of DBP's Proposed and Authority Approved Revenue Building Blocks, nominal \$ million



222. Figure 4 compares DBP's proposed revenue building blocks with the building blocks approved in the Authority's Final Decision. The key changes relate to the inflationary gain and return on capital base (reflecting a reduction in forecast inflation and increase in the real rate of return) and taxation (reflecting an adjustment to the opening tax asset base).

Figure 4 Comparison of Authority's Final Decision with Draft Decision Revenue Building Blocks, nominal \$ million



Required Amendment 4

The Authority has determined the values for total revenue to be the values in Table 7 and Table 8 of this Final Decision.

The Access Arrangement must also be amended to remove the proposed revisions in relation to over depreciation to be consistent with this Final Decision.

Basis for Financial Information

Regulatory Requirements

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

73. Basis on which financial information is to be provided.

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

DBP's Original Proposal

224. Section 2 of DBP's original revised access arrangement information set out the basis on which it had provided its financial information:

- Financial information was provided on a calendar year basis.
- Unless otherwise stated, financial information was stated in real terms with values expressed on a 31 December 2015 basis.
- Where necessary to express financial values in dollar values of 31 December 2015, the financial values were escalated at the rate of inflation as measured by the December Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities)⁹⁹ or de-escalated at the expected rate of inflation.
- The expected rate of inflation was determined using the linear interpolation and Fischer equation approach outlined in the ERA's Rate of Return Guidelines and based on the 40 trading days prior to 30 September 2014.

⁹⁹ The rate of inflation for 2014 and 2015 has been determined on the same basis as "expected inflation" and will be updated for actual when available.

225. The actual and forecast inflation for the AA3 and AA4 periods originally proposed by DBP are set out below in Table 9 and Table 10 respectively.

Table 9 DBP's Original Actual/Forecast Inflation (AA3), per cent per annum

Per cent per annum	2011 %	2012 %	2013 %	2014 %	2015 %
Rate of inflation	3.10	2.20	2.75	2.05	2.02

Table 10 DBP's Original Forecast Inflation (AA4), per cent per annum

Per cent per annum	2016 %	2017 %	2018 %	2019 %	2020 %
Rate of inflation	2.04	2.09	2.16	2.22	2.30

Submissions

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

Draft Decision

227. In its Draft Decision, the Authority was satisfied that DBP's provision of financial information expressed in real values was consistent with the requirements of Rule 73. The Authority was also satisfied with the method used by DBP to escalate or de-escalate financial costs to dollar values of 31 December 2015.

228. However, the Authority did not accept DBP's forecast inflation factors. The reasons for this were set out in Appendix 4 of the Draft Decision. The inflation rates determined by the Authority in its Draft Decision are set out in Table 11 and Table 12 below.

Table 11 Draft Decision Actual/Forecast Inflation (AA3), per cent per annum

Per cent per annum	2011 %	2012 %	2013 %	2014 %	2015 %
Rate of inflation	3.10	2.20	2.75	1.72	2.75

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

Table 12 Draft Decision Forecast Inflation (AA4), per cent per annum

Per cent per annum	2016 %	2017 %	2018 %	2019 %	2020 %
Rate of inflation	1.90	1.90	1.90	1.90	1.90

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

229. The Authority required the following amendment:

Required Amendment 6

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

DBP's Response to the Draft Decision

In its response to the Draft Decision, DBP noted that it had accepted Required Amendment 6 and adopted the forecast inflation methodology used by the Authority in the Draft Decision. DBP also updated the 2015 inflation figure to reflect the actual published inflation. DBP's amended actual and forecast inflation for the AA3 and AA4 periods are set out below in Table 13 and Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 2, p. 6.

230. Table 14 respectively.

Table 13 DBP's Amended Actual Inflation (AA3), per cent per annum

Per cent per annum	2011 %	2012 %	2013 %	2014 %	2015 %
Rate of inflation	3.10	2.20	2.75	1.74	1.69

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 2, p. 6.

Table 14 DBP's Amended Forecast Inflation (AA4), per cent per annum

Per cent per annum	2016 %	2017 %	2018 %	2019 %	2020 %
Rate of inflation	1.91	1.91	1.91	1.91	1.91

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 3, p. 6.

Further Submissions

231. No public submissions were made in relation to the Authority's Draft Decision on the basis for financial information, or on DBP's revised proposal.

Considerations of the Authority

232. The Authority notes DBP has accepted the forecasting methodology used by the Authority in the Draft Decision. The Authority has updated the 2015 inflation value to reflect the actual published inflation value and updated the AA4 forecast inflation to be consistent with the averaging period nominated by DBP for the purposes of calculating the WACC. The updated actuals and forecasts are set out in Table 15 and Table 16 below.

Table 15 Final Decision Actual Inflation (AA3), per cent per annum

Per cent per annum	2011 %	2012 %	2013 %	2014 %	2015 %
Rate of inflation	3.10	2.20	2.75	1.72	1.69

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Table 16 Final Decision Forecast Inflation (AA4), per cent per annum

Per cent per annum	2016 %	2017 %	2018 %	2019 %	2020 %
Rate of inflation	1.43	1.43	1.43	1.43	1.43

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Required Amendment 5

The Authority has determined the actual and forecast inflation assumptions to be the values in Table 15 (Authority Actual Inflation for AA3) and Table 16 (Authority Forecast Inflation for AA4) of this Final Decision.

Demand Forecast

Regulatory Requirements

233. Rule 72 of the NGR contains specific requirements for access arrangement information.

72. Specific requirements for access arrangement information relevant to price and revenue regulation

(1) The access arrangement information for a full access arrangement proposal (other than an access arrangement variation proposal) must include the following:

(a) if the access arrangement period commences at the end of an earlier access arrangement period:

...

(iii) usage of the pipeline over the earlier access arrangement period showing:

(A) for a distribution pipeline, minimum, maximum and average demand and, for a transmission pipeline, minimum, maximum and average demand for each receipt or delivery point; and

(B) for a distribution pipeline, customer numbers in total and by tariff class and, for a transmission pipeline, user numbers for each receipt or delivery point.

...

(d) to the extent it is practicable to forecast pipeline capacity and utilisation of pipeline capacity over the access arrangement period, a forecast of pipeline capacity and utilisation of pipeline capacity over that period and the basis on which the forecast has been derived; ...

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

74. Forecasts and estimates

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

DBP's Original Proposal

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

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

Table 17 DBP's Original Full Haul Demand (AA2 and AA3), TJ/day

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

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 6, p. 6. and from AA3 Access Arrangement Information document.

Table 18 DBP's Original Part Haul Demand (AA2 and AA3), TJ/day

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

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 7, p. 6. and from AA3 Access Arrangement Information document.

Table 19 DBP's Original Back Haul Demand (AA2 and AA3), TJ/day

Back Haul (TJ/day)	2005-2010*	2011	2012	2013	2014 ¹⁰⁰
Maximum	136.67	127.47	151.58	198.65	200.97
Average	93.80	105.17	128.96	146.48	176.15
Minimum	0	5.79	42.43	53.20	88.36

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 8, p. 6. and from AA3 Access Arrangement Information document.

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

Table 20 DBP's Original Number of Shippers per Inlet Point (AA2 and AA3)

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

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 9, p. 7 and from AA3 Access Arrangement Information document.

Table 21 DBP's Original Number of Shippers per Outlet (AA2 and AA3)

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

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 10, p. 7 and from AA3 Access Arrangement Information document.

238. DBP's original forecast for pipeline capacity over the AA4 period is set out in Table 22 below.

¹⁰⁰ DBP Quote from AAI: The information for 2014 is year to date information up to [October 2014], reflecting what information was available at the time the AAI was submitted to the ERA.

Table 22 DBP's Original Capacity Demand Forecast (AA4), TJ/Day

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

Source: DBNGP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 17, p. 14*

239. The forecast pipeline capacity proposed by DBP (as shown in Table 22 above), was lower than the value included in the previous access arrangement, which reported pipeline capacity of 888 TJ/Day. The Authority queried DBP in relation to this. DBP advised that the values in Table 17 of its original access arrangement information related to Firm Full Haul or T1 Capacity, and contained an error with regards to the outlined assumptions. The assumptions in the table stated that “all compressor units are operating” whereas it should have stated that “compressor units are available to operate at 98.3% of the time”.¹⁰¹
240. DBP also advised that the capacity figures included in Table 16 of the AA3 Access Arrangement Information were calculated based on the assumption that compressor units were available at all times. It noted that there was also an error in relation to the assumed value for HHV: the 888 TJ/day reported in 2010 was based on an HHV of 38.0 MJ/m³ and not 37.0 MJ/m³ (as was stated in the original Access Arrangement Information assumptions). DBP advised that maximum capacity, assuming all compressor units are operating, based on 37.0 MJ/m³ is 866, not 888 TJ/day.
241. In summary, the capacity figure of 845 TJ/day reported in the original access arrangement information related to Firm Full Haul capacity, and was based on an HHV of 37.0 MJ/m³. It also assumed that compressor units were available to operate 98.3 per cent of the time.
242. DBP's original forecasts for capacity and throughput over the AA4 period are set out in the tables below, together with actual capacity and throughput from 2012 to 2014.

Table 23 DBP's Original Capacity Demand Forecast (AA4), TJ/Day

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

Source: DBNGP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 16, p. 14 and from AA3 Access Arrangement Information document.*

¹⁰¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Response to Information Requests ERA07 and 07A, Supporting Submission: 37.*

Table 24 DBP's Original Throughput Demand Forecast (AA4), TJ/Day

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

Source: DBNGP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 31 December 2014, Table 18, p. 14* and from AA3 Access Arrangement Information document.

243. DBP submitted ¹⁰² that its demand forecasts for the fourth access arrangement period were based on:
- the amount of capacity currently contracted. It noted that contracted capacity was generally very predictable and stable, with the Standard Shipper Contracts requiring 15 year commitments to contracted capacity;
 - reviews of capacity utilisation factors taking account of contracts, historical usage, business requirements and industry type for each shipper to forecast throughput;
 - adjustments for any expected relinquishment, termination or additional capacity that is either allowable within the Standard Shipper Contract or currently being negotiated with the shipper; and
 - forecasts that were peer reviewed within DBP's commercial division in order to verify their reasonableness, and to determine whether any final adjustments needed to be made (DBP noted that this review occurs at least twice per year).
244. DBP noted that the reductions for full haul capacity were related to agreed capacity relinquishments in renegotiations for its Standard Shipper Contracts, ██████████ ██████████ and the closure of a business in the South West due to bankruptcy.

Submissions

245. CPMM disagreed with DBP's forecast gas throughput and instead submitted that flow data from the Gas Bulletin Board showed that the daily throughput exceeded 1,000 TJ/day. CPMM considered this to be evidence that 100 per cent of DBP's full haulage capacity of 845 TJ/day is currently contracted and was likely to remain contracted throughout the fourth access arrangement period.¹⁰³
246. CPMM submitted that data from the Independent Market Operator's (IMO) Gas Bulletin Board showed that volume movements through the DBNGP have recently been above its full capacity and had been increasing slightly over the previous six month period, despite the overall economic slowdown in Western Australia and a

¹⁰² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11*, 31 December 2014.

¹⁰³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 8.

drop in oil and iron ore prices.¹⁰⁴ CPMM considered that the trend of increasing gas transmission volumes would continue for the next five years with additional capacity being required by Gorgon 1 and 2, Wheatstone, and the new Apache entity. Furthermore, CPMM stated that new projects such as the Fortescue River Gas Pipeline to FMG's Solomon Hub, the Tropicana Gold Mine and the Roy Hill Mine, all of which are scheduled to commence within the next two years would further increase throughput demand through the DBNGP over the course of the forth access arrangement period.¹⁰⁵

247. CPMM suggested that the reduction in global LNG prices and the likely implementation of a carbon emissions reduction scheme would encourage the use of gas for power generation in the South West Interconnected System (**SWIS**) and in remote mine sites, further increasing the volume of gas transmitted through the DBNGP.

Draft Decision

248. In its Draft Decision, the Authority noted that the pipeline capacity reported by DBP of 845 TJ/day was consistent with the IMO's Gas Bulletin Board for nameplate capacity and DBP's DBNGP Capacity Register.
249. The Authority's technical consultant, EMCa, provided advice that the capacity and throughput forecasts were derived from a reasonable assessment of the information available to DBP. EMCa noted the capacity forecast was significantly underpinned by contracted capacity commitments and that the capacity factors derived from the throughput forecasts were in a reasonable range. EMCa also noted that forecast throughput was consistent with the IMO's Gas Statement of Opportunities (**GSOO**) forecast.
250. The Authority noted that DBP had not based any of its forecast capital expenditure requirements on the demand forecast. The only operating expenditure identified by DBP as being related to demand was fuel gas. Otherwise, the main relevance of the demand forecast was that it provided the denominator for deriving the reference tariffs. The greater the forecast demand, the lower the reference tariff and vice versa. As discussed in the tariff variation mechanism section of the Authority's Draft Decision, DBP's proposal to adopt a revenue cap was not accepted. The Authority instead considered that DBP's current price cap price control provided better incentives.
251. The Authority also noted that DBP had excluded capacity volumes in relation to the Special Purpose Access Contract (**SPAC**) from its original forecasts, but had continued to include throughput volumes.¹⁰⁶ As DBP had included forecast volumes for both capacity and throughput in relation to the SPAC in its proposals for previous access arrangements, the Authority considered that it should continue to do so.

¹⁰⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 9.

¹⁰⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 9.

¹⁰⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11*, 31 December 2014, pp. 12-13.

252. The Authority noted the submission from CPMM comparing volume data reported on the Gas Bulletin Board with the throughput volumes used by DBP in its proposed access arrangement. The Authority agreed that it was difficult to reconcile DBP's demand forecast with the throughput volumes reported on the Gas Bulletin Board as DBP had only provided individual demand forecasts for full haul, part haul and back haul and had not provided an overall forecast which could easily be reconciled with the Gas Bulletin Board. DBP had also not provided any details in relation to any non-firm supplies or other non-reference services which may be included in the Gas Bulletin Board volumes. In addition, the Gas Bulletin Board is broken into zones, whereas DBP has only provided demand forecasts for the total pipeline. The Authority considered the robustness of DBP's forecasts would be improved by providing a reconciliation of its demand forecasts with the volumes reported to the Gas Bulletin Board.
253. In relation to CPMM's views that future demand for gas is likely to increase, the Authority noted the 2015 GSOO was published in November 2015. The IMO expected domestic gas consumption to fall slightly over the period to 2020. It expected a decrease in gas fired electricity generation to be partially offset by demand from new mining related projects. It noted forecast demand for the period to 2020 had reduced compared with the 2014 GSOO forecast due to:
- the scheduled decommissioning of the South-West Joint Venture Co-generation facility in 2016 which consumes about 30 TJ per day; and
 - closure of the Windimurra vanadium mine (due to fire damage in late 2014).
254. The GSOO noted these reductions would be partially offset by commencement of the following projects between 2014 and 2017:
- connection of the Sunrise Dam and Tropicana gold mines to the EGGP;
 - restart of Newman Power Station, which will supply electricity to the Roy Hill iron ore mine;
 - operation of the South Hedland Power Station;
 - operation of the Pilbara Temporary Power Station; and
 - expansion of the Sino Iron magnetite mine.
255. In its proposal, DBP noted it considered the potential for any new demand outside of the Pilbara to be limited. DBP noted it was aware of several potential customers in the Pilbara but their location would require laterals to be built. Consequently, DBP considered any increase in contracted capacity was only expected in the latter years of AA4.¹⁰⁷ It was unclear to the Authority whether the projects identified in the GSOO had been adequately accounted for in DBP's projected demand. The Authority required DBP to provide additional information demonstrating that the projects identified in the GSOO, to the extent they impact DBP's demand, had been accounted for.
256. For the purposes of calculating the reference tariffs, consistent with previous years, DBP had calculated full haul equivalent volumes for part haul and back haul services by using the distance factors for each shipper. As part of its review, the Authority

¹⁰⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11*, 31 December 2014, p. 18.

requested additional information from DBP to verify the distances used. Whilst preparing this information, DBP noted a number of discrepancies in the distance factors that it had provided to the Authority. Whilst the impact of these discrepancies appeared to be small, given the importance of this data in calculating the reference tariffs, the Authority considered that DBP should review its data and calculations and provide updated data, together with evidence to support the distance factors used, to the Authority.

257. The Authority also noted an error in DBP's tariff model, whereby volumes related to two customers were not included in the calculation of the full haul equivalent values. The Authority corrected this in its tariff model for its Draft Decision.
258. As noted above, DBP did not link any of its proposed capital expenditure to its demand forecast. The consequence of the demand forecast being incorrect is the impact it has on the reference tariffs. For the purposes of its Draft Decision, the Authority used the demand forecast provided by DBP, with the correction noted above in relation to the calculation of full haul equivalent volumes. However, the Authority required DBP to provide the additional information and evidence outlined above to be taken into account in the Final Decision in relation to the demand forecast:

Required Amendment 7

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

DBP's Amended Proposal

259. In its response to the Authority's Draft Decision, DBP has provided additional information in relation to (Draft Decision) Required Amendment 7 and updated its demand forecast including providing actual volumes for 2014 and 2015.¹⁰⁸ The additional information has been grouped under the following headings:
- Capacity volumes in relation to the SPAC;
 - Reconciliation of DBP's demand forecasts with the volumes reported to the Gas Bulletin Board;
 - Demonstrating that the projects identified in the GSOO, to the extent they impact DBP's demand, have been accounted for; and
 - Updated distance factors, together with evidence to support the factors used included actual volumes for full haul and part haul demand for the years 2014 and 2015.¹⁰⁹
260. DBP's updated demand information and forecasts, as included in its amended Access Arrangement Information, are set out in the tables below.

¹⁰⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 57*, 22 February 2016, pp. 5-14, paragraphs 2.1 to 2.62.

¹⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016.

Table 25 DBP's Amended Full Haul Demand (AA2 and AA3), TJ/day

Full Haul (TJ/Day)	2005-2010*	2011	2012	2013	2014	2015
Maximum	894.03	793.65	767.02	752.73	812.22	824.96
Average	627.04	630.52	631.80	631.31	643.22	652.56
Minimum	560.37	477.26	531.60	502.20	560.55	556.56

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 6, p. 9 and from AA3 Access Arrangement Information document.

Table 26 DBP's Amended Part Haul Demand (AA2 and AA3), TJ/day

Part Haul (TJ/Day)	2005-2010*	2011	2012	2013	2014	2015
Maximum	137.24	141.26	134.18	212.13	189.47	205.97
Average	77.23	110.31	106.47	130.66	116.88	147.83
Minimum	52.27	91.26	83.34	51.48	69.17	101.80

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 7, p. 9 and from AA3 Access Arrangement Information document.

Table 27 DBP's Amended Back Haul Demand (AA2 and AA3), TJ/day

Back Haul (TJ/Day)	2005-2010*	2011	2012	2013	2014	2015
Maximum	136.67	127.47	151.58	198.65	200.97	205.48
Average	93.80	105.17	128.96	146.48	178.37	167.76
Minimum	0	5.79	42.43	53.20	88.36	85.73

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 8, p. 9 and from AA3 Access Arrangement Information document.

Table 28 DBP's Amended Number of Shippers per Inlet Point (AA2 and AA3)

Inlet/Receipt Point	Aggregate Number of Shippers (AA2)*	Aggregate Number of Shippers (AA3)
DOMGAS Dampier Receipt	19	29
MLV7 Interconnect	7	24
Griffin	2	
Devil Creek		26
Harriet	16	33
Gorgon		0
Macedon		20
Mondarra Storage Facility		6
Red Gully		1
Total	44	139

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 9, p. 10 and from AA3 Access Arrangement Information document.

Table 29 DBP's Amended Number of Shippers per Outlet (AA2 and AA3)

Outlet/Delivery Point	Aggregate Number of Shippers (AA2)*	Aggregate Number of Shippers (AA3)
Full Haul Points	14	17
Part Haul Points	9	29
Back Haul Points	6	22

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 10, p. 10 and from AA3 Access Arrangement Information document

Table 30 DBP's Amended Capacity Demand Forecast (AA4), TJ/day

TJ/Day	2012 Actual	2013 Actual	2014 Actual	2016	2017	2018	2019	2020
Total Full Haul	██████	██████	██████	725.94	715.49	713.99	711.87	711.87
Total Part Haul	██████	██████	██████	254.92	254.62	254.32	254.02	253.72
Total Back Haul	██████	██████	██████	227.74	229.36	229.36	229.36	229.36

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 16, p. 17 and from AA3 Access Arrangement Information document

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
265. The Authority notes that the primary focus of the EMCa review was to provide advice to the Authority on DBP's proposed capital and operating expenditure. EMCa did not specifically consider the matter of whether any SPAC volumes should be included in the capacity forecast.
266. The demand forecasts provide the denominator for deriving the reference tariffs. As discussed in the allocation of revenue and reference tariff sections of this Final Decision and consistent with previous access arrangements, volumes in relation to both reference and non-reference full haul, part haul and back haul services are included in the demand forecasts. This ensures that costs are allocated equally between reference and non-reference services on the basis that the services are essentially the same.
267. The Authority acknowledges that the SPAC does not include a [REDACTED] [REDACTED]. However, substantial gas volumes are delivered, and are expected to be continued to be delivered, on a regular basis (around 2 per cent of full haul throughput). Consequently, the shipper is making regular use of the DBNGP.
268. In previous access arrangements, for the purposes of deriving the reference tariffs, the SPAC has been treated consistently with other full haul services and the demand forecasts have included both capacity and throughput volumes in relation to the SPAC. DBP's proposal to exclude any capacity volumes in relation to the SPAC has the effect of only allocating costs recovered through the Commodity Charge to the SPAC. The Commodity Charge only recovers around 10 per cent of the total costs associated with providing full haul services.¹¹²
269. Not including capacity volumes in relation to the SPAC results in a higher Capacity Charge for reference services than would otherwise be the case and effectively results in costs attributable to non-reference services being allocated to reference services. This would be inconsistent with the allocation of costs approved by the Authority in this Final Decision as set out in paragraph 1171 and therefore inconsistent with the requirements of NGR 93.

¹¹² The Commodity Charge recovers variable costs relating to System Use Gas. Other costs, which are fixed in nature, are recovered through the Capacity Charge.

270. DBP considers that if capacity were to be included in the demand forecasts, it should be based on the forecast throughput for the SPAC. The Authority considers this to be reasonable and would provide a balance between recognising the shipper [REDACTED] capacity but is making ongoing and regular use of capacity and should therefore be allocated a portion of fixed costs.

Reconciliation of DBP's demand forecasts with the volumes reported to the Gas Bulletin Board

271. In relation to the requirement to provide a reconciliation with the Gas Bulletin Board, DBP submits:
- 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:
 - the GBB Board does not include contracted capacity information; and
 - the GBB volumes are actuals, whereas DBP has provided forecast throughput for a different period (being AA4).
 - Information in relation to the GBB is only relevant to the extent that actual throughput is used as a starting point for determining forecast throughput. DBP notes this was done in its original submission and it provided a report from Jacobs validating a reconciliation of the starting point with the GBB.
 - The publicly available information on the GBB is represented as total pipeline capacity/total energy deliveries whereas the AA4 forecasts relate to firm full haul capacity, part haul capacity and back haul capacity. DBP has provided additional information to explain and ensure that any comparison of the GBB information with DBP's forecasts of demand is put into its proper context including:
 - how total pipeline capacity interrelates with firm full haul capacity; and
 - how throughput information relating to the DBNGP is reported on the GBB and how it differs from the way that throughput information is forecast for the purposes of the access arrangement.
272. Based on the additional information provided by DBP in relation to how the figures reported on the GBB are derived, the Authority accepts it is not possible to reconcile the GBB volumes with the information used for the purposes of determining chargeable volumes, and therefore the volumes required for the demand forecast. In particular, as stated by DBP, the flow reported on the GBB is the sum of gas delivered to outlet points regardless of whether they are full haul, part haul or back haul deliveries and provides no information in regard to the type of transportation service.
273. As discussed in the tariff variation chapter, DBP considers the GBB could be used to verify DBP's actual capacity and throughput for the purposes of establishing the "true-up" adjustment for its proposed revenue cap. However, this conflicts with the information provided above by DBP indicating the GBB volumes cannot be reconciled with chargeable volumes. The Authority has taken this into account in its consideration of DBP's proposed revenue cap in the tariff variation chapter.

Demonstrating that the projects identified in the GSOO, to the extent they impact DBP's demand, have been accounted for


274. In its response to the Draft Decision, DBP has reviewed and updated its demand forecasts, including providing evidence that the projects identified in the GSOO have been accounted for. The Authority has reviewed the information and is satisfied, except in relation to the SPAC as outlined above, that the amended forecasts are reasonable.
275. The Authority notes the capacity forecasts have the most significant impact on tariffs as approximately 90 per cent of costs are recovered through the capacity charge.
276. Forecast full haul capacity has reduced by approximately 0.06 per cent reflecting [REDACTED]. The combined part haul and back haul forecasts have increased by 1.5 per cent reflecting various changes. DBP has provided details of these changes in its submission including copies of third party documentation where possible to support its amendments.
277. Forecast throughput volumes have reduced overall by around 1.8 per cent. The largest reduction relates [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Updated distance factors

278. Distance factors, i.e. the length of pipeline between a gas supply's inlet and outlet point are used to calculate full haul equivalent volumes for part haul and back haul services. As set out in paragraph 1153, this is necessary to ensure that users of part haul and back haul reference services will have the same costs allocated to them (on a dollar per kilometre basis) as users of the full haul reference service.
279. In response to the Draft Decision, DBP provided updated distance factors, including adding the distance factors and volumes for the two shippers who were omitted in error from its original proposal.
280. In relation to providing evidence to support the distance factors used, DBP notes the copies of contracts are not reliable evidence to support the distance factors used as the inlet and outlet points recorded in the executed version of many of the contracts do not reflect the current inlet points and outlet points at which the shipper has contracted capacity. DBP explains this is because over time shippers have relocated capacity from one inlet or outlet point to another, however the provisions of the contracts relating to relocations do not require the relocations to be recorded in a formal deed of amendment.
281. To overcome this limitation with the contracts, DBP notes it has relied on evidence from its Customer Reporting System (**CRS**) to derive the distance factors. DBP states the CRS is used for daily interfacing between DBP and each of its shippers

¹¹³ A copy of the Notice of relinquishment was provided in DBP's submission.

and contains all of the information required 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.

282. DBP states that Shippers use the CRS to verify the supporting information provided in the monthly invoices and also use the information from the delivered quantities reports and the real time information in it to undertake trades between shippers. DBP notes that shipper verify the information available in the CRS, including the details of inlet and outlet points on at least a daily basis. DBP also considers the integrity of the data is further demonstrated by the fact that it is provided to AEMO for the purposes of the GBB and REMCo for the retail market operation, noting that DBP is obligated under the relevant statutory regimes governing both the retail market and the GBB not to provide misleading information.
283. The Authority has reviewed the additional information provided by DBP and notes the distance factors provided in DBP's amended proposal, with the exception of two shippers discussed further below, have not changed significantly from those included in its original proposal. The Authority notes the evidence DBP has provided supporting the robustness of the data source (i.e. the CRS) and from the information provided to the Authority, the distance factors used appear to be reasonable.
284. However, the Authority is not satisfied with the distance factors submitted by DBP in relation to the full haul services for Alcoa and Alinta. DBP's original proposal included the full pipeline length (i.e. 1,399 km) for all full haul services. In its amended proposal DBP has reduced the distance factors for Alcoa and Alinta to 1358.03 km and 1397.12 km respectively. DBP's amended proposal made no explanatory comment in relation to this.
285. In response to a query from the Authority, DBP stated it had replaced the full pipeline length with weighted average distance factors noting:
- 
 - The change to the Alinta distance reflects it has contracted capacity at three outlet points, of which two (Nangetty Road and Eneabba) are above CS9 and one (through which the majority of the gas flows) is below CS9.
286. DBP considers these amendments were necessary to enable calculation of a Full Haul equivalent load based on the ERA's definition of a "Part Haul" from the Draft Decision. The Authority has not accepted this adjustment for the following reasons:
- DBP has not advised or provided any evidence it has amended the non-reference full haul services for these shippers to become part haul services.
 - In any case, under the contracts relevant to these shippers, they are permitted to relocate capacity from one inlet point to another without the need for contracts to be amended and/or reinstated.
 - Consequently, these shippers are free to change their inlet or outlet points over the AA4 period and so effectively have continued to reserved capacity for a full haul service.

¹¹⁴ Commenced on 1 June 2013.

287. As outlined elsewhere in this Final Decision, consistent with previous reviews, non-reference volumes have been included in the demand forecasts used to derive reference tariffs on the basis that the costs of reference and non-reference full haul, part haul and back haul services are similar. The volumes in relation to these non-reference services are included in the relevant reference service, for example a full haul non reference service is included as though it were a full haul reference service.
288. DBP refers to the Authority's definition of "Part Haul" as being the reason it needs to make this change. The Authority considers this would only be relevant if DBP had entered into new agreements which removed these supplies from their current non-reference full haul service and entered into new agreements for part haul services. This is not the case. Rather DBP is continuing to charge these customers at the same rate they pay for full haul services.
289. Based on the above, the Authority considers the closest equivalent reference service for both Alcoa and Alinta, continues to be the full haul service. As outlined above, the forecast capacity and throughput volumes are used to derive the tariff unit rates and ensure costs are allocated appropriately between reference and non-reference services. Not using the full pipeline length for Alcoa and Alinta effectively results in an over allocation of costs to reference tariffs which is not consistent with the NGO.

Required Amendment 6

The Authority has determined:

- The capacity forecast must include capacity related to the SPAC consistent with the volumes used in the throughput forecast.
- The distance factors for Alcoa and Alinta's full haul capacity and throughput volumes must be based on the full length of the pipeline.

Key Performance Indicators

Regulatory requirements

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

DBP's Original Proposal

291. DBP's KPI information was set out in section 12 of its original proposal Access Arrangement Information document. DBP only proposed one KPI to support its proposed expenditure for AA4. Its proposed indicator was to compare the forecast operating expenditure for each year against the actual operating expenditure excluding expenditure for System Use Gas and government imposts.
292. DBP considered it relevant to include this as a KPI because:

- most of the firm full haul capacity is fully contracted under access contracts for non-reference services;
- the tariffs payable under these non-reference service access contracts are structured in such a way that DBP is incentivised to reduce its operating expenditure to the lowest sustainable costs;
- the non-reference services are structured in a way that DBP has limited control of the throughput on the DBNGP and therefore, expenditure for System Use Gas will be largely driven by the throughput requirements of Shippers; and
- there continues to be increases in government imposts and DBP is forecasting a continued steep increase in this type of expenditure during AA4. DBP considers it has limited control over the level of government imposts imposed on it.

Submissions

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

Draft Decision

294. The Authority directed EMCa, its technical advisor, to assess DBP's proposed KPIs from the following perspectives:

- how they have been used to support capital and operating expenditure forecasts in comparison with industry standards; and
- operational and service level performance in comparison with industry standards;

295. EMCa noted that a business should be able to demonstrate a causal link between inputs (expenditure) and outcomes, both of which can be represented by KPIs and scrutinised to determine:

- whether the inputs are justifiable- including through benchmarking against similar businesses via "common" transmission pipeline (normalised) expenditure measures; and
- whether the outcomes are justifiable-typically in terms of what measures satisfy prudent safety, reliability, and cost objectives.

296. In the absence of DBP having proposed such measures, EMCa noted that it drew on publicly available information and identified two alternative opex benchmarks used by other regulated transmission gas pipelines. These were operating expenditure/mm-km, used by the Roma Brisbane Pipeline; and operating expenditure, used by N.T. Gas Pty Ltd. EMCa noted (based on 2011 data) these measures indicate DBP's operational expenditure is relatively high. EMCa noted:

- DBP underspent its opex allocation in the AA3 period, including through the impact of the new capitalisation process (i.e. introducing the Subsequent Costs category, which is discussed below in the operating expenditure section); and
- DBP has proposed to significantly increase opex in real terms from its 2011 "base".

297. EMCa acknowledged that a normalised benchmark is only a starting point for comparative assessment and there may be exogenous factors which explain DBP's

apparently poor relative performance. However, it recommended that DBP should be required to present an opex KPI based on \$/km to facilitate comparison with other transmission pipelines.

298. The Authority considered that appropriate KPI's provide a valuable tool for assessing the efficiency of operating expenditure by enabling comparisons with similar companies and to measure ongoing performance. The Authority recognised that such measures are only a starting point for assessment and other factors (for example the size of the pipeline or capacity utilisation) may need to be taken into account when making comparative assessments or comparisons from year to year.
299. The Authority required DBP to include an opex KPI similar to those described above with appropriate modifications, if necessary, to provide a suitable comparator with other pipelines.
300. The Authority required the following amendment:
- Required Amendment 8
- DBP must include on operational expenditure KPI based on \$/km, or similar, to support its proposed operating expenditure forecast.

DBP's Amended Proposal

301. DBP has not accepted required amendment 8 from the Authority's Draft Decision. DBP notes in its Supporting Submission 58, Response to Draft Decision Non-Tariff Amendments, that the ERA has not demonstrated why the proposed KPI in required amendment 8, from the Draft Decision, meets the NGL's criteria for KPI's, in particular that it is consistent with the NGO and the revenue and pricing principles of the NGL.
302. DBP believes that it is not apparent that the ERA has taken into account the specific circumstances of the Service Provider, the pipeline concerned or the pipeline services to be provided by the DBNGP in assessing whether the KPI referenced in amendment 8 should be included in the access arrangement.
303. In its submission, DBP responds to what it has concluded are the two main conclusions of the EMCa report in that DBP has not provided a satisfactory "input" KPI to support whether its forecast expenditure is prudent and efficient; and that publicly available information indicates that DBP is not efficient relative to other pipelines, although EMCa does acknowledge that a normalised benchmark is only a starting point for comparative assessment and there may be exogenous factors which explain DBP's apparently poor relative performance.
304. In response to the issue of DBP's proposed KPI not being a satisfactory "input" KPI, DBP outlines a number of reasons, though not exhaustive, why a variety of input based KPI's can be misleading in the case of assessing the efficiency of gas transmission pipelines in Australia.
305. Reasons include maintenance costs, pipeline parameters, compressor size and installed power, capacity and compressor fuel costs or total gas use.
306. In response to the assertion that publicly available information indicates that DBP is not efficient relative to other pipelines DBP has noted that both EMCa and the ERA note that this sort of indicator is only a starting point for comparative assessment and

there may be exogenous factors which explain DBP's apparently poor relative performance.

307. DBP submits that there are such factors present and including an indicator of the kind required by the ERA in Amendment 8 of the Draft Decision would be meaningless. DBP notes that the DBNGP has very different characteristics to the "comparator" pipelines including pipeline distance; pipeline diameter; pipeline remoteness; pipeline age and condition; operational characteristics such as the number of compressors, receipt points and delivery points; markets served; and the natural and man-made environment through which the pipeline passes.
308. DBP has proposed the inclusion of a KPI that is calculated by dividing operating expenditure excluding fuel gas, GEA/turbine overhaul and reactive maintenance categories, over the total energy delivered each calendar year.

Further Submissions

309. No further submissions were made in relation to DBP's proposed KPI and the Authority's Draft Decision.

Considerations of the Authority

310. The Authority notes that DBP has not accepted its required amendment to provide an operation expenditure KPI based on \$/km or similar to support its proposed operating expenditure forecast.
311. The Authority accepts that the purpose of rule 72(1)(f) of the NGR is for key performance indicators to be used by the service provider to support expenditure to be incurred over the access arrangement period, and while KPI's, including \$/km KPI's, can be a useful tool to enable comparisons and facilitate benchmarking between comparable firms that the rule does not require this specifically.
312. The Authority notes that while DBP has outlined some of the issues associated with calculating a simple \$/km KPI and using these results to compare against other pipelines, the Authority is still of the view that such KPI's are only a starting point for comparative assessment and any exogenous factors should be taken into account when making comparisons.
313. However, the Authority notes that as this KPI can be easily calculated from information already provided by DBP in its access arrangement information, it no longer requires DBP to provide this KPI as part of the access arrangement documentation.
314. The Authority has reviewed the revised proposed KPI from DBP, which is calculated by dividing all operating expenditure for the regulatory year (excluding fuel gas, GEA/turbine overhauls and reactive maintenance categories) by the total energy delivered each regulatory year, and concludes that this is an acceptable KPI meeting the requirements of rule 72(1)(f) of the NGR.
315. The Authority accepts DBP's revised proposed KPI but notes that Figure 1 in the Access Arrangement Information document requires updating. DBP states in the section that Figure 1 contains results in each regulatory year during the Prior Access Arrangement Period and the Current Access Arrangement Period, however the graph in Figure 1 only contains results for 2016 to 2020.

Required Amendment 7

The Authority has determined that Figure 1 of the Access Arrangement Information document must be updated to include AA3 actuals and AA4 forecasts for the KPI.

Operating Expenditure

Regulatory Requirements

316. Rule 69 of the NGR defines operating expenditure for the purposes of Part 9 of the NGR as follows:
69. Operating expenditure means operating, maintenance and other costs and expenditure of a non-capital nature incurred in providing pipeline services and includes expenditure incurred in increasing long-term demand for pipeline services and otherwise developing the market for pipeline services.
317. Rule 91 of the NGR sets the criteria the Authority must consider in approving a service provider's operating expenditure:
91. Criteria governing operating expenditure
- (1) Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.
 - (2) The [Authority's] discretion under this rule is limited.
318. Rule 74 of the NGR contains specific requirements for the provision of forecasts and estimates.
74. Forecasts and estimates
- (1) Information in the nature of a forecast or estimate must be supported by a statement of the basis of the forecast or estimate.
 - (2) A forecast or estimate:
 - (a) must be arrived at on a reasonable basis; and
 - (b) must represent the best forecast or estimate possible in the circumstances.
319. Rule 71 of the NGR is also relevant to the Authority's consideration of forecast operating expenditure.
71. Assessment of compliance
- (1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [ERA] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [ERA] considers appropriate.
 - (2) The [ERA] must, however, consider, and give appropriate weight to, submissions and comments received when the question whether a relevant *access arrangement proposal* should be approved is submitted for public consultation.

320. Rule 93 of the NGR is relevant to the allocation of total revenue and costs between reference and other services.

93. Allocation of total revenue and costs

- (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
- (2) Costs are to be allocated between reference and other services as follows:
 - (a) costs directly attributable to reference services are to be allocated to those services; and
 - (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
 - (c) other costs are to be allocated between reference and other services on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].

...

321. Rule 95 of the NGR is relevant to the portion of revenue referable to reference services.

95. Tariffs – transmission pipelines

...

- (2) The portion of total revenue referable to a particular reference service is determined as follows:
 - (a) costs directly attributable to each reference service are to be allocated to that service; and
 - (b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
- (3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:
 - (a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and
 - (b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
- (4) The [ERA]'s discretion under this rule is limited.

322. Rule 100 of the NGR sets out a general requirement that the provisions of an access arrangement must be consistent with the national gas objective which is set out in section 23 of the NGL(WA) as:

23. National gas objective

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

323. The revenue and pricing principles are set out in section 24 of the NGL(WA):
24. Revenue and pricing principles
- (1) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
- (a) providing reference services; and
- (b) complying with a regulatory obligation or requirement or making a regulatory payment.
- ...

DBP's Original Proposal

324. DBP initially forecast operating expenditure of \$560.84 million for the fourth access arrangement period. This was a reduction of 4.97 per cent compared to the Authority's approved amount for the third access arrangement period of \$590.15 million.
325. DBP's revised proposal included forecast operating expenditure of \$525.09 million for the fourth access arrangement period. This was a reduction of 6.37 per cent compared to DBP's initial forecast and a reduction of 11.02 per cent compared to the Authority's approved amount for the third access arrangement period.
326. DBP presented its initial forecast operating expenditure in its proposed revised access arrangement information document under the following six categories:
- wages & salaries;
 - non-field expenses;
 - field expenses;
 - government charges;
 - reactive maintenance; and
 - system use gas.
327. In DBP's Supporting Submission 10: Forecast Operating Expenditure, the six operating expenditure categories presented in the access arrangement information document were broken down into 20 line items of operating costs.
328. DBP stated that its forecast operating expenditure for each regulatory year of the access arrangement period was based on the internal budget developed by its management and approved by DBP's Board and unitholders for the 2014-15 financial year.¹¹⁵
329. In calculating the base year for the proposed access arrangement, with the exception of the below mentioned expenditure line items, DBP applied six months of CPI (All Groups Weighted average of eight capital cities) to each item in the budget approved for the financial year 2014/15 to arrive at a base year of forecast expenditure for calendar year 2015:
- Regulatory

¹¹⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 3.

- Gas Engine Alternator (GEA) / Turbine Overhauls
 - Fuel Gas
 - Insurance
330. To arrive at the forecast for each regulatory year of the access arrangement period, DBP escalated cost categories contained in the Base Year in each regulatory year by the expected inflation provided in table 2 of the Access Arrangement Information document¹¹⁶ with the following exceptions:
- Salaries –this forecast is escalated by expected inflation and 2 per cent, which DBP has determined to be the average real increase in average weekly earnings (AWE);
 - Salaries – Contractors – this forecast is escalated in the same manner as salaries;
 - Consulting – this forecast is escalated in the same manner as salaries;
 - Fuel Gas – the assumed gas price has been escalated based on DBP's methodology;
 - Insurance, Regulatory Expenses and GEA and Turbine Overhaul costs have not been escalated by DBP as these categories are cyclical in nature.
331. DBP noted that in addition to the information provided in section 5 of its supporting submission 10 on Forecast Operating Expenditure¹¹⁷, that there were a number of key drivers that influence the operating expenditure. These included:
- Requirements and obligations under the DBNGP Safety Case;
 - Obligations under pipeline licences and other mandatory requirements; and
 - Findings from internal and external audits that are completed.
332. The key drivers behind the reduction in non-field expenses included a new Corporate ICT Service Agreement and a general softening in the global insurance market. Conversely, consulting expenditure was forecast to increase over the forthcoming access arrangement period.¹¹⁸
333. The key categories affecting field expenses included GEA/Turbine overhauls and repairs and maintenance. DBP's replacement philosophy for turbines on the DBNGP is for units that have exceeded 30,000 hours to be replaced in the following financial year. Similarly for the GEA overhaul, engines that reach a required run hour will require either a minor or major overhaul. The hours are normally 12,000 hours, 24,000 hours, 48,000 hours and 54,000 hours.¹¹⁹

¹¹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information*, 31 December 2014, p. 3.

¹¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 6 – 47.

¹¹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 16-24.

¹¹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 44-45.

334. DBP stated that due to the nature of work captured under the reactive maintenance category, expenditure is volatile and difficult to forecast. DBP based its 2015 base year costs on historical costs.¹²⁰

System Use Gas

335. System Use Gas (**SUG**), also referred to as Fuel Gas, had the most significant increase in forecast operating expenditure categories from the third access arrangement period to the forthcoming access arrangement. SUG was forecast to account for approximately 35 per cent of all operating expenditure for the forthcoming access arrangement period.
336. SUG is required to operate compressors used to deliver gas on the DBNGP. The SUG quantity required during the 2016 to 2020 regulatory period was estimated using forecasts of:
- The expected gas quality that the DBNGP will be transporting during this period;
 - The quantity of gas required as compressor fuel to transport the forecast throughput; and
 - The quantity of gas required for all other operational activities, including gas used as fuel in gas engine alternators and heaters and vented during normal operation and maintenance activities.
337. DBP submitted that for the purpose of the reference tariff, DBP's forecast of fuel gas operating expenditure assumed that all fuel gas will be supplied by DBP. This is consistent with clause 5.12 of the reference service terms and conditions and the approach taken in the current AA period.¹²¹
338. DBP submitted that as the SUG price is contracted, which is a long term take or pay purchase and sales agreement rather than a short term spot agreement, this should underpin its fuel gas price assumptions. DBP noted in its submission that public statements about new long term gas supply contracts negotiated in recent times inferred gas prices of between \$6.50 and \$12.00/GJ.¹²²

Labour Escalation

339. DBP included in its proposal a real 2 per cent labour escalation to its salary and wage expenditure over the fourth access arrangement period, taking into consideration information from labour market reviews and based on the following evidence:
- Historical Average Weekly Earnings (**AWE**) for Western Australia obtained from the Australian Bureau of Statistics (**ABS**); and
 - Western Australian Treasury forward estimates wage price index (**WPI**).

¹²⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 43.

¹²¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, p. 41.

¹²² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10*, 31 December 2014, pp. 36-43.

340. DBP submitted that the average real AWE for Western Australia for the period from 30 June 2000 to 30 June 2014 is 2.29 per cent. However, DBP noted that the recent AWE figures have trended lower than the long run average. DBP considered that it would not be appropriate to set the real labour price escalation lower than its proposed figure of two per cent for the following reasons:
- the two per cent figure is lower than the average for the last 14 years; and
 - as the two per cent assumption is being applied for the fourth access arrangement period, DBP did not consider it appropriate to rely on a small sub set of data points for a five year forecast.
341. Table 32 below shows DBP's calculation of the adjusted forward WPI estimates. DBP adjusted the WPI for a 0.5 per cent premium for the Electricity, Gas, Water and Waste Sector (**EGWWS**).

Table 32 DBP's Original Adjusted Forward Wage Price Index Estimate (2014/15 to 2017/18), per cent per annum

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

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

342. DBP submitted that its calculations return a range of between 1.93 and 2.39 per cent for its labour escalation factor.
343. DBP stated that it did not consider that the Authority's Draft Decision on ATCO's initial proposed revisions to the Mid-West and South-West Gas Distribution Systems (**GDS**) met the requirements of rule 74 of the NGR.
344. DBP stated that it uses the WPI as a reference point for its annual salaries review process, but noted the limitations of using this economic indicator in that it fixes price-determining characteristics of jobs, "i.e. the index does not account for an individual's progression within the role due to being assigned different tasks or responsibilities, number of hours worked...". For this reason, DBP submitted that the WPI should not be the sole reference point in setting the labour escalation factor.
345. DBP considered that the AWE measure is a more important indicator as it takes into account changes in the level of earnings of employees but also changes with the overall composition of wage and salaries in the labour force. DBP submitted that a real two per cent labour escalation factor was arrived at on a reasonable basis and represents the best possible estimate.¹²³

¹²³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014, p. 11.*

Submissions

Labour Escalation

346. The Authority did not receive any submissions in relation to DBP's original proposal for labour escalation assumptions.

System Use Gas

347. CPMM submitted that DBP's proposed operating expenditure for the fourth access arrangement period did not satisfy the requirements of the prudence test under the NGR, as the costs forecast by DBP for its SUG of between \$6.50/GJ and \$12/GJ were significantly higher than prices on the gas spot market, which at the time of CPMM's submission were between \$2.80/GJ and \$5.60/GJ. CPMM considered that a prudent service provider would diversify its gas portfolio by purchasing some of the gas on the spot market and some under medium term contracts. CPMM submitted that DBP has the flexibility to manage its line-pack and SUG by bidding on at least some of its gas on the spot market. CPMM also suggested that the gas spot market prices should be substituted for DBP's forecast prices as they are representative of the lowest sustainable cost.¹²⁴
348. WESCEF considered that the significant increase in DBP's System Gas Use is contrary to recent movements in the domestic gas market.¹²⁵
349. BHP considered that the Authority should interrogate DBP's forecast operating expenditure carefully to establish the reasons for the differences between the forecast and actual expenditure over the third access arrangement period, and to ensure that the SUG forecast was not also inflated for the fourth access arrangement period.¹²⁶

Economic Growth and Inflation

350. CPMM considered that factors such as changes to the economic climate, significant falls in the price of oil, slowing inflation and labour costs, and falling prices of parts, steel and pipes are likely to continue over the coming years and that these factors should be taken into account in the determination for DBP's approved operating and capital expenditure.¹²⁷

¹²⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 10.

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

¹²⁶ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, pp. 14-15.

¹²⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 2.

351. DBP submitted that its forecast salaries and wages were lower than the amounts approved in previous access arrangement periods and were therefore not a source of increases in forecast operating expenditure.¹²⁸
352. DBP submitted that Figure 5 in the Authority's Issues Paper presented a misleading picture of operating costs because it did not take into account the operation of inflation, which alone would account for the significant difference between the nominal average between the 2011-2013 value and the average forecast for AA4. DBP considered that the Authority should have presented year on year figures or values representing the averages of real costs to enable stakeholders to see the clear trend produced by inflation.¹²⁹

Draft Decision

353. In the Draft Decision, the Authority considered that only \$509.28 million of DBP's forecast operating expenditure for the fourth access arrangement period satisfied rules 74 and 91 of the NGR:
- \$143.06 million of Wages & Salaries;
 - \$67.96 million of Non-Field Expenses;
 - \$72.84 million of Field Expenses;
 - \$38.02 million of Government Charges;
 - \$6.00 million of Reactive Maintenance; and
 - \$181.40 million on System Use Gas.
354. Table 33 summarises the Authority's Draft Decision approved operating expenditure by category for the fourth access arrangement period.

Table 33 Draft Decision Operating Expenditure by Category (AA4), real \$ million

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

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

¹²⁸ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 7.

¹²⁹ DBNGP (WA) Transmission Pty Ltd, *2016-2020 Regulatory Period – Response to ERA Issues Paper*, 2 June, 2015, p. 7.

System use Gas

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

System Use Gas - Quantity

356. In order to determine the quantity of fuel gas required, DBP used an equation as set out in its proposal taking into account the pipeline configuration, throughput and a number of other factors in order to calculate the total fuel gas requirements on TJ/day basis for each year of the forthcoming access arrangement period.¹³⁰

357. As part of EMCa's technical review of DBP's access arrangement proposal, EMCa reviewed the quantity of fuel gas proposed by DBP. EMCa noted that DBP modelled the DBNGP pipeline system and derived a suite of fuel curves to represent different operating conditions to produce a 'weighted average' fuel curve to capture the full dynamics of the pipeline system. DBP also used actual performance to calibrate its model and to manage costs within forecast.¹³¹

358. EMCa noted that DBP's explanations of the fuel gas use model and the modification and calibration of the fuel curve were in accordance with common industry practice and appeared to be reasonable.

359. EMCa stated in its report to the Authority that it considered that DBP's SUG quantity forecast for the forthcoming access arrangement period was reasonable for the following reasons:¹³²

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

360. During the process of reviewing the SUG price and quantity proposed by DBP the Authority asked a number of clarifying questions to DBP. During the process of preparing responses to these questions additional information was accessed by DBP which it disclosed to the Authority. The information affected the amount of SUG used to determine the forecast expenditure for SUG included in DBP's proposed forecast operating expenditure.

¹³⁰ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014, p. 41.

¹³¹ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, p. 67.

¹³² EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, p. 70.

361. As a result of [REDACTED]
[REDACTED]
[REDACTED] thus reducing the amount of SUG required for the pipeline operations.
362. DBP provided revised SUG quantity requirements to the Authority in a further confidential submission and made the required adjustment in revisions to the AA4 proposal in response to the Authority's Draft Decision.
363. The Authority used these revised SUG quantities when reviewing and determining the appropriateness of the quantities proposed for the fourth access arrangement period.
364. Based on EMCa's advice, the Authority was satisfied that the quantity of system use gas proposed for use by DBP in the AA4 period was justified.

System Use Gas - Price

365. DBP submitted that its forecast fuel gas operating expenditure for 2016 to 2020 was based on an assumed price for fuel gas that is consistent with the price for which it has contracted to pay under its System Use Gas contract [REDACTED].
366. DBP noted that the contract [REDACTED]
and under the contract it is required to pay [REDACTED]
[REDACTED]
367. DBP submitted that the SUG price contracted for under [REDACTED] which is a long term take or pay purchase and sales agreement as opposed to short term spot agreements should underpin the fuel gas price assumption for a number of reasons, including most importantly that SUG is essential for the operation of the DBNGP as without fuel for compressors and auxiliaries, the pipeline cannot deliver gas. The other reasons DBP submitted as to why [REDACTED] should underpin the fuel gas price assumption are set out in paragraph 5.160 of supporting submission 10 (Forecast Operating Expenditure) of its proposal.
368. In order to meet these obligations, DBP submitted that it must have in place firm supply agreements for system use gas, which [REDACTED] represents. Contracts for firm supply of gas incorporate obligations on the supplier to make certain quantities available each day and on the buyer to take or pay for those quantities.
369. [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
372. The Authority reviewed DBP's proposal on the calculation of price for system use gas in the AA4 period and was not satisfied that DBP's forecast was justified. The Authority was of the view that [REDACTED]

██████████ the most prudent and efficient cost was not being incorporated into the access arrangement.

373. The Authority accepted that DBP requires some certainty with regards to supply of SUG on a daily basis to ensure operation of the pipeline can continue unimpeded. However, the Authority did not accept that as a result of this need for certainty, customers should bear all of the costs and that DBP should reap all the benefits.

374. DBP noted in its submission that for the purpose of the reference tariff, the forecast of fuel gas operating expenditure assumes that all fuel gas will be supplied by DBP. This is consistent with clause 5.12 of the reference service terms and conditions and the approach taken in the current access arrangement period.

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384. [Redacted]

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392. [Redacted]

[Redacted]

[Redacted]

[Redacted Table Content]

Table 34 Draft Decision Weighted Average Price for System Use Gas (AA4), Nominal \$/GJ

Prices in Nominal \$ per GJ	2016	2017	2018	2019	2020
Weighted Average Price of SUG	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

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

402. The Authority noted that there is significant variance between the fuel gas reported in DBP's financial accounts and its forecast costs for the AA4 period. [Redacted]

However, the Authority was concerned at the size of the variance and required DBP to provide a reconciliation of its access arrangement forecast with its forecast financial statement values.

403. Subject to DBP providing a satisfactory explanation, based on the Authority's review and the information supplied by DBP in its original proposal and subsequent supporting submissions, the Authority was not satisfied that DBP's forecast of \$195.14 million on system use gas in the AA4 period was justified. The Authority decided that of the \$195.14 million of system use gas that was forecast by DBP for the fourth access arrangement period:
- \$181.40 million satisfied rules 74 and 91 of the NGR; and
 - \$13.74 million did not satisfy rules 74 and 91 of the NGR.

Wages & Salaries

Labour Escalation

404. The Authority noted that DBP had submitted an operating expenditure forecast with a two per cent escalation factor above inflation for salary and wage expenditure categories (salaries, salaries-contractors and consulting) over the course of the fourth access arrangement period.
405. The Authority considered that it was reasonable for DBP to include a labour escalation factor as part of the operating expenditure forecast for the fourth access arrangement period. The Authority noted that it had previously included a labour escalation factor for the Mid-West and South-West Gas Distribution Systems' fourth access arrangement period, once it had determined that it satisfied the requirements of rule 74 of the NGR.
406. The Authority noted that DBP used the historical AWE figures, WA Treasury forward estimates of the WPI, in addition to considering benchmarks and labour market reviews. However, the Authority noted that DBP did provide its benchmarking studies or labour market reviews as part of its access arrangement proposal. Additionally, Table 34 above only makes reference to the nominal WPI, DBP's expected inflation projections and DBP's calculation of the EGWWS premium. It was not clear to the Authority how the other sources and materials cited by DBP directly contributed to the calculation of DBP's labour escalation factor.
407. The Authority noted DBP's assessment of the Authority's Draft Decision with regard to ATCO's initial proposed labour escalation factor. The Authority considered that DBP's assessment on this matter was irrelevant to the Authority's decision on DBP's proposed labour escalation factor in its Draft Decision. However, the Authority noted that it rejected ATCO's proposed labour escalation factor on the basis that it did not satisfy rule 74 of the NGR. In particular, the Authority was not satisfied at the time that there was a reasonable basis to support ATCO's proposed labour escalation factor. The Authority allowed a labour escalation factor for ATCO's forecast operating expenditure in its Final Decision, upon being satisfied that it met the requirements of rule 74 of the NGR.
408. The Authority reviewed DBP's proposal and noted DBP's assessment regarding the use of the WPI over the historical AWE. The Authority noted that the ABS generally recommends using the AWE if the analysis of wages and salaries needs to reflect contemporary structural change in the labour market, whereas analyses that is

concerned with inflationary pressure associated with wages and salaries should consider using the WPI. The Authority noted that it consistently applied the WPI in its two most recent regulatory decisions (Western Power and ATCO).¹³³

409. The Authority did not agree with DBP's view that the AWE is a more important indicator in the determination of a labour escalation factor. The Authority considered that a prudent and efficient service provider should only be compensated for forecast changes in the price of labour, and not structural or compositional changes in the labour market. The Authority was of the opinion that productivity issues did not need to be considered for the purposes of the labour escalation factor. The Authority noted that compositional changes in the skill mix is a business choice. If a business chooses to pay for a skill mix with a higher (or lower) average wage, the business will get the associated productivity benefit (loss) of that decision. The Authority considered that a prudent and efficient service provider should only be concerned, and therefore compensated for inflationary pressures associated with wages and salaries.
410. For the reasons above, the Authority considered the WPI to be a better measure of the change in the price of labour. The Authority noted that it was determining how the change in the price of labour will affect DBP's proposed operating expenditure forecast for wages and salaries, and not issues of productivity. Furthermore, as stated in paragraph 406 it was not clear to the Authority how DBP factored in the AWE or the other reference sources in its calculation of the labour escalation factor. Accordingly, the Authority determined its own labour escalation factor based upon the most recent WPI and EGWWS figures from the WA Treasury and ABS.
411. Table 35 presents the WA Treasury's most recent mid-year revision for 2014/15 period along with the forward estimates for the next three years. The Authority noted that DBP's submission, as at 31 December 2014, contained the budget estimate figure for the 2014/15 WPI. In its Draft Decision the Authority used the most recent data as it considered that this presents the best forecast in accordance with rule 74 of the NGR.

Table 35 Western Australian Treasury's Weighted Price Index Forward Estimate (2014/15 to 2017/18), per cent per annum

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

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

412. The Authority did not consider that DBP's calculation of the EGWWS premium over the WA Treasury forward estimate of WPI to be an accurate calculation, as it compares historical amounts for the EGWWS against the WA Treasury's forward estimates. The Authority considered that the premium should be determined on a like for like basis, by taking the difference from the equivalent time periods. Accordingly, the Authority used ABS series A2603491L and A2607601L for historical EGWWS and historical WPI respectively, to determine a suitable average historical

¹³³ Australian Bureau of Statistics, *Feature Article - Average Weekly Earnings and Wage Price Index – What do they Measure?*, 14 August 2014.

premium.¹³⁴ The Authority took the difference between each series' quarterly percentage change amounts from June 2011 through to June 2015, to determine an average premium of the EGWWS WPI over the Western Australian WPI of 0.14 per cent. The Authority noted that for the purposes of determining a forecast WPI, it is necessary to use WA Treasury forward estimates as the ABS does not provide this in its data series.

413. The Authority applied its forecast inflation, as outlined in the rate of return chapter of its Draft Decision and in Table 36 below, to derive its approved labour escalation factor, to be applied on the wages and salaries forecast operating expenditure for the fourth access arrangement period. The Authority rejected DBP's proposed labour escalation factor of 2 per cent and instead approved a labour escalation factor of 1.56 per cent in its Draft Decision for the fourth access arrangement period. Where labour escalation applied in the operating expenditure chapter, the Authority adjusted DBP's forecast to reflect the approved labour escalation forecast of 1.56 per cent.

Table 36 Draft Decision Derivation of Real Labour Escalation Factor, per cent per annum

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

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

¹³⁴ Australian Bureau of Statistics, 6345.0 – Wage Price Index, Australia - June 2015, 12 August 2015.

Non-field Expenses

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

Consulting

418. DBP's forecast used its 2015 forecast as the base year for determining its AA4 forecast plus a 2 per cent real increase in labour rates. DBP notes that the variance between the 2013 actuals and the 2016 forecast is largely due to an increase in expected legal costs for health safety and environment consultancy, additional audit and compliance consultancy, additional risk management consultancy offset by reductions in commercial, finance and engineering consultancy needs.
419. EMCa noted in its review that it did not consider the 2 per cent real escalation included by DBP was justified. In its Draft Decision, the Authority noted that an allowance for labour escalation above inflation is a reasonable cost to include when forecasting labour costs in operating expenditure. As set out above the Authority determined that a labour escalation factor of 1.56 per cent should be used in escalating salaries, contractor salaries and consulting costs.
420. EMCa also noted that in its opinion DBP had not provided adequate information to demonstrate that its 2015 forecast expenditure level represents an efficient amount or that the amount is required for the AA4 period. EMCa considered that the most recent revealed annual expenditure of \$4.2 million in 2014 is likely to be representative of an efficient annual amount.
421. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$27.96 million on consulting in the AA4 period was justified. The Authority decided that of the \$27.96 million of consulting that is forecast by DBP for the fourth access arrangement period:
- \$21.91 million satisfied rules 74 and 91 of the NGR; and
 - \$6.05 million did not satisfy rules 74 and 91 of the NGR.

Information Technology

422. The Information Technology (IT) cost category includes expenditure incurred under its Corporate ICT service agreement, expenditure incurred for software, software

maintenance and support, licence and rental costs, hardware licenses and leases, hardware maintenance and support and IT consumables.

423. DBP proposed to spend \$20.59 million on information technology in the AA4 period compared to a forecast actual spend of \$32.1 million in the AA3 period. The forecast IT expenditure accounts for 4 per cent of all operating expenditure proposed for the AA4 period.
424. DBP's forecast has used its 2015 forecast as the base year for determining its AA4 forecast. EMCa noted that DBP's 2015 forecast was based primarily on the terms of a new Corporate ICT Service Agreement with ZettaServe, which was established through a competitive tender process.
425. EMCa considered that based on the information provided by DBP, the new service agreement represents good value for money pursuant to DBP's evaluation criteria. As a result, EMCa considered that the proposed expenditure level of AA4 is likely to represent a prudent and efficient amount.
426. For proposed operating expenditure in the AA4 period, the Authority adopted the 2014 revealed cost for the base year where appropriate. For IT expenditure, the Authority did not use 2014 as the base year, as the existence of a contract with ZettaServe for the AA4 period forms the best forecast and estimate of the efficient cost.
427. Based on EMCa's advice, the Authority was satisfied that DBP's forecast of \$20.59 million on information technology in AA4 is justified. The Authority decided that of the \$20.59 million of information technology that was forecast by DBP for the fourth access arrangement period:
- \$20.59 million satisfied rules 74 and 91 of the NGR.

Insurance

428. The Insurance cost category includes expenditure incurred for a number of insurance products including directors and officers insurance, workers compensation and other insurance which includes industrial special risks, liability, motor vehicle, travel, journey, employment practices liability and crime insurance policies. The forecast expenditure for Insurance accounts for 2 per cent of all operating expenditure proposed for the AA4 period.
429. DBP proposed to spend \$16.37 million on insurance in AA4 compared to a forecast spend of \$18.8 million for the AA3 period. DBP used its 2015 forecast of \$2.6 million as its base year which was the same as DBP's most recent revealed cost in 2014.
430. DBP noted that its insurance costs are influenced by a number of factors including the state of the global insurance market and more specific issues such as the size and frequency of claims, value of the asset base and revenue. DBP noted that the steady decrease in actual costs in 2011, 2012 and 2013 reflect a general softening in the global insurance market.
431. DBP stated that as the global insurance market is cyclical in nature and is likely to be at the bottom of its cycle, there is a greater chance that premiums will increase from that assumed in the base year than decrease.
432. EMCa reviewed DBP's proposal and was of the opinion that DBP did not provide compelling information to explain the increase proposed over the AA4 period. EMCa

considered that the most recent revealed annual expenditure of \$2.6 million in 2014 was likely to be representative of an efficient level.

433. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$16.37 million on insurance in the AA4 period was justified. The Authority decided that of the \$16.37 million of insurance that was forecast by DBP for the fourth access arrangement period:
- \$12.91 million satisfied rules 74 and 91 of the NGR; and
 - \$3.46 million did not satisfy rules 74 and 91 of the NGR.

Office and Administration

434. The Office and Administration cost category includes expenditure for office supplies, office equipment hire and lease costs, archiving costs, printing and mailing, couriers and freight charges and other general expenses. The forecast expenditure for office and administration accounted for less than 1 per cent of all operating expenditure originally proposed for the AA4 period.
435. DBP proposed to spend \$4.92 million on office and administration in AA4 compared to \$5.0 million in the AA3 period. DBP used its 2015 forecast of \$0.99 million as the base year for determining its AA4 forecast.
436. EMCa reviewed DBP's proposal and was of the opinion that DBP did not provide a compelling justification for the increase from the most recent revealed cost in 2014 of \$0.91 million. EMCa considered that the most recent revealed annual expenditure of \$0.91 million in 2014 was likely to be representative of an efficient level.
437. Based on EMCa's advice, the Authority was not satisfied that DBP's original forecast of \$4.92 million on office and administration costs in the AA4 period was justified. The Authority decided that of the \$4.92 million of office and administration that was originally forecast by DBP for the fourth access arrangement period:
- \$4.57 million satisfied rules 74 and 91 of the NGR; and
 - \$0.35 million did not satisfy rules 74 and 91 of the NGR.

Regulatory Expenses

438. The Regulatory Expenses cost category includes expenditure for the Economic Regulation Standing Charges and Economic Regulation Authority Specific Charges. DBP's originally forecast expenditure was based on available information including the 2014-15 WA State Budget Papers (#3); and DBP's actuals incurred for Standing and Specific charges levied by the Authority.
439. DBP proposed to spend \$4.52 million on regulatory expenses in AA4 compared to \$9.60 million in the AA3 period. As regulatory expenses are not a standard cost each year and can differ greatly between years, DBP did not use a base year in forecasting its proposed costs.
440. The Authority reviewed DBP's proposed costs including its proportions used to apply against the Authority's regulatory fees for the AA4 period and these appeared to be based on reasonable assumptions. In the absence of further information, the Authority accepted DBP's proposed regulatory costs for the AA4 period.

441. The Authority was satisfied that DBP's forecast of \$4.52 million on regulatory expenses in AA4 was justified. The Authority decided that of the \$4.52 million of regulatory expenses that was forecast by DBP for the fourth access arrangement period:

- \$4.52 million satisfied rules 74 and 91 of the NGR.

Employee Expenses

442. The Employee Expenses cost category includes expenditure for employee reimbursements, employee incentives and awards (e.g. gym memberships, service awards, HSE awards) and recruitment costs. The forecast expenditure for employee expenses accounted for less than 1 per cent of all operating expenditure proposed for the AA4 period.

443. DBP proposed to spend \$2.03 million on employee expenses in AA4 compared to \$1.9 million in the AA3 period. DBP used its 2015 forecast of \$0.41 million as the base year for determining its AA4 forecast. DBP noted that it considers that the labour market conditions have become more favourable in terms of staff retention in recent times and that DBP is likely to see a significant number of retirements due to an aging demographic which will affect this cost category.

444. EMCa reviewed DBP's proposal and was of the opinion that the labour conditions referred to by DBP in its original proposal are more likely to persist rather than lead to increased labour expenses. As a result EMCa considered that the most recent revealed annual expenditure of \$0.35 in 2014 was likely to be representative of an efficient level.

445. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$2.03 million on employee expenses in the AA4 period was justified. The Authority decided that of the \$2.03 million of employee expenses that was originally forecast by DBP for the fourth access arrangement period:

- \$1.73 million satisfied rules 74 and 91 of the NGR; and
- \$0.30 million did not satisfy rules 74 and 91 of the NGR.

Entertainment

446. The Entertainment cost category includes expenditure incurred for meals, catering for meetings and staff events such as an annual end of year function. DBP's original forecast for entertainment accounted for less than 1 per cent of all operating expenditure proposed for the AA4 period.

447. DBP proposed to spend \$1.38 million on entertainment expenses in AA4 compared to \$2.30 million in the AA3 period. DBP used its 2015 forecast of \$0.28 million as the base year for determining its AA4 forecast.

448. EMCa reviewed DBP's proposal and noted that the expenditure was substantially reduced from the 2014 revealed cost and was therefore considered to be efficient. EMCa recommended that the 2015 proposed cost be accepted by the Authority as the most efficient cost.

449. For proposed operating expenditure in the AA4 period, the Authority adopted the 2014 revealed cost for the base year where appropriate. For entertainment, DBP noted in its submission that Fringe Benefits Tax was previously included in this section. As a result of this information the Authority considered that DBP's 2015

proposed expenditure figure was the most reasonable estimate of costs for the AA4 period as opposed to the 2014 revealed cost.

450. Based on EMCa's advice and DBP's submission information, the Authority was satisfied that DBP's forecast of \$1.38 million on entertainment in AA4 was justified. The Authority decided that of the \$1.38 million of entertainment expenses that was forecast by DBP for the fourth access arrangement period:
- \$1.38 million satisfied rules 74 and 91 of the NGR.

Self-Insurance

451. DBP proposed the inclusion of Self-Insurance costs of \$1.22 million over the AA4 period. DBP stated that self-insurance generally falls into three categories being:
- Physical items that DBP does not or cannot insure at all and thus bears all risk if they are damaged or stolen;
 - Expenses incurred for insured events of items that fall under the deductibles for insurance products DBP will have in place over the period; and
 - Risks that could be insured for under insurance products but DBP has elected not to.
452. DBP noted that it did not attempt to quantify the level that it is effectively self-insured for in both (a) and (b) above. DBP stated that it attempted to quantify at least some of the level of self-insurance it has accepted by not entering into insurance covers for events or risks that it is exposed to. To quantify, the cost of self-insurance, DBP asked its broker, Marsh, to provide a list of insurance policies which could elect to purchase but has not.
453. EMCa noted in its review of the self-insurance cost category that the Authority did not approve any expenditure in this category for AA3 and that DBP had no history of claims under this category or had not presented any evidence that it incurred such costs as would be covered by this self-insurance allowance prior to the AA3 period. EMCa considered that there should continue to be a nil allowance for this expenditure category in AA4.
454. The Authority considered that an allowance in the forecast of operating expenditure for self-insurance might be consistent with rule 91 of the NGR if supported by relevant evidence in the form of an actuarial assessment of the risks and fair-value assessments of self-insurance costs. The Authority noted that DBP did not provide any actuarial assessments to validate and justify the self-insurance costs proposed in AA4.
455. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$1.22 million on self-insurance in the AA4 period was justified. The Authority decided that of the \$1.22 million of self-insurance that was originally forecast by DBP for the fourth access arrangement period:
- \$1.22 million did not satisfy rules 74 and 91 of the NGR.

Advertising

456. The advertising cost category includes expenditure for marketing and sponsorship activities undertaken by DBP. DBP proposed spending \$0.46 million on advertising expenses over the AA4 period compared to \$0.42 million in the AA3 period. The

forecast for advertising expenses accounted for less than 1 per cent of all operating expenditure proposed for the AA4 period.

457. DBP used its 2015 forecast as its base year for determining the AA4 forecast. DBP's 2015 forecast was for \$0.092 million compared to the 2014 actual revealed cost of \$0.072 million.
458. EMCa considered that DBP did not provide a compelling reason for the expenditure increase from the 2014 revealed cost. Both EMCa and the Authority were of the view that the 2014 revealed cost provided the most reasonable basis to forecast the AA4 costs.
459. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$0.46 million on advertising in the AA4 period was justified. The Authority decided that of the \$0.46 million of advertising that was forecast by DBP for the fourth access arrangement period:
- \$0.36 million satisfied rules 74 and 91 of the NGR; and
 - \$0.10 million did not satisfy rules 74 and 91 of the NGR.

Field Expenses

460. DBP proposed to spend \$84.43 million on Field Expenses in the AA4 period across the following sub categories:
- GEA/Turbines: \$30.58 million
 - Repairs and maintenance: \$29.78 million
 - Travel and accommodation: \$10.84 million
 - Training and development: \$6.17 million
 - Motor Vehicles: \$6.08 million
 - Health Safety and Environment: \$0.98 million
461. Each of the sub categories is reviewed in further detail below.

GEA/Turbines

462. The GEA/Turbine overhaul cost category includes costs associated with overhauling the gas engine alternators and turbine on the DBNGP. The forecast expenditure for GEA/Turbine overhauls accounted for 5 per cent of all operating expenditure proposed for the AA4 period.
463. DBP proposed to spend \$30.58 million on GEA/Turbine overhauls in AA4 compared to a forecast spend of \$38.58 million for the AA3 period. DBP's replacement philosophy for turbines is for units that have exceeded 30,000 hours to be replaced in the following financial year. Similarly for the GEA overhaul, engines that reach a required run hour will require either a minor or major overhaul. The hours are normally 12,000 hours, 24,000 hours, 48,000 hours and 54,000 hours.
464. EMCa noted that it considers DBP's asset management strategy and plan with respect to GEA/turbines is commensurate with good industry practice. EMCa noted from advice provided at the on-site meeting that DBP tested the risk/benefit trade-off of shorter and longer maintenance and turbine exchange run time limits and

decided to revert to the original equipment manufacturer recommended operating times.

465. Based on EMCa's advice, the Authority was satisfied that DBP's forecast of \$30.58 million on GEA/turbine overhauls in AA4 was justified and that the forecast amount satisfied rules 74 and 91 of the NGR.

Repairs and maintenance

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

Travel and Accommodation

471. DBP proposed spending \$10.84 million over the AA4 period for travel and accommodation. The AA4 proposed expenditure was \$0.3 million higher than forecast actual expenditure for AA3 of \$10.5 million and \$0.7 million lower than the Authority approved expenditure of \$11.5 million for the AA3 period.
472. DBP's forecast expenditure was based on the 2015 base year escalated by expected inflation. EMCa noted that DBP did not provide any explanation for the reversal of the downward trend of actual expenditure that was experienced in AA3 through to 2014.

473. EMCa considered that DBP did not provide adequate information to demonstrate that the 2015 forecast expenditure level represented an efficient amount. EMCa considered that the most recent revealed annual expenditure of \$1.7 million in 2014 was more likely to be representative of an efficient level.
474. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$10.84 million on travel and accommodation in AA4 was justified. The Authority decided that of the \$10.84 million of travel and accommodation that was forecast by DBP for the fourth access arrangement period:
- \$8.77 million satisfied rules 74 and 91 of the NGR; and
 - \$2.07 million did not satisfy rules 74 and 91 of the NGR.

Training and Development

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

Motor Vehicles

480. DBP proposed spending \$6.08 million over the AA4 period for motor vehicle expenses. The motor vehicle category includes costs for motor vehicle fleet expenses, fuel and oil, licencing and registration, hire and lease costs and repairs and maintenance. The forecast for motor vehicles accounted for less than 1 per cent of all forecast operating expenditure for AA4.
481. DBP used its 2015 forecast as its base year for determining the AA4 forecast, however, EMCa noted that DBP did not explain the forecast increase in costs between 2014 and 2015 in its submission.

482. EMCa considered that DBP did not provide adequate information to demonstrate that the 2015 expenditure level represented an efficient amount. As a result EMCa considered that the most recent revealed annual expenditure of \$1.0 million in 2014 was likely to be representative of an efficient annual amount.
483. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$6.08 million on training and development in the AA4 period was justified. The Authority decided that of the \$6.08 million of training and development that was forecast by DBP for the fourth access arrangement period:
- \$5.24 million satisfied rules 74 and 91 of the NGR; and
 - \$0.84 million did not satisfy rules 74 and 91 of the NGR.

Health, Safety and Environment – PPE

484. The health safety and environment (**HSE**) cost category includes expenditure required to supply the required personal protective equipment (**PPE**), GIS datasets required for environmental compliance work and a small amount of training that is specific only to the HSE staff within DBP. The forecast expenditure for HSE accounted for less than 1 per cent of all operating expenditure proposed for the AA4 period.
485. DBP proposed to spend \$0.98 million on HSE in AA4 compared to a forecast spend of \$1.8 million for the AA3 period. DBP noted that expenditure in AA3, in particular 2011 was markedly higher than actual expenditure in 2012 and 2013 due to the roll of the early warning driver fatigue detection system, Optartlet programme in 2011.
486. DBP used its 2015 forecast as its base year for determining the AA4 forecast. EMCa noted that the DBP forecast included a 14 per cent reduction in expenditure from 2014 to 2015, as well as a constant expenditure forecast at the base year level.
487. EMCa noted that the base year represents a reduction on the most recent revealed cost and as it comes after a number of years of progressive reductions, EMCa was satisfied that the 2015 expenditure was likely to be representative of an efficient level.
488. For proposed operating expenditure in the AA4 period, the Authority adopted the 2014 revealed cost for the base year where appropriate. For HSE, the Authority was of the opinion that there was no circumstances present as to why it should deviate from this approach. As a result the Authority determined that the 2014 actual expenditure figure was the most reasonable estimate of costs for the AA4 period.
489. Taking into account EMCa's advice and the Authority's decision that the 2014 actual revealed cost should form the base year for AA4 operating expenditure costs, where appropriate, the Authority determined that DBP's actual cost in 2014 of \$1.14 million on HSE was justified in AA4. The Authority decided that of the \$1.14 million of HSE that was forecast by DBP for the fourth access arrangement period:
- \$1.14 million satisfied rules 74 and 91 of the NGR.

Government Charges

490. The Government Charges cost category, referred to by DBP as Utilities, Rates and Taxes (**URT**), included expenditure relating to fixed line, satellite and mobile telephone charges, rent and accommodation, gas and water rates and other general rate and taxes. DBP noted in its submission that this cost category included ERA

standing and specific charges, however these costs had actually been included in the Regulatory Expenses cost category.

491. DBP proposed to spend \$41.44 million over the AA4 period on URT compared to \$41.01 million for the AA3 period. The AA4 forecast URT accounted for 7 per cent of all proposed operating expenditure for the AA4 period. DBP used its 2015 forecast as its base year for determining the AA4 costs.
492. EMCa noted that on the basis that DBP's regulated business activities are likely to be relatively stable, EMCa would expect DBP's government charges to be stable (flat) in real terms. Accordingly, EMCa considered that the most recent revealed annual expenditure of \$7.6 million in 2014 was likely to be representative of an efficient level.
493. EMCa considered that an allowance of \$38.0 million for the AA4 period was more in keeping with the expenditure that a prudent and efficient service provider would incur and was consistent with rule 74(2).
494. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$41.44 million on government charges in the AA4 period was justified. The Authority decided that of the \$41.44 million of government charges that was forecast by DBP for the fourth access arrangement period:
 - \$38.02 million satisfied rules 74 and 91 of the NGR; and
 - \$3.42 million did not satisfy rules 74 and 91 of the NGR.

Reactive Maintenance

495. Forecast reactive maintenance accounted for less than one per cent of all operating expenditure proposed for the fourth access arrangement period. DBP submitted that due to the nature of work, expenditure captured under the Reactive Maintenance cost category is volatile and difficult to forecast.
496. EMCa noted that DBP used its forecast 2015 expenditure as the Base Year for projecting its expenditure in AA4 at a constant \$1.4 million per year (real). This 2015 forecast was less than the 2014 actual expenditure but was still 17 per cent higher than the average expenditure over AA3.
497. EMCa recommended that an allowance of \$1.2 million per year for the AA4 period was likely to be representative of an efficient level of expenditure for the following reasons:
 - DBP's maintenance operations are aligned with good industry practice, which should help ensure reactive maintenance costs are relatively stable over a five year period;
 - through its 'Subsequent Costs' category, DBP intends to capitalise a significant amount of expenditure on activities that the Authority understands were previously treated as reactive operating expenditure (so in effect there is an additional provision of \$12.9 million for 'unplanned work'; and
 - DBP has provided no compelling information to support an expenditure level in excess of the average rate of expenditure in AA3.
498. Based on EMCa's advice, the Authority was not satisfied that DBP's forecast of \$6.99 million on reactive maintenance in AA4 was justified. The Authority decided

that of the \$6.99 million of reactive maintenance that was forecast by DBP for the fourth access arrangement period:

- \$6.00 million satisfied rules 74 and 91 of the NGR; and
- \$0.99 million did not satisfy rules 74 and 91 of the NGR

Draft Decision Required Amendments

499. In its Draft Decision the Authority considered that only \$509.28 million of DBP's forecast operating expenditure for the fourth access arrangement period satisfied rules 74 and 91 of the NGR:

- \$143.06 million on Wages & Salaries;
- \$67.96 million on Non-Field Expenses;
- \$72.84 million on Field Expenses;
- \$38.02 million on Government Charges;
- \$6.00 million on Reactive Maintenance; and
- \$181.40 million on System Use Gas.

500. Table 37 (below) shows DBP's proposed operating expenditure forecast, and the required amendments in the Authority's Draft Decision for the fourth access arrangement period by cost category.

Table 37 Draft Decision Operating Expenditure Forecast Reductions by Cost Category (AA4), real \$ million

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

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

501. Table 38 summarises the operating expenditure by category approved by the Authority in its Draft Decision for the fourth access arrangement period.

Table 38 Draft Decision Approved Operating Expenditure Forecast by Cost Category (AA4), real \$ million

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

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

502. The Authority required the following amendment:

Required Amendment 9

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

DBP's Amended Proposal

503. DBP has not accepted the Draft Decision's operating expenditure amendments. Table 39 shows DBP's revised proposal forecast operating expenditure by cost category for the fourth access arrangement period.

Table 39 DBP Amended Operating Expenditure by Cost Category (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Wages & salaries	29.47	30.05	30.64	31.24	31.86	153.26
Non-field expenses	15.30	14.92	15.00	15.45	16.00	76.67
Field Expenses	13.44	15.36	16.93	13.15	13.06	71.94
Government charges	7.30	7.30	7.30	7.30	7.30	36.49
Reactive maintenance	1.40	1.40	1.40	1.40	1.40	7.00
System use gas	36.57	35.07	35.51	36.01	36.56	179.72
TOTAL	103.48	104.10	106.78	104.56	106.16	525.09

Source: DBNGP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 19, p. 18*.

504. In response to the Draft Decision, DBP provided supporting submission 55 which related to the proposed operating expenditure for the fourth access arrangement period. In its supporting submission 55, DBP set out three overarching matters to be addressed in relation to Draft Decision required amendment 9.

505. The first overarching matter DBP notes is that the Authority's Table 24 of the Draft Decision purports to be in Real, \$2015 but that this is not the case. DBP states that

the Authority has not used the relevant Consumer Price Index published by the Australian Bureau of Statistics for the December 2015 quarter of 1.69 per cent but another number instead of 2.75 per cent.

506. DBP notes that it has used the inflation rate of 1.69 per cent to report forecast operating expenditure as Real, \$2015 in its revised proposal.
507. The second overarching matter DBP notes in its supporting submission 55 relates to the use by DBP in its initial proposal of the proposed actual expenditure for 2015 as the base year to set the forecast expenditure levels for each year of the fourth access arrangement period.
508. DBP notes that in the Draft Decision, in many instances, the Authority has rejected DBP's proposed forecast for a particular category on the basis that either or both:
 - The actual expenditure for 2015 had not been revealed; or
 - While the actual expenditure for 2015 had not been revealed, it was significantly different to the level of actual expenditure for that category in 2014.
509. DBP further notes that since the publication of the Draft Decision, the actual operating expenditure for 2015 has been revealed and included in the revised proposal.
510. The third overarching matter that DBP notes is that it believes that the Authority failed to take into consideration the relevant consideration made by DBP in its initial supporting submissions about how DBP's actual contractual framework is a significant driver to ensure DBP is prudent and efficient in the operating and capital expenditure that it incurs.
511. DBP submits that if the ERA took these submissions into account then the ERA would have reached a different conclusion on the level of expenditure forecast by DBP for AA4.
512. DBP submits that now that it has provided the ERA with its actual expenditure for 2015, in light of the contractual framework and the incentive mechanism it creates to ensure efficiency and prudence, the ERA should accept DBP's Amended Proposal where DBP has used the 2015 actual expenditure as the basis for forecasting expenditure for each year of AA4.
513. Two of the key issues that DBP did not accept in the Authority's Draft Decision related to the calculation of the weighted average price for fuel gas (SUG) and the determination of the labour escalation rate to be used to escalate the salaries, contractor salaries and consulting cost categories.
514. DBP has responded to all of the cost categories in the revised proposal. DBP's responses to the cost categories are discussed in further detail below in the Considerations of the Authority section for Operating Expenditure in the Final Decision.

Further Submissions

515. In relation to Draft Decision required amendment 9 (which required DBP to amend its forecast operating expenditure for the AA4 period to the values set out in Table 24 of the Draft Decision). WESCEF repeats the submission it made in its initial submissions on operating expenditure, agrees with the Authority's position on these

matters as set out in the Draft Decision and submits that DBP should be required to accept and adopt Draft Decision required amendment 9.

516. No further submissions were made to the Authority that addressed Operating Expenditure.

Considerations of the Authority

517. DBP initially forecast operating expenditure of \$560.84 million for the fourth access arrangement period. The Authority did not approve DBP's forecast and determined that only \$509.28 million was acceptable for forecast operating expenditure under the NGR. DBP has submitted a revised proposed forecast operating expenditure of \$525.09 million for the fourth access arrangement period.
518. The Authority has reviewed DBP's revised proposal documents and submissions in assessing the forecast expenditure for the fourth access arrangement period meets the requirements of the NGR.
519. DBP noted in its submission that the Authority did not use the December 2015 quarter CPI of 1.69 per cent as published by the Australian Bureau of Statistics (ABS) but instead used 2.75 per cent in the Draft Decision. The Authority agrees and notes that the Draft Decision was published on 22 December 2015, before the December quarter CPI had been published by the ABS and that the 2.75 per cent was an estimate. In the Final Decision the Authority has used the 1.69 per cent to determine 2015 real costs.
520. In the Draft Decision, the Authority rejected a number of DBP's proposed operating expenditure cost categories on the base year assumption. DBP had originally provided proposed costs using 2015 estimated costs. The Authority, with the assistance of EMCa, reviewed these costs and determined that the value that would provide the most accurate and reliable forecast was the most recent revealed cost, being at the time the 2014 actual cost.
521. The following operating cost categories were rejected in the Draft Decision and the Authority determined that the 2014 base year was likely to be the most efficient cost starting value for the AA4 period operating expenditure costs. These costs were:
- Employee Expenses
 - Advertising
 - Entertainment
 - Office & Administration
 - Motor Vehicles
 - Repairs and Maintenance
 - Training and Development
 - Travel and Accommodation
 - Utilities, Rates and Taxes
522. For the above categories, DBP in its revised proposal has used the 2015 actual cost, being the most recent revealed cost. The Authority in the Draft Decision took the approach that where appropriate the most recent revealed cost is the most efficient and reliable estimate for the next access arrangement period's costs. This is not the

case for all costs as some are cyclical in nature, have other factors that must be incorporated into them such as labour escalation or have a more accurate cost driver such as demand/throughput or hours in use etc.

523. The Authority notes that for all of the cost categories mentioned in paragraph 521 above, the 2015 actual cost is different from what DBP estimated the costs would be in its original proposal. In eight of the nine categories the actual cost is lower than DBP had forecast with only the entertainment category incurring a higher 2015 actual cost than was estimated originally.
524. As a result the Authority has reviewed DBP's revised proposal for each of the above AA4 operating cost categories that uses the 2015 actual cost as the base year and accepts DBP's proposal to use its 2015 actual costs for these categories as the base year for estimating the AA4 period costs. Details of each of the above cost categories are discussed below under the relevant six high level operating cost areas.

Assessment of Operating Expenditure

System Use Gas

525. In DBP's original proposal, DBP proposed to spend \$195.10 million for fuel gas (SUG). The Authority determined in the Draft Decision that a forecast of \$181.40 million was justified for fuel gas in AA4. In its revised proposal, DBP now proposes to spend \$179.72 million on fuel gas in the AA4 period.

System Use Gas – Quantity

526. In its revised proposal submission DBP notes that the Authority accepted in the Draft Decision, the quantity of fuel gas proposed by DBP in its initial submission as justified. Notwithstanding this, DBP has in its revised proposal provided a revised quantity requirement for the AA4 period which is based on the same methodology that was accepted by the ERA. DBP notes that the total quantity required has been updated to reflect DBP's revised forecast of capacity and throughput figures presented in DBP's revised proposal.
527. DBP has proposed a reduction in the forecast throughput for AA4 from that proposed in its initial proposal which has a corresponding reduction in the fuel gas requirement. DBP has revised its proposed quantity of fuel gas required for the AA4 period downwards in its revised proposal due to a proposed reduction in the forecast throughput for AA4.
528. The Authority has reviewed DBP's revised fuel gas quantities proposed in its revised proposal and is satisfied that the quantity of fuel gas proposed for use by DBP in the AA4 period is justified in accordance with rules 74 and 91 of the NGR.

System Use Gas – Price

529. DBP notes that in its initial proposal for fuel gas for AA4, DBP based the price on the [REDACTED] price being applied to 100 per cent of the fuel gas requirement. The Authority did not accept DBP's proposed fuel gas forecast expenditure in the Draft Decision.

530. In the Draft Decision the Authority calculated a weighted average price using the [REDACTED]. DBP did not accept the Authority's methodology in calculating the SUG price for the AA4 period.

531. DBP does not agree with using [REDACTED] to calculate a weighted price [REDACTED].

532. DBP submits that if [REDACTED] DBP could be placed in a situation where it may not be able to procure alternative supplies which could lead to DBP curtailing shippers which would not only expose DBP to significant financial damages but it would also expose shippers to significant operational and financial exposure in its downstream operations.

533. DBP notes that its submissions made at paragraph 2.29-2.30 of submission 30 still stand as DBP considers that its contracted [REDACTED] is the best reasonable proxy as it is a price that has been struck recently in the market and is an arm's-length commercial arrangement. [REDACTED]

534. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

538. The Authority has reviewed the additional information provided by DBP in its revised proposal. [REDACTED]

539. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

543. [REDACTED]

544. The Authority believes that in order to meet the requirements of rule 74 of the NGR, in which a forecast or estimate must be arrived at on a reasonable basis and must represent the best forecast or estimate possible in the circumstances, [REDACTED]

545. Accordingly, the Authority has calculated a weighted average price for the purchase of SUG [REDACTED]. The weighted average price has been calculated for each year of the forthcoming access arrangement period due to the differing mix of SUG quantities [REDACTED].

546. Table 40 below sets out the weighted average price for each year of the AA4 period. [REDACTED]

Table 40 Final Decision Weighted Average Price for System Use Gas (AA4), nominal \$/GJ

Prices in Nominal \$ per GJ	2016	2017	2018	2019	2020
Weighted Average Price of SUG	█	█	█	█	█

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

547. Based on the Authority's review of the information supplied by DBP in its original proposal, supporting submissions and in its revised proposal, the Authority is not satisfied that DBP's forecast of \$179.72 million on SUG in the AA4 period is justified in accordance with rules 74 and 91 of the NGR. The Authority has decided that, of the \$179.72 million of SUG forecast by DBP for the fourth access arrangement period, only \$175.93 million is justified and satisfies rules 74 and 91 of the NGR.

Wages & Salaries

548. In its revised proposal, DBP did not accept the Authority's Draft Decision determination of the forecast expenditure for Wages and Salaries.

Labour Escalation

549. DBP notes that the Authority did not accept in the Draft Decision, DBP's proposal for labour escalation which was proposed to be set at two per cent above inflation (2 per cent real) and that the Authority determined a labour escalation rate of 1.56 per cent above inflation.

550. DBP summarises the main reasons for the Authority requiring this change as:

- DBP has not made it clear how other reference material fed into its labour cost escalation calculations;
- The ERA does not agree with DBP that AWE figures are more relevant than WPI figures, and proposed to use only the latter;
- DBP's calculation of the EGWWS premium of 0.5 per cent was not an "apples with apples" calculation as it compares historical EGWWS premia with forward-looking WA Treasury figures, and that instead, DBP should have compared historical EGWWS growth with historical WPI, and used this premium, which the ERA calculates at 0.14 per cent.

551. DBP notes that with respect to the first point, DBP made use of a wide variety of internal information pertaining to the growth of salaries of its staff in the past, and likely further trends within DBP's immediate industry based upon the judgement of internal and external human resource professionals. DBP agreed that the use of judgement can be opaque to those who are not employing it but that DBP's position does not rely upon judgement as explained in the response to the other two dot points.

552. DBP did not accept the Authority's opinion in the Draft Decision that productivity issues do not need to be considered for the purposes of the labour escalation factor and that compositional changes in the skill mix is a business choice. DBP also did not accept that if a business chooses to pay for a skill mix with a higher (or lower) average wage, the business will get the associated productivity benefit (loss) of that decision. As a result the Authority considered that a prudent and efficient service provider should only be concerned and therefore compensated for inflationary pressures associated with wages and salaries.

553. DBP notes in its revised proposal that if labour becomes more productive, it requires higher payment because it is more valuable in the marketplace as a whole and as it becomes more productive, it is able to make more efficient use of the other factors of production, and thus overall efficiency is increased, and overall costs lowered.
554. DBP submits that if the ERA ignores productivity gains in labour and the costs this imposes in respect of wages, then, logically, it must also ignore the benefits such productivity gains bring in respect of lowering costs elsewhere in the business. That is, using a lower wage index implies that the ERA must allow other costs to rise by more, as they indeed would were a firm not to invest in the productivity of its workers.
555. DBP proposes that the Authority take into consideration information from the AWE, and recognise that more productive and more costly labour can in fact reduce overall costs, as the AWE takes into account changes in the level of earnings of employees but also changes with the overall composition of wage and salaries in the labour force.
556. The Authority notes that DBP has not proposed in either its initial proposal or its revised proposal any productivity gain reductions for any operating costs based on paying a higher payment to maintain a more productive workforce. DBP noted that there are productivity gains and lower costs elsewhere in the business from paying higher wages and salaries but these do not appear to have been quantified in the proposal for the AA4 period.
557. The Authority maintains its methodology position from the Draft Decision that if a business chooses to pay for a skill mix with a higher (or lower) average wage, the business will get the associated productivity benefit (loss) of that decision and accordingly the prudent and efficient service provider should only be concerned and therefore compensated for inflationary pressures associated with wages and salaries.
558. As noted by the Authority in the Draft Decision, the ABS generally recommends using the AWE if the analysis of wages and salaries need to reflect contemporary structural change in the labour market, whereas analysis that is concerned with inflationary pressures associated with wages and salaries should consider using the WPI. The Authority notes that the purpose of the analysis of wages and salaries required here is to determine inflationary pressures, not contemporary structural change in the labour market. The Authority also considers that the ABS approach is reasonable and indicates good industry practice.
559. Accordingly, the Authority maintains the use of the WPI over the AWE in determining the labour cost escalation for the fourth access arrangement period is consistent with rules 74 and 91 of the NGR.
560. In respect to the third dot point in paragraph 550 , DBP contends that the ERA has not made an “apples with apples” comparison. DBP notes that the Authority has compared the percentage change in hourly rates of pay in the EGWWS sector for Australia, with the percentage change in the WPI for Western Australia which is not an apples with apples comparison because the jurisdictions do not match.
561. To correct this, DBP proposes to use the percentage change in the WPI for Australia with the percentage change in hourly rates of pay in the EGWWS sector for Australia, a more “apples with apples” comparison.

562. The Authority has reviewed DBP's revised proposal and submissions and accepts that a more like-for-like comparison in this circumstance would be to compare the EGWWS and the WPI on the same scale, being for all of Australia. The Authority has amended its calculation of labour cost escalation accordingly to be between ABS series A2603491L (percentage change in hourly rates of pay in the EGWWS sector for Australia) and ABS series A2603611V (percentage change in the WPI for Australia).
563. Accordingly, the Authority has determined its own labour escalation factor based upon the most recent WPI and EGWWS figures from the ABS and the most recent WPI economic forecasts from the WA Treasury and considers this is a reasonable approach for achieving consistency with rules 74 and 91 of the NGR. The Authority has used the most recent data as it considers this is reasonable and represents the best forecast in accordance with rule 74 of the NGR.
564. Table 41 below presents the WA Treasury's annual average WPI for Western Australia for 2015/2016 through to 2019/2020.

Table 41 Western Australian Treasury's Weighted Price Index Forward Estimates (2014/16 to 2019/20), per cent per annum

Per Cent	2015/16 (Estimated Actual)	2016/17 (Budget Estimate)	2017/18 (Forward Estimate)	2018/19 (Forward Estimate)	2019/20 (Forward Estimate)
Annual Average of Western Australian WPI	1.75	1.75	2.25	2.75	3.25

Source: http://www.treasury.wa.gov.au/Treasury/Economic_Data/Economic_Forecasts/

565. Table 42 below sets out the Authority's determined labour escalation for the AA4 period.

Table 42 Final Decision Derivation of Approved Real Labour Escalation Factor, per cent per annum

Labour Escalation Factor Component	Per cent per annum
Annual Average of Western Australian WPI over AA4	2.35
Plus Premium of EGWWS WPI over Australian WPI	0.40
Equals Nominal Labour Escalation Forecast per annum	2.75
Less Forecast Inflation/CPI per annum	1.43
Equals Authority Approved Labour Escalation Factor	1.32

Wages and Salaries Assessment

566. In its revised proposal, DBP proposes to spend \$149.21 million on wages and salaries in the AA4 period. DBP has used its 2015 actual cost as the base year and added a labour cost escalation of 2 per cent in each year when calculating this forecast expenditure.
567. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.

568. DBP notes that the Authority has incorrectly used the 2014 revealed cost. DBP notes that the 2014 actual cost did not include salaries apportioned to regulatory function and claims it was therefore incorrect to exclude them for the purposes of setting forecast expenditure for the AA4 period. Further, DBP notes that as part of DBP's IT transition project, DBP now has two additional IT project managers that were not present in the 2014 actual costs.
569. In its initial proposal, DBP forecast wages and salaries of \$148.88 million for the AA4 period using a 2 per cent labour escalation factor. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that wages and salaries for the AA4 period should be \$143.06 million, using a 1.56 per cent labour escalation factor.
570. The Authority notes that DBP's revised proposed cost for wages and salaries in AA4 is \$6.15 million more than the Authority determined in the Draft Decision and is \$0.33 million more than DBP's initial proposal.
571. The Authority notes DBP's further information about the costs that are not included in the 2014 actual cost which the Authority used as a base year estimate in the Draft Decision.
572. The Authority has reviewed DBP's revised proposed cost for wages and salaries in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
573. While the Authority accepts DBP's 2015 actual cost as the base year for estimating the AA4 period costs, the Authority, as outlined above, does not accept DBP's labour cost escalation factor of 2 per cent but has determined that 1.32 per cent is the appropriate labour escalation factor for the AA4 period consistent with rules 74 and 91 of the NGR.
574. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$149.21 million on wages and salaries in the AA4 period is justified in accordance with rules 74 and 91 of the NGR and determines that \$146.27 million over the AA4 period is justified and satisfies rules 74 and 91 of the NGR.

Salaries - Contractors

575. In its revised proposal, DBP proposes to spend \$4.05 million on salaries for contractors in the AA4 period. DBP has used its 2015 actual cost as the base year and added a labour cost escalation of 2 per cent in each year when calculating this forecast expenditure. In DBP's initial proposal, DBP proposed to spend \$4.53 million for the AA4 period using a 2 per cent escalation factor.
576. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year. The Authority also rejected DBP's labour cost escalation factor of 2 per cent and used its determined factor of 1.56 per cent.
577. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year and a labour cost escalation of 1.56 per cent, that salaries for contractors for the AA4 period should be \$4.30 million. The Authority notes that DBP's revised proposed cost for salaries for contractors in AA4 is \$0.25 million less than the

Authority determined in the Draft Decision and is \$0.48 million less than DBP's initial proposal.

578. The Authority has reviewed DBP's revised proposed cost for salaries for contractors in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed. The Authority, as outlined above in the wages and salaries section, that it does not accept DBP's proposed labour escalation factor of 2 per cent and has determined that the appropriate labour escalation to be applied for the AA4 period is 1.32 per cent.
579. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$4.05 million on salaries for contractors in the AA4 period is justified in accordance with rules 74 and 91 of the NGR and determines that \$3.97 million over the AA4 period is justified and satisfies rules 74 and 91 of the NGR.

Non-Field Expenses

580. DBP in its revised proposal, proposes to spend \$76.67 million on Field Expenses in the AA4 period across the following sub categories:
- Consulting: \$22.55 million
 - Information Technology: \$20.59 million
 - Insurance: \$20.09 million
 - Office and Administration: \$3.97 million
 - Regulatory Expenses: \$4.55 million
 - Employee Expenses: \$1.20 million
 - Entertainment: \$2.27 million
 - Self-Insurance: \$1.22 million
 - Advertising: \$0.25 million

581. Each of the sub categories is reviewed below.

Consulting

582. In its revised proposal, DBP proposes to spend \$22.55 million on consulting in the AA4 period. DBP has used a five year average of the AA3 consulting expenditure as the base year cost estimate for the AA4 period. In DBP's original proposal the consulting expenditure for AA4 was calculated using a 2015 estimated cost as the base year with an additional 2 per cent labour escalation for each year of AA4.
583. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year. In addition, the Authority used its determined labour escalation of 1.56 per cent to escalate the consulting expenditure for AA4.
584. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that consulting expenditure for the AA4 period should be \$21.91 million. The Authority notes that DBP's revised proposed cost for office and administration

in AA4 is \$0.64 million more than the Authority determined in the Draft Decision and is \$5.41 million less than DBP's original proposal.

585. DBP in its revised proposal does not agree with EMCA's and the Authority's approach of adopting a single year's worth of revealed costs for the consulting category as costs in this category are not stable in nature. DBP notes that this is largely because consulting expenditure varies substantially due to legal, commercial and regulatory requirements that change from year to year.
586. DBP notes in its submission that it has used the 2013, 2014 and 2015 consulting costs to determine the average expenditure to use as the base year, this is because there is a clear step change in costs from 2012 onwards.
587. The Authority notes that in the model provided by DBP, DBP has used a five year average in calculating the consulting expenditure for AA4 and there does not appear to be any step change that DBP refers to, with 2011 to 2014 expenditure being fairly flat and the only change being a drop in the 2015 actual costs.
588. The Authority has reviewed DBP's revised proposal and agrees with DBP that consulting costs can be a variable expenditure item over an access arrangement period and adopting a single year's revealed cost may not be the most reasonable approach to determining a base year for the AA4 period.
589. As a result the Authority agrees with DBP that an average expenditure would provide a more reasonable estimate for calculating the AA4 period expenditure. The Authority has used DBP's model approach of using a 5 year average, the full AA3 period, on which to calculate the AA4 base year average.
590. The Authority does not, however, accept the labour escalation of 2 per cent that DBP has used to escalate the consulting expenditure in its revised proposal. The Authority, as outlined earlier in the Final Decision, has determined that the labour escalation for the AA4 period is 1.32 per cent.
591. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$22.55 million on consulting in the AA4 period is justified in accordance with rules 74 and 91 of the NGR and determines that only \$22.10 million over the AA4 period is justified and satisfies rules 74 and 91 of the NGR.

Information Technology

592. In its revised proposal, DBP proposes to spend \$20.59 million on Information Technology in the AA4 period. DBP notes that the Authority accepted DBP's proposed forecast expenditure for information technology in the Draft Decision.
593. DBP proposed to spend \$20.59 million in its initial proposal and has not amended this cost in its revised proposal.
594. Based on a review of the expenditure, the Authority is satisfied as it was in the Draft Decision that DBP's forecast of \$20.59 million on information technology in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Insurance

595. In its revised proposal, DBP proposes to spend \$20.09 million on insurance in the AA4 period. DBP originally proposed in its initial submission to spend \$16.37 million

on Insurance. In the Draft Decision the Authority determined that an efficient level of expenditure was \$12.91 million by using the 2014 revealed cost as the base year.

596. DBP's revised proposal is \$3.72 million more than its original proposal and is \$7.18 million more than the Authority's Draft Decision.
597. DBP noted in its original proposal that the insurance expenditure for AA4 included a 10 per cent year-on-year real increase for each year reflecting the cyclical nature of insurance markets and that there has been a prolonged period where the insurance market has been 'soft'.
598. DBP is of the view that it is wrong to use one year's worth of premiums expenditure as the basis for setting an allowance for insurance for a five year period. DBP again submitted that it is commonly accepted that insurance markets and insurance premiums are cyclical in nature and this needs to be factored into the expenditure estimate for the AA4 period.
599. DBP references a number of publications that review the insurance markets and determines that the cyclical pattern in insurance markets is an average of six years in length.
600. In its revised proposal, DBP has worked out an average insurance expenditure for the AA4 period using a 10 year average using the actual expenditure for the AA2 and AA3 periods. This 10 year average is inconsistent with the cyclical 6 year average that DBP mentions in its submission.
601. The Authority has reviewed DBP's actual expenditure in the AA2 and AA3 periods and notes there is a cyclical nature to DBP's insurance expenditure. The Authority has reviewed DBP's submission document and accepts that 6 years is an appropriate time period to cover the insurance premium cycle.
602. As a result the Authority has determined that a rolling average for the last six years of DBP's actual costs would be the most appropriate and reasonable basis on which to forecast the AA4 insurance expenditure. The Authority has calculated the six year rolling average to be [REDACTED].
603. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$20.09 million on insurance in the AA4 period is justified in accordance with rules 74 and 91 of the NGR and determines that only [REDACTED] million over the AA4 period is justified and satisfies rules 74 and 91 of the NGR.

Office and Administration

604. In its revised proposal, DBP proposes to spend \$3.97 million on office and administration in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
605. In the Draft Decision, the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
606. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that office and administration for the AA4 period should be \$4.57 million. The Authority notes that DBP's revised proposed cost for office and administration

in AA4 is \$0.60 million less than the Authority determined in the Draft Decision and is \$0.95 million less than DBP's original proposal.

607. The Authority has reviewed DBP's revised proposed cost for office and administration in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
608. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$3.97 million on office and administration in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Regulatory Expenses

609. In its revised proposal, DBP proposes to spend \$4.55 million on regulatory expenses in the AA4 period. DBP notes that the Authority accepted DBP's proposed forecast expenditure for regulatory expenses in the Draft Decision.
610. DBP proposed to spend \$4.55 million in its initial proposal and has proposed the same amount in its revised proposal.
611. Based on a review of the expenditure, the Authority is satisfied as it was in the Draft Decision that DBP's forecast of \$4.55 million on regulatory expenses in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Employee Expenses

612. In its revised proposal, DBP proposes to spend \$1.20 million on employee expenses in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
613. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
614. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that employee expenses for the AA4 period should be \$1.73 million. The Authority notes that DBP's revised proposed cost for employee expenses in AA4 is \$0.53 million less than the Authority determined in the Draft Decision and is \$0.83 million less than DBP's original proposal.
615. The Authority has reviewed DBP's revised proposed cost for employee expenses in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
616. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$1.20 million on employee expenses in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Entertainment

617. In its revised proposal, DBP proposes to spend \$2.27 million on entertainment expenses in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.

618. The Authority accepted DBP's 2015 forecast cost as the base year for this category in the Draft Decision after DBP noted that the cost category in the AA3 period with FBT costs forecasted in the entertainment category but recorded in the Utilities, Rates and Taxes cost category in AA3. This change justified using the 2015 estimate as the base year for the Draft Decision.
619. As a result the Authority accepted DBP's original proposal for entertainment expenses of \$1.38 million. The Authority notes that DBP's revised proposed cost for entertainment expenses in AA4 is \$0.89 million more than the Authority determined in the Draft Decision and DBP's original proposal.
620. DBP notes that the amount of actual expenditure for 2015 for entertainment is largely consistent with the average annual expenditure for this category. DBP also notes that entertainment expenses should be largely consistent year from year, subject to certain exceptions of celebrating major milestone business events.
621. The Authority notes that DBP's 2015 actual expenditure which it has used as the base year estimate in its revised proposal is consistent with the expenditure incurred by DBP in AA3. The Authority also maintains that the most recent revealed actual cost is the most appropriate cost to use for the base year where relevant.
622. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$2.27 million on entertainment expenses in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Self-Insurance

623. In its revised proposal, DBP proposes to spend \$1.22 million on self-insurance in the AA4 period. DBP did not receive an allowance for self-insurance in AA3 and did not incur any costs for self-insurance in the AA3 period.
624. DBP proposed in its initial submission to spend \$1.22 million on self-insurance of which the Authority rejected all of this proposed expenditure on the grounds that it did not satisfy rules 74 and 91 of the NGR.
625. DBP has not revised its forecast for self-insurance and as set out in its initial proposal notes that self-insurance generally falls into three categories being:
- physical items that DBP does not or cannot insure at all and thus bears all risk if they are damaged or stolen;
 - expenses incurred for insured events of items that fall under the deductibles for insurance products DBP will have in place over the period; and
 - risks that could be insured for under insurance products but DBP has elected not to.
626. DBP noted in its initial submission that it had not attempted to quantify the level it is effectively self-insured for in the first two dots points above. DBP stated that it had attempted to quantify at least some of the level of self-insurance it has accepted by not entering into insurance covers for events or risks that it is exposed to. To quantify the cost of self-insurance, DBP asked its broker to provide a list of insurance policies which could elect to purchase but has not.
627. It was noted in the Draft Decision that DBP has no history of claims under this category or has not presented any evidence that it incurred such costs as would be covered by this self-insurance allowance prior to the AA3 period.

628. The Authority noted that an allowance in the forecast of operating expenditure for self-insurance may be consistent with rule 91 of the NGR if supported by relevant evidence in the form of an actuarial assessment of the risks and fair-value assessments of self-insurance costs and that DBP has not provided any actuarial assessments to validate and justify the self-insurance costs proposed in AA4.
629. DBP submits in its revised proposal that it does not consider it to be a prudent and efficient use of funds to perform an actuarial study to justify self-insurance costs. DBP also submits that because it has elected to not undertake the suggested actuarial study it does not mean that a forecast expenditure of zero is a reasonable forecast.
630. DBP notes that just because DBP hasn't had a history of incidents of that sort that would be covered by this category cannot, of itself, be the sole reason for rejecting the allowance and that an incident hasn't occurred in the last 5 years does not preclude an incident from ever happening.
631. The Authority notes that DBP has not submitted any new information regarding self-insurance expenditure to justify its inclusion as allowable expenditure than was provided in its initial proposal. In making its determination, the Authority takes into account all available information. The information available at present is that DBP has no actuarial report to quantify and validate the self-insurance costs and that there is no history of expenses that would fall into this cost category.
632. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$1.22 million on self-insurance in the AA4 period is justified or satisfies rules 74 and 91 of the NGR.

Advertising

633. In its revised proposal, DBP proposes to spend \$0.25 million on advertising in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
634. In the Draft Decision, the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
635. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that advertising expenses for the AA4 period should be \$0.36 million. The Authority notes that DBP's revised proposed cost for advertising in AA4 is \$0.11 million less than the Authority determined in the Draft Decision and is \$0.21 million less than DBP's original proposal.
636. The Authority has reviewed DBP's revised proposed cost for advertising in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
637. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$0.25 million on advertising in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Field Expenses

638. DBP in its revised proposal, proposes to spend \$71.94 million on Field Expenses in the AA4 period across the following sub categories:

- GEA/Turbines: \$30.75 million
- Repairs and maintenance: \$20.28 million
- Travel and accommodation: \$9.83 million
- Training and development: \$4.67 million
- Motor Vehicles: \$5.33 million
- Health, Safety and Environment: \$1.08 million

639. Each of the sub categories is reviewed below.

GEA/Turbines

640. In its revised proposal, DBP proposes to spend \$30.75 million on GEA/Turbine overhauls in the AA4 period. DBP notes that the Authority accepted DBP's proposed forecast expenditure for GEA/Turbine overhauls in the Draft Decision.

641. DBP budgeted its original proposal for operating expenditure costs in nominal dollars, then converted this to real 2015 dollars in its submission. DBP has proposed to spend \$32.50 million in nominal dollars, the same amount in both its original and revised submissions.

642. In the Draft Decision the Authority accepted DBP's proposed GEA/Turbine overhaul costs to the value of \$30.58 million in real 2015 dollars. The Authority notes that DBP's revised submission is \$0.17 million more than it accepted in the Draft Decision. The Authority accepts that this increase is a result of updated inflation numbers now being available for use in DBP's revised proposal.

643. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$30.75 million on GEA/Turbine overhauls in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Repairs and maintenance

644. In its revised proposal, DBP proposes to spend \$20.28 million on repairs and maintenance in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.

645. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.

646. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that repairs and maintenance for the AA4 period should be \$22.20 million. The Authority notes that DBP's revised proposed cost for repairs and maintenance in AA4 is \$1.92 million less than the Authority determined in the Draft Decision and is \$9.50 million less than DBP's original proposal.

647. The Authority has reviewed DBP's revised proposed cost for repairs and maintenance in the AA4 period and maintains its Draft Decision methodology that

the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.

648. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$20.28 million on repairs and maintenance in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Travel and accommodation

649. In its revised proposal, DBP proposes to spend \$9.83 million on travel and accommodation in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
650. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
651. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that travel and accommodation for the AA4 period should be \$8.77 million. The Authority notes that DBP's revised proposed cost for travel and accommodation in AA4 is \$1.06 million more than the Authority determined in the Draft Decision but is \$1.01 million less than DBP's original proposal.
652. The Authority has reviewed DBP's revised proposed cost for travel and accommodation in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
653. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$9.83 million on travel and accommodation in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Training and development

654. In its revised proposal, DBP proposes to spend \$4.67 million on training and development in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
655. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
656. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that training and development for the AA4 period should be \$4.91 million. The Authority notes that DBP's revised proposed cost for training and development in AA4 is \$0.24 million less than the Authority determined in the Draft Decision and \$1.50 million less than DBP's original proposal.
657. The Authority has reviewed DBP's revised proposed cost for training and development in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.

658. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$4.67 million on training and development in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Motor Vehicles

659. In its revised proposal, DBP proposes to spend \$5.33 million on motor vehicles in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
660. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
661. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that motor vehicles for the AA4 period should be \$5.24 million. The Authority notes that DBP's revised proposed cost for motor vehicles in AA4 is \$0.09 million more than the Authority determined in the Draft Decision but is \$0.75 million less than DBP's original proposal.
662. The Authority has reviewed DBP's revised proposed cost for motor vehicles in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
663. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$5.33 million on motor vehicles in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Health, Safety and Environment

664. In its revised proposal, DBP proposes to spend \$1.08 million on health, safety and environment in the AA4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
665. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
666. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that health, safety and environment for the AA4 period should be \$1.14 million. The Authority notes that DBP's revised proposed cost for health, safety and environment in AA4 is \$0.06 million less than the Authority determined in the Draft Decision but \$0.10 million more than DBP's original proposal.
667. The Authority has reviewed DBP's revised proposed cost for health, safety and environment in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
668. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$1.08 million on health, safety and environment in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Government Charges

Utilities, Rates and Taxes

669. In its revised proposal, DBP proposed to spend \$36.49 million on Utilities, Rates and Taxes (URT) in the A4 period. DBP has used its 2015 actual cost as the base year in calculating this expenditure.
670. In the Draft Decision the Authority rejected DBP's 2015 estimated cost as the base year and determined that the most recent revealed cost, being the 2014 actual cost at the time, was the most efficient and reliable cost estimate as the base year.
671. In the Draft Decision the Authority determined, using DBP's 2014 actual cost as the base year, that URT for the AA4 period should be \$38.02 million. The Authority notes that DBP's revised proposed cost for URT in AA4 is \$1.53 million less than the Authority determined in the Draft Decision and \$4.95 million less than DBP's original proposal.
672. In its original proposal, DBP based its URT forecast expenditure on its 2015 forecasted costs and in its revised proposal, DBP based its forecast expenditure on its 2015 actual costs.
673. DBP, however, notes that the derivation of a forecast based on a single year's worth of actual expenditure in circumstances where there has been significant variances in the level of expenditure over the last five years would place the operator in a position where it is denied the opportunity of recovering its efficient costs.
674. DBP notes that this would not be the situation if there is a pass through mechanism in place that gives the operator certainty that the reference tariffs will be adjusted should the level of expenditure change from the forecast.
675. DBP submits that if the ERA does not accept DBP's position in relation to the tariff variation mechanisms in the amended access arrangement proposal that the ERA should in the Final Decision, adopt a level of expenditure for this category for each year of AA4 that is based on the average annual expenditure for this category over the last five years.
676. The Authority notes that DBP has, when determining the URT forecast expenditure for the AA4 period, included two proposed methods for calculating the total expenditure. DBP has linked the URT expenditure with the amendments to the tariff variation mechanism (TVM).
677. The Authority notes that DBP in the TVM has access to variations for any tax changes and new costs pass through events that occur during the access arrangement period. The TVM is not a mechanism to allow for poor forecasting and estimating by the service provider of its operating costs. Should there be a relevant tax change or new cost event during the AA4 period, the Authority believes that the TVM gives the operator the opportunity of recovering these costs if determined efficient.
678. The Authority notes that under rule 74(2) of the NGR a forecast or estimate must be arrived at on a reasonable basis and must represent the best forecast or estimate possible in the circumstances.

679. Based on the requirements of rule 74(2) of the NGR, the Authority believes that in order to satisfy these requirements that DBP should propose in its submission and in the tariff model a cost estimate that would represent the best forecast or estimate possible in the circumstances.
680. As EMCa noted with respect to DBP's initial proposal, DBP's regulated business activities are likely to be relatively stable and EMCa would expect that URT expenditure would also be relatively stable in real terms.
681. The Authority has reviewed DBP's revised proposed cost for utilities, rates and taxes in the AA4 period and maintains its Draft Decision methodology that the most recent revealed actual cost is the most appropriate cost to use for the base year, as DBP has proposed.
682. Based on a review of the expenditure, the Authority is satisfied that DBP's forecast of \$36.49 million on utilities, rates and taxes in AA4 is justified and satisfies rules 74 and 91 of the NGR.

Reactive Maintenance

683. In its revised proposal, DBP proposes to spend \$7.00 million on reactive maintenance in the AA4 period. This equates to \$1.40 million per year¹³⁵ of the AA4 period.
684. In its initial proposal DBP proposed to spend \$6.99 million on reactive maintenance which the Authority rejected. The Authority determined, based on EMCa's advice that the AA3 allowance of \$1.2 million per year of the access arrangement was the most representative of an efficient level of expenditure. The \$1.2 million per year was the allowance that was determined for DBP in the AA3 determination.
685. DBP acknowledges in its revised submission that there is some volatility in this cost category. DBP notes that the three year average of the actual expenditure in the reactive maintenance is \$1.72 million¹³⁶ and that this is significantly higher than its proposed \$1.40 million per year for the AA4 period.
686. The Authority notes that the average of reactive maintenance over the whole AA3 five years is in fact \$1.28 million.¹³⁷ DBP has not mentioned in its submission why it has only looked at the average expenditure for the last three years as opposed to the whole AA3 period.
687. From a review of DBP's submission, the Authority is unable to ascertain the reasoning behind the \$1.4 million per year proposed cost. The cost does not appear to be based on any historical results other than an arbitrary decision to choose an amount between the AA3 allowance and the average of the last three years of actual expenditure.
688. The Authority has reviewed DBP's revised proposed cost for reactive maintenance in the AA4 period and based on the information available determines that the proposed \$7.00 million over the AA4 period is not justified in accordance with rules 74 and 91 of the NGR.

¹³⁵ Real \$2015

¹³⁶ Real \$2015

¹³⁷ Real \$2015

689. The Authority agrees with DBP that the reactive maintenance cost category can experience some volatility over an access arrangement period. The Authority does not agree with DBP's three year average and has determined that a five year average of the AA3 expenditure should be used as the base year estimate for the fourth access arrangement period.
690. Based on a review of the expenditure, the Authority is not satisfied that DBP's forecast of \$7.00 million on reactive maintenance in AA4 is justified and determines that \$6.39 million over the AA4 period is justified and satisfies rules 74 and 91 of the NGR.

Required Amendments

691. The Authority considers that only \$514.68 million of DBP's forecast operating expenditure for the fourth access arrangement period satisfies rules 74 and 91 of the NGR:¹³⁸
- \$150.24 million on Wages and Salaries;
 - \$73.68 million on Non-Field Expenses;
 - \$71.94 million on Field Expenses;
 - \$36.49 million on Government Charges
 - \$6.39 million on Reactive Maintenance; and
 - \$175.93 million on System Use Gas.
692. Table 43 below shows DBP's revised proposed operating expenditure forecast, and the Authority's required amendments for the fourth access arrangement period by cost category.

¹³⁸ The total operating expenditure for the AA4 period does not match to the individual category totals due to rounding.

Table 43 Final Decision Operating Expenditure Forecast Reductions by Cost Category (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
DBP Proposed Operating Expenditure Forecast	103.48	104.10	106.78	104.56	106.16	525.09
Wages & salaries	(0.19)	(0.39)	(0.60)	(0.81)	(1.03)	(3.02)
Non-field expenses	(0.54)	(0.57)	(0.60)	(0.63)	(0.66)	(2.99)
Field Expenses	0.00	0.00	0.00	0.00	0.00	0.00
Government charges	0.00	0.00	0.00	0.00	0.00	0.00
Reactive maintenance	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.61)
System use gas	(0.75)	(0.76)	(0.76)	(0.76)	(0.76)	(3.79)
Total Reductions	(1.60)	(1.84)	(2.08)	(2.32)	(2.57)	(10.41)
Authority Approved Operating Expenditure Forecast	101.88	102.26	104.70	102.24	103.59	514.68

693. Table 44 below summarises the Authority approved operating expenditure by category for the fourth access arrangement period.

Table 44 Final Decision Operating Expenditure Forecast by Cost Category (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total
Wages & salaries	29.28	29.67	30.04	30.43	30.83	150.24
Non-field expenses	14.77	14.35	14.40	14.83	15.34	73.68
Field Expenses	13.44	15.36	16.93	13.15	13.06	71.94
Government charges	7.30	7.30	7.30	7.30	7.30	36.50
Reactive maintenance	1.28	1.28	1.28	1.28	1.28	6.39
System use gas	35.81	34.31	34.75	35.25	35.80	175.93
TOTAL	101.88	102.26	104.70	102.24	103.59	514.68

Required Amendment 8

The Authority has determined operating expenditure for the fourth access arrangement period to be the values set out in Table 44 of this Final Decision.

Opening Capital Base

Regulatory Requirements

694. The capital base is the capital value attributed to the pipeline assets that are used to provide regulated services. The capital base is used to calculate the return on capital and depreciation (return of capital).
695. Rule 77(2) of the NGR establishes the approach to determining the opening capital base for an access arrangement period that follows immediately on the conclusion of a preceding access arrangement period.
696. The Authority notes that the AEMC published an updated version of the NGR on 2 October 2014, which added text to rule 77(2)(a).
697. Rule 77(2) of the NGR states:
77. Opening capital base
- ...
- (2) If an *access arrangement period* follows immediately on the conclusion of a preceding *access arrangement period*, the opening capital base for the later *access arrangement period* is to be:
- (a) the opening capital base as at the commencement of the earlier *access arrangement period* adjusted for any difference between estimated and actual capital expenditure included in that opening capital base. This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure;
- plus:
- (b) conforming capital expenditure made, or to be made, during the earlier *access arrangement period*;
- plus:
- (c) any amounts to be added to the capital base under rule 82 [capital contributions by users to new capital expenditure], rule 84 [speculative capital expenditure account] or rule 86 [re-use of redundant assets];
- less:
- (d) depreciation over the earlier *access arrangement period* (to be calculated in accordance with any relevant provisions of the access arrangement governing the calculation of depreciation for the purpose of establishing the opening capital base); and
- (e) redundant assets identified during the course of the earlier *access arrangement period*; and
- (f) the value of pipeline assets disposed of during the earlier *access arrangement period*.
698. Rule 79 of the NGR sets out the criteria for new capital expenditure. Rule 79 of the NGR states:
79. New capital expenditure criteria

- (1) Conforming capital expenditure is capital expenditure that conforms with the following criteria:
 - (a) the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services;
 - (b) the capital expenditure must be justifiable having regard to one of the following grounds stated in rule 79(2).
- (2) Capital expenditure is justifiable if:
 - (a) the overall economic value of the expenditure is positive; or
 - (b) the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital expenditure; or
 - (c) the capital expenditure is necessary:
 - (i) to maintain and improve the safety of services; or
 - (ii) to maintain the integrity of services; or
 - (iii) to comply with a regulatory obligation or requirement; or
 - (iv) to maintain the service provider's capacity to meet levels of demand for services existing at the time the capital expenditure is incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity); or
 - (d) the capital expenditure is an aggregate amount divisible into 2 parts, one referable to incremental services and the other referable to a purpose referred to in paragraph (c), and the former is justifiable under paragraph (b) and the latter under paragraph (c).
- (3) In deciding whether the overall economic value of capital expenditure is positive, consideration is to be given only to economic value directly accruing to the service provider, gas producers, users and end users.
- (4) In determining the present value of expected incremental revenue:
 - (a) a tariff will be assumed for incremental services based on (or extrapolated from) prevailing reference tariffs or an estimate of the reference tariffs that would have been set for comparable services if those services had been reference services;
 - (b) incremental revenue will be taken to be the gross revenue to be derived from the incremental services less incremental operating expenditure for the incremental services; and
 - (c) a discount rate is to be used equal to the rate of return implicit in the reference tariff.
- (5) If capital expenditure made during an *access arrangement period* conforms, in part, with the criteria laid down in this rule, the capital expenditure is, to that extent, to be regarded as conforming capital expenditure.
- (6) The [ERA's] discretion under this rule is limited.

699. Rule 82(1) of the NGR provides that a user may make a capital contribution towards a service provider's capital expenditure. Any capital contributions by a user may, with the approval of the Authority, be rolled into the capital base for a pipeline on condition that the service provider does not benefit through increased revenue from the user's contribution to the capital base.
700. Rules 88, 89 and 90 of the NGR specify particular requirements for the depreciation of pipeline assets in the Regulated Asset Base.
701. Rule 88(2) of the NGR states that the depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or asset class.
702. Rule 89(1) of the NGR provides that the depreciation schedule should be designed so that:
- reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services;
 - so that each asset or group of assets (asset class) is depreciated over the economic life of that asset or group of assets (asset class);
 - so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset or a particular group of assets (asset class);
 - so that (subject to the rules about capital redundancy in rule 85 of the NGR), an asset is depreciated only once (i.e. the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted, if the accounting method approved by the Authority permits, for inflation)); and
 - so as to allow the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.
703. Rule 90(1) of the NGR specifies that a full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period. Rule 91(2) of the NGR states that those provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.
704. Rule 93 of the NGR is relevant to the allocation of total revenue and costs between reference and other services.
93. Allocation of total revenue and costs
- (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
 - (2) Costs are to be allocated between reference and other services as follows:
 - (a) costs directly attributable to reference services are to be allocated to those services; and
 - (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
 - (c) other costs are to be allocated between reference and other services on a basis (which must be consistent with the

revenue and pricing principles) determined or approved by the [ERA].

...

705. Rule 95 of the NGR is relevant to the portion of total revenue referable to reference services.

95. Tariffs – transmission pipelines

...

(2) The portion of total revenue referable to a particular reference service is determined as follows:

(a) costs directly attributable to each reference service are to be allocated to that service; and

(b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].

(3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:

(a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and

(b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].

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

706. Rule 100 of the NGR sets out a general requirement that the provisions of an access arrangement must be consistent with the national gas objective, which is set out in section 23 of the NGL(WA).

23. National gas objective

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

707. The revenue and pricing principles are defined in section 24 of the NGL(WA) and include the following.

24. Revenue and pricing principles

...

(2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—

(a) providing reference services; and

(b) complying with a regulatory obligation or requirement or making a regulatory payment.

...

DBP's Original Proposal

708. In its original proposal DBP proposed an opening capital base for the fourth access arrangement period of \$3,536.78 million¹³⁹ as at 1 January 2016. DBP's proposed opening capital base included \$239.37 million (\$nominal) in conforming capital expenditure less depreciation of \$495.57 million for AA3.

¹³⁹ Real \$ million at 31 December 2015.

Table 45 DBP's Original Opening Capital Base (AA4), real \$ million

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015
Total assets					
Capital base at 1 Jan	3,805.08	3,862.99	3,792.18	3,709.93	3,617.40
<i>Plus</i>					
Conforming capital	162.39	34.71	24.13	15.21	20.30
Correction for over-depreciation	0.00	0.00	0.00	0.00	5.32
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.83	0.40	0.79	1.84	0.00
Depreciation	99.66	105.12	105.59	105.90	106.24
Capital base at 31 December	3,862.99	3,792.18	3,709.93	3,617.40	3,536.78
DBNGP assets					
Capital base at 1 Jan	3,775.14	3,833.75	3,764.08	3,683.02	3,591.73
<i>Plus</i>					
Conforming capital	162.39	34.71	24.13	15.21	20.30
Correction for over-depreciation	0.00	0.00	0.00	0.00	3.36
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.83	0.40	0.79	1.84	0.00
Depreciation	98.95	103.98	104.40	104.67	105.01
Capital base at 31 December	3,833.75	3,764.08	3,683.02	3,591.73	3,510.37
Shipper assets					
Capital base at 1 Jan	29.94	29.23	28.10	26.90	25.68
<i>Plus</i>					
Conforming capital	0.00	0.00	0.00	0.00	0.00
Correction for over-depreciation	0.00	0.00	0.00	0.00	1.97
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	1.13	1.19	1.23	1.23
Capital base at 31 December	29.23	28.10	26.90	25.68	26.41

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

709. DBP considered that its actual past capital expenditure was capital expenditure that conformed to the criteria under rule 79 of the NGR. Under rule 77(2) of the NGR, capital expenditure must be 'conforming capital expenditure' in order to be added to the capital base.

710. DBP proposed the addition of \$256.74 million¹⁴⁰ for the third access arrangement period to the opening capital base. The \$256.74 million for conforming capital expenditure was \$30.60 million, or 13.5 per cent more than the forecast amount approved by the Authority for the third access arrangement period.
711. Of the \$256.74 million¹⁴¹ proposed by DBP as conforming capital expenditure for the third access arrangement period, \$117.82 million¹⁴² of this related to capital expenditure expansion works and \$138.92 million¹⁴³ related to stay in business capital expenditure.
712. DBP noted that the proposed conforming capital expenditure for the current access arrangement period related to the Stage 5A and 5B expansion projects. DBP provided substantiation of these expansion projects to the Authority as part of the approval for the third access arrangement.
713. DBP largely completed the Stage 5A and 5B expansion works in the 2005-2010 access arrangement period. There were amounts of expansion capital expenditure not included in the opening capital base of the third access arrangement period as they were incurred in 2011 and 2012.
714. DBP submitted that the expansion capital expenditure met the criteria contained in NGR 79 and should be approved as conforming capital expenditure and rolled into the opening capital base calculation.
715. DBP's stay in business capital expenditure was expenditure made to ensure DBP was able to continue operating the pipeline to meet its statutory and contractual obligations.
716. DBP noted that the reason for the difference between the level of conforming capital expenditure made in 2011 and the level of expenditure made in later years was due to the change in accounting treatment of capital expenditure from 2011 to subsequent years. In 2012, DBP moved from a capitalised basis of accounting to an incurred basis for regulatory purposes.
717. DBP submitted that the prudence and efficiency criterion was met for each of the projects that make up the actual capital expenditure.
718. Consistent with the requirements of the current access arrangement, depreciation was based on the forecast conforming capital expenditure approved for AA3. DBP noted it had adopted the depreciation determined by the ERA in 2012 when it approved the prior access arrangement's forecast conforming capital expenditure.
719. DBP noted the correction made for over-depreciation reflects the fact that certain assets will have been over depreciated by the end of the prior AA period due to the application of approved forecast depreciation and conforming capital expenditure inputs.
720. DBP provided the value of pipeline assets disposed of during AA3.

¹⁴⁰ Real \$ million at 31 December 2015.

¹⁴¹ Real \$ million at 31 December 2015.

¹⁴² Real \$ million at 31 December 2015.

¹⁴³ Real \$ million at 31 December 2015.

721. No expenditure was added to shipper funded assets during the period.

Submissions

722. BHP suggested that recently incurred conforming capital expenditure for expanding the capacity of the pipeline should be examined carefully in the context of the forecasts for reduced throughput and capacity reservation.¹⁴⁴

Draft Decision

723. In the Draft Decision the Authority determined different values of the opening capital base than proposed by DBP. In assessing whether DBP's proposed opening capital base and projected capital base over the 2011 to 2015 access arrangement period met the requirements of the NGR, the Authority addressed the following matters:

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

724. The Authority engaged Energy Market Consulting associates, (**EMCa**), to assess DBP's capital expenditure, operating expenditure and governance processes.

Assessment of Capital Expenditure during AA3

725. With assistance from EMCa, the Authority assessed whether DBP's actual capital expenditure for the third access arrangement period that was proposed to be rolled into the capital base was conforming capital expenditure in accordance with the NGR using a three-step framework:

- Evaluate whether the expenditure is justifiable on the grounds set out in rule 79(2) of the NGR;
- Consider whether the expenditure satisfies the prudent service provider test set out in rule 79(1)(a) of the NGR; and
- Assess whether forecasts or estimates comply with rule 74(2) of the NGR.

726. As part of its review, EMCa assessed DBP's policies, processes and key strategic documents to establish the quality of what DBP 'says it does'. EMCa also assessed 15 stay-in-business projects with the highest expenditure as identified by DBP and undertook a high level assessment of the balance of the stay-in-business project expenditure.

727. EMCa assessed the current state of DBP's processes, policies and systems and noted that with few exceptions they were appropriate to manage DBP's business if

¹⁴⁴ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

properly applied. However, EMCa's review of the consistency of DBP's application of the procedures and policies found that DBP's information in support of its AA3 program to be generally inadequate to justify the expenditure.

Stay-In-Business capital expenditure

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

Primary Documents

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

Business Need

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

regulatory obligations, all of which are common and accepted drivers within the industry for stay-in-business work.

Options Analysis

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

Procurement

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

Delivered Scope

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

Delivered Cost

739. EMCa noted that DBP provided inadequate information to allow EMCa to conclude that it has deployed prudent means of establishing efficient costs at the project/program level. EMCa noted significant variation between actual and forecast expenditure within expenditure categories and with the absence of compelling, or any, explanations, notes that it is indicative of suboptimal decision making at a project level.

Close-out Reports

740. EMCa noted in its review that it would expect that a prudently operated business with good governance procedures to produce close-out reports for all projects over a certain dollar threshold. EMCa noted that DBP did not produce close-out reports for the projects comprising its \$138.91 million AA3 stay-in-business program of works. This made it difficult for EMCa to confidently assess the delivered cost against the business case estimate and the reasons for any significant variance.

741. EMCa considered that the absence of close-out reports further undermined its confidence that DBP delivered projects for an efficient cost and that benefits were realised.

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

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

Prudency Test rule 79(1)(a)

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

Subsequent Costs

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

The subsequent cost category, consistent with the requirements of AASB116 Property, Plant and Equipment (PP&E), captures expenditure incurred as a condition of continuing to operate an item of PP&E. Regular day-to-day serving expenditure is recognised through profit and loss (operating expenditure) as consumed and generally described as repairs and maintenance. However, major overhauls that effectively extend the life of an asset are classified as a subsequent cost of the assets continued use the costs of which are recognised as part of the asset value.¹⁴⁵

¹⁴⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual Capital Expenditure 2011-15 (Stay in business) – Supporting Submission 8 (part 1)*, 31 December 2014, Table 190, p. 126.

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

Expansion Capital Expenditure

755. Of the \$256.74 million in capital expenditure from AA3 that DBP proposes adding to the capital base, \$117.82 million relates to expansion works which was incurred in 2011 and 2012. This expansion capital expenditure relates to the Stage 5A and 5B expansion projects and represents the final two years of multi-year projects that commenced in AA2.
756. EMCa notes in its review that over 90 per cent of the capital expenditure on the Stage 5A and 5B projects was incurred in the AA2 period. As a result, DBP has argued that the conclusions reached by the Authority in its 2011 Final Decision regarding the prudence and efficiency of the two expansion projects are applicable to the expansion expenditure proposed as conforming capital expenditure in the AA4 submission.
757. In its 2011 Final Decision, the Authority concluded that the proposed Stage 5A and 5B expenditure satisfied or was likely to satisfy Rule 79(2)(a) and Rule 79(2)(c)(iii). Based on the Authority's approval in 2011, EMCa considers that the project need has been satisfactorily established.
758. Rule 79(1)(a) sets out the criteria of the prudent service provider test which EMCa considered in its review, in determining if the \$117.82 million spent by DBP was efficiently delivered in accordance with the requirements under this rule.

759. In undertaking the review, EMCa had regard to the Authority's requirement for DBP to provide satisfactory audited statements of capital expenditure, as was required in the Final Decision for the AA3 Access Arrangement period. EMCa notes that DBP has provided audited statements as required and while it was outside of EMCa's scope to verify the findings in the statements, it notes that the auditor, Ernst & Young, found no errors or exceptions for capital expenditure in its report.
760. The Authority reviewed the information provided by DBP in Submission 6 to the proposed access arrangement (Cost allocation and verification), and is satisfied with the auditor's findings that they found no errors or exceptions for capital expenditure.
761. EMCa also reviewed DBP's project governance framework employed for Stage 4, 5A and 5B including but not limited to independent engineer reports, close out reports and lessons learnt registers.
762. The 2010 forecast for total expenditure on the remainder of Stage 5A and 5B approved by the Authority was \$104.87 million (real \$ million at 31 December 2010) which EMCa considers is in a reasonable bound of the actual expenditure of \$108.03 million (\$ nominal). EMCa considers that DBP's actual expenditure performance is indicative of efficiently incurred costs.
763. EMCa notes that on balance it considers that it is reasonable to conclude that DBP's expenditure on expansion capital expenditure in AA3 satisfies the prudent service provider test pursuant to rule 79(1)(a).
764. Based on EMCa's review and findings and the Authority's review of expansion capital expenditure for the AA3 period, the Authority was satisfied that the expansion capital expenditure of \$117.82 million satisfied the requirements of rule 74(2).

Summary of Draft Decision determination and required amendments

765. In its Draft Decision, the Authority did not approve DBP's proposed capital expenditure for the third access arrangement period as submitted.
766. Table 46 compares the third access arrangement period capital expenditure that DBP proposed to be added to its opening capital base with the capital expenditure, by asset class, that the Authority's excluded from the capital base in its Draft Decision.

Table 46 Draft Decision Conforming Capital Expenditure Reductions by Asset Class (AA3), real \$ million

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

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

767. The Authority determined that:

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

768. Table 47 shows the Authority's approved conforming capital expenditure for the third access arrangement period by asset class for both expansion and stay-in-business capital expenditure as determined in the Draft Decision.

Table 47 Draft Decision Conforming Capital Expenditure by Asset Class (AA3), real \$ million

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

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

769. The depreciation values used by DBP to calculate the opening capital base were consistent with the depreciation forecasts approved for AA3.
770. The Authority did not accept DBP's proposed methodology for correcting over-depreciation. The Authority required that an alternative approach be applied.
771. The net effect is that the service provider retains some of the excess 'return on' capital from the third access arrangement which provides an incentive for efficiency gains whilst balancing long term interests of consumers. This was consistent with the requirements of the National Gas Objective. The Authority also noted that it is the method utilised by the Australian Energy Regulator, so has regulatory precedent.

772. The Authority noted the values for asset disposals were small and similar to previous periods. The values had been extracted from the DBP's financial statements and the Authority considered them to be reasonable.

773. Set out in Table 48 below was the Authority's determination of the closing capital base for AA3 that forms the opening capital base for AA4.

Table 48 Draft Decision Opening Capital Base (AA4), real \$ million

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015
Total Assets					
Opening Capital Base (AA3)	3,819.99	3,867.29	3,784.69	3,691.20	3,591.81
Plus: Capital Expenditure	152.19	22.90	12.82	8.25	11.41
Less: Redundant & Disposed Asset	4.85	0.40	0.79	1.85	-
Less: Depreciation	100.05	105.10	105.51	105.79	106.13
Closing Capital Base (AA3)	3,867.29	3,784.69	3,691.20	3,591.81	3,497.09
DBNGP Assets					
Opening Capital Base (AA3)	3,789.94	3,837.94	3,756.05	3,663.27	3,564.59
Plus: Capital Expenditure	152.19	22.90	12.82	8.25	11.41
Less: Redundant & Disposed Asset	4.85	0.40	0.79	1.85	-
Less: Depreciation	99.34	104.39	104.81	105.08	105.42
Closing Capital Base (AA3)	3,837.94	3,756.05	3,663.27	3,564.59	3,470.57
Shippers Assets					
Opening Capital Base (AA3)	30.06	29.35	28.64	27.93	27.22
Plus: Capital Expenditure	-	-	-	-	-
Less: Redundant & Disposed Asset	-	-	-	-	-
Less: Depreciation	0.71	0.71	0.71	0.71	0.71
Closing Capital Base (AA3)	29.35	28.64	27.93	27.22	26.52

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

774. The Authority required the following amendment:

Required Amendment 10

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

DBP's Amended Proposal

- 775. DBP did not accept the Authority's Draft Decision that \$49.26 million of stay-in-business capital expenditure did not comply with the criteria set out in rules 74, 79 or 93 of the NGR.

- 776. DBP's proposed revised Opening Capital Base calculations are shown in Table 49.

Table 49 DBP's Amended Opening Capital Base (AA4), real \$ million

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015
Total assets					
Capital base at 1 Jan	3,780.68	3,838.21	3,767.86	3,686.13	3,593.07
<i>Plus</i>					
Conforming capital	161.35	34.48	23.97	14.38	27.38
Correction for over-depreciation	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.80	0.39	0.79	2.22	0.78
Depreciation	99.02	104.44	104.91	105.22	105.56
Capital base at 31 December	3,838.21	3,767.86	3,686.13	3,593.07	3,514.11
DBNGP assets					
Capital base at 1 Jan	3,750.93	3,809.16	3,739.94	3,659.40	3,567.56
<i>Plus</i>					
Conforming capital	161.35	34.48	23.97	14.38	27.38
Correction for over-depreciation	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	4.80	0.39	0.79	2.22	0.78
Depreciation	98.32	103.32	103.73	104.00	104.34
Capital base at 31 December	3,809.16	3,739.94	3,659.40	3,567.56	3,489.82
Shipper assets					
Capital base at 1 Jan	29.75	29.05	27.92	26.73	25.51
<i>Plus</i>					
Conforming capital	0.00	0.00	0.00	0.00	0.00
Correction for over-depreciation	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Redundant assets	0.00	0.00	0.00	0.00	0.00
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	1.13	1.19	1.22	1.22
Capital base at 31 December	29.05	27.92	26.73	25.51	24.29

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 11, p. 12.

777. DBP's proposed revised expansion and stay-in-business (**SIB**) conforming capital expenditure is shown in Table 50.

Table 50 DBP Amended Expansion and SIB Conforming Capital Expenditure (AA3), real \$ million

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	Total
Expansion						
Pipeline	36.21	10.73	0.00	0.00	0.00	46.94
Compression	27.29	3.72	0.00	0.00	0.00	31.01
Metering	0.00	0.00	0.00	0.00	0.00	0.00
Other	19.80	(1.80)	0.00	0.00	0.05	18.05
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
BEP Lease	21.12	0.00	0.00	0.00	0.00	21.12
Sub total	104.42	12.65	0.00	0.00	0.06	117.13
Stay-in-business						
Pipeline	13.88	4.80	4.85	0.59	2.59	26.71
Compression	5.55	5.10	5.74	3.36	4.48	24.23
Metering	0.38	1.97	0.99	1.22	3.66	8.22
Other	37.15	10.02	12.19	8.34	13.37	81.07
Other non-depreciable	(0.02)	(0.04)	0.20	0.86	3.23	4.23
Sub total	56.94	21.84	23.97	14.38	27.32	144.45
TOTAL						
Pipeline	50.09	15.52	4.85	0.59	2.59	73.64
Compression	32.84	8.82	5.74	3.36	4.48	55.24
Metering	0.38	1.97	0.99	1.22	3.66	8.22
Other	56.94	8.22	12.20	8.34	13.42	99.12
Other non-depreciable	(0.02)	(0.04)	0.20	0.86	3.23	4.23
BEP Lease	21.12	0.00	0.00	0.00	0.00	21.12
TOTAL	161.35	34.48	23.97	14.38	27.38	261.56

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 3, p. 7.

Expansion Capital Expenditure

778. DBP has included an additional amount of \$0.06 million for expansion capital expenditure to what it proposed in its original proposal. DBP's original proposal did not estimate any additional AA3 expansion capital expenditure for the 2015 year.
779. The expenditure relates to the costs of complying with the conditions of a Ministerial Statement issued under the Environmental Protection Act and which was required to enable the expansion projects known as Stages 5A and 5B to be undertaken.

780. DBP notes that Condition 14 of Ministerial Statement 735 requires the implementation of a rehabilitation management plan, developed, reviewed and revised in consultation with the Department of Parks and Wildlife, until such time as the completion criteria are being met.
781. In order to meet this statutory post construction requirement, the completion criteria needed to be adjusted which required a field assessment. DBP procured the services of the same environmental consultant who undertook the initial corridor surveys and post completion review of rehabilitation.
782. DBP submits that this additional AA3 expansion capital expenditure is conforming capital expenditure for the purposes of rule 79 because of a number of reasons, including that the expenditure was required to be made in order to comply with a regulatory requirement (see rule 79(2)(c)(iii) of the NGR).
783. DBP also notes that the Authority has endorsed the EMCa report¹⁴⁶ which stated that project expenditure of less than \$0.15 million is a typical threshold under which:
- It is often counterproductive for organisations to spend significant time to refine scope and achieve delivery efficiencies; and
 - Expenditure can be ad hoc and reactive such that the opportunity for significant savings are limited.

Stay In Business

784. DBP notes that the revised proposed AA3 SIB capital expenditure is \$5.53 million more than the amount of AA3 SIB capital expenditure that was proposed in the original AA4 access arrangement proposal.
785. DBP notes three reasons for the difference between the proposals. These reasons are:
- Inflation – the inflation numbers were updated, resulting in a reduction in the total AA3 SIB capital expenditure of \$0.71 million.
 - 2014 and 2015 estimated actuals – due to the timing of the original access arrangement proposal, some of the costs included were estimates, these costs have now been updated with actual costs resulting in an additional \$2.14 million in AA3 SIB capital expenditure.
 - Linepack – DBP has modified the value of the linepack that is conforming capital expenditure. This modification has resulted in an increase to the AA3 SIB capital expenditure of █████ million.
786. DBP sets out the reasons it does not accept the Authority's Draft Decision required amendment 10 in its supporting submission 53 to the revised proposed access arrangement documentation. These reasons are set out briefly below.
- DBP notes that in its amended access arrangement proposal there are no estimates relied on by DBP and as such any rejection of the proposed amounts that relies on Rule 74(2) is unfounded.
 - Further supporting information is provided by DBP for the projects reviewed by EMCa, the remaining projects not reviewed and the Subsequent Costs capital

¹⁴⁶ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement*, September 2015, pg 51.

expenditure. DBP believes that this information demonstrates that the expenditure is prudent and efficient and compliant with rule 79 of the NGR.

- DBP notes that it believes that the Authority's methodology outlined in the Draft Decision for determining the percentage reductions for the capital expenditure categories suffers from a number of flaws.
- DBP notes that in relation to at least one item of expenditure the Authority has reduced the expenditure more than the amount proposed by DBP, thereby leading to a double deduction which is inconsistent with the Revenue and Pricing Principles of the NGL.
- The inclusion of the revised linepack valuation as conforming capital expenditure was not in the original proposal or subsequently the Draft Decision and now needs to be included in the valuation of conforming capital expenditure.

787. DBP does accept the ERA's required amendment 10 in so far as it relates to accepting DBP's proposed AA3 SIB capital expenditure for each project of less than \$0.15 million in value.

788. DBP expands on its reasoning for not accepting Draft Decision required amendment 10 in its supporting submission 53 and provided the Authority with a large number of supporting documents on its projects to demonstrate that the expenditure was prudent and efficient.

Stay in Business – Linepack Valuation

789. DBP's revised proposal has an additional [REDACTED] million included for a revaluation of the linepack. Linepack is the amount of gas in the pipeline required to allow the pipeline to operate. Under accounting standard AASB116 it is classified as a non-current asset.

790. DBP notes that the value of the linepack has increased for 2014 and 2015 above the amount estimated. This was identified as part of the updating of AA3 SIB capital expenditure estimates with actual values for 2014 and 2015.

791. DBP summarises that two main reasons why the value of linepack that is included in the capital base in 2014 and 2015 has been changed in DBP's amended access arrangement proposal are:

- the amount of linepack now includes an amount to reflect what is required for the efficient operation of the pipeline; and
- in determining the weighted average cost of linepack for the purposes of determining the value of the linepack that forms part of the capital base, the cost of the additional linepack is determined by reference to the price paid under DBP's long term system use gas agreements.

Stay in Business – Subsequent Costs

792. In the Draft Decision one of the significant cost areas that was determined by the Authority to not meet the criteria for conforming capital expenditure was Subsequent Costs in the amount of [REDACTED] million.

793. DBP submits that the majority of the expenditure captured in the Subsequent Cost category of AA3 SIB capital expenditure is conforming capital expenditure because:

- 1) The expenditure in the Subsequent Cost category of SIB expenditure is capital expenditure and satisfies rule 79(1)(b).
 - 2) There is no 'double-counting' of an expenditure allowance accrued by DBP as a result of determining the capital expenditure to be conforming capital expenditure.
 - 3) The expenditure in the Subsequent Cost category of SIB expenditure is capital expenditure consistent with the least cost of undertaking the work as would be incurred by a prudent and efficient network operator, that is, it satisfies rule 79(1)(a).
794. DBP contends that the expenditure in the subsequent cost category consists of two types of expenditure being; expenditure that was always capital expenditure and not operating expenditure now capitalised; and expenditure that has now been capitalised as a result of adopting accounting standard AASB116.
795. DBP notes that many of the activities for which capital expenditure has been categorised in the subsequent costs category of actual AA3 SIB capital expenditure are capital expenses and would always have been capitalised. This expenditure was captured in the capital expenditure forecasts for AA3 and was not transferred from an operating expense to a capital expense as a result of the accounting standard AASB116. This expenditure that was always capital expenditure totals [REDACTED] million. DBP has referred to this as 'Always Capital Expenditure'.
796. The remaining subsequent cost expenditure consists of expenditure that has now been capitalised as a result of adopting accounting standard AASB116, this amount totals [REDACTED] million.
797. Of the [REDACTED] million, [REDACTED] million, relates to one activity which was forecast in the operating expenditure allowance of AA3 and was capitalised in the actual expenditure during AA3. This activity was for unplanned major overhauls of turbines included in DBP's forecast for reactive maintenance operating expenditure for AA3. This [REDACTED] million is referred to by DBP as 'Turbine Reactive Maintenance' expenditure.
798. The remaining [REDACTED] million, related to other activities that have been capitalised in subsequent cost SIB capital expenditure that were not included in the AA3 operating expenditure allowance. This amount is referred to by DBP as 'Non Turbine Reactive Maintenance'.
799. DBP accepts that there could be a double count of operating expenditure forecast allowance if there was operating expenditure for which an operating expenditure allowance which was recovered through reference tariffs, and that expenditure is subsequently capitalised, then DBP may receive an allowance for the same expenditure through reference tariffs again in future periods.
800. DBP notes that this can only be the case where:
- 1) There was an allowance for expenditure on an activity in the operating expenditure forecast and the expenditure associated with the same activity is subsequently capitalised; and
 - 2) The expenditure on the activity was less than the expenditure allowance.
801. DBP submits that this is not the case for the majority of the subsequent cost capital expenditure. The Always Capital Expenditure was not included in the operating

expenditure forecast allowance and consists of capital expenditure that would previously have been forecast and captured in project specific capital expenditure categories.

802. DBP believes that continuing to capitalise this expenditure does not result in recovering the costs in both past and future periods and so no double count occurs.
803. DBP submits that of the subsequent cost capital expenditure, the non-always capital expenditure reflects expenditure on a number of activities, only one of which was included in the forecast operating expenditure allowance. Non Turbine Reactive Maintenance Expenditure activities were not included in the forecast operating expenditure allowance for AA3 and was therefore not recovered during AA3.
804. DBP believes that by capitalising this expenditure will result in DBP being provided an allowance for this investment in AA4 and as no allowance was provided in AA3 it would not receive an allowance in both past and future periods.
805. DBP submits that for Turbine Reactive Maintenance, the actual expenditure on reactive maintenance operating expenditure, including expenditure on overhaul of turbines that does not meet accounting standard AASB116, during AA3 was almost the same as the forecast allowance for reactive maintenance operating expenditure in AA3, being \$0.1 million less than forecast.
806. DBP believes that any allowance DBP received during AA3 for the other subsequent cost expenditure was limited to \$0.1 million and if the other subsequent cost expenditure is not included in AA4 as conforming capital expenditure, no allowance will be received in AA4 either.
807. An additional two arguments as to why there is no double count of the subsequent cost capital expenditure are put forward by DBP in submission 53. Firstly, DBP submits that it cannot receive a double count of an allowance for expenditure incurred in AA3 again in AA4 because DBP has not received an allowance for expenditure through reference tariffs during AA3.
808. DBP submits that regardless of the analysis about the activities and cost items that are included in the forecast operating expenditure and actual AA3 SIB capital expenditure, DBP did not receive any revenue through reference tariffs or revenue that was in any way determined based on operating expenditure forecasts determined in the AA3 period because its shipper contracts are all negotiated under a tariff structure that sits outside the regulatory framework during AA3.
809. DBP believes that therefore it has not received an allowance for operating expenditure through reference tariffs during AA3.
810. Secondly, DBP states in its submission that in any event, the concept of “double-counting” or “double-dipping” is not prohibited under the NGL. The revenue and pricing principles of the NGL is to provide the service provider with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services.
811. DBP submits that it has incurred the expenditure in the subsequent costs SIB capital expenditure category and this expenditure will contribute to the provision of reference services during AA4.

Further Submissions

812. In relation to the Draft Decision required amendment 10, WESCEF repeats the submissions it made in its initial submissions on these matters, agrees with the Authority's position on these matters as set out in the Draft Decision and submits that DBP should be required to accept and adopt the Draft Decision required amendment 10.
813. No further submissions were received on the Opening Capital Base.

Considerations of the Authority

814. The Authority has considered whether DBP's proposed opening capital base for the fourth access arrangement period meets the requirements of rules 77 and 79 of the NGR. These considerations include:
- Verification of capital expenditure;
 - Determination of the opening capital base for the fourth access arrangement period, taking into account an assessment of:
 - Conforming capital expenditure in the third access arrangement period;
 - Capital contributions;
 - Depreciation; and
 - Assessment of DBP's general method of calculating the opening capital base.
815. The Authority engaged EMCa to review elements of DBP's response to the Authority's Draft Decision and to provide its findings in an Addendum Report to the report prepared on DBP's initial proposal.
816. As discussed above in the Draft Decision section, EMCa in its initial report found that when they reviewed DBP's governance framework, with emphasis on policies, processes, procedures and key documents, that with few exceptions they were appropriate to manage DBP's business if properly applied.
817. As detailed in its initial report, EMCa's review of the consistency of DBP's application of the procedures and policies found that DBP's information in support of its AA3 program to be generally inadequate to justify the expenditure.
818. In DBP's supporting submission 53 in response to the Draft Decision, DBP has provided responses to each of the 'gaps' in the application of its governance procedures that were outlined in section 6.3.2 of EMCa's initial report.
819. In its Addendum Report, EMCa has reviewed the information provided and has come to the view that DBP has now provided comprehensive and adequate responses to EMCa's initial findings, including by providing documented evidence of the application of good governance and management practice that was not evident in the information provided in EMCa's initial assessment.
820. EMCa notes in its Addendum Report that DBP has adequately addressed its concerns regarding systemic issues with its governance framework and processes as applied to this expenditure.
821. Specifically, EMCa notes that DBP has explained the derivation and application of its risk framework, including the application of its 'top-down' prioritisation of its capex

program. DBP has also provided evidence that in practice its operational capital reporting process is more comprehensive and logical than was evident from the information provided in its initial proposal.

Expansion Capital Expenditure

822. In the Draft Decision the Authority approved the AA3 expansion capital expenditure proposed by DBP in full. In DBP's revised proposal DBP has made an amendment to the expansion capital expenditure by including an additional \$0.06 million in the 2015 year.
823. The Authority has reviewed Condition 14 of Ministerial Statement 735 and notes DBP's requirements under the condition to undertake such work.
824. The Authority also notes, as DBP has pointed out in its submission, that the ERA did endorse the EMCa report which noted the difficulties in achieving efficiencies and in achieving significant savings for expenditure under \$0.15 million.
825. Based on the information provided in DBP's submission and the Authority's review of the additional expansion capital expenditure, the Authority is satisfied that the expenditure meets the criteria of rule 79(1) and (2).

Stay In Business Capital Expenditure

826. DBP proposed the inclusion of \$138.92 million in SIB capital expenditure. EMCa reviewed a sample of major projects totalling \$75.23 million. Of the sample projects, EMCa concluded that \$56.72 million of the expenditure satisfied the prudent service provider test.
827. This assessment reflected that DBP had not always provided adequate information to support its claims that it had completed a prudent scope of work and had undertaken the expenditure efficiently.
828. The Authority determined that \$89.66 million of AA3 stay in business capital expenditure met the criteria for inclusion in the opening capital base for AA4.
829. In its revised proposal, DBP has proposed the inclusion of \$144.45 million in stay-in-business capital expenditure. This includes an additional [REDACTED] million for the modified value of the amount of linepack that is conforming capital expenditure. The increase in the value of linepack is discussed in more detail below.
830. As discussed in DBP's revised proposal section, DBP responded to EMCa's original technical report by providing a large amount of extra documentation including project summaries which addressed the specific issues that EMCa had with the reviewed projects. DBP also commented in detail on the seven systematic issues raised by EMCa in the original Technical Report.
831. EMCa notes in its Addendum Report that based on the reassessment of the sampled projects and the large volume of additional information that mitigates its concerns regarding systemic issues, it believes that it is reasonable to consider that capital expenditure incurred on projects that were not reviewed within the sample projects also meet the requirements of the NGR and can be considered to be conforming capital expenditure.
832. With regards to AA3 capital expenditure (other than Subsequent Costs and the increase in the linepack between the initial and revised submissions), the Authority

has reviewed the additional information provided by DBP along with the Addendum Report from EMCa and agrees with the EMCa analysis being that the AA3 stay in business capital expenditure (other than Subsequent Costs and the increase in linepack) submitted by DBP in its revised proposal satisfies rules 79(1) and (2).

Subsequent Costs

833. DBP proposed ██████████¹⁴⁷ million of Subsequent Costs expenditure in its original proposal which is ██████ per cent of its total SIB capital expenditure for AA3. The Authority rejected all of this expenditure in the Draft Decision on the basis that these costs had already been included in DBP's forecast operating expenditure allowance for AA3. The Authority considered that DBP's change in accounting treatment during AA3 which had resulted in these costs being capitalised would result in DBP recovering the costs twice if they were added to the asset base.
834. DBP did not accept the Authority's Draft Decision and has re-submitted Subsequent Cost capital expenditure of ██████████ million¹⁴⁸ in its amended proposal.
835. DBP's amended proposal notes the ██████████ million is made up of ██████████ million¹⁴⁹ of "Always Capital Expenditure", ██████████ million¹⁵⁰ of "Turbine Reactive Maintenance Expenditure" and ██████████ million¹⁵¹ "Non Turbine Reactive Maintenance".
836. DBP acknowledges in its amended proposal that if expenditure included in the forecast operating expenditure allowance is subsequently capitalised, then DBP may receive an allowance for the same expenditure through reference tariffs again in future periods.
837. DBP claims, however, that this only occurs to the extent that the actual expenditure is within the forecast operating expenditure allowance (i.e. any expenditure in excess of the forecast would not be double counting).
838. DBP submits that the majority of Subsequent Cost capital expenditure (i.e. the amounts denoted as Always Capital Expenditure and Non-Turbine Reactive Maintenance Expenditure) were not included in the operating expenditure forecast allowance for AA3 and therefore were not recovered during AA3.
839. DBP further claims that it cannot receive a double count of an allowance for expenditure incurred in AA3 again in AA4 because it has not received revenue through reference tariffs during AA3 as its shipper contracts are negotiated under a tariff structure that sits outside the regulatory framework. Therefore, DBP claims it has not received income through reference tariffs during AA3, resulting from its allowance for operating expenditure.
840. DBP also claims that the concept of "double-counting" or "double-dipping" is not prohibited under the NGL, and appears to rely on the revenue and pricing principles of the NGL which include 'to provide the service provider with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services'. DBP asserts that it is sufficient that it has incurred the

¹⁴⁷ Real \$ million at 31 December 2015.

¹⁴⁸ Nominal prices.

¹⁴⁹ Nominal prices.

¹⁵⁰ Nominal prices.

¹⁵¹ Nominal prices.

expenditure and that the expenditure will contribute to the provision of reference services in AA4.

841. EMCa has considered the various claims made by DBP. In summary, EMCa advises:

- EMCa does not agree with DBP's view that double counting is not disallowed by the NGL and that it is therefore entitled to claim expenditures that have been previously included in other allowances in other periods. EMCa considers that assessment of this matter should be based on a rounded view of the implications of the change in regulatory capitalisation policy that DBP has instituted, by reference to the NGL.
- Double counting of costs is not consistent with the National Gas Objective in that it is not in the long term interests of consumers to be charged twice for the same expense;
- Double counting of expenditure would not meet the requirement that the conforming capital expenditure must achieve 'the lowest sustainable cost' of providing pipeline services, as required under rule 79(1)(a) of the NGR.
- In relation to DBP's assertion that it cannot be considered to have double-counted expenditure because its shipper contracts are based on their bilateral contracts, and not on the Reference Service tariffs, EMCa notes that the NGR regulatory regime is based on the offer of a Reference Service and the calculation of Reference Tariffs and expenditure allowances is governed by the NGR. The extent to which customers take up those Reference Services or negotiate outside of this framework is not an NGR consideration in establishing expenditure allowances or other components in the building blocks for setting those tariffs.
- The potential to switch expenditure between operating and capital expenditure during a regulatory period, whether by changes to maintenance practices themselves or by changes to expenditure capitalisation practices, can provide apparent commercial incentives to the regulated entity that may conflict with, or at least not be consistent with, the objectives, criteria and principles of the relevant regulatory law. EMCa considers this to be such an instance.
- Where accounting policies and practices have changed during an access arrangement period, EMCa considers that a reasonable way to assess the expenditure is by reference to the accounting policies and practices that applied at the time that the expenditure allowances were used to set the revenue allowance for the period. This applies particularly with regard to capitalising expenditure that was previously treated as operating expenditure.

842. The Authority agrees with EMCa's views and notes that under rule 79(1)(a) of the NGR, conforming capital expenditure is what would be incurred by a prudent service provider acting efficiently, in accordance with good industry practice, to achieve the lowest sustainable cost of providing services. Further, under rule 100 of the NGR, the General requirement for consistency, the provisions of the access arrangement must be consistent with the NGO and the rules and the Procedures as in force when the terms and conditions of the access arrangement are determined or revised.

843. While DBP claims that the concept of "double-counting" or "double-dipping" is not prohibited under the NGL, the Authority is of the opinion that such a concept, while not specifically prohibited, is in complete opposition to the National Gas Objective and rule 79(1) of the NGR as 'double-counting' cannot be in the long term interests

of consumers or possibly achieve the lowest sustainable cost of providing the services.

844. Taking account of the information put forward by DBP and advice provided by EMCa in relation to the Subsequent Costs, the Authority considers that any of the Subsequent Cost expenditure shown to be 'double-counting' or 'double-dipping' should not be allowed as conforming capital expenditure for the AA3 period.

Always Capital Expenditure

845. EMCa has reviewed the █████ million that DBP claims was Always Capital Expenditure. From its review, EMCa recommends approving these costs for inclusion in the capital base, on the basis that allowances for this type of expenditure were included in the AA3 forecasts on an individual capital project basis, and the actual expenditure during AA3 has been reported as a global category.
846. EMCa also notes that the amount that DBP claims as Always Capital Expenditure in the AA3 period is similar to the Subsequent Costs capital expenditure that DBP has forecast for the AA4 period which EMCa believes provides support to DBP's claim that this represents an accounting shift from allowances within each project, to a global allowance outside of individual project budgets.
847. EMCa also notes in its report that from its review of a sample of AA4 projects that there does not appear to be an allowance for Subsequent Costs or their equivalent, within individual project budgets, further supporting DBP's claim regarding the accounting shift from allowances within each project to a global allowance outside of the individual project budgets and the always capital expenditure of █████ million of AA3 Subsequent Costs.
848. Based on the review and advice from the EMCa addendum report and the Authority's review of DBP's additional information provided, the Authority accepts DBP's claim that █████ million of the Subsequent Costs referred to by DBP as "always capital expenditure" meets the criteria for inclusion as conforming capital expenditure and can be included into the opening capital base for AA4.

Turbine Reactive Maintenance Expenditure and Non Turbine Reactive Maintenance Expenditure

849. The remaining █████ million includes Turbine Reactive Maintenance of █████ million, which DBP acknowledges was included in the operating expenditure allowance for AA3, and Non Turbine Reactive Maintenance of █████ million, which DBP claims was not included in the AA3 operating expenditure allowance.
850. EMCa observes that, while DBP reported an amount spent on Reactive Maintenance operating expenditure in AA3 that was broadly equal to the regulatory allowance for that category, overall it spent \$58 million less than its total operating allowance (excluding SUG).
851. In particular, EMCa highlights that DBP spent \$25 million less than the AA3 regulatory allowance for Field Expenses, and that DBP specifically noted the impact of re-classification between Field Expenses and Reactive Maintenance as part of its explanation for this, as follows:

'DBP has also put in place clearer procedures dealing with the classification of planned maintenance and reactive maintenance explaining a degree of the reduction in historical costs [of Field Expenses] and some of the uplift in the reactive cost category.'

852. EMCa notes that while DBP claims that non-turbine reactive maintenance expenditure was not included in the AA3 forecast operating expenditure allowance, EMCa considers this narrow presentation by DBP is misleading. Taking the wider perspective of the NGL, EMCa observes a level of maintenance costs was included in DBP's AA3 operating expenditure allowance and it underspent this allowance by a considerable amount. EMCa considers DBP took the underspend as a reduction in Field Expenses operating expenditure but reported a higher amount in the 'reactive maintenance' category which it now proposes to capitalise.
853. EMCa considers this to be a significant and clear instance of double-counting and recommends that these costs should not be added to the capital base.
854. Taking account of the information put forward by DBP and the advice provided by EMCa, the Authority considers both Turbine Reactive [REDACTED] million, which DBP acknowledges was included in the operating expenditure allowance for AA3, and Non Turbine Reactive Maintenance of [REDACTED] million would result in double counting if they were to be included in DBP's capital base. Consequently, for the reasons outlined above, the Authority does not consider the [REDACTED] million, reported as Turbine and Non Turbine Reactive Maintenance, meets the criteria for conforming capital expenditure and therefore does not approve its inclusion in the opening capital base for AA4.

Linepack Valuation

855. DBP's amended proposal includes an additional [REDACTED] million in relation to an increase in the value of the Linepack. DBP notes this was identified when updating the AA3 SIB capex amounts for 2014 and 2015. DBP's original proposal did not include any amounts in relation to Linepack for 2014 or 2015.
856. Based on DBP's Pipeline Gas Accounting Policy Paper¹⁵², the Authority understands Linepack to be the amount of gas in the pipeline to allow the pipeline to operate. The paper also notes that Linepack is initially valued at acquisition or construction of a pipeline and subsequently may be acquired or used to manage transmission pipeline efficiency or acquired for further expansions of the pipeline.
857. In supporting submission 53, DBP notes the amounts included in capital expenditure in relation to Linepack in the past have been for:
- additional Linepack required to fill any capacity that is created through an expansion of the pipeline (eg through the installation of a loop); and
 - differences between the actual expenditure and the forecast expenditure that was allowed for in the prior access arrangement (eg 2011 and 2012).
858. DBP notes in Submission 53 that it is now of the view that conforming capital expenditure should also include an allowance for the value of Linepack required during a reporting period to "manage the efficiency of the pipeline".
859. Submission 53 notes that, based on the design assumptions for operating the DBNGP (following the commissioning of stage 5B expansion), a set amount of Linepack is required to exist in the pipeline to ensure the pipeline is operated efficiently. DBP notes that, since the commissioning of Stage 5B (which occurred in 2010), the set amount of Linepack has been [REDACTED] (**Required Linepack**).

¹⁵² Appendix G included in DBP Submission 53

860. DBP notes that during the year changes will occur in the amount of Linepack, for example, there will be times where Linepack is used to address such matters as amounts of gas unaccounted for and shippers exercising their behavioural rights under access contracts (eg imbalance rights).
861. DBP notes that although the amount of Linepack will change from month to month, the overarching requirement is to try to ensure that the amount of Linepack at the end of the relevant year matches as closely as possible to the Required Linepack amount. It notes that to ensure the amount of Linepack throughout the period is always maintained close to the Required Linepack amount, additional gas may be required to be purchased (where the amount of Linepack is less than the Required Linepack amount).
862. DBP's reference to managing "the efficiency of the pipeline" appears to relate to use of the Linepack (together with purchases of fuel gas) to manage overall system use gas requirements to ensure contracted capacity is delivered to shippers in accordance with DBP's contractual obligations.
863. In determining the amount of Linepack used in the year DBP notes it has considered:
- Changes in the "Pipeline Imbalance"- the difference between the gas that DBP has purchased for use in the pipeline in a year and what it has consumed as fuel gas in the year; and
 - Changes in the "Shipper Imbalance"-the difference between the amount of gas the shippers deliver for receipt by DBP at the inlet points of the pipeline in a year and the amount of gas the shippers are delivered by DBP at outlet points in the year under all pipeline services provided by DBP to all shippers during the course of the year.
864. DBP notes it has used its long term firm fuel gas supply contract to value the amount of Linepack used during the year and that the cost of additional gas purchased after 1 July 2014 increased as a result of the change in the price payable under that supply contract. DBP notes this is one of the key drivers for the increase in the value of Linepack during 2014 and 2015.
865. In submission 53, DBP refers to the change in value for 2014 as having been "verified by DBP's external auditors" and that the value for 2015 is "in the process of being verified by them." The Authority has reviewed supporting submission 25 (2014 Cost Verification) and supporting submission 59 (2015 Cost Verification) and the associated Ernst & Young Report of Factual Findings reports for the two years.
866. The Authority notes that the purpose of the cost verification process is to demonstrate that the actual operating expenditure and capital expenditure for AA3 reported by DBP in its AA4 access arrangement proposal is consistent with DBP's audited financial reports and only includes regulatory operating and capital expenditure related to the DBNGP. Both verification documents have been reviewed by Ernst & Young under an Agreed-Upon Procedures Engagement.
867. Table 4 in both cost verification documents sets out the Capital Expenditure allocated by regulatory asset category for the relevant calendar year. Table 15 in both cost verification documents sets out the closing balance sheet values for Linepack.
868. The Authority has reviewed the capital expenditure values reported in Table 4 of both cost verification reports and established they do not include any values in

relation to Linepack. On this basis, the Authority has concluded that the amounts DBP has included in its regulatory capital expenditure for its access arrangement proposal in relation to Linepack cannot be considered as having been verified as regulatory capital expenditure by Ernst and Young in its verification process.

869. Having reviewed the information provided by DBP, the Authority does not consider the changes in Linepack value constitute capital expenditure and are rather an accounting adjustment. From the Authority's review of the information provided by DBP, it considers the costs of any Linepack which is temporarily used for system use gas requirements and then subsequently replaced by new gas purchases will be captured in System Use Gas operating expenditure. Capital expenditure in relation to Linepack should only relate to the costs of acquiring the Required Linepack which has not changed since 2010.
870. DBP notes in its submission that if no allowance is to be made to change the value of the capital base as proposed by DBP:
- DBP will have been denied the opportunity of recovering its efficient costs; and
 - The ERA should, for AA4 allow a higher amount of fuel gas in the forecast of operating expenditure for AA4 than it has in the Draft Decision. That amount should equal the amount for each year of AA4 that DBP adjusted the value of linepack in its statutory accounts.
871. In relation to the first bullet point, the Authority does not consider DBP has been denied the opportunity of recovering its efficient costs. The AA3 operating cost and capital expenditure allowances were set on the basis of what would be required for efficient operation of the Pipeline. The Authority notes DBP's actual System Use Gas operating expenditure for AA3 was significantly below the costs forecast for AA3.
872. In relation to the second point, DBP has not provided any evidence that the forecast System Use Gas quantity requirements for AA4 are not sufficient for the efficient operation of the pipeline.
873. For the reasons outlined above, the Authority does not consider that the [REDACTED] million for 2014 and the [REDACTED] million for 2015 included in DBP's amended proposal in relation to Linepack, meet the requirements of rule 79 of the NGR (in particular they are not capital expenditure) and therefore should not be added to the opening capital base.

Approved Opening Capital Base

874. Table 51 breaks down the Authority's approved conforming capital expenditure for the third access arrangement period by asset class for both expansion and SIB capital expenditure.

Table 51 Final Decision Conforming Capital Expenditure by Asset Class (AA3), real \$ million

Real \$ million at 31 December 2015	2011	2012	2013	2014	2015	Total
Expansion						
Pipeline	36.21	10.73	0.00	0.00	0.00	46.94
Compression	27.29	3.72	0.00	0.00	0.00	31.01
Metering	0.00	0.00	0.00	0.00	0.00	0.00
Other	19.80	(1.80)	0.00	0.00	0.05	18.06
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
BEP Lease	21.12	0.00	0.00	0.00	0.00	21.12
Sub total	104.42	12.65	0.00	0.00	0.06	117.13
Stay-in-business						
Pipeline	13.88	4.80	4.85	0.59	2.59	26.71
Compression	4.17	5.10	5.74	3.11	4.48	22.60
Metering	0.38	1.97	0.99	1.22	3.66	8.21
Other	36.06	8.23	9.71	7.60	11.68	73.28
Other non-depreciable	(0.02)	(0.04)	0.20	0.00	0.00	0.13
Sub total	54.47	20.05	21.48	12.52	22.40	130.93
TOTAL						
Pipeline	50.09	15.52	4.85	0.59	2.59	73.65
Compression	31.46	8.82	5.74	3.11	4.48	53.61
Metering	0.38	1.97	0.99	1.22	3.66	8.21
Other	55.85	6.44	9.71	7.60	11.73	91.33
Other non-depreciable	(0.02)	(0.04)	0.20	0.00	(0.00)	0.13
BEP Lease	21.12	0.00	0.00	0.00	0.00	21.12
TOTAL	158.89	32.70	21.49	12.52	22.46	248.06

875. The Authority's determination on the closing capital base for AA3 that forms the opening capital base for AA4 is set out in Table 52 below.

Table 52 Final Decision Opening Capital Base (AA4), real \$ million

Real \$ million at 31 December 2016	2011	2012	2013	2014	2015
Total Assets					
Opening Capital Base (AA3)	3,780.53	3,835.60	3,763.90	3,680.17	3,585.78
Plus: Capital Expenditure	158.89	32.70	21.49	12.52	22.46
Less: Redundant & Disposed Asset	4.80	0.39	0.79	2.22	0.78
Less: Depreciation	99.01	104.01	104.42	104.70	105.04
Closing Capital Base (AA3)	3,835.60	3,763.90	3,680.17	3,585.78	3,502.43
DBNGP Assets					
Opening Capital Base (AA3)	3,750.79	3,806.56	3,735.55	3,652.53	3,558.84
Plus: Capital Expenditure	158.89	32.70	21.49	12.52	22.46
Less: Redundant & Disposed Asset	4.80	0.39	0.79	2.22	0.78
Less: Depreciation	98.31	103.31	103.72	104.00	104.34
Closing Capital Base (AA3)	3,806.56	3,735.55	3,652.53	3,558.84	3,476.19
Shippers Assets					
Opening Capital Base (AA3)	29.74	29.04	28.34	27.64	26.94
Plus: Capital Expenditure	0.00	0.00	0.00	0.00	0.00
Less: Redundant & Disposed Asset	0.00	0.00	0.00	0.00	0.00
Less: Depreciation	0.70	0.70	0.70	0.70	0.70
Closing Capital Base (AA3)	29.04	28.34	27.64	26.94	26.24

Required Amendment 9

The Authority has determined the opening capital base for 1 January 2016 to be the values set out in Table 52 of this Final Decision.

Projected Capital Base

Regulatory Requirements

876. Rule 78 of the NGR establishes the approach to determine the projected capital base for an access arrangement period.
877. Rule 78 of the NGR states that the projected capital base for a particular period is:
78. Projected capital base
- (1) The projected capital base for a particular period is:
- (a) the opening capital base;
- plus:
- (b) forecast conforming capital expenditure for the period;
- less:
- (c) forecast depreciation for the period; and
- (d) the forecast value of pipeline assets to be disposed of in the course of the period.
878. Rule 69 of the NGR defines capital expenditure for the purposes of Part 9 of the NGR as follows:
- capital expenditure means costs and expenditure of a capital nature incurred to provide, on in providing, pipeline services
879. Rule 79 of the NGR sets out the criteria that capital expenditure must meet in order to be considered conforming capital expenditure. As discussed previously in the opening capital base section, conforming capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services, and the expenditure must be justifiable on an economic, safety or regulatory ground as stated in rule 79(2).
880. The Authority's discretion is limited under rule 79. Rule 40(2) of the NGR sets out the Authority's limited discretion powers. Rule 40(2) states that the regulator must not withhold its approval of an element of an access arrangement proposal if it is satisfied that the element complies with applicable requirements of the NGL(WA) and the NGR and is consistent with applicable criteria (if any) prescribed by the NGL(WA) and the NGR.
881. Rule 74 of the NGR provides that information in the nature of a forecast or estimate must be supported by a statement of its basis, and must be arrived at on a reasonable basis, and must represent the best forecast or estimate possible in the circumstances.
882. Rule 71 of the NGR is relevant to the Authority's consideration of actual and forecast capital expenditure against the requirements of rule 79 of the NGR, and states that:
71. Assessment of compliance
- (1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [ERA] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [ERA] considers appropriate.

- (2) The [ERA] must, however, consider and give appropriate weight to, submissions and comments received when the question whether a relevant *access arrangement proposal* should be approved is submitted for public consultation.
883. Rule 88 of the NGR provides that the pipeline assets constituting the capital base are to be depreciated for the purpose of determining a reference tariff as set out in the depreciation schedule(s). The requirements in relation to the depreciation schedule(s) are set out in rule 89 of the NGR.
884. Rule 93 of the NGR is relevant to the allocation of total revenue and costs between reference and other services.
93. Allocation of total revenue and costs
- (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
- (2) Costs are to be allocated between reference and other services as follows:
- (a) costs directly attributable to reference services are to be allocated to those services; and
- (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
- (c) other costs are to be allocated between reference and other services on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the ERA.
- ...
885. Rule 95 of the NGR is relevant to the portion of revenue referable to reference services.
95. Tariffs – transmission pipelines
- ...
- (2) The portion of total revenue referable to a particular reference service is determined as follows:
- (a) costs directly attributable to each reference service are to be allocated to that service; and
- (b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
- (3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:
- (a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and
- (b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the ERA.
- (3) The [ERA]'s discretion under this rule is limited.

886. Rule 100 of the NGR sets out a general requirement that the provisions of an access arrangement must be consistent with the national gas objective, which is set out in section 23 of the NGL(WA) as follows:
23. National gas objective
- The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.
887. Section 24 of the NGL(WA) set out the revenue and pricing principles, which include the following:
24. Revenue and pricing principles
- ...
- (2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
- (a) providing reference services; and
 - (b) complying with a regulatory obligation or requirement or making a regulatory payment.

DBP's Original Proposal

888. DBP originally proposed a projected capital base for the fourth access arrangement period of \$3,149.77 million at 31 December 2020. DBP's original proposed forecast closing capital base for each year of the fourth access arrangement period are shown in Table 53.

Table 53 DBP's Original Projected Capital Base (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,536.78	3,456.58	3,376.01	3,290.53	3,212.86
<i>Plus</i>					
Forecast conforming capital expenditure	23.27	21.77	17.50	19.37	24.76
<i>Less</i>					
Forecast depreciation	103.47	102.33	102.97	97.05	87.85
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Projected Capital Base	3,456.58	3,376.01	3,290.53	3,212.86	3,149.77
DBNGP Assets					
Capital base at 1 Jan	3,510.37	3,430.87	3,351.01	3,266.23	3,189.27
<i>Plus</i>					
Forecast conforming capital expenditure	23.27	21.77	17.50	19.37	24.76
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	102.77	101.63	102.27	96.34	87.14
Capital base at 31 December	3,430.87	3,351.01	3,266.23	3,189.27	3,126.88
Shipper Assets					
Capital base at 1 Jan	26.41	25.70	25.00	24.30	23.59
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	0.70	0.70	0.70	0.70
Capital base at 31 December	25.71	25.00	24.30	23.59	22.89

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

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

891. DBP originally forecast \$106.66 million in stay in business capital expenditure over the fourth access arrangement period, which was 23.3 per cent less than DBP's proposed actual stay in business capital expenditure for the third access arrangement period of \$138.91 million. DBP did not propose any capital expenditure on expansion projects in the AA4 period in its original proposal.
892. DBP's original proposed capital expenditure is shown in Table 54 below. The expenditure only related to Stay-in-business as no expansion expenditure was forecast in DBP's original proposal.

Table 54 DBP's Original Proposed Conforming SIB Capital Expenditure (AA4), real \$ million

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

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

893. DBP submitted that the prudence and efficiency criteria were met for each of the projects that were included in the original forecast capital expenditure for the fourth access arrangement period.
894. DBP stated its forecast conforming capital expenditure for the fourth access arrangement period was based on the need to ensure DBP:
- Maintains and improves the safety of pipeline services;
 - Maintains the integrity of pipeline services;
 - Complies with the regulatory obligations or requirements applicable to the DBNGP; and/or
 - Maintains its capacity to meet levels of demand for pipeline services existing at the time the capital expenditure is forecast to be incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity).

Submissions

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

Draft Decision

896. The Authority did not accept DBP's initial proposal for the projected capital base in the Draft Decision.

897. The Authority made a number of amendments to the projected capital base proposed by DBP and determined that:
- \$77.92 million (73 per cent of DBP's proposed capital expenditure) complied with the criteria set out in rule 79 of the NGR, and could be considered conforming capital expenditure for the purposes of rule 78; and
 - \$28.74 million (27 per cent of DBP's proposed capital expenditure) did not comply with the criteria set out in rule 79 of the NGR, and cannot be considered conforming capital expenditure for the purposes of rule 78.
898. Table 55 shows the Authority's Draft Decision on the approved capital expenditure to be included in the projected capital base by asset class.

Table 55 Draft Decision Approved Capital Expenditure Forecast by Asset Class (AA4), real \$ million

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

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

899. To arrive that these amendments, the Authority considered whether DBP's proposed value of the projected capital base for the fourth access arrangement period met the requirements of the NGR, to assist with reviewing DBP's proposal the Authority appointed a technical advisor, Energy Market Consulting associates (**EMCa**) to assess the technical aspects of DBP's proposal including capital expenditure and the associated governance processes.
900. EMCa undertook a review of a sample of projects from the DBP AA4 capital expenditure program and used this to test the extent to which the systemic governance, management and expenditure forecasting issues that were identified in the review are manifest in DBP's claimed AA4 capital expenditure requirement.
901. EMCa assessed DBP's governance framework and processes in relation to capital expenditure forecasting. EMCa's review focused on DBP's policies, processes, procedures and reference documents that relate to project and program development, approval and delivery. EMCa conducted the review in relation to DBP's corporate objectives and regulatory obligations, in addition to good industry practice.
902. As part of the review, EMCa assessed 17 AA4 capital expenditure projects in order to identify how DBP applied its policies and processes in practice. EMCa assessed 15 projects with the highest expenditure (as identified by DBP) and two other projects of an atypical nature.
903. EMCa noted DBP provided sufficient information to EMCa to conclude that the expenditure satisfied one or more of the components of rule 79(2)(c)(i) to (iv) in relation to 15 projects in the sample.

904. EMCa identified two projects totalling [REDACTED] million that did not satisfy one or more of the components of rule 79(2)(c)(i) to (iv). [REDACTED]
[REDACTED]. For these two projects, EMCa noted that DBP had not provided sufficient supporting evidence to justify the expenditure for the capital works.
905. EMCa further noted that for the 15 projects that satisfied one or more of the components of rule 79(2)(c)(i) to (iv), EMCa had to apply its industry knowledge and experience to bridge information gaps pertaining to risk assessment in the project summaries and other supporting project-level documentation where necessary.
906. For the 15 projects that satisfied one or more of the components of rule 79(2)(c)(i) to (iv), these projects were then reviewed under rule 79(1)(a) to determine if this proposed capital expenditure by DBP satisfied the prudent service provider test in that the expenditure is likely to be necessary in the AA4 period and that the cost estimate is reasonable.
907. EMCa noted in its review of the initial proposal documentation provided by DBP in support of the proposed expenditure of the sample projects, that it identified a number of systemic issues including poor documentation, lack of clarity about the scope, lack of options analysis, lack of clarity of the basis for the estimate and lack of demonstration of delivery capability.
908. Taking into account the systemic governance, management and forecasting issues that EMCa identified and described in section 4 of its technical review (i.e. what DBP says it does), with the evidence of those issues being apparent in the sample review EMCa undertook (i.e. what DBP does in practice), EMCa considered that there was reasonable evidence that those issues applied generally across DBP's proposed capital expenditure allowance.
909. Based on those findings, EMCa concluded that DBP's proposed capital expenditure allowance did not meet the requirements of rule 79(1)(a), in that it did not represent the best forecast or estimate possible in the circumstances as required under rule 74(2), of the expenditure that would be incurred by a prudent service provider acting efficiently, in accordance with good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.
910. EMCa noted that in order to estimate the impact of the systemic issues, it considered the extent to which they were evident, and their relative impact, in projects by asset category. From its review of the systemic issues by asset category, EMCa determined adjustment ranges applicable to each of the asset categories.
911. The Authority agreed with EMCa's findings that there were a number of systemic issues with the sample projects reviewed to extrapolate these findings out to be likely to be evident in all of the proposed AA4 capital expenditure.
912. The Authority determined that not all proposed AA4 capital expenditure met the criteria to be considered conforming capital expenditure. The Authority reviewed EMCa's recommended adjustment ranges and adopted a mid-point of the range for each asset class as an appropriate reduction in the over-statement of proposed capital expenditure by DBP. The Authority considered this reflected a reasonable estimate of capital expenditure that DBP requires to meet its capital expenditure objectives in the AA4 period both prudently and efficiently. The Authority's percentage reduction is set out below in Table 56.

Table 56 EMCa Recommended Adjustment Ranges and Authority's Determined Adjustment percentage for DBP's capital expenditure (AA4), per cent

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

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

913. Table 57 below shows the Authority's required amended values for the projected capital base for AA4. This takes into account the Authority's required amendments to capital expenditure as provided by the rules 74 and 79 of the NGR and the amendments to depreciation for the fourth access arrangement period that are relevant to this calculation.

Table 57 Draft Decision Projected Capital Base, real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,497.09	3,415.56	3,330.32	3,241.41	3,160.09
<i>Plus</i>					
Forecast conforming capital expenditure	16.99	15.78	12.58	14.05	18.51
<i>Less</i>					
Forecast depreciation	98.52	101.03	101.49	95.38	85.99
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Projected Capital Base	3,415.56	3,330.32	3,241.41	3,160.09	3,092.61
DBNGP assets					
Capital base at 1 Jan	3,470.57	3,389.75	3,305.21	3,217.02	3,136.40
<i>Plus</i>					
Forecast conforming capital expenditure	16.99	15.78	12.58	14.05	18.51
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	97.81	100.32	100.78	94.67	85.28
Capital base at 31 December	3,389.75	3,305.21	3,217.02	3,136.40	3,069.63
Shipper assets					
Capital base at 1 Jan	26.52	25.81	25.10	24.39	23.69
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.71	0.71	0.71	0.71	0.71
Capital base at 31 December	25.81	25.10	24.39	23.69	22.98

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

914. The Authority required the following amendments:

Required Amendment 11

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

Required Amendment 12

The projected capital base in the proposed revised access arrangement must be amended to reflect the values in Table 36 (Authority Approved Projected Capital Base) of this Draft Decision, which shows the Authority's required amended values for the

projected capital base as at 31 December 2020. This takes into account the Authority's required amendments to capital expenditure and the amendments to depreciation that are relevant to this calculation.

DBP's Amended Proposal

915. DBP has not accepted the Authority's required amendments 11, 12 and 13 from the Draft Decision. DBP has revised its projected capital base calculations in its amended access arrangement proposal.
916. DBP has not accepted the following elements from the Draft Decision required amendments for the projected capital base:
- AA4 Opening Capital Base;
 - AA4 Forecast SIB Capital Expenditure; and
 - AA4 Forecast expansion/enhancement Capital Expenditure.
917. DBP has also included increased amounts for AA4 Forecast enhancement capital expenditure in each year of the AA4 period in its revised proposal.
918. Table 58 sets out DBP's Projected Capital Base calculations for the AA4 period.

Table 58 DBP's Amended Projected Capital Base (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,514.11	3,442.42	3,382.41	3,297.21	3,230.42
<i>Plus</i>					
Forecast conforming capital expenditure	25.68	41.82	17.59	30.12	39.09
<i>Less</i>					
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Forecast depreciation	102.69	101.82	102.79	96.91	87.93
Over Depreciation	-5.32	0.00	0.00	0.00	0.00
Projected Capital Base	3,442.42	3,382.41	3,297.21	3,230.42	3,181.58
DBNGP Assets					
Capital base at 1 Jan	3,489.82	3,416.87	3,357.57	3,273.07	3,206.98
<i>Plus</i>					
Forecast conforming capital expenditure	25.68	41.82	17.59	30.12	39.09
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	102.03	101.12	102.09	96.21	87.23
Over Depreciation	-3.41	0.00	0.00	0.00	0.00
Capital base at 31 December	3,416.87	3,357.57	3,273.07	3,206.98	3,158.83
Shipper Assets					
Capital base at 1 Jan	24.29	25.54	24.84	24.14	23.44
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.66	0.70	0.70	0.70	0.70
Over Depreciation	-1.91	0.00	0.00	0.00	0.00
Capital base at 31 December	25.54	24.84	24.14	23.44	22.74

919. As the Authority accepted DBP's methodology for calculating the forecast depreciation and the only reason for the difference in the amount of forecast depreciation is as a consequence of other amendments of the Draft Decision, DBP accepts the Authority's position on the methodology for calculating forecast depreciation.

920. DBP does not accept the ERA's amount of forecast depreciation in the required amendment 13 and notes it has provided a number of other submissions on each of

the other amendments in the Draft Decision that impact on the amount of depreciation for the projected capital base.

921. DBP does not accept the Authority's calculation of the AA4 Opening Capital Base. DBP outlines in submission 53 (DBP's response to the AA3 Opening Capital Base) why it does not accept the AA4 opening capital base. This element is dealt with above in the AA3 Opening Capital Base section of the Final Decision.
922. For the AA4 Forecast Capital Expenditure, DBP has proposed a total amount of \$154.29 million over the AA4 access arrangement period. Of this total, AA4 forecast SIB capital expenditure amounts to \$107.32 million and forecast capital expenditure for the enhancement of the DBNGP amounts to \$46.97 million.
923. Table 59 sets out DBP's amended access arrangement proposal AA4 forecast capital expenditure broken down by year and by asset category.

Table 59 DBP's Amended Conforming Capital Expenditure (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline	3.68	20.37	1.64	15.96	21.67	63.32
Compression	16.01	16.11	12.50	11.75	11.73	68.10
Metering	3.60	2.68	0.85	0.65	3.14	10.93
Other	2.40	2.65	2.60	1.76	2.55	11.95
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total	25.68	41.82	17.59	30.12	39.09	154.29

924. DBP notes that this amount of AA4 forecast capital expenditure is \$47.63 million more than the amount proposed in DBP's original proposal. DBP explains this variance is due to:
- Enhancement Capital Expenditure – DBP has included an amount of \$46.97 million in expenditure that was not included in the original proposal; and
 - Inflation – in presenting the amounts in Real \$2015 values, DBP has used the inflation rates for 2015 and each year of the AA4 as set out in Amendment 6 of the Draft Decision. This results in the amount of AA4 access arrangement period forecast capital expenditure increasing by \$0.66 million.
925. In submission 54, DBP provides further information to support the levels of forecast expenditure for each of the projects assessed by the ERA and EMCa, the new items of forecast expenditure that were not included in the original proposal and for all forecast expenditure generally.
926. DBP notes that, pursuant to Rule 71 of the NGR, in determining whether capital expenditure is efficient and complies with other criteria prescribed by the NGR, the ERA may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or any other basis the ERA considers appropriate.
927. DBP submits two alternative bases which the ERA should use to infer that DBP's AA4 forecast SIB capital expenditure meets the criteria of Rule 79(1). They are:

- As the ERA has itself previously acknowledged, DBP's shipper contractual framework provides an even more powerful incentive framework for efficiency that is the case with the framework of the NGR itself; or
 - The combination of the following circumstances which exist should be appropriate to infer compliance:
 - the fact that no submissions were made by third parties in relation to DBP's AA4 forecast SIB capital expenditure;
 - the expertise and experience of DBP's workforce to ensure that the DBNGP is maintained to meet the business needs and to incur expenditure in so doing in a way that is prudent and efficient; and
 - the level of forecast expenditure proposed by DBP in its Amended Access Arrangement Proposal is comparable to the level of expenditure incurred by DBP in AA3 but significantly lower than the level of expenditure that DBP forecast for AA3, which forecast was approved by the ERA in 2011.
928. DBP submits that for the two projects that the Authority and EMCa determined that did not satisfy one or more of the components of rule 79(2)(c)(i) to (iv) and subsequently rule 79(1)(b), DBP is of the view that all of the forecast expenditure associated with these projects is not only necessary but is also prudent and efficient and represents a forecast that meets the requirements of Rule 74.
929. A more detailed submission on the two projects has been prepared by DBP, in Appendix A to submission 54 of its revised proposal, which provides further supporting explanations and documentation for each project to substantiate its compliance with the requirements of rule 79(1)(b) of the NGR.
930. DBP notes that of the \$28.75 million of the total value of DBP's AA4 forecast SIB capital expenditure disallowed by the ERA, \$11.46 million appears to have been disallowed on the basis that it related to projects for which DBP failed to demonstrate a business need and therefore meet the requirements of rule 79(1)(b).
931. DBP submits that this should mean the remaining amount disallowed by the ERA, being \$17.19 million, was disallowed on the basis that it related to projects where DBP had not demonstrated the expenditure met the criteria in rule 79(1)(a), that it was prudent and efficient expenditure. However, DBP submits that neither the Authority or EMCa formed any conclusions about whether these projects met the efficiency and prudence criteria under rule 79(1)(a)
932. DBP notes that it would appear that the ERA has not disallowed the expenditure on the basis of the criteria in rule 79(1)(a), instead that the ERA has applied a blanket percentage reduction across all projects in a particular asset category, regardless of whether the ERA or EMCa concluded that the expenditure for a project met any or all of the requirements in rules 79(1)(a) and (b) and rule 74. Further DBP has submitted that:
- in concluding that a mid-point of the range for each asset class is an appropriate reduction in the over-statement of proposed capital expenditure by DBP, the ERA failed to identify what parts of each project for which expenditure was included in DBP's AA4 Forecast Capex did not satisfy the rule 79 criteria; and
 - the ERA did not actually make any assessment against rule 74 in the Draft Decision. DBP submits that the only instance where an assessment of capital

expenditure is made against rule 74 is in the EMCa Report, but that even in that report, EMCa only concludes generally that “DBP has not provided sufficient evidence to demonstrate that its forecasts or estimates met the full requirements of Rule 74(2) in being forecasts or estimates that were arrived at on a reasonable basis and represent the best forecasts or estimates possible in the circumstances” and no reasoning is outlined in the EMCa Report to support this conclusion.

933. In response to the systemic governance, management and forecasting issues that EMCa identified, DBP has provided Appendix B to submission 54 which contains additional information to support the AA4 forecast SIB capital expenditure levels included in DBP’s amended access arrangement proposal for each of the AA4 reviewed SIB projects. This is done by providing:
- Further explanation of the project management framework, its application in the business, and audit review findings about the requirements for documentation and DBP’s staff having deep knowledge about what is required;
 - Where relevant to projects in AA4, information for each reviewed AA4 project on what was delivered in each year of AA3 has been provided;
 - Where a project commenced in AA3 and is continuing into AA4, additional information has been provided to support efficient procurement including procurement processes undertaken for each reviewed AA4 SIB project in line with DBP’s purchasing policy, tender procedure and preferred vendor procedure; and
 - Additional documentation to support the efficient delivery of the projects including the project management office’s approach to capturing relevant information in the project status reports.

New Projects not in DBP’s initial proposal

934. DBP notes in its revised proposal that in the course of responding to the ERA’s Draft Decision, DBP has identified 3 new capital projects for the enhancement of the DBNGP with a total value of \$46.97 million that should be included in DBP’s forecast capital expenditure for AA4.
935. The three projects that the additional forecast capital expenditure relates to are:
- Additional compressor unit at CS9;
 - Compressor reconfiguration of CS1; and
 - Urban sprawl integrity upgrade.
936. DBP submits that these projects should be included in the forecast capital expenditure for AA4. DBP has provided in confidential Appendix C of submission 54 separate documents for each of these proposed projects that seeks to substantiate the expenditure as conforming forecast capital expenditure.
937. Further information regarding these three additional projects is included in the Considerations of the Authority section later in the Final Decision.

Further Submissions

938. One submission was received from CLE Town Planning and Design (**CLE**) on behalf of Perron Developments Pty Ltd (**Perron**). The submission relates to Perron being

the landowner of a number of lots on Baldivis Road, Zig Zag Road and Sabrina Road in Baldivis (**the subject land**) which the DBNGP traverses.

939. CLE notes that a structure plan for the subject land was prepared and submitted to the City of Rockingham and to the WA Planning Commission. This structure plan was supported by a wide range of technical reports, including a Pipeline Quantitative Risk Assessment (**QRA**) and Pipeline Risk Management Plan prepared by Worley Parsons consulting engineers in accordance with AS 2885.
940. During the public consultation period on the structure plan, DBP advised that the structure plan could not be supported as DBP could not be satisfied that the mitigation measures proposed in the QRA could achieve the “As Low as Reasonably Practicable” (**ALARP**) standard required by AS 2885.
941. CLE notes that the mitigation measures suggested by DBP at the time in order to achieve ALARP would result in a project that may no longer be viable to develop due to a considerable loss in developable area and lot yield.
942. As part of discussions between Perron and DBP, DBP has proposed the possibility of upgrading the portion of the pipe that traverses the subject land from a Rural standard to a non-rupture T1 standard which would satisfy the ALARP requirement.
943. It is noted by CLE that the cost of upgrading the pipe to a non-rupture standard is considerable and if it were to be borne by Perron Developments, it will have a significant bearing on the viability of the development of the subject land for urbanisation.
944. CLE submit that in this instance it is entirely appropriate that the costs are borne by the pipeline operator for the upgrading of this portion of the pipeline to a non-rupture standard and therefore fully support the funding proposal as set out in DBP’s revised Access Arrangement Submission.

Considerations of the Authority

945. The Authority has considered whether DBP’s proposed value of the projected capital base for the fourth access arrangement period in its revised access arrangement proposal submitted in response to the Authority’s Draft Decision, meets the requirements of the NGR.
946. The Authority has appointed EMCa as a technical advisor, to assess and report on the technical aspects of DBP’s revised proposal. EMCa has provided an addendum report to its initial technical review report that was prepared on DBP’s initial proposal, this addendum report reviews DBP’s responses to the Draft Decision and any additional capital expenditure that was not included in the initial proposal.

Stay-In-Business expenditure

947. As noted above in the Draft Decision section on the projected capital base, EMCa originally reviewed 17 SIB sample projects of which they determined that only one of the 17 projects satisfied the requirements of NGR rules 79(1), 79(2) and 74(2). EMCa in its addendum report has reconsidered the findings based on the new and updated information provided by DBP in its revised proposal for the 16 projects that didn’t satisfy the NGR requirements.

948. EMCa has reviewed all of the additional information provided by DBP and the results of the review of the 16 sample projects that did not satisfy the NGR requirements previously now fall into two categories:
- 13 projects for which DBP has now provided satisfactory explanations to address the issues EMCa raised; and
 - three projects which include aspects for which EMCa advised considers the new and updated information is insufficient to satisfy the requirements of one or more of the NGR rules 79(1), 79(2) or 74(2).
949. The issues EMCa identified with the information provided in DBP's initial proposal led EMCa to consider that the proposed expenditure for the 13 projects, the 13 projects that now satisfy the NGR requirements, was originally unjustified (fully or partially) against the requirements of rule 74(2) due to a lack of clarity of the proposed scope of work, lack of clarity of the options considered, and/or lack of clarity about the basis for the forecast expenditure.
950. EMCa now considers that the expenditure for these projects satisfies the requirements of the NGR rules 79(1), 79(2) and 74(2) because DBP provided, via appendices to submission 54 for each project:
- Further details to support the business need for the project;
 - Sufficient information about the scopes of work, including where relevant (i) the delineation between what was achieved (and not achieved) in the AA3 period, and (ii) the relationship to other projects where EMCa identified an apparent scope conflict;
 - Satisfactory explanations of the risk and options analyses that led to the preferred option, including the timing of work;
 - Satisfactory explanations of the basis for the procurement options and the selected procurement approach (in most cases by competitive tender) – this information helps establish that the delivered cost is likely to be efficient; and
 - Satisfactory explanations of the basis for the cost estimate, including sources (e.g. historical costs, budget quotes) and other relevant assumptions – this provides confidence that the forecast cost is reasonable.
951. The three projects that EMCa has reviewed and considers do not satisfy the requirements of one or more of the NGR rules 79(1), 79(2) or 74(2) are:
- Flow computer upgrade
 - Sealing of airstrips
 - Hot gas path
- Each of these is discussed in detail below.

Flow computer upgrade

952. DBP proposed expenditure of █████ million in its initial proposal to upgrade obsolescent flow computers at the balance of sites not addressed in the AA3 period. DBP has re-submitted this proposed expenditure in its revised proposal.
953. EMCa's primary concerns with the initially proposed expenditure were:
- lack of clarity about the scope to be achieved in the AA4 period;

- lack of clarity about the basis for the cost estimate for the AA4 work;
 - a projected underspend of between [REDACTED] million and [REDACTED] million of the forecast [REDACTED] million AA3 program, including more than a two-year schedule slippage; and
 - consequent lack of confidence in DBP spending the proposed [REDACTED] million in the final year of the AA4 period.
954. DBP responded with the following new information in its response:
- After accounting for the above-budget actual expenditure in 2015, the total spend for the AA3 period was [REDACTED] million on 17 of the originally scoped 45 sites;
 - It proposes addressing 24 projects in 2016, and [REDACTED] million, and allocating [REDACTED] million to commence the next replacement cycle (i.e. due to obsolescence of the units installed in the AA3 period).
955. Based on the new information from DBP, EMCa observed that:
- DBP installed no upgraded flow computers in 2010 and only a small amount in 2011 - in EMCa's view this reduces the strength of DBP's claim of the need to provide for future replacements based on obsolescence in 2020;
 - DBP spent an average [REDACTED] in the AA3 period;
 - DBP [REDACTED] and
 - DBP proposes spending an average of just under [REDACTED] to complete the upgrade program commenced in AA3.
956. EMCa considers from its review that it is unlikely DBP will need to spend [REDACTED] million in the last year of the regulatory period. As a result of the updated and new information, EMCa has revised its position for the flow computer upgrade that an [REDACTED] million for the AA4 period is likely to satisfy the requirements of NGR rule 74(2), resulting in a reduction of [REDACTED] million of DBP's proposed [REDACTED] million allowance.
957. Having considered DBP's revised proposal and submissions and EMCa's initial and addendum reports, the ERA is of the view that [REDACTED] million of DBP's proposed [REDACTED] million allowance for flow computer upgrade for the AA4 period does not satisfy the requirements of rules 74(2) and 79 of the NGR and that consequently only an allowance of [REDACTED] million does satisfy those rules.

Sealing of airstrips

958. DBP proposed expenditure of [REDACTED] million in its initial proposal to seal and install lighting at six airfields adjoining compressor stations. DBP has re-submitted this proposed expenditure in its revised proposal.
959. EMCa's primary concerns with DBP's initial proposal were that DBP did not:
- Present a compelling risk assessment;
 - Demonstrate that there had been a step change in regulatory or similar standards that triggered the need for sealing the airstrips; or
 - Demonstrate it had undertaken a thorough options analysis.

960. DBP has responded with new or updated information in its revised proposal that:
- The airstrips are not inspected daily (as the adjacent compressor stations are not always 'manned' by personnel);
 - There has been a snake bite incident at CS4 and a staff member lost his balance and could not stand at CS6 – both requiring evacuation;
 - The airstrips are not reliably available for community use (eg. Royal Flying Doctor Service and nearby communities); and
 - Whilst the requirements of the Petroleum Pipelines Act have not changed, the current industry standard in remote locations is to have all weather emergency evacuation capability.
961. EMCa reviewed the new and updated information provided by DBP and does not consider that DBP has provided a compelling analysis to demonstrate that the risk associated with the unsealed airstrips has increased materially, including through potential non-compliance with any changes to aviation standards, industry standards, or the Petroleum Pipelines Act, or is such as to warrant the proposed expenditure.
962. EMCa also does not consider that DBP has provided a compelling options analysis to demonstrate that it has taken into account all practicable options to mitigate the inherent risk to a satisfactory level other than by sealing and lighting all six airstrips, including the option of prioritising the work on certain airstrips above others.
963. After reviewing all of the new and updated information provided by DBP, EMCa has maintained its initial view that DBP has not provided sufficiently compelling information to reasonably justify the proposed █████ million expenditure allowance in accordance with NGR rule 79(1)(b).
964. As a result, EMCa does not consider any of the proposed expenditure is likely to satisfy the requirements of NGR rules 74(2) of 79.
965. Having considered DBP's revised proposal and submissions and EMCa's initial and addendum reports, the ERA is of the view that none of DBP's proposed █████ million allowance for sealing of airstrips satisfies the requirements of rules 74(2) and 79 of the NGR.

Hot gas path

966. DBP proposed expenditure of █████ million in its initial proposal for inspection of the Nuovo Pignone unit hot gas path at compressor station 6 (CS6). DBP has re-submitted this proposed expenditure in its revised proposal.
967. EMCa's primary concerns with DBP's initial Proposal were that:
- The cost estimate did not appear to be consistent with the work undertaken in the AA3 period; and
 - There was doubt whether the work scope would be required based on deferral of expenditure scheduled for AA3.
968. DBP responded in its revised Proposal with new and updated information that:
- Unit 2 at Compressor Station 6 reached its Hot Gas Path Inspection (HGPI) life in 2014 but due to its low use factor, its refurbishment was deferred for the last two years based on DBP's SIB risk ranking process - the timing of the

implementation of the future Nuovo Pignone unit HGPIs (at CS6 and CS9) will be risk assessed by DBP based on their use, throughput and demand; and

- The cost estimate for 2016 would normally be [REDACTED] million but will be [REDACTED] million (nominal) due to additional work; the cost estimate for 2017 is for work on [REDACTED] and is based on the cost for [REDACTED] and the cost estimate for 2019 and 2020 is 'based on current cost estimates'.
969. EMCa notes that DBP has provided separate information that confirms that individual compressor unit use, throughput and demand is likely to be lower than originally forecast. DBP does not provide any evidence that it has taken this into account in forecasting that the next HPGIs are due in 2019 and 2020. As a result, EMCa considers that it is unlikely the proposed HPGIs will be required.
970. With respect to the cost estimate, EMCa found DBP's attempted reconciliation of the AA3 and AA4 period work scopes and cost estimates to be confusing and inconsistent and found no support for [REDACTED] million (nominal) expenditure in each of 2019 and 2020.
971. EMCa considers that it is reasonable to form the view from the information presented by DBP that:
- There is likely to be a two-year delay to the HPGI work scheduled for 2019 and 2020; and
 - Even if it were to occur, the work should be budgeted at [REDACTED] million (i.e. the same as budgeted for the 2014 and 2017 work).
972. As a result, EMCa considers that [REDACTED] of DBP's proposed [REDACTED] million is likely to satisfy NGR rule 74(2) representing a reduction adjustment of [REDACTED] million on DBP's proposed expenditure.
973. Having considered DBP's revised proposal and submissions and EMCa's initial and addendum reports, the ERA is of the view that [REDACTED] million of DBP's proposed [REDACTED] million allowance for hot gas path inspection does not satisfy the requirements of rules 74(2) and 79 of the NGR and consequently only an allowance of [REDACTED] million does satisfy those rules.

Proposed AA4 SIB project expenditure not sampled

974. The sample projects reviewed by EMCa accounted for approximately 70 per cent of the proposed AA4 SIB capital expenditure. EMCa's initial findings, as set out in its initial technical report, were that the systemic issues identified in the sample projects could be extrapolated out to being present in the non-sampled projects and accordingly were recommended for adjustment in the Draft Decision.
975. DBP's revised proposal, as discussed previously, contained a significant quantity of new and updated information relating to the sample projects. As a result of this information, EMCa has reviewed and revised its initial findings and now conclude that the systemic issues previously identified are no longer prevalent and any reductions to the sample projects are more project specific and do not relate to systemic issues across all projects.
976. EMCa considers that the proposed expenditure for the projects not sampled should be accepted as conforming with the requirement of the Rules. EMCa's reasoning for this is that:

- The sample is such that EMCa has directly assessed over 2/3rd of expenditure;
- The only sampled project for which EMCa considers none of the expenditure meets the requirements of the Rules (airstrip sealing) is an atypical project and not one that can be considered an indicator of systemic issues affecting the types of projects not sampled;
- Not including airport sealing, the other adjustments made represent only 6% of proposed expenditure; and
- The annual amount of proposed SIB capex is less than the amount that DBP has spent in AA3.

AA4 SIB projected capital expenditure

977. Based on the addendum report provided by EMCa, the Authority agrees with EMCa's conclusions and recommendations. As a result the Authority determines that DBP has now in its revised proposal provided adequate information to allow the Authority to be satisfied that the systemic issues identified in the Draft Decision do not appear to exist to any material extent within DBP but were evident previously due to a lack of relevant documentation being provided in the initial submission.
978. The Authority determines that as a result of the concerns surrounding the systemic issues being addressed that the non-sampled projects do not require percentage reductions to be applied as was the case in the Draft Decision.
979. The Authority also determines that reductions should be made either partially or in full to the three projects that EMCa identified did not meet all of the relevant requirements of the NGR.

Newly Proposed Projects

980. As noted previously in DBP's revised proposal section, DBP has identified 3 new capital projects with a total value of \$ 46.97 million to be included in the forecast capital expenditure for the AA4 period. Each of these projects are discussed in greater detail below.

Compressor reconfiguration of CS1

981. DBP proposes expenditure of █████ million¹⁵³ in 2017 to address matters it claims were unforeseeable when it prepared its 2014 initial proposal. Specifically, it proposes expenditure to:
- Undertake a FEED study in the first quarter of 2016 to confirm the proposed approach of re-wheeling both Solar Turbine compressor units at CS1;
 - Ordering long-lead time items in 2016 (assuming results are as expected); and
 - Re-wheeling of both CS1 units in 2017 to improve operational flexibility.
982. The premise is that re-wheeling will allow the units to operate efficiently at lower speeds.
983. EMCa notes that DBP presents the following reasons for the project:

¹⁵³ Nominal dollars

- As part of the Stage 5B Expansion design, CS1 was assumed to be the highest gas flowing station but over the period 2010 – 2015, CS1 station gas flow has been well under the design capacity of [REDACTED] with the forecast for further reductions;
 - As a consequence, it has been increasingly difficult to operate CS1 with the station flowing at less than half of the design flow level; and
 - The impellers were sized to ensure the compressor operating point was at maximum efficiency – they are now the wrong size (largest available) for the current operating regime and are often operating at or below the manufacturer’s recommended speed.
984. DBP submits that the project meets the requirements of Rule 79(2)(c)(iv) as the work is required to maintain the reliability of the pipeline services required to be provided by the DBNGP.
985. EMCa reviewed the documentation provided by DBP to support the proposed expenditure and notes that while DBP has identified the sources of risk to reliable CS1 operations and to performance of the DBP from the low gas flow rates – the risks are technical (reliability) and economic, DBP has not quantified the economic or commercial risks in the submission, nor has it presented the risk analysis consistent with its risk management framework.
986. EMCa notes that DBP has not provided a cost-benefit analysis of each option compared to the ‘do-nothing’ option and DBP has not confirmed that the increased costs from the ‘do nothing’ option have not been included into the forecast SUG usage included in the revised proposal.
987. In its submission, DBP describes how it has implemented a number of operating modes and strategies to respond to the changed use patterns since the completion of stage 5B Expansion, including operating different compressor configurations. The scope of work proposed for 2017 is directed towards reducing the risk of failure of the units and improving operational efficiency.
988. EMCa notes that on the basis of the information provided, the ‘re-wheeling’ option represents a common-industry approach, but needs to be shown to be viable for the specific units at CS1. The alternative of replacing both compressor packages is a much more expensive option.
989. EMCa considers that DBP has presented a satisfactory explanation of the basis for the project cost estimate, including its procurement approach.
990. From a review of the project documentation provided by DBP, EMCa concluded that despite some limitations in the information presented, it considers that there is sufficient evidence to find that the proposed work is consistent with rule 79(1)(a) and rule 79(1)(b)(2)(iv) of the NGR and therefore considers that the proposed expenditure of [REDACTED] million in 2016 is likely to satisfy NGR rule 74(2).
991. Based on EMCa’s advice, the Authority is satisfied that DBP’s proposed capital expenditure for the compressor reconfiguration at CS1 is justified and meets the requirements of rules 79 and 74(2) of the NGR.

Additional compressor unit at CS9

992. DBP proposes expenditure of [REDACTED] million¹⁵⁴ in 2016 to address matters it claims were unforeseeable when it prepared its 2014 initial proposal. Specifically it proposes expenditure to:
- Undertake a FEED study in the first quarter of 2016 to confirm the proposed approach of re-wheeling both compressor units at CS9;
 - Order long-lead time items in 2016 (assuming results are as expected); and
 - Install replacement wheels (impellers) in both CS9 units to improve operational flexibility.
993. The premise is that re-wheeling will allow the CS9 units to operate efficiently in both low and high flow conditions, thus reducing the number of start/stops.
994. EMCa notes that DBP presents the following reasons for the project:
- Due to changing load demand and transient flow patterns:
 - On low gas flow days, it is not efficient or feasible to operate CS9; and
 - On high flow days, CS9 needs to be able to quickly stop/start;
 - CS9 is critical to enable the DBNGP to respond promptly to sudden transients and peak demands from shippers - if DBP is unable to deliver contracted capacity or the required pressurised gas to shippers downstream of CS9, DBP is exposed to significant financial penalties;
 - Whilst there have been no curtailments due to CS9 outages, there have been 'near curtailments'; and
 - If DBP does nothing to the configuration and operation of CS9, it would lead to other increased costs and risks for DBP.
995. DBP submits that the project meets the requirements of rule 79(2)(c)(iv) as the work is required to maintain the reliability of the pipeline services required to be provided by the DBNGP.
996. EMCa notes that DBP submits that the issue has become more apparent over the last 24 months (i.e. since its initial proposal was submitted) [REDACTED]
[REDACTED]
997. EMCa reviewed the documentation provided by DBP to support the proposed expenditure and notes that DBP has identified the sources of risk to reliable CS9 operations and to performance of the DBNGP from the 'unexpected' gas demand pattern. The risks are technical (reliability), economic (higher operating costs) and commercial (charges associated with shipper curtailment). However, DBP has not quantified the economic or commercial risks in the submission, nor has it presented the risk analysis in a form consistent with its risk management framework.
998. DBP describes how it has implemented a number of operating modes and strategies to respond to the changed use patterns since the completion of stage 5B Expansion, including operating different compressor configurations. This strategy has mitigated some risk, but exacerbated others.

¹⁵⁴ Nominal dollars

999. DBP has not provided a cost-benefit analysis of each option compared to the ‘do-nothing’ option. DBP has confirmed that the increased costs from the ‘do nothing’ option have not been included into the forecast SUG usage in the revised proposal.
1000. The scope of work proposed in DBP’s revised proposal is directed towards reducing the risk of failure of the units and improving operational efficiency. EMCa notes that on the basis of the information provided, the ‘re-wheeling’ option represents a common industry approach, but has to be confirmed for the particular turbines at CS9 and that the alternative of replacing both units is a much more expensive option.
1001. EMCa considers that DBP has presented a satisfactory explanation of the basis for the project cost estimate, including its procurement approach.
1002. From a review of the project documentation provided by DBP, EMCa concluded that despite some limitations in the information presented, it considers that there is sufficient evidence to find that the proposed work is consistent with rule 79(1)(a) and rule 79(1)(b)(2)(iv) and therefore considers that the proposed expenditure of █████ million in 2016 is likely to satisfy NGR rule 74(2).
1003. Based on EMCa’s advice, the Authority is satisfied that DBP’s proposed capital expenditure for the additional compressor unit at CS9 is justified and meets the requirements of rules 79 and 74(2) of the NGR.

Urban sprawl integrity upgrade

1004. DBP proposes four projects, which DBP grouped into a project titled Urban sprawl integrity upgrade, at a █████ █████ █████ four sections of the DBNGP, in Baldvis and Dandalup, with ‘heavy wall’ pipe to meet the Australian Standard AS2885 requirements for high pressure transmission pipeline traversing through proposed new residential areas.
1005. DBP claims that the physical and procedural controls currently in place for the relevant sections of the DBNGP are adequate for the existing rural land use, but that a proposed change to residential land use would require the pipeline wall thickness to be increased (strengthened). This would reduce the consequences of damage by providing improved resistance to penetration of the pipeline from external interference threats.
1006. EMCa notes that DBP claims the projects are necessary to maintain safety and integrity of services and that the projects meet the requirements of Rule 79(2)(c)(i) and (ii). It submits the following reasons to justify the pipe wall integrity projects:
- the expenditure identified relates to the areas of the pipeline currently rated as R1/R2 (rural) which over the next 5-10 years are ‘most likely’ to be subject to re-zoning and subdivision applications;
 - there should be no differentiation between the circumstances proposed with those associated with the initial design of the initial part of the pipeline that traversed T1 (residential) areas – with no contribution to the incremental cost by land owners;
 - the proposed expenditure will (i) provide developers with greater certainty that the subdivision or development will proceed with no change in the risk profile,

¹⁵⁵ Nominal dollars

- (ii) ensure that ‘pipeliners’ are able to recover the costs from shippers, and (iii) ensure no delay to the residential development of Perth; and
 - if land developers have to pay for the pipeline reinforcement expenditure, it will make the developments in question uneconomic. DBP contends that this is not in the best interests of the State as large tracts of land will be prohibitive to develop for residential use.
1007. DBP claims the projects are necessary to maintain safety and integrity of services and that the projects meet the requirements of rule 79(2)(c)(i) and (ii).
1008. DBP submits that the project is necessary in that it meets the criterion in rule 79(2)(c)(i) and (ii) as expenditure required to maintain both safety and integrity of services. DBP explains this requirement on the basis that if the residential development proceeds on land which covers land traversed by high pressure gas transmission pipelines, a review of the physical and procedural controls to assess whether the new threats are effectively controlled will be required. Under AS2885 and the *Petroleum Pipelines (Management of Safety of Pipeline Operations) Regulations 2010*, DBP must satisfy the Department of Mines and Petroleum that the ALARP test is satisfied in these locations.
1009. EMCa has reviewed DBP’s proposal documentation for options analysis and notes that it appears that DBP has concluded that the ALARP test can only be satisfied by either (i) undertaking the proposed work or (ii) by reducing the operating pressure.
1010. EMCa notes that DBP does not quantify the impact of the second option, nor does it fully explore other options, such as by enforcing a suitably wide easement (with or without other physical and procedural controls). Furthermore, DBP does not fully explore alternative timing for the work, particularly for projects three and four, which appear to be based on purely speculative development timetables.
1011. Further, DBP has not provided a robust options analysis to determine that the proposed projects are the only feasible or preferred way to meet the requirements of the ALARP test under AS2885 at the four locations at the estimated cost.
1012. One of the issues that EMCa identified is that DBP has not satisfactorily explained why DBP’s shippers should (through increased tariffs) fund any of the [REDACTED] sole tangible benefit of land developers. EMCa notes that DBP has identified that:
- ‘Currently, subdivision applications have been assessed [by the WAPC] on the assumption that the costs of installing additional physical controls on pipelines to maintain the no rupture case are to be work by either the service provider or the developer....Were it left to the developer to pay, this would make any residential development uneconomic to proceed.’
 - DBP goes on to say that ‘A service provider is only prepared to make the expenditure if it is able to have the opportunity of recovering this expenditure from users of the pipeline capacity.’
1013. EMCa agrees with the logic of the second dot point above and also acknowledges that if the developers were required to pay the [REDACTED] million proposed then the developments are likely to be uneconomic. However this in itself seems to provide a strong case for DBP to make to the WAPC against rezoning in that it would have such an impact on the pipeline.

1014. If the costs of the proposed pipe wall upgrades were to be incurred by DBP then the cost to users of the pipeline would be effectively more than the [REDACTED] million for the project because the replaced section of the pipeline would also be lost value to users because that original pipeline cost will still need to be paid for by users through depreciation.
1015. DBP has provided no economic case to explain why the project will be of benefit to the users of the pipeline or in terms of rule 79(1)(a), DBP has not shown that the proposed capital expenditure is likely to achieve the 'lowest sustainable cost of providing services'.
1016. EMCa concluded that it would have expected DBP to have provided a strong business case to support the new work but that DBP has not provided adequate evidence that the further land development it refers to in its submission will take place within the AA4 period or that DBP will be unable to be compensated by the developers for the cost involved in facilitating their developments.
1017. EMCa further notes the options that DBP has itself raised in its revised proposal, while DBP considers these options to be an inefficient use of time and resources, DBP is able to seek an intra-period adjustment or make an application under rule 80 of the NGR to have the regulator make and advance determination with regard to future capital expenditure, if the expenditure subsequently does prove to be required.
1018. From a review of the project documentation provided by DBP, EMCa concluded that DBP has provided insufficient evidence that the proposed work is consistent with either rule 79(1)(a) or rule 79(1)(b) and therefore considers that none of the proposed expenditure ([REDACTED] million) is likely to satisfy NGR rule 74(2).
1019. The Authority in its review of the proposed urban sprawl integrity upgrade project agrees with EMCa's assessment that DBP has not satisfactorily explained why DBP's shippers should fund any of the proposed cost while receiving no apparent benefit.
1020. Further, the Authority does not see how this capital expenditure could be deemed to be incurred by a prudent service provider acting efficiently, when it is proposing to incur costs that it is not under any obligation to incur. Notwithstanding a change to the land use, DBP notes in its submission that the existing physical and procedural controls are deemed adequate for the existing land use.
1021. DBP submits the pipe wall integrity projects are justified because the expenditure identified relates to areas of the pipeline currently rated as R1/R2 (rural) which over the next 5-10 years are 'most likely' to be subject to re-zoning and subdivision applications. The Authority is concerned that DBNGP shippers should not be required to pay (via increased tariffs) for works which may turn out not to be required (or not be required during the next 5-10 years) because the re-zoning and developments do not go ahead. The Authority is of the view that DBP has not provided adequate justification for its assessment that the re-zoning and subdivision applications are "most likely" to occur over the next 5-10 years. If there is no real prospect that they will occur over the next 5-10 years, then the Authority is of the view that the proposed capex cannot be "necessary" under any ground in NGR 79(2) claimed by DBP, nor would a prudent service provider, acting efficiently in accordance with the criteria in NGR 79(1)(a) incur such speculative expenditure.
1022. DBP claims that were it left up to the land developer to pay the costs of installing additional physical controls on pipelines to maintain the no rupture case, it would

make any residential development uneconomic to proceed. The Authority notes, however, that making land development projects profitable or promoting economic development within the state are not criteria of the NGR rules. In particular:

- DBP submits the pipe wall integrity projects are justified because the proposed expenditure will (i) provide developers with greater certainty that the subdivision or development will proceed with no change in the risk profile, (ii) ensure that 'pipeliners' are able to recover the costs from shippers, and (iii) ensure no delay to the residential development of Perth. However, the Authority is of the view that DBP has not provided adequate evidence to show that these reasons provide any justification of the proposed capex under any ground in NGR 79(2) claimed by DBP or NGR 79(1)(a) or NGR 100. For example, DBP has not provided adequate evidence to show why it thinks that ensuring that 'pipeliners' are able to recover the costs from shippers is justified under the prudent service provider criteria in NGR 79(1)(a) or the NGO under NGR 100. DBP has not shown that transferring costs from developers and land owners to DBP's shippers (via increased tariff) is economically "efficient", helps "achieve the lowest sustainable cost of providing services" or would "promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas".
- DBP submits the pipe wall integrity projects are justified because, if land developers have to pay for the pipeline reinforcement expenditure, it will make the developments in question uneconomic. DBP contends that this is not in the best interests of the State as large tracts of land will be prohibitive to develop for residential use. However, the Authority is of the view that DBP has not shown that this claimed justification provides any justification of the proposed capex under any ground in NGR 79(2) claimed by DBP or NGR 79(1)(a) or NGR 100. In this regard, the Authority notes that the Australian Competition Tribunal has recently confirmed that the NGO does not (and has not) extended to "broader social and environmental objectives". If the government considers that it is in the best interests of the State that private land owners/developers should not bear these costs, then presumably it can either bear them itself or take steps via legislation or otherwise to ensure that they do not. However, the Authority does not consider that DBP has shown why its view of "the best interests of the State" provides any justification under the NGR for this proposed capex.

1023. DBP as the service provider has an obligation to the users of the pipeline to ensure that its expenditure is prudent and efficient, in accordance with accepted good industry practice to achieve the lowest sustainable cost of providing services.

1024. DBP noted in its submission that the costs associated with going through residential areas were accepted as justified pipeline costs when the pipeline was first constructed. The Authority notes that at that time, the pipeline was going through known urban areas and those cost were legitimately costs to be faced by the proponents/user of the pipeline. This situation is different as the land where the pipeline currently is has not been in the past and currently still is not classified as residential land. Further, at the time when the DBNGP was initially installed in these areas, it is likely that land owners were not required to contribute to the costs because, at that time, it was the DBNGP that was encroaching on the existing rights of the land owners (just as the proponents of the proposed re-zoning and subdivision developments are now seeking to encroach on the existing rights of DBP). DBP has not shown that it has thoroughly assessed its options for obtaining compensation from the developers, land owners, State government or any other relevant party for

their proposed encroachment on its rights (rather than simply seeking to pass on the cost to shippers via increased tariff). If there is a real prospect that DBP could obtain all or any part of the proposed capital expenditure from third parties (other than shippers) then the Authority is of the view that a prudent service provider, acting efficiently in accordance with the criteria in NGR 79(1)(a) would not overlook such an opportunity to "achieve the lowest sustainable cost of providing services".

1025. Based on EMCa's advice and the Authority's review of the proposal documentation, the Authority is not satisfied that DBP's proposed capital expenditure for the urban sprawl integrity upgrade is justified and meets the requirements of rules 79 and 74(2) of the NGR.

Conclusion

1026. The Authority has determined that for the AA4 SIB and other capital works projects proposed by DBP in its revised proposal the following amounts can be considered as conforming capital expenditure for the purposes of rule 78 of the NGR:

- \$100.61 million¹⁵⁶ of DBP's proposed AA4 stay in business expenditure complies with the criteria set out in rule 79 of the NGR, and can be considered conforming capital expenditure; and
- █████ million¹⁵⁷ of DBP's proposed AA4 new capital projects expenditure complies with the criteria set out in rule 79 of the NGR, and can be considered conforming capital expenditure.

1027. The Authority has determined that for the AA4 SIB and other capital works projects proposed by DBP in its revised proposal the following amounts cannot be considered as conforming capital expenditure for the purposes of rule 78 of the NGR:

- █████ █████ of DBP's proposed AA4 stay in business expenditure does not comply with the criteria set out in rule 79 of the NGR, and cannot be considered conforming capital expenditure; and
- █████ million¹⁵⁹ of DBP's proposed AA4 new capital projects expenditure does not comply with the criteria set out in rule 79 of the NGR, and cannot be considered conforming capital expenditure.

1028. Table 60 below shows the Authority's approved capital expenditure to be included in the projected capital base by asset class.

¹⁵⁶ Real \$ million at 31 December 2015.

¹⁵⁷ Real \$ million at 31 December 2015.

¹⁵⁸ Real \$ million at 31 December 2015.

¹⁵⁹ Real \$ million at 31 December 2015.

Table 60 Final Decision Capital Expenditure for Projected Capital Base by Asset Class (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Expansion/Enhancement/Extension						
Pipeline	0.00	0.00	0.00	0.00	0.00	0.00
Compression	2.38	2.10	0.00	0.00	0.00	4.49
Metering	0.00	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00	0.00
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Sub total	2.38	2.10	0.00	0.00	0.00	4.49
Stay-in-business						
Pipeline	3.68	2.49	1.64	5.38	7.65	20.83
Compression	13.23	13.24	11.75	10.17	10.18	58.58
Metering	3.60	2.68	0.85	0.65	1.32	9.11
Other	2.40	2.65	2.60	1.76	2.55	11.95
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Sub total	22.91	21.06	16.83	17.96	21.69	100.46
Total Conforming Capital Expenditure						
Pipeline	3.68	2.49	1.64	5.38	7.65	20.83
Compression	15.61	15.34	11.75	10.17	10.18	63.06
Metering	3.60	2.68	0.85	0.65	1.32	9.11
Other	2.40	2.65	2.60	1.76	2.55	11.95
Other non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total	25.29	23.17	16.83	17.96	21.69	104.94

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Required Amendment 10

The Authority has determined the conforming capital expenditure for the 2016 to 2020 access arrangement period to be the values set out in Table 60 of this Final Decision.

1029. Table 61 below shows the Authority's determination values for the projected capital base as at 31 December 2020. This takes into account the Authority's determined capital expenditure as provided by the rules 74 and 79 of the NGR and the amendments to depreciation for the fourth access arrangement period that are relevant to this calculation.

Table 61 Final Decision Projected Capital Base (AA4), real \$ million at 31 December 2015)

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020
Total Assets					
Total Capital base at 1 Jan	3,502.43	3,428.74	3,350.44	3,265.12	3,186.83
<i>Plus</i>					
Forecast conforming capital expenditure	25.29	23.17	16.83	17.96	21.69
<i>Less</i>					
Forecast depreciation	98.98	101.46	102.15	96.24	87.06
Forecast asset disposals	0.00	0.00	0.00	0.00	0.00
Projected Capital Base	3,428.74	3,350.44	3,265.12	3,186.83	3,121.47
DBNGP assets					
Capital base at 1 Jan	3,476.19	3,403.19	3,325.60	3,240.98	3,163.39
<i>Plus</i>					
Forecast conforming capital expenditure	25.29	23.17	16.83	17.96	21.69
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	98.28	100.76	101.45	95.54	86.36
Capital base at 31 December	3,403.19	3,325.60	3,240.98	3,163.39	3,098.73
Shipper assets					
Capital base at 1 Jan	26.24	25.54	24.84	24.14	23.44
<i>Plus</i>					
Forecast conforming capital expenditure	0.00	0.00	0.00	0.00	0.00
<i>Less</i>					
Disposed assets	0.00	0.00	0.00	0.00	0.00
Depreciation	0.70	0.70	0.70	0.70	0.70
Capital base at 31 December	25.54	24.84	24.14	23.44	22.74

Source: Economic Regulation Authority, DBP Tariff Model, June 2016

Required Amendment 11

The Authority has determined the projected capital base in the fourth access arrangement period to be the values set out in Table 61 of this Final Decision.

Depreciation

Regulatory Requirements

1030. Rule 88(1) of the NGR provides that the ‘depreciation schedule sets out the basis on which the pipeline assets constituting the capital base are to be depreciated for the purpose of determining a reference tariff’. Rule 88(2) of the NGR provides that the ‘depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or class of assets’.

1031. Rule 89 of the NGR specifies particular depreciation criteria and requirements for the calculation of depreciation. Rule 89 criteria are as follows:

89. Depreciation criteria

(1) The depreciation schedule should be designed:

- (a) so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services; and
- (b) so that each asset or group of assets is depreciated over the economic life of that asset or group of assets; and
- (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset, or a particular group of assets; and
- (d) so that (subject to the rules about capital redundancy), an asset is depreciated only once (ie that the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted, if the accounting method approved by the [ERA] permits, for inflation)); and
- (e) so as to allow for the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.

(2) Compliance with subrule (1)(a) may involve deferral of a substantial proportion of the depreciation, particularly where:

- (a) the present market for pipeline services is relatively immature; and
- (b) the reference tariffs have been calculated on the assumption of significant market growth; and
- (c) the pipeline has been designed and constructed so as to accommodate future growth in demand.

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

1032. The Authority's discretion is limited under rule 89(3). Rule 40(2) of the NGR sets out the Authority's limited discretion powers. Rule 40(2) states that the regulator must not withhold its approval of an element of an access arrangement proposal if it is satisfied that the element complies with the applicable requirements of the NGL(WA) and is consistent with applicable criteria (if any) prescribed by the NGL(WA).

1033. Rule 40(2) of the NGR provides the following example:

The [ERA] has limited discretion under rule 89. (See rule 89(3).) This rule governs the design of a depreciation schedule. In dealing with a full access arrangement submitted for its approval, the [ERA] cannot, in its *Draft Decision*, insist on change to an aspect of a depreciation schedule governed by rule 89 unless the [ERA] considers change

necessary to correct non-compliance with a provision of the Law or an inconsistency between the schedule and the applicable criteria. Even though the [ERA] might consider change desirable to achieve more complete conformity between the schedule and the principles and objectives of the Law, it would not be entitled to give effect to that view in the *decision* making process.

1034. Rule 90 of the NGR specifies that a full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period. The provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.

1035. The National gas objective is defined in section 23 of the NGL(WA) as:

23. National gas objective

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

1036. Revenue and pricing principles are defined in section 24 of the NGL(WA).

24. Revenue and pricing principles

- (1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - (a) providing reference services; and
 - (b) complying with a regulatory obligation or requirement or making regulatory payment.
- (3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—
 - (a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and
 - (b) the efficient provision of pipeline services; and
 - (c) the efficient use of the pipeline.
- (4) A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.
- (5) Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services.
- (6) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

DBP's Original Proposal

1037. DBP's projected capital base included forecast depreciation of \$490.15 million over the fourth access arrangement period. DBP proposed that the depreciation schedule

for the fourth access arrangement period should be calculated using the straight line method.

1038. DBP proposed Current Cost Accounting (**CCA**) of the RAB, with nominal straight line depreciation. The CCA approach maintains the historic value of the asset base in real terms (giving the so-called 'current cost'), for example by indexing the closing value of the previous year's asset base each year to account for inflation. Annual depreciation is then calculated on the current cost, given the effective life of the asset.

1039. DBP's original proposed forecast depreciation in real terms is shown in Table 62 below.

Table 62 DBP's Original Forecast Depreciation (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.63	58.68	58.71	58.74	58.81	293.57
Compression assets	34.58	35.04	35.50	29.45	20.10	154.68
Metering assets	1.05	1.13	1.18	1.20	1.21	5.76
Other depreciable assets	8.13	6.41	6.50	6.59	6.64	34.27
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.86
Total¹⁶⁰	102.77	101.63	102.27	96.34	87.14	490.15

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

1040. DBP's proposed forecast depreciation in nominal terms is shown in Table 63 below.

Table 63 DBP Original Forecast Depreciation (AA4) nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.82	61.12	62.48	63.89	65.45	312.76
Compression assets	35.29	36.50	37.78	32.04	22.37	163.98
Metering assets	1.07	1.17	1.25	1.30	1.34	6.15
Other depreciable assets	8.30	6.68	6.92	7.16	7.39	36.45
BEP Lease	0.38	0.39	0.40	0.41	0.41	1.99
Total¹⁶¹	104.86	105.86	108.83	104.80	96.97	521.33

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

1041. Table 64 lists DBP's proposed RAB asset classes and economic lives. These are consistent with the asset classes and economic lives approved for AA3.

¹⁶⁰ Total excludes Depreciation for Shipper Assets.

¹⁶¹ Total excludes Depreciation for Shipper Assets.

Table 64 DBP's Original Proposed Asset Classes and RAB Asset Lives (AA4), years

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

Source: DBNGP, Access Arrangement Information, 31 December 2014, Table 14.

Submissions

1042. No submissions were received in relation to depreciation.

Draft Decision

1043. In its Draft Decision the Authority noted Australian regulators generally adopt CCA indexed straight-line depreciation of the regulatory asset base, which is equivalent to straight line depreciation in *real* terms.

1044. In line with the NGO, this 'standard' regulatory approach can be considered to be in the long term interests of consumers. This is because it results in a more even allocation of the return on and of capital in real terms over time, thereby:

- achieving efficient growth in the market for reference services over time in line with the requirements of rule 89(1)(a) of the NGR;
- providing efficient signals for utilisation of assets over the whole of their economic life, thereby further contributing to the achievement of the NGO and to the Revenue and Pricing Principles (RPP);¹⁶²
- taking account of the interests of current and future customers over the economic lives of the assets;
- avoiding subsidies from current customers to future customers; and
- avoiding price shocks for customers when major assets reach the end of their effective life and are replaced.

1045. Indexed straight-line depreciation may be converted to nominal terms, as is done in the AER's PTRM that applies a CCA approach. This is achieved by the following:

- indexing the capital base;
- determining the associated straight-line depreciation for each asset; and then

¹⁶² The efficient use of assets relate to the network assets themselves, as well as the assets of the upstream and downstream users of the network services.

- removing an amount so as to avoid a double count for inflation that would otherwise occur when a nominal rate of return is applied to an indexed asset base.¹⁶³

1046. The Authority considered that the standard regulatory CCA depreciation method meets all of the foregoing requirements.

1047. The Authority considered that CCA is consistent with NGO for the following reasons:

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

Depreciation for rolling forward capital base

1048. In its Draft Decision, the Authority noted DBP had based the depreciation schedule for establishing the forecast opening capital base at 1 January 2021 on forecast capital expenditure. DBP had based depreciation from 2016 to 2020 on the following:

- depreciation on the initial capital base and the assets created by added capital expenditure from 2000 to 2015; and
- depreciation on assets expected to be created by capital expenditure forecast for 2016 to 2020.

1049. DBP had added capital expenditure to the capital base at the end of the year in which it is forecast to be made, and applied depreciation the following year.

1050. The Authority noted the depreciation method used for rolling forward the capital base was consistent with the approach approved for AA3. On that basis the Authority accepted DBP's proposed methodology.

¹⁶³ For a summary of the need to remove double counting for inflation when a nominal rate of return is applied to a nominal asset base, see section 2.2 in Queensland Competition Authority, *Financial Capital Maintenance and Price Smoothing*, February 2014.

Asset lives

1051. DBP had adopted asset lives consistent with those approved for AA3. On that basis, the Authority accepted DBP's proposed regulatory asset lives.

Overall assessment of forecast depreciation

1052. As set out above, in its Draft Decision the Authority accepted the depreciation methodology and asset lives used by DBP. However, as the Authority had not approved DBP's proposed opening capital base or forecast capital expenditure for AA4, adjustments were required to forecast depreciation. The Authority's draft determination of forecast depreciation for AA4 in real and nominal values is set out in Table 65 and Table 66 respectively below.

Table 65 .Draft Decision Forecast Depreciation (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.69	58.73	58.76	58.78	58.84	293.81
Compression assets	34.30	34.59	34.90	28.67	19.15	151.62
Metering assets	(0.32)	1.07	1.11	1.12	1.13	4.11
Other depreciable assets	4.76	5.55	5.64	5.72	5.78	27.45
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.87
Total¹⁶⁴	97.81	100.32	100.78	94.67	85.28	478.85

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

Table 66 .Draft Decision Forecast Depreciation (AA4), nominal \$ million

Nominal \$	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.81	60.99	62.18	63.38	64.65	310.99
Compression assets	34.95	35.92	36.92	30.91	21.04	159.75
Metering assets	(0.32)	1.11	1.17	1.21	1.24	4.41
Other depreciable assets	4.85	5.76	5.96	6.17	6.35	29.10
BEP Lease	0.38	0.39	0.40	0.40	0.41	1.98
Total¹⁶⁵	99.67	104.17	106.63	102.07	93.69	506.23

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

1053. The Authority required the following amendment:

Required Amendment 13

Forecast depreciation must be amended to reflect the values (in nominal terms) in Table 51 (Authority's Forecast Depreciation for AA4) of this Draft Decision.

¹⁶⁴ Total excludes Depreciation for Shipper Assets.

¹⁶⁵ Total excludes Depreciation for Shipper Assets.

DBP's Amended Proposal

1054. In response to the Draft Decision, DBP noted that it accepted the methodology approved in the Draft Decision but rejected the values set out in Draft Decision Required Amendment 13 as a consequence of its response to Draft Decision Required Amendments 10, 11 and 12.¹⁶⁶

1055. DBP has not changed its asset categories and asset lives from those approved by the Authority in the Draft Decision. DBP's amended forecast depreciation in real and nominal terms is shown in Table 67 and Table 68 respectively below.

Table 67 DBP's Amended Forecast Depreciation (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.22	58.28	58.57	58.59	58.82	292.48
Compression assets	34.18	34.71	35.25	29.24	19.96	153.32
Metering assets	1.02	1.13	1.18	1.20	1.21	5.74
Other depreciable assets	8.24	6.64	6.72	6.81	6.87	35.28
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.85
Total¹⁶⁷	102.03	101.12	102.09	96.21	87.23	488.68

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 15, p. 16.

Table 68 DBP's Amended Forecast Depreciation (AA4), nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.34	60.52	61.99	63.20	64.66	309.71
Compression assets	34.83	36.05	37.31	31.53	21.94	161.65
Metering assets	1.04	1.17	1.25	1.29	1.33	6.09
Other depreciable assets	8.40	6.89	7.12	7.35	7.55	37.30
BEP Lease	0.38	0.38	0.39	0.40	0.41	1.96
Total¹⁶⁸	103.98	105.02	108.05	103.77	95.88	516.71

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

Further Submissions

1056. No further submissions were received in relation to depreciation.

¹⁶⁶ DBP Submission 50 p. 7.

¹⁶⁷ Total excludes Depreciation for Shipper Assets.

¹⁶⁸ Total excludes Depreciation for Shipper Assets.

Considerations of the Authority

1057. Consistent with its Draft Decision, the Authority has accepted the depreciation methodology and asset lives used by DBP. However, as the Authority has not approved DBP's proposed opening capital base or forecast capital expenditure for AA4 as set out elsewhere in this decision, adjustments are required to forecast depreciation. The Authority's final determination of forecast depreciation for AA4 in real and nominal values is set out in Table 69 and Table 70 respectively below.

Table 69 Final Decision Forecast Depreciation (AA4), real \$ million

Real \$ million at 31 December 2015	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	58.22	58.28	58.31	58.33	58.41	291.55
Compression assets	34.11	34.63	35.15	29.11	19.78	152.78
Metering assets	(0.25)	1.13	1.18	1.20	1.21	4.47
Other depreciable assets	5.88	6.36	6.44	6.53	6.59	31.81
Non Depreciable asset (adjustment)	(0.06)	0.00	0.00	0.00	0.00	(0.06)
BEP Lease	0.37	0.37	0.37	0.37	0.37	1.85
Total¹⁶⁹	98.28	100.76	101.45	95.54	86.36	482.40

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Table 70 Final Decision Forecast Depreciation AA4), nominal \$ million

Nominal \$	2016	2017	2018	2019	2020	Total AA4
Pipeline assets	59.06	59.95	60.85	61.74	62.71	304.31
Compression assets	34.60	35.63	36.67	30.81	21.23	158.95
Metering assets	(0.25)	1.16	1.23	1.27	1.30	4.71
Other depreciable assets	5.97	6.54	6.73	6.91	7.07	33.22
Non Depreciable asset (adjustment)	(0.06)	0.00	0.00	0.00	0.00	(0.06)
BEP Lease	0.38	0.38	0.39	0.39	0.40	1.93
Total¹⁷⁰	99.69	103.67	105.87	101.13	92.72	503.06

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Required Amendment 12

The Authority has determined forecast depreciation for the AA4 period to be the values set out in Table 69 and Table 70 of this Final Decision.

¹⁶⁹ Total excludes Depreciation for Shipper Assets.

¹⁷⁰ Total excludes Depreciation for Shipper Assets.

Rate of Return

1058. In its Draft Decision the Authority did not accept DBP's approach for estimating the rate of return and determined its own numbers.
1059. The Draft Decision noted that, as provided in the *Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution Systems* (hereafter, the **ATCO GDS Final Decision**) published as amended on 10 September 2015,¹⁷¹ the Authority had recently modified its approach to estimating the return on debt and the return on equity as outlined in the Authority's Rate of Return Guidelines.¹⁷²
1060. The Authority considered that the modified approach aligned with the regulatory requirements for the rate of return as specified in the National Gas Law (**NGL**) and National Gas Rules (**NGR**). The Authority considered DBP's proposal for estimating the rate of return, but was not convinced that it met the requirements of either the NGL or the NGR.
1061. The detailed reasoning for the Authority's Draft Decision is set out in Appendix 4 and is summarised below. The Authority:
- continued to estimate the rate of return based on the debt proportion of total capital – the gearing - for the benchmark efficient entity of 60 per cent;
 - with regard to the estimate of the return on equity:
 - retained the Sharpe Lintner Capital Asset Pricing Model (**SL-CAPM**) as the primary relevant model for estimating the return on equity;
 - utilised information from other relevant models – including the Black Capital Asset Pricing Model (**Black-CAPM**) and the Dividend Growth Model (**DGM**) – to establish the value of parameters in the Sharpe Lintner CAPM;
 - estimated the risk free rate parameter for input to the Sharpe Lintner CAPM from Commonwealth Government Securities, based on a 5 year term to maturity;
 - estimated a range for the 5 year forward looking Market Risk Premium (**MRP**) based on historic excess return data and the DGM, in recognition that it fluctuates in response to prevailing conditions;
 - drew on a range of forward looking information to establish the point value of the MRP; and
 - estimated the beta parameter based a benchmark sample of Australian firms with similar characteristics to the benchmark efficient entity.
 - with regard to the estimate of the return on debt:
 - continued to estimate the cost of debt as the sum of the risk free rate, relevant Debt Risk Premium (**DRP**), and relevant debt raising and hedging transactions costs;

¹⁷¹ Economic Regulatory Authority, *Final Decision on Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution Systems*, as amended 10 September 2015.

¹⁷² Economic Regulation Authority, *Rate of Return Guidelines*, 16 December 2013.

- estimated the risk free rate from the bank bill swap rate with the same term as the regulatory period, that is, 5 years;
- adopted a hybrid trailing average approach to estimating the return on debt, with the risk free rate estimated once, just prior to the regulatory period, and the DRP estimated using an equally weighted 10 year trailing average;
- estimated the DRP based on a BBB band credit rating, for a term of 10 years, using the Authority's enhanced bond yield approach that included international bonds issued by domestic entities (and for estimates of the DRP prior to the proposed averaging period, utilise the Reserve Bank of Australia's credit spread data for the BBB band); and
- annually updated the estimate of the DRP using a set of specified automatic formulas.

1062. The Authority's resulting *indicative* estimate for the overall post tax nominal rate of return for its Final Decision, for the 2016 calendar year, was 6.02 per cent:

- the *indicative* expected 5 year return on equity was 7.28 per cent, estimated as at 2 April 2015;
- the *indicative* estimate for the return on debt for the 2016 calendar year was 5.172 per cent, estimated as at 2 April 2015.

1063. This rate of return was applied from 1 January 2016 to 31 December 2020 in the tariff modelling for the Draft Decision, in order to estimate *indicative* tariffs for the Draft Decision.

1064. The Draft Decision noted the *indicative* estimate of the rate return on debt, would be updated in the Final Decision to account for DBP's nominated averaging period for the 2016 estimate. The overall method for determining that revised calendar year 2016 estimate would follow that for the *indicative* estimate set out in the Draft Decision. The resulting estimated rate of return for 2016 would be applied in the tariff modelling for the Final Decision for 2016 to 2020.

1065. The Draft Decision noted the 2017 to 2020 rates of return would then be progressively annually updated through the remaining years of AA4. The resulting revised rate of return would be included in the relevant tariff variations which occur in each calendar year.

1066. The Draft Decision noted the process for implementing the annual update would be as follows:

- For each annual update for 2017, 2018, 2019 and 2020, the Authority would estimate the updated DRP following the relevant annual averaging period, recalculate the rate of return, and then notify DBP of the outcomes as soon as practicable. This would allow DBP to check the rate of return estimate, prior to its incorporation in the proposed annual tariff variation to occur on 1 January in each year.
- Following that notification, DBP would be required to respond on any issues as soon as practicable, in order to allow the updated DRP and rate of return estimates to be finalised prior to submission by DBP of its proposed annual tariff variation.

- In the event that there was a disagreement on the DRP annual update estimate, the Authority would work with DBP to ensure that any misapplication of the automatic formulas in Appendix 4G of the Draft Decision were corrected in a timely manner.

1067. The Authority required the following amendment:

Required Amendment 14

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

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

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

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

1068. In its response to the Draft Decision, DBP did not accept Required Amendment 14.
1069. A summary of DBP's amended proposal, public submissions received in response to the Authority's Draft Decision and DBP's amended proposal and the Authority's considerations are set out in Appendix 4.
1070. The Authority has not accepted DBP's amended proposal for the reasons set out in Appendix 4. As set out in Appendix 4, the Authority has determined its own numbers which are summarised in Table 71 below.

Table 71 Final Decision Rate of return (AA4)

	DBP Original Proposal	Authority's Draft Decision	DBP's Amended Proposal	Authority's Final Decision
Nominal Risk Free Rate	3.54%	1.96%	2.87%	1.80%
Real Risk Free Rate		0.06%		0.36%
Inflation Rate	2.16%	1.90%	1.91%	1.43%
Debt Proportion	60%	60%	60%	60%
Equity Proportion	40%	40%	40%	40%
Debt Risk Premium (10 year trailing average)		2.502%		2.716%
5 year IRS (effective yield)		2.431%		2.100%
Return on Debt; 5 year Interest Rate Swap Spread		0.47%		0.300%
Return on Debt; Debt Issuing Cost (0.125%) + Hedging (0.114%)		0.239%		0.239%
Return on debt	6.13%	5.18%	5.59%	5.06%
Australian Market Risk Premium	6.50%	7.60%	7.03%	7.40%
Equity Beta		0.7		0.7
Corporate Tax Rate	30%	30%	30%	0.30
Franking Credit	25%	40%	25%	0.40
Nominal After Tax Return on Equity	11.71%	7.28%	10.84%	6.98%
Nominal After Tax WACC	8.36%	6.02%	7.69%	5.83%
Real After Tax WACC	6.07%	4.04%	5.67%	4.33%

Required Amendment 13

The Authority determines that the rate of return be consistent with the estimates set out in Table 71 of this Final Decision. The nominal post tax rate of return for 2016 is 5.83 per cent.

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

DBP must nominate the averaging period for each annual update applying in 2017, 2018, 2019 and 2020 within 10 business days of the release of this Final Decision. The nominated 20 Sydney trading day averaging period for each of the four years do not

need to be identical periods, only that they occur in the period 1 June to 31 October in each relevant year, and are nominated prior. The nominated averaging periods will remain confidential.

For each annual update for 2017, 2018 and 2019, the Authority will estimate the updated rate of return following the relevant annual averaging period and then notify DBP of the outcomes as soon as practicable, within 10 days. Following that notice, DBP is required to respond on any issues as soon as practicable, within 10 days, in order to allow the updated estimate to be finalised prior to submission by DBP of its proposed annual tariff variation within the required timeframe.

Gamma

1071. The Authority is required by the NGR to estimate the value of gamma, a parameter in the building block revenue model.
1072. The gamma parameter accounts for the reduction in the effective corporate taxation that is generated by the distribution of franking credits to investors. As a general rule, investors who are able to utilise franking credits will accept a lower required rate of return, before personal tax, on an investment that has franking credits, compared with an investment that has similar risk and no franking credits, all other things being equal.
1073. DBP's original proposal included a gamma of 0.25. In its Draft Decision the Authority did not accept this value and instead determined a gamma of 0.4. The Authority required the following amendment:
- Required Amendment 15
DBP is required to adopt a gamma of 0.4.
1074. In its response to the Draft Decision, DBP did not accept Required Amendment 14.
1075. The Authority's consideration of DBP's amended proposal is set out in Appendix 5. The Authority has determined a gamma of 0.4. Reasoning for the Authority's decision is set out in Appendix 5 of this Final Decision.

Required Amendment 14

The Authority has determined a gamma of 0.4.

Taxation

Regulatory Requirements

1076. Rule 76(c) of the NGR provides for the estimated cost of corporate income tax as a building block for total revenue.

1077. Rule 87A of the NGR elaborates on how to calculate the estimated cost of corporate income tax:

87A. Estimated cost of corporate income tax

- (1) The estimated cost of corporate income tax of a service provider for each regulatory year of an access arrangement period (ETC_t) is to be estimated in accordance with the following formula:

$$ETC_t = (ETI_t \times r_t) (1 - \nu)$$

Where

ETI_t is an estimate of the taxable income for that regulatory year that would be earned by a benchmark efficient entity as a result of the provision of reference services if such an entity, rather than the service provider, operated the business of the service provider;

r_t is the expected statutory income tax rate for that regulatory year as determined by the [ERA]; and

ν is the value of imputation credits.

DBP's Original Proposal

1078. DBP proposed to estimate the cost of corporate income tax directly by multiplying its estimated taxable income by an assumed statutory income tax rate of 30 per cent.¹⁷³

1079. DBP's proposal stated that estimated tax losses should be carried forward to offset against taxable income.¹⁷⁴

1080. DBP assumed debt to be 60 per cent of its Regulatory Asset Base (RAB), which gives rise to tax deductible interest at the Allowable Rate of Return.¹⁷⁵

1081. DBP reduced its estimated amount of tax payable by the value of imputation credits. The value of imputation credits applied by DBP was 25 per cent.¹⁷⁶

1082. DBP calculated taxable income as assessable income less tax deductible costs that are recognised by the Australian Taxation Office (ATO), as follows:¹⁷⁷

- Net cost of service.

¹⁷³ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 9.

¹⁷⁴ However, in practice, DBP has no carried forward losses that could be applied to the calculation of the regulatory tax allowance as at 1 January 2016. (KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 1.)

¹⁷⁵ KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 11.

¹⁷⁶ DBNGP (WA) Transmission Pty Ltd, *Submission 13 – Total Revenue*, December 2014, p. 14.

¹⁷⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Tariff Model*, December 2014.

- *minus* Forecast operating expenditure.
- *minus* Proposed depreciation of the Tax Asset Base (**TAB**), which excludes capital contributions, land and non-depreciable site works and Capital Works in Progress, and include the value of the BEP Lease and capitalised Gas Engine Alternator and compressor overhaul expenditure. DBP has calculated proposed tax depreciation on a straight-line basis.
- *minus* Debt servicing costs, which DBP has calculated by multiplying the debt portion of the opening capital base by the debt to equity ratio (assumed at 60 per cent) and DBP's proposed nominal cost of debt (cost of debt risk margin plus nominal risk free rate).
- *equals* Estimated taxable income.

1083. DBP proposed a corporate income tax building block of \$134.74 million over the 2016 to 2020 access arrangement period. Table 72 shows DBP's proposed estimated corporate income tax in real terms.¹⁷⁸

Table 72 DBP's Original Estimated Cost of Corporate Income Tax (AA4), real \$ million

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

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

* Figures may not add exactly, due to rounding.

1084. A summary of DBP's tax calculation in nominal values is set out in Table 73 below.

¹⁷⁸ DBP (WA) Transmission Pty Limited, *Proposed Revisions DBNGP Access Arrangement – 2016 – 2020 Access Arrangement Period: Access Arrangement Information*, 31 December 2014, Table 10, p. 14.

Table 73 DBP's Original Calculation of Estimated Cost of Corporate Income Tax (AA4), nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total
Tariff Revenue	454.0	457.5	467.9	477.8	490.5	2,347.7
Operating Expenditure	(111.7)	(115.7)	(121.4)	(122.0)	(127.0)	(597.8)
Debt Servicing Costs	(129.1)	(128.8)	(128.4)	(127.8)	(127.6)	(641.7)
Tax Depreciation	(92.8)	(92.0)	(93.7)	(96.2)	(95.0)	(469.7)
Taxable Income	120.4	121.0	124.5	131.7	140.9	638.5
Taxation (30 per cent of taxable income)	(36.1)	(36.3)	(37.3)	(39.5)	(42.3)	(191.5)
Imputation credit	9.0	9.1	9.3	9.9	10.6	47.90
Income tax net of imputation credits	(27.1)	(27.2)	(28.0)	(29.6)	(31.7)	(143.6)

Source: ERA, DBP Tariff Model, December 2014.

1085. DBP rolled forward the TAB for the 2016 to 2020 access arrangement period from 1 January 2016 to 31 December 2020 by adding capital expenditure (excluding capital contributions), deducting depreciation, and deducting asset disposals (at written down tax value). Table 74 presents DBP's calculation of the closing TAB for the 2016 to 2020 access arrangement period.

Table 74 DBP's Original Closing Tax Asset Base (AA4), \$ nominal million

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

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

Consultant Review of DBP's Proposed Changes

1086. KPMG was engaged by DBP to provide an estimate of the opening TAB at 1 July 2016, and opening written down value of any tax losses as at 1 January 2016, for a benchmark efficient entity providing reference services for the DBNGP.

1087. KPMG was also instructed by DBP to perform a test of the methodology of calculating DBP's tax allowance in the next access arrangement period to determine if it is in compliance with the National Gas Rules.

1088. In calculating the value of the TAB as at 1 January 2016, KPMG made the following assumptions, in relation to the underlying data provided by DBP:¹⁷⁹

- The acquisitions and disposal information, including the cost and date of acquisition/disposal, which has been used in the preparation of [DBP's] relevant income tax returns is complete and accurate. We have performed an additional check to reconcile these to the financial statements;
- The opening tax cost of the assets of DBP, calculated upon privatisation in 1998 and included in the income tax returns lodged on behalf of the relevant taxable entities, is complete and accurate. We understand that external consultants were engaged at the time to undertake work in respect of the transaction and the opening tax cost base was calculated in line with their advice; and
- We have accepted the forecast additions and associated depreciation figures provided to use and note that these are consistent with the tariff forecasting model.

1089. KPMG noted that its calculation of the opening TAB at 1 July 2016 was based on the following documents provided by DBP:¹⁸⁰

- Detailed tax asset register data for the period February 1998 to 30 June 2014;
- A summarised year on year reconciliation of [DBP's] tax depreciation data as per income tax returns to tax the tax depreciation claim for regulatory purposes for the period February 1998 to 31 December 2020;
- Forecast tax depreciation data for the period 1 July 2014 to 31 December 2020;
- Income tax returns for the entities that provided the reference services for the period February 1998 to 30 June 2013 and estimates for the year ended 30 June 2014;
- Special purpose financial reports for the entities and/or corporate group that provided the reference services for the period February 1998 to 30 June 2014.

1090. KPMG calculated the opening TAB as at 1 January 2016 as \$1,238,432,632.¹⁸¹ This TAB:¹⁸²

- excluded capital contributions (being shipper-funded works);
- excluded land and non-depreciable site works, on the basis that they are not depreciable for tax purposes;
- excluded Capital Works in Progress on the basis that they are not depreciable for tax purposes;
- was adjusted to include Gas Engine Alternator and compressor overhaul expenditure, which was treated as capital expenditure for tax purposes;¹⁸³
- was adjusted for the regulatory BEP Lease value (\$19.44 million in costs, with a written down value of \$14.55 million as at 1 January 2015);

¹⁷⁹ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, pp. 18-19.

¹⁸⁰ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 18.

¹⁸¹ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 6.

¹⁸² KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 16.

¹⁸³ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd, December 2014*, p. 10.

- included other minor adjustments to the treatment of capitalised interest, fuel gas, and pigging expenses, to ensure that tax return treatment aligned with regulatory expenditures;¹⁸⁴
- included metering assets that were also included in the RAB;
- commenced depreciation of assets in Capital Works in Progress as at 30 June 2014, and additions for regulatory purposes during the 6 months to 31 December 2014, in the 2015 calendar year;
- commenced depreciation of assets acquired during the year ended 31 December 2015 (and onwards) in the calendar year following the addition; and
- used the straight line method of depreciation.¹⁸⁵

1091. KPMG stated that its calculation of the opening TAB as at 1 January 2016 was based on the following assumptions:

- The date the business was first subject to tax, and thus the date when a TAB was initially determined is the date of privatisation of the relevant gas transmission pipeline. This was early 1998;
- The value for the RAB came into existence in 2000 and the TAB was established on all regulatory assets as at the date of privatisation being 1998;
- The roll forward of the TAB between the establishment of the TAB (1998) and the forecast of a TAB as at 1 January 2016 incorporates adjustments for tax depreciation, actual capex and asset disposals;
- The forecasts for the TAB has been prepared on the basis of a 1 year time lag to allow for tax depreciation to commence only after commissioning of the asset;
- The BEP lease relates to pipeline capacity DBP has contracted for on the Burrup Extension Pipeline. We note this lease was approved as a forecast conforming capital expenditure for 2011 and is therefore considered to be included in the regulated asset based [sic] for the DBNGP. On this basis DBP has included a BEP asset in the TAB equal to the value of the allowed capital expenditure for the 2011 Access Arrangement. This has been depreciated from that time using a depreciation rate applicable for a gas transmission pipeline.

1092. KPMG reviewed DBP's adoption of the straight line method of depreciation for tax purposes, and noted that use of the straight line method was consistent with Rule 87R the *Australian National Gas Rules*. KPMG stated that:

[t]he straight line depreciation methodology applied to [DBP's] TAB is consistent with the current (and the historical) income tax position and therefore emulates the actual tax depreciation profile of the entity in that regard.

1093. KPMG noted that, while the adoption of the diminishing value method would allow a benchmark efficient entity to maximise tax deductions, an efficient entity would also consider other factors when selecting tax depreciation method. Considerations such as cashflow planning and smoothing, and management of the entity's franking account, may give an efficient entity reason to adopt the straight line method.

¹⁸⁴ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 9.

¹⁸⁵ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 13.

1094. KPMG also commented that:

[a]s straight line depreciation delivers a smooth tax depreciation profile it delivers a more equitable distribution of tax deductions passed on to customers over the life of an asset.

1095. KPMG reviewed DBP's timing in incorporating new assets into that TAB, and noted the following:¹⁸⁶

In the [Authority's] recent ATCO Draft Decision, the ERA argued that the ATO practice is to incorporate new assets into the TAB on an "as commissioned" basis. In particular, it required ATCO to adopt the practice of incorporating assets into the TAB and commencing tax depreciation through maintaining a one year lag "between spending capital expenditure and commissioning the relevant assets. The ERA requires that ATCO update the roll forward TAB to ensure the tax asset register includes commissioned assets only".

DBP's approach would meet the ERA's requirements if they applied the same principle to DBP as they applied to ATCO.

1096. Table 75 presents KPMG's calculation of DBP's proposed regulated TAB as at 1 January 2016.

¹⁸⁶ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, p. 17.

Table 75 DBP's Original Regulated Tax Asset Base as at 1 January 2016,¹⁸⁷

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

Source: KPMG, *Establishing opening tax inputs for a Post-tax WACC methodology – DBNGP (WA) Transmission Pty Ltd*, Pg. 17-18.

Submissions

1097. The Authority received one submission in relation to DBP's proposed estimated cost of corporate income tax. This submission was made by BHP Billiton, which stated that:¹⁸⁸

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

Draft Decision

1098. In coming to its Draft Decision, the Authority assessed DBP's proposed opening TAB and estimated cost of corporate income tax. The Authority reviewed the following:

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

¹⁸⁷ KPMG, *Establishing Opening Tax Inputs for a Post-tax WACC Methodology – DBNGP (WA) Transmission Pty Ltd*, December 2014, pp. 17-18.

¹⁸⁸ BHP Billiton, *Public Submission By BHP Billiton: In response to DBNGP (WA) Transmission Pty Ltd's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 3.

1099. The Authority also revised DBP's proposed taxable income in light of the Draft Decision's amendments to operating costs, capital expenditure and WACC.

Tax Asset Lives

1100. In order to calculate tax depreciation for its original proposal, DBP made asset life assumptions for the TAB. DBP stated that the effective asset lives of assets used to calculate estimated corporate income tax for the regulatory period 'are consistent with tax life rulings and the statutory effective life cap from 2000/2001 which has been calculated from the time assets were installed ready for use'.¹⁸⁹

1101. The Authority noted that KPMG reviewed the asset lives used by DBP and was provided with copies of DBP's tax returns. However, DBP had not provided the Authority with a summary of asset lives by regulatory category. For the purposes of its assessment, and to enable the taxation cost to be modelled, the Authority used tax asset lives consistent with its understanding of the relevant tax legislation.

1102. For income tax reporting purposes, DBP's BEP Lease payments were claimed as an expense, rather than depreciated. However, the BEP Lease is considered a capital asset for regulatory purposes. Consequently, DBP included the written down value of the BEP Lease in its TAB, and applied an asset life consistent with the regulatory asset life approved by the Authority in the 2011-15 Access Arrangement.¹⁹⁰

1103. Table 76 lists the asset lives that the Authority determined to be appropriate for the TAB.

Table 76 Draft Decision Tax Asset Lives

Asset Category	Authority determined asset life in years for TAB
Pipeline	20
Compression	20
Metering	15
BEP Lease	20
Other	20

Source: ERA Tariff Model, December 2015.

Tax Depreciation Methodology

1104. DBP's proposed tax depreciation approach commenced depreciation of new assets in the year following the addition. In its Draft Decision, the Authority accepted this approach, and noted that it is consistent with its finding for its *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems*, that a one-year lag should be maintained

¹⁸⁹ DBNGP (WA) Transmission Pty Ltd, *Submission 14 – Tariff Model and Tariff Calculation*, December 2014, p. 10.

¹⁹⁰ Economic Regulation Authority, *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems*, 10 September 2015, p. 67.

between capital expenditure and commissioning the relevant asset. This approach ensures that the tax asset register includes commissioned assets only.¹⁹¹

1105. DBP applied the straight line method to calculate tax depreciation. The Authority accepted DBP's adoption of the straight line method to depreciate new capital expenditure in its TAB after 1 January 2016 for the following reasons:

- DBP provided the Authority with evidence that it has and continues to adopt straight line depreciation in its tax returns.
- The Authority considered that DBP had an incentive to select the most efficient tax depreciation method, particularly during the pre-tax regime.
- The Authority considered that a benchmark efficient entity would seek to minimise its tax liabilities over the lives of the assets, rather than over one access arrangement period only. Such an entity would select the tax depreciation methodology that achieves this, based on its circumstances. In a neutral NPV context, and in line with the National Gas Objective, the benchmark efficient entity would also safeguard the long term interests of consumers through making sure that costs are evenly spread out through the lives of assets.

Debt Servicing Costs

1106. The Authority noted that DBP used a capital base value that was consistent with the Current Cost Accounting (CCA) depreciation approach used to determine the RAB for other purposes in the building block approach, as discussed in the Depreciation chapter of its Draft Decision. The Authority considered that this approach was appropriate for determining the debt service costs used in the taxation calculations.

1107. The Authority updated the debt servicing costs to reflect the impact of required amendments in its Draft Decision.

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

1108. The Authority accepted in principle DBP's use of a TAB for regulatory purposes that is derived from DBP's actual tax asset base, as reported in its corporate income tax returns.

1109. BHP Billiton submitted that DBP's TAB should instead be calculated using DBP's opening capital base at the time it became regulated in 2000, rather than DBP's actual tax base for corporate income reporting purposes.¹⁹²

1110. The Authority noted that this would notionally reset the tax value of DBP's assets, as at the commencement of regulation in 2000 for the purpose of estimating the cost of corporate income tax for regulatory purposes.

¹⁹¹ Economic Regulation Authority, *Amended Final Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distributions Systems*, 10 September 2015, p. 446.

¹⁹² BHP Billiton, *Public Submission By BHP Billiton: In response to DBNGP (WA) Transmission Pty Ltd's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 3.

1111. The Authority considered that adopting this approach would be inconsistent with past decisions made by both the Authority and the AER, in relation to establishing a TAB for a regulated utility when transitioning from a pre-tax to a post-tax model. In its *Further Final Decision on Proposed Revisions to the Access Arrangement for the Western Power Network*, the Authority accepted Western Power's use of written down 'historical cost' in determining its initial TAB, and noted that 'the AER accepts the actual written 'historic cost' TAB of the service provider, rather than any real pre-tax equivalent opening value for the TAB'.¹⁹³
1112. However, the Authority noted that the taxation schedules provided by DBP indicated that the tax asset base decreased significantly during 1998 and 1999 [REDACTED]
[REDACTED]
[REDACTED]
1113. In the absence of sufficient information to understand the reasons for the significant reduction in the TAB during 1998 and 1999, for the purposes of the Draft Decision, the Authority estimated the opening TAB for 2000 by using the opening RAB value and deducting two year's tax depreciation based on a 20 year life and straight line depreciation. This resulted in an opening TAB as at 1 January 2000 of \$1,395 million compared with the value of \$645.5 million proposed by DBP.
1114. Table 77 lists the Authority's estimated closing tax asset base by year over the fourth access arrangement period which was used to calculate tax depreciation in the Draft Decision.

Table 77 Draft Decision Estimated Closing Tax Asset Base (AA4), nominal \$ million

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

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

Forecast Taxation

1115. For its Draft Decision, the Authority calculated taxable income as follows.

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

¹⁹³ Economic Regulation Authority, *Further Final Decision on Proposed Revisions to the Access Arrangement for the Western Power Network*, 29 November 2012, p. 39; and Australian Energy Regulator 2007, *Preliminary positions: Matters relevant to distribution determinations for ACT and NSW DNSPs for 2009-2014*, Appendix A, p. 53.

1116. The Authority's Draft Decision on taxation costs, taking into account relevant required amendments elsewhere in its Draft Decision, tax asset lives and an adjusted opening tax asset base as at 1 January 2000 is set out in Table 78 below.

Table 78 Draft Decision Calculation of Estimated Cost of Corporate Income Tax (AA4), nominal \$ million

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

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

1117. The Authority required the following amendment:

Required Amendment 16

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

DBP's Amended Proposal

1118. In response to the Authority's Draft Decision, DBP has not accepted the Draft Decision Required Amendment 16.¹⁹⁴ DBP does not agree with the Authority's calculation of the starting value for the TAB which was based on the opening RAB value in 2000, adjusted for two year's tax depreciation based on a 20 year life and straight-line depreciation. DBP also does not consider that the Authority used the correct statutory tax asset lives for assets installed ready for use prior to 1 January 2001.

1119. DBP has provided additional information in relation to the tax asset base and asset lives, including a report from KPMG verifying the new information.

1120. DBP has provided the Authority with the following information with reference to the significant tax asset base reduction during the years 1998 and 1999, identified by the Authority in its Draft Decision:

¹⁹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 57*, 22 February 2016, pp. 15-17.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

1121. DBP has also advised that all assets installed ready for use prior to 1 January 2001 should be depreciated on a 13 per cent straight line method basis. It notes Taxation Ruling IT 2685 provides the relevant effective lives and tax depreciation rates for each class of asset acquired prior to 1 January 2001. It notes that under the ruling, the 20 year effective life identified for gas pipelines, compression assets and other gas plant related assets translates into a 13 per cent annual prime cost depreciation rate.

1122. DBP's consultant, KPMG confirms DBP's assertions regarding the methodology used by the Authority in its Draft Decision. KPMG's considerations are as follows:

- DBP's approach to estimating the cost of corporate income tax is correct and consistent with the law;
- the asset lives used in the Authority's Draft decision (with the exception of those relating to the opening TAB) are correct
- the correct annual prime cost depreciation rate for assets acquired prior to 1 January 2001 is 13 per cent;
- DBP's reconciliation of its tax asset base is confirmed by its tax documentation; and
- assets that were installed for use prior to 1 January 2001 should be fully depreciated prior to 1 January 2016, therefore any adjustments made to the tax base of these assets in accordance with the Authority's Draft Decision would not impact the estimated corporate income tax over the AA4 period.

1123. DBP's amended access proposal included an updated estimate for its cost of corporate income tax as set out in Table 79 below.

Table 79 DBP's Proposed Estimated Cost of Corporate Income Tax (AA4), real \$ million

Real \$ million at June 2014	2016	2017	2018	2019	2020	Total
Gross Estimated Cost of Corporate Income Tax	34.48	33.64	33.25	34.26	35.62	171.25
Value of Imputation Credits	(8.62)	(8.41)	(8.31)	(8.57)	(8.90)	(42.81)
DBP's Estimated Cost of Corporate Income Tax Net of Imputation Credits	25.86	25.23	24.94	25.70	26.71	128.44

Source: DBNGP (WA) Transmission Pty Limited, Proposed Revisions DBNGP Access Arrangement, Access Arrangement Information, 22 February 2016, Table 20, p. 25

Further Submissions

1124. WESCEF agrees with the Authority's Draft Decision and submits that DBP should adopt the Authority's required amendments.
1125. BHP Billiton (**BHP**) reiterates its position that the commencement date of the taxation asset base for the benchmark efficient entity is the date at which regulation commenced, because that was the date at which a new notional investment value for the regulated assets was determined. BHP therefore considers that the DBNGP's TAB should be determined with reference to an initial taxation asset value that started in 2000 at the initial capital base. BHP submits that this approach is consistent with the NGR and that the Authority should reconsider its Draft Decision on this matter.
1126. BHP considers that DBP's arguments in relation to setting the starting value of the TAB as at 1998 do not have any relevance in the context of requirements of NGR 87A, which requires that:
- "ETI_t is an estimate of the taxable income for that regulatory that would be earned by a benchmark efficient entity as a result of the provision of reference services if such an entity, rather than the service provider, operated the business of the service provider."

Considerations of the Authority

1127. The Authority notes BHP's views in relation to the methodology for establishing the starting value of the TAB. BHP Billiton submitted that DBP's TAB should be calculated using DBP's opening capital base at the time it became regulated in 2000, rather than DBP's actual tax base for corporate income reporting purposes.¹⁹⁵
1128. However, as set out in the Draft Decision, the Authority considers that using DBP's capital base at the time it became regulated in 2000 as the starting value for the TAB would notionally reset the tax value of DBP's assets. The Authority considers adopting this approach would be inconsistent with past decisions made by both the Authority and the AER, in relation to establishing a TAB for a regulated utility when transitioning from a pre-tax to a post-tax model.
1129. As set out in the Draft Decision, the Authority accepted in principle DBP's use of a TAB for regulatory purposes that is derived from DBP's actual tax asset base, as reported in its corporate income tax returns. However, as DBP did not provide sufficient evidence to support the tax values reported and asset lives used, the Authority estimated the opening TAB for 2000 by using the opening RAB value and deducting two year's tax depreciation based on a 20 year life and straight line depreciation.
1130. DBP's amended proposal has provided new information in relation to the tax asset lives relevant to the starting value of the TAB. The Authority accepts that Taxation Ruling IT 2685 sets out the relevant tax asset lives for assets acquired prior to 1 January 2001 and that they should be depreciated using the prime cost method at

¹⁹⁵ BHP Billiton, *Public Submission By BHP Billiton: In response to DBNGP (WA) Transmission Pty Ltd's proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 3.

13% which is equivalent to straight line method using tax asset life of 7.69 years (rather than the 20 year straight line depreciation assumed in the Draft Decision).

1131. The Authority notes adopting the tax asset lives set out in Taxation Ruling IT 2685 results in the initial TAB being fully depreciated prior to the commencement of AA4. Consequently, the AA4 forecast of taxation payable will not change, regardless of the starting value of the TAB and therefore, the concerns the Authority had regarding the initial tax values provided by DBP do not impact on the forecast tax costs for AA4 and do not need to be resolved for the purposes of the Final Decision.
1132. The Authority notes KPMG is in agreement with the asset lives used by the Authority in the Draft Decision in relation to assets other than those affected by Taxation Ruling IT 2685.
1133. The Authority has updated its estimate of the TAB for AA4 to reflect the revisions to the asset lives and starting value for the TAB as outlined above. The Authority's estimate of the TAB for AA4 is set out in Table 80 below.

Table 80 Final Decision Estimated Tax Asset Base (AA4), nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020
Opening Tax Asset Base	1,319.47	1,248.77	1,174.93	1,093.59	1,012.81
Authority Forecast Capital Expenditure	25.65	23.83	17.57	19.01	23.29
Authority Forecast Tax Depreciation	(96.35)	(97.67)	(98.90)	(99.80)	(100.65)
Authority Approved Estimated Closing Tax Asset Base	1,248.77	1,174.93	1,093.59	1,012.81	935.45

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

1134. For its Final Decision, the Authority has calculated taxable income using the same methodology as in the Draft Decision, that is:
- Smoothed tariff revenue
 - *minus* Approved forecast operating expenditure
 - *minus* Depreciation of the TAB
 - *minus* Debt servicing costs
 - *equals* Estimated taxable income
1135. The Authority's Final Decision on taxation costs, taking into account relevant required amendments elsewhere in its Final Decision, is set out in Table 81 below.

Table 81 Final Decision Cost of Corporate Income Tax (AA4), nominal \$ million

Nominal \$ million	2016	2017	2018	2019	2020	Total
Revenue						
Tariff Revenue (smoothed)	370.61	361.75	366.35	370.64	376.96	1,846.32
Operating Expenditure	(103.33)	(105.21)	(109.26)	(108.21)	(111.22)	(537.23)
Debt Servicing Costs	(105.43)	(104.69)	(103.77)	(102.58)	(101.55)	(518.03)
Tax Depreciation	(96.35)	(97.67)	(98.90)	(99.80)	(100.65)	(493.37)
Taxable Income	65.49	54.18	54.41	60.06	63.55	
Taxation (30 per cent of taxable income)	(19.65)	(16.26)	(16.32)	(18.02)	(19.06)	(89.31)
Imputation credit	7.86	6.50	6.53	7.21	7.63	35.72
Income tax net of imputation credits	(11.79)	(9.75)	(9.79)	(10.81)	(11.44)	(53.58)

Source: Economic Regulation Authority, DBP Tariff Model, June 2016.

Required Amendment 15

The Authority has determined taxation costs to be the values set out in Table 81 of this Final Decision.

Incentive Mechanism

Regulatory Requirements

1136. Rule 98 of the NGR provides that a full access arrangement may include (and the Authority may require it to include) one or more incentive mechanisms to encourage efficiency in the provision of services by the service provider.

98. Incentive mechanism

- (1) A full access arrangement may include (and the AER [ERA] may require it to include) one or more incentive mechanisms to encourage efficiency in the provision of services by the service provider.
- (2) An incentive mechanism may provide for carrying over increments for efficiency gains and decrements for losses of efficiency from one access arrangement period to the next.
- (3) An incentive mechanism must be consistent with the revenue and pricing principles.

1137. Rule 72(d) provides for total revenue to include amounts (as an increment or decrement) resulting from the operation of the incentive mechanism. Rule 71(1)(i) requires that the access arrangement information include the proposed carryover of the amounts and a demonstration of how allowance is to be made in the value of total revenue for the amounts.

DBP's Original Proposal

1138. DBP's current access arrangement does not have an incentive mechanism and DBP did not propose one for the 2016-2020 access arrangement period.

1139. DBP's supporting submission 13 noted its contractual arrangements with shippers provide an effective incentive mechanism. It noted there are mechanisms which either expose DBP to capital and operating cost risk (for certain items of expenditure) or which require approval from the shipper before the costs can be included in charges levied under the relevant contract.

1140. DBP submitted that it is consistent with the national gas objective not to have an incentive mechanism and that it is not necessary to include any specific incentive mechanism.

Submissions

1141. No submissions commented in relation to an incentive mechanism.

Draft Decision

1142. The Authority considered whether it should require that the access arrangement for the 2016 to 2015 access arrangement period include an incentive mechanism to encourage efficiency in the provision of services by DBP.

1143. Rule 98 of the NGR provides that a full access arrangement may include (and the Authority may require it to include) one or more incentive mechanisms to encourage efficiency in the provision of services by the service provider.

1144. The Authority considered that the roles of an incentive mechanism in an access arrangement include the following:
- to promote incentives for the service provider to achieve efficiency gains to the ultimate benefit of pipeline users;
 - to ensure that there is a continuous incentive to achieve efficiency gains, and in particular to ensure that there are incentives for efficiency gains in later years of an access arrangement period; and
 - to increase the confidence that the Authority can place on values of actual costs as an indicator of efficient costs and a benchmark to apply in assessment of cost forecasts, particularly actual costs in the later years of an access arrangement period.
1145. In considering the roles and benefits of an incentive mechanism, the Authority recognised that an incentive mechanism involving the carry-over of benefits of efficiency gains from one access arrangement period to the next may create undesirable incentives for the service provider, such as:
- incentives to inefficiently shift costs across years (particularly to later years in the access arrangement period) to create a benefit for the service provider under the incentive mechanism without there being a sustained reduction in costs that will benefit pipeline users; and
 - where an incentive mechanism is applied only to operating expenditure, incentives to inefficiently substitute capital expenditure for operating expenditure.
1146. Consistent with its decision in relation to AA3, the Authority determined that it is not practical to impose an incentive mechanism that provides the necessary protections against adverse incentives and therefore did not require the proposed revised access arrangement to be amended to include an incentive mechanism.

DBP's Amended Proposal

1147. Based on the Authority's determination to not impose an incentive mechanism in the Draft Decision, DBP has again not included an incentive mechanism for the 2016-2020 access arrangement period.

Further Submissions

1148. No further submissions commented in relation to an incentive mechanism.

Considerations of the Authority

1149. The Authority's position on the inclusion of an incentive mechanism has not altered from the Draft Decision. The Authority is still of the view that it is not practical to impose an incentive mechanism that provides the necessary protections against adverse incentives.
1150. Accordingly, the Authority agrees that there should be no incentive mechanism in the access arrangement for the fourth access arrangement period.

Allocation of Total Revenue between Reference Services and Other Services

Regulatory Requirements

1151. Rule 93 of the NGR requires that total revenue be allocated between reference services and other services on the basis of an allocation of costs. As an alternative to cost allocation, rule 93 provides for services other than reference services to be classed as rebateable services, with part of the revenue from the sale of these services to be rebated or refunded to users of reference services. The particular requirements of rule 93 are as follows.

93. Allocation of total revenue and costs
 - (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
 - (2) Costs are to be allocated between reference and other services as follows:
 - (a) costs directly attributable to reference services are to be allocated to those services; and
 - (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
 - (c) other costs are to be allocated between reference and other services on a basis (that must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
 - (3) The [ERA] may, however, permit the allocation of the costs of rebateable services, in whole or in part, to reference services if:
 - (a) the [ERA] is satisfied that the service provider will apply an appropriate portion of the revenue generated from the sale of rebateable services to provide price rebates (or refunds) to the users of reference services; and
 - (b) any other conditions determined by the [ERA] are satisfied.
 - (4) A pipeline service is a rebateable service if:
 - (a) the service is not a reference service; and
 - (b) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and
 - (c) the market for the service is substantially different from the market for any reference service.

DBP's Original Proposal

1152. DBP noted its proposal did not include any rebateable services, and therefore NGR 93(3) and 93(4) were irrelevant.¹⁹⁶

1153. Consistent with the current access arrangement (AA3), DBP proposed that:¹⁹⁷

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

1154. In relation to its cost allocation methods, DBP stated in its supporting submission that:¹⁹⁸

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

Submissions

1155. No third party submissions to the Authority addressed the allocation of revenue.

¹⁹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Tariff Model and tariff calculation – Supporting Submission 14*, 31 December 2014, p. 2.

¹⁹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Tariff Model and tariff calculation – Supporting Submission 14*, 31 December 2014, p. 2.

¹⁹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Access, Cost allocation & verification of costs – Supporting Submission 6*, 31 December 2014, p. 17.

Draft Decision

1156. The Authority noted DBP's proposed arrangements relating to the allocation of costs were consistent with those currently in place.
1157. The Authority considered it is appropriate to continue to allocate costs on the same basis between reference and non-reference full haul, part haul and back haul services, as the services are essentially the same.
1158. In relation to whether DBP has any non-reference services that should be declared to be rebateable services, the Authority noted that it was a matter it considered at the last access arrangement review.
1159. At the last access arrangement review DBP noted that, in addition to non-reference full haul, part haul and back haul services, other non-reference services it may provide could include:¹⁹⁹
- park and loan, storage and delivery services;
 - spot services;
 - interruptible services;
 - co-mingling services;
 - commissioning services;
 - inlet swap services; and
 - out of specification gas services.
1160. In its Final Decision for the third access arrangement (AA3) review, the Authority noted there was insufficient evidence of demand for these potential non-reference services over the 2011 to 2015 access arrangement period to establish an imperative for the Authority to make an allocation of total revenue to these services, or seek to have a rebate mechanism included in the access arrangement.²⁰⁰ The Authority also noted there may be practical difficulties in implementing a rebate mechanism. Specifically:²⁰¹
- [R]ule 93(3)(a) of the NGR contemplates rebates or refunds under a rebate mechanism being provided only to users of reference services ... There could be practical difficulties in applying a rebate mechanism that allows for rebates to be provided only to users of reference services in that there may be disputes over what comprises a reference service: for example, would a service that is of a very similar nature to a reference service still be classed as a reference service if there are minor differences in some terms and conditions from the terms and conditions set out in the access arrangement for the reference service.

¹⁹⁹ DBNGP (WA) Transmission Pty Ltd, *Submission 35: Response to ERA Information Request of 28 October 2010*, 7 January 2011.

²⁰⁰ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 31 October 2011 (as amended on 22 December 2011), paragraph 769.

²⁰¹ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 31 October 2011 (as amended on 22 December 2011), paragraph 771.

1161. Consistent with the current access arrangement, DBP proposed to offer other pipeline services including a spot capacity service, park and loan service and seasonal service.
1162. In response to a query, DBP advised that the figures in Tables 6, 7 and 8 of the original proposal Access Arrangement Information include throughput in relation to other pipeline services but has not provided any details in relation to the quantity of such services. An examination of the Management Information reported on the DUET website showed DBP earned around \$15 million (approximately 4 per cent of total revenue) from other services in the 2014/15 financial year.²⁰² It was also not apparent from the Management Information, whether the revenue described as “Transport Revenue” only included revenues received from firm contracts based on the Standard Shipper Contract, or includes other arrangements such as non-firm contracts. As noted in the IMO’s 2015 GSOO, DBNGP shipped more than its nameplate capacity during winter 2014 and summer 2015. The IMO considers this suggests non-firm shipping capacity is not constant and notes more information could be made available to the market in relation to those services.
1163. To enable the Authority to determine whether a rebate mechanism was necessary, it required DBP to provide information in relation to any non-reference services provided during the 2011 to 2015 access arrangement period (including revenue received) and its forecasts of the likely demand for such services in the 2016 to 2020 period.
1164. The Authority noted that if these services were found to be significant, and in the absence of DBP proposing an alternative method to allocate costs to such services, the Authority will give consideration to requiring a rebate mechanism to be included in the access arrangement.
1165. As noted above, NGR 93(3)(a) contemplates any rebate or refund being provided only to users of reference services. Given that the proposed reference tariffs are based on volumes incorporating both reference and non-reference pipeline services, the Authority considers a similar methodology could be used to calculate the rebate as a reduction to reference tariffs.
1166. The Authority required the following amendment:
- Required Amendment 17
- DBP must provide details (including revenue and volumes) of all non-reference services provided (in addition to full haul, part haul and back haul non reference services) during AA3 and its forecast for AA4. It should also provide details of any costs relating to such services and, if found to be significant, either a cost allocation methodology which ensures such costs are recovered from the parties receiving the services, or a rebate mechanism as permitted under the National Gas Rules.

²⁰² See DUET website <http://www.duet.net.au/Investor-centre/Investor-reports/Tabs/Management-information-reports/2015/FY2015-Management-Information-Report.aspx>

DBP's Amended Proposal

1167. In its response to the Draft Decision, DBP has provided additional information in relation to non-reference services to address Required Amendment 17.²⁰³
1168. DBP has provided a detailed breakdown of the revenue reported in the DUET Management Information Reports (**MIR**) for 2011 to 2015. This includes a breakdown of revenue included in both "Transport Revenue" and "Other Pipeline Services."²⁰⁴ DBP has also provided a forecast of non-reference service revenue for the AA4 period.²⁰⁵
1169. DBP has also provided additional comment in relation to its cost allocation methodology.²⁰⁶

Further Submissions

1170. No third party submissions to the Authority addressed the allocation of revenue.

Considerations of the Authority

1171. As set out in the Draft Decision, DBP's proposed arrangements relating to the allocation of costs are consistent with those currently in place and the Authority considers it is appropriate to continue to allocate costs on the same basis between reference and non-reference full haul, part haul and back haul services, as the services are essentially the same.
1172. However, in relation to the allocation of costs to any other non-reference services, the Authority had limited information on which to make its decision. Information available from DUET's MIR indicated DBP earned \$15 million (approximately 4 per cent of total revenue) from other services in the 2014/15 financial year.²⁰⁷ It was not apparent from the MIR, whether the revenue described as "Transport Revenue" also included other non-reference services.
1173. In addition to being uncertain of the level of non-reference services DBP provides, it was also not clear to the Authority to what extent any costs incurred in providing non-reference services had been included in DBP's proposed operating costs for the access arrangement.

²⁰³ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions *DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 18-23.

²⁰⁴ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions *DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, Appendix C.

²⁰⁵ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions *DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, Appendix D.

²⁰⁶ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions *DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 21-22.

²⁰⁷ See DUET website <http://www.duet.net.au/Investor-centre/Investor-reports/Tabs/Management-information-reports/2015/FY2015-Management-Information-Report.aspx>

1174. The Authority has reviewed the additional information provided by DBP in relation to non-reference services and the allocation of costs.

1175. The Authority accepts that, as DBP notes in Submission 57, the DUET Management Information Reports (**MIR**) are prepared for the purpose of reporting on all of DBP's revenue and costs to DUET investors and are not prepared for the purposes of aligning with the Authority's assessment or to inform the access arrangement process. The Authority also notes the cost allocation methodology mechanism used by DBP to report its actual operating expenditure in its access arrangement proposal.

1176. From the additional information provided by DBP in relation to the revenue reported in the MIR, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1177. Of the remaining reported revenue, which represents less than [REDACTED] of total revenue, DBP advises:

- gas volumes in relation to spot and overrun services have been included in the forecast volumes used to calculate reference tariffs; and
- costs in relation to other non-reference services such as inlet sales services, interruptible services, data services and storage services are either not discernible or there are no incremental costs in providing such services.

1178. DBP submits that, given the small percentage of DBP's actual revenue that relates to the provision of non-reference services is not significant, there should be no additional cost allocation methodology or rebate mechanism included in the access arrangement. DBP also notes the uncertainty associated with the provision of non-reference services during AA4 and that if more costs were allocated to these services but the market for these services did not eventuate, DBP would not be able to recover its efficient costs.

1179. In relation to inclusion of a rebate mechanism DBP submits the following:

- rebate mechanisms are not appropriate where there is such a small percentage of revenue to be earned from such services;
- the NGR only allows a rebate mechanism to provide rebates to users of reference services and would not permit any rebate to be paid to users of services that are "in the nature of reference services"; and
- there is likely to be only one shipper that has contracted for a reference service which would lead to an unfair outcome if, as a result of the rebate mechanism, that shipper was entitled to a rebate that is greater than the annual charges it pays to DBP.

1180. [REDACTED]

[REDACTED] In addition, the requirement for such services is uncertain, whereas, the Authority has satisfied itself that the approved operating costs only include those that would be incurred by a prudent service provider acting efficiently. Consequently, if costs were to be allocated to non-reference services based on the uncertain forecasts in relation to non-reference services, there is a risk DBP would not recover its efficient costs.

1181. Although in this situation, a rebate mechanism may be considered appropriate, the Authority recognises the practical difficulties for implementing a rebate mechanism in DBP's case given that the NGR specifically states it can only be paid to "users of reference services."
1182. Taking account of the above, in particular the low value of costs and uncertainties in relation to other non-reference services, the Authority is satisfied with the allocation of revenue between services and does not consider a rebate mechanism is necessary.

²⁰⁸ Which include inlet sales services, interruptible services, data services and storage services.

Reference Tariffs

Regulatory Requirements

1183. Rule 95 of the NGR sets out requirements for the determination of reference tariffs for transmission pipelines.

95. Tariffs – transmission pipelines
- (1) A tariff for a reference service provided by means of a transmission pipeline must be designed:
 - (a) to generate from the provision of each reference service the portion of total revenue referable to that reference service; and
 - (b) as far as is practicable consistently with paragraph (a), to generate from the user, or the class of users, to which the reference service is provided, the portion of total revenue referable to providing the reference service to the particular user or class of users.
 - (2) The portion of total revenue referable to a particular reference service is determined as follows:
 - (a) costs directly attributable to each reference service are to be allocated to that service; and
 - (b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
 - (3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:
 - (a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and
 - (b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the [ERA].
 - (4) The [ERA's] discretion under this rule is limited.

DBP's Original Proposal

1184. DBP proposed to retain the reference services and tariffs that are currently offered under the existing access arrangement (AA3), which are the:

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

1185. Consistent with the current access arrangement, the reference tariffs were designed to recover from shippers, using each of the reference services, that portion of the total revenue that reflects:²⁰⁹
- those costs (including capital costs) which are directly attributable to the provision of the reference services; and
 - a share of those costs (including capital costs) which are attributable to the provision of the reference services jointly with pipeline services that are provided to other shippers with contractual rights existing prior to the commencement of the fourth access arrangement (AA4) and other pipeline services that DBP considers are reasonably foreseeable to be offered during the fourth access arrangement period.
1186. Consistent with the current access arrangement, in determining the reference tariffs for the T1, P1 and B1 services, costs were allocated to the services provided to shippers with access contracts entered into prior to the commencement of AA4, as if those shippers had been provided with the respective reference services.
1187. Also consistent with the current access arrangement, for any expenditure included in the regulatory asset base that was funded by a capital contribution, the portion of total revenue attributable to the return on and depreciation of that expenditure was not allocated to any pipeline service including the reference tariffs.
1188. Consistent with the current access arrangement, each of the reference tariffs were divided into a two part tariff structure comprising:
- a “Capacity Reservation Tariff”; and
 - a “Commodity Tariff”.
1189. The charges proposed by DBP resulted in 80 per cent of revenue being collected through the capacity reservation charge and 20 per cent being collected through the commodity charge. This was in contrast to the 2015 T1 Reference Tariff where 92 per cent of revenue was collected through the capacity reservation charge and 8 per cent through the commodity charge.
1190. DBP also amended the basis for setting the commodity charge. For the current access arrangement period it was based on the cost of system use gas and the carbon tax. For the fourth access arrangement period, DBP proposed to amend this to be “*a proportion of the forecast operating expenditure (including but not limited to, the cost of the System Use Gas used on the DBNGP)*”.²¹⁰ DBP did not provide any reasons for these proposed changes.
1191. Consistent with current access arrangement, to derive the split between the T1, P1 and B1 services, DBP calculated a full haul equivalent value for each service and derived unit rates accordingly.
1192. DBP's original proposed reference tariffs are set out in Table 82 below.

²⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Access Arrangement Information*, 31 December 2014, p. 24.

²¹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Access Arrangement Information*, 31 December 2014, p. 25.

Table 82 DBP's Original Reference Tariffs (AA4), nominal \$ per GJ/day

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

Source: ERA, DBP Tariff Model, December 2014.

Submissions

1193. CPMM considered that DBP's proposed reference tariff should be reduced to \$1.24/GJ as at January 2016 in accordance with CPMM's proposed WACC of 5.56 per cent. CPMM also suggested that the contracted tariffs for the current access arrangement period were artificially inflated as a result of the negotiated rescue of the DBNGP in 2004 following the insolvency of its owner at that time, Epic Energy.²¹¹

Draft Decision

1194. In its Draft Decision, the Authority noted that apart from the proposed revision in relation to the commodity charge, DBP had adopted the same approach as was taken in the current (AA3) access arrangement for deriving the reference tariffs. In its Draft Decision, the Authority considered that provided that the costs of delivering the reference and non-reference T1, P1 and B1 services are similar, then combining the reference and non-reference services to allocate total costs to reference and non-reference services on the same basis was reasonable²¹². It, therefore, followed that calculating reference tariffs on the same basis (i.e. including demand for both reference and non-reference services) was also reasonable. The Authority

²¹¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 11.

²¹² Economic Regulation Authority, *Draft Decision on Proposed Amendments to the Fourth Access Arrangement for the DBNGP*, "Allocation of Total Revenue" paragraphs 1151 to 1165.

considered that the reference and non-reference pipeline services were still sufficiently similar for this approach to continue to be adopted.

1195. In undertaking its review of DBP's proposed tariffs for its Draft Decision, the Authority identified errors in the calculation of the full haul equivalent values. DBP confirmed the errors and advised that it would correct them when making its submission in response to the Draft Decision.²¹³ For the purpose of making its Draft Decision, the Authority made an adjustment to the revenue model to correct the error.
1196. DBP amended the basis of the commodity charge, but did not provide any justification for this change. The Authority noted that in its decision in relation to the current (AA3) access arrangement, the Authority had determined that the commodity charge should be set to recover costs of fuel gas, and the capacity charge should be set to recover all other costs. The Authority noted that the requirement for fuel gas is variable and dependent on the amount of gas flowing through the pipeline. The Authority also noted that DBP had not provided any explanation for its proposed change to the basis of the commodity charge, or for the calculation of the split between the capacity charge (80 per cent) and the commodity charge (20 per cent).
1197. The Authority therefore required DBP to revise its proposed tariff structure to ensure that the commodity charge is based on variable costs only and to provide sufficient workings to demonstrate that this is the case. For the purposes of its Draft Decision the Authority modelled the commodity charge based on the forecast cost of fuel gas, which resulted in a split of around 90 per cent for the capacity charge and 10 per cent for the commodity charge.
1198. The Authority noted that adjusting the split between the capacity charge and commodity charge impacted on the total reference tariff. For example, the Authority's model indicated that basing the split on a ratio of 80/20 resulted in a total Full Haul tariff, including both the capacity and commodity charge, in 2016 of \$1.233 per GJ per day, whereas basing the split on 90/10 results in a total tariff of \$1.217 per GJ per day.
1199. As the Authority did not approve DBP's proposed total revenue, it required DBP's forecast tariffs also to be amended. Based on the required amendments in its Draft Decision, the Authority's determination of reference tariffs is set out in Table 83 below.
1200. In its Draft Decision, the Authority outlined that the Final Decision would not be made in time for the revised tariffs to be in place by 1 January 2016. As permitted under NGR 92(3)(b), the Authority therefore adjusted the tariffs to reflect the delay in implementation. For the purposes of the Draft Decision it was assumed that the revised tariffs would take effect from 1 July 2016 and an adjustment would be made in the Final Decision if necessary to reflect any revised timings.
1201. In response to the concerns raised by CPMM in relation to the level of the non-reference tariffs, the Authority noted that its decision only related to reference tariffs and that DBP is free to negotiate non-reference tariffs with shippers.

²¹³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020 Supporting Submission 37*, 15 October 2015, p. 3.

Table 83 Draft Decision Approved Reference Tariffs(AA4), nominal \$ per GJ/day

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

Source: ERA, ERA Tariff Model, December 2015.

1202. The Authority required DBP to make the following amendment:

Required Amendment 18

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

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

DBP's Amended Proposal

1203. In its response to the Draft Decision, DBP notes it accepts the ERA's amendment by adopting a tariff split that reflects the fixed and variable costs associated with operating the DBNGP. It has amended the split in line with the 90/10 capacity/commodity split estimated in the Draft Decision.

1204. DBP has submitted a revised reference tariff model to the Authority. DBP's revised proposed reference tariffs are outlined in Table 84 below.

Table 84 DBP's Amended Reference Tariffs (AA4), real \$ per GJ/day

Real \$ at 31 December 2015	2016	2017	2018	2019	2020
Full Haul (\$/GJ/day):					
Capacity	1.395751	1.395751	1.395751	1.395751	1.395751
Throughput	0.154091	0.154091	0.154091	0.154091	0.154091
Total	1.549841	1.549841	1.549841	1.549841	1.549841
Part Haul (\$/GJ/day/km):					
Capacity	0.000998	0.000998	0.000998	0.000998	0.000998
Throughput	0.000110	0.000110	0.000110	0.000110	0.000110
Total	0.001108	0.001108	0.001108	0.001108	0.001108
Back Haul (\$/GJ/day/km):					
Capacity	0.000998	0.000998	0.000998	0.000998	0.000998
Throughput	0.000110	0.000110	0.000110	0.000110	0.000110
Total	0.001108	0.001108	0.001108	0.001108	0.001108

Source: DBP Tariff Model, Revenue Sheet, Rows 93-100

Further Submissions

1205. BHP Billiton supports that Authority's Draft Decision to adjust DBP's tariffs in accordance with the interval of delay from 1 January 2016 until the date the amendments to the current access arrangement take effect. BHP Billiton submits that DBP should be required to make the amendments required by the Authority in its Draft Decision, as it does not appear to have done so in its revised proposal.²¹⁴

Considerations of the Authority

1206. The Authority notes DBP has complied with Required Amendment 18 to the extent that it has modified the capacity/commodity split to better reflect the fixed and variable costs associated with operating the DBNGP. However, DBP did not amend the tariffs to reflect the Draft Decision.

1207. The Authority has updated its estimate of forecast reference tariffs to reflect adjustments made to total revenue as set out elsewhere in this Final Decision. The Authority's revised forecast reference tariffs are set out in Table 85 below.

1208. As set out in the Draft Decision, the Final Decision has not been made in time for the revised tariffs to be in place by 1 January 2016. Consistent with the Draft Decision, as permitted under NGR 92(3)(b), the Authority has adjusted the tariffs to reflect the delay in implementation. Consistent with the assumption in the Draft Decision, the revised tariffs will take effect on 1 July 2016.

²¹⁴ BHP Billiton, *Public Submission in response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016, pp. 2-3.

Table 85 Final Decision Approved Reference Tariffs, real \$ per GJ/day

Real \$ million at 31 December 2015	Jul-Dec 2016	2017	2018	2019	2020
Full Haul (\$/GJ/day):					
Capacity	1.148680	1.148680	1.148680	1.148680	1.148680
Commodity	0.126692	0.126692	0.126692	0.126692	0.126692
Total	1.275372	1.275372	1.275372	1.275372	1.275372
Part Haul (\$/GJ/day/km):					
Capacity	0.000821	0.000821	0.000821	0.000821	0.000821
Commodity	0.000091	0.000091	0.000091	0.000091	0.000091
Total	0.000912	0.000912	0.000912	0.000912	0.000912
Back Haul (\$/GJ/day/km):					
Capacity	0.000821	0.000821	0.000821	0.000821	0.000821
Commodity	0.000091	0.000091	0.000091	0.000091	0.000091
Total	0.000912	0.000912	0.000912	0.000912	0.000912

Source: ERA, ERA Tariff Model, June 2016.

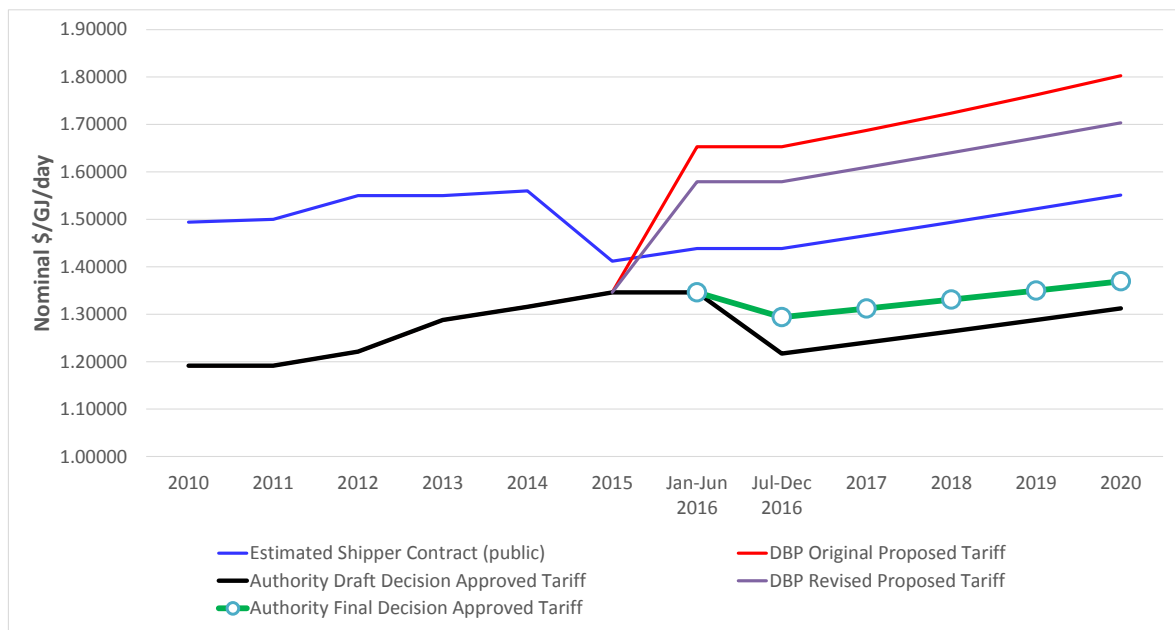
1209. Table 85 above shows the approved tariffs in real prices as at 31 December 2015. The Authority has indexed the 2016 tariff using the September CPI²¹⁵, consistent with the tariff variation mechanism for future years, to calculate the tariffs which will commence on 1 July 2016. The approved reference tariffs which will commence on 1 July 2016 and apply until 1 January 2017 are set out in below. These tariffs will be varied on 1 January 2017 in accordance with the tariff variation mechanism set out in the Access Arrangement.

²¹⁵ Based on September 2015 CPI Index of 108.0 and September 2014 CPI Index of 106.4.

Table 86 Final Decision Approved Reference Tariffs for 1 July 2016, nominal \$ per GJ/day

Nominal \$ per GJ/day	Tariff
Full Haul (\$/GJ/day):	
Capacity	1.165954
Commodity	0.128597
Total	1.294551
Part Haul (\$/GJ/day/km):	
Capacity	0.000833
Commodity	0.000092
Total	0.000925
Back Haul (\$/GJ/day/km):	
Capacity	0.000833
Commodity	0.000092
Total	0.000925

1210. For information, Figure 5 below compares the total T1 reference tariffs determined by the Authority with DBP's proposed tariffs and an estimate of the SSC tariff based on publicly available information.

Figure 5 Full Haul Tariff Comparison (AA4), nominal \$ per GJ/day

Source: ERA Tariff Model, Tariff Variation, DBP Tariff Model, Public information for estimate of Standard Shipper Contract tariff.²¹⁶

²¹⁶ The Standard Shipper Contract tariff is not published. The values for 2010 to 2014 have been taken from *2014/15 Margin Peak and Margin Off Peak Assumptions Report – Public*, Sinclair Knight Merz, 10 September 2013, published on the AEMO website http://wa.aemo.com.au/docs/default-source/rules/imo-wem-procedures-and-other-documents/sh43499_assumptions_report-v7_0-

Required Amendment 16

The Authority has determined the reference tariffs (in \$2015 prices) to be as set out in Table 85 of this Final Decision. The nominal tariffs which will apply on 1 July 2016 are as set out in Table 86 of this Final Decision.

[1_public.pdf?sfvrsn=0](#) . The value for 2015 has been derived by reducing the 2014 tariff by 9.5 per cent, reflecting the ASX announcement made by DBP on 7 August 2014 <http://www.duet.net.au/getattachment/ASX-releases/2014/DBP-recontracts-with-its-Shippers/DUET-ASX-Release-DBP-recontracting-7Aug14/DUET-ASX-Release-DBP-recontracting-7Aug14.pdf.aspx> . The ASX announcement notes the tariff will be escalated annually. The chart is based on an assumption that the indexation is in line with forecast CPI of 1.9 per cent per annum.

Tariff Variation Mechanism

Regulatory Requirements

1211. Rules 92 and 97 of the NGR set out requirements for an access arrangement to include a mechanism for variation of reference tariffs during an access arrangement period.

92. Revenue equalisation
- (1) A full access arrangement must include a mechanism (a reference tariff variation mechanism) for variation of a reference tariff over the course of an access arrangement period.
 - (2) The reference tariff variation mechanism must be designed to equalise (in terms of present values):
 - (a) forecast revenue from reference services over the access arrangement period; and
 - (b) the portion of total revenue allocated to reference services for the access arrangement period.
 - (3) However, if there is an interval (the interval of delay) between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence:
 - (a) reference tariffs, as in force at the end of the previous access arrangement period, continue without variation for the interval of delay; and
 - (b) the operation of this subrule may be taken into account in fixing reference tariffs for the new access arrangement period.
- ...
97. Mechanics of reference tariff variation
- (1) A reference tariff variation mechanism may provide for variation of a reference tariff:
 - (a) in accordance with a schedule of fixed tariffs; or
 - (b) in accordance with a formula set out in the access arrangement; or
 - (c) as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax); or
 - (d) by the combined operation of 2 or more or the above.
 - (2) A formula for variation of a reference tariff may (for example) provide for:
 - (a) variable caps on the revenue to be derived from a particular combination of reference services; or
 - (b) tariff basket price control; or
 - (c) revenue yield control; or
 - (d) a combination of all or any of the above.
 - (3) In deciding whether a particular reference tariff variation mechanism is appropriate to a particular access arrangement, the [ERA] must have regard to:

- (a) the need for efficient tariff structures; and
 - (b) the possible effects of the reference tariff variation mechanism on administrative costs of the [ERA], the service provider, and users or potential users; and
 - (c) the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed reference tariff variation mechanism; and
 - (d) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and
 - (e) any other relevant factor.
- (4) A reference tariff variation mechanism must give the [ERA] adequate oversight or powers of approval over variation of the reference tariff.
- (5) Except as provided by a reference tariff variation mechanism, a reference tariff is not to vary during the course of an access arrangement period.

DBP's Original Proposal

1212. The tariff variation mechanism is set out in clause 11 of the proposed revised access arrangement.

1213. In a supporting submission to its original proposal,²¹⁷ DBP indicated that the tariff variation mechanism continues to allow for the variation of the reference tariff by way of the combined operation of two or more of the examples listed in NGR 97(1). Specifically, the proposed tariff variation mechanism comprised the following mechanisms:

- CPI formula variation;
- tax change variation; and
- new cost pass-through variation.

1214. DBP proposed retaining these mechanisms with some modification, as follows:

- The CPI formula variation was modified to allow for the introduction of a revenue cap price control, rather than the current price cap control.
- The tax change variation mechanism was modified to remove “carbon costs” (which has been added to the new cost pass-through variation instead) and modify the approval process.
- The new cost pass-through variation was modified to include carbon costs and modify the approval process, similar to the process proposed for the tax change variation mechanism. DBP also proposed amending the description of new costs (in (new) clause 11.5(a)(iii)) by replacing the words “*could not be predicted prior to*” with “*were not included in the Operators’ forecast operating expenditure*”.

²¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14*, 31 December 2014.

1215. DBP further proposed the addition of two tariff variation mechanisms to apply for the fourth access arrangement period (AA4):
- a “revenue cap adjustment” (that is, establishing a revenue cap price control in place of the current price cap control); and
 - a “trailing average cost of debt annual update variation” (that is, annual updating of the tariff to reflect that the rate of return on debt has been estimated using a methodology that results in the potential for the return on debt to vary across regulatory years in the access arrangement period).
1216. DBP noted that the proposed revenue cap adjustment is a means by which the reference tariff is varied in a way that establishes the revenue cap price control for the access arrangement period. DBP stated that the proposed revenue cap price control is consistent with rules 97(1)(b) and 97(2)(c) of the NGR.
1217. Further, DBP noted that more than 85 per cent of its revenues are earned from contracts that have negotiated tariffs that are not tied to the reference tariffs during the access arrangement period. Consequently, DBP considered it difficult to justify the inclusion of a traditional revenue cap variation mechanism – a revenue cap could not just apply to customers paying the reference tariff as this would lead to cost allocation implications between negotiated shippers and reference tariff shippers. Hence, DBP proposed an approach that will use the concept of “regulated earned revenues” (**RER**), rather than assessing actual revenues from all shippers, or from a small set of shippers.
1218. DBP considered RER were the revenues the benchmark efficient entity operating the DBNGP (rather than DBP itself) would earn with the same capacity and throughput as in actual operations, but on the assumption that all customers are paying the regulated tariff. DBP proposed that:
- Total revenue is set for each year of the access arrangement period, referred to as the “initial total revenue” (**ITR**).
 - In December of each year the tariff model is updated for the RER during that year and the extent to which it varies compared to the ITR and any change in forecast contracted capacity and throughput for the remaining period. This creates a new “allowed revenue” (**AR**) for the next year, as well as new reference tariff to apply from 1 January each year.
1219. DBP noted that, while a new AR is determined each year, the costs that are used to determine each of the building blocks required to calculate total revenue do not change during the period – it is only the allocation of the ITR across the pipeline services of the benchmark efficient entity that may change from year-to-year.
1220. DBP’s proposed revenue cap adjustment was adjusted by the WACC to reflect the time value of money. To obtain the relevant “capacity” and “throughput tariffs” (**CT** and **TT** respectively) for a given year, DBP proposed multiplying the AR by the split between capacity and throughput and dividing each by the expectation formed in December of a given year of the capacity and throughput for the following year.
1221. DBP submitted that its proposed revenue cap form of price control should be acceptable to the Authority on the following basis:²¹⁸

²¹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14*, 31 December 2014, pp. 5 – 6.

- (a) DBP's proposed revenue cap approach is more likely to achieve the Revenue and Pricing Principles in Section 24 of the National Gas Law. Specifically that DBP should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services and complying with a regulatory obligation or requirement. Under the current price cap approach if approved forecast contracted capacity and throughput prove to be overly optimistic DBP will not be afforded the opportunity to recover the efficient costs in providing the reference services.
- (b) The revenue cap tariff variation mechanism gives consumers comfort that if DBP's proposed forecast contracted capacity and throughput process to be overly pessimistic DBP will not attract more than the total revenue determined by the ERA i.e. if spare capacity is contracted for in the AA Period the reference tariff will be revised down accordingly.
- (c) The importance of volume forecasts is reduced under the proposed reference tariff mechanism however - DBP is still incentivised to propose forecasts that are reasonable and best in the circumstances for the following reasons:
 - (i) To reduce the volatility in the prevailing reference tariff;
 - (ii) Total Revenue is fixed over the regulatory period; and
 - (iii) To the extent costs are determined by volume (i.e. fuel gas) if demand is greater than expected the costs would exceed proposed forecast for operating expenditure reducing profits.
- (d) Administrative costs are minimal. DBP will carry out the tariff variation mechanism for the ERA's review and approval consistent with the existing tariff variation mechanisms. The administrative costs of the ERA are not expected to be significantly different to the costs it has incurred in reviewing the tariff variation mechanism of the Current AA. *[sic]*

1222. A summary and explanation of DBP's proposed tariff variation in relation to the trailing average cost of debt variation was included in a separate supporting submission²¹⁹ (which was discussed in Appendix 4 of the Authority's decision).

Submissions

Tax change variation and new cost pass-through variation

1223. CPMM supported a cost pass through mechanism that allows DBP to mitigate any direct costs that it might incur as a result of unforeseen changes in law or tax. However, CPMM considered DBP's proposed tariff variation mechanism was too complex and should not be accepted. CPMM considered, that in order for DBP's true input costs for risk allocation to be correct, there must be no chance of over or under recovery for shippers who are using the reference service. CPMM also considered that a flat increase in the tariff component, which includes non-variable components, was inappropriate and therefore variation should apply only to variable input cost components of the tariff.²²⁰ CPMM further submitted that, for any cost escalation risk that DBP agrees to absorb in its commercial dealings with

²¹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12*, 31 December 2014.

²²⁰ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 12.

recontracting shippers, the NGO requires this risk to remain with DBP for the duration of the fourth access arrangement period.

1224. WESCEF suggested DBP's proposed amendments remove the requirement for the regulator to approve tariff variations, and may therefore hinder the regulator from objecting to variations unless it does so on the specific grounds set out by DBP in its proposal. WESCEF submitted that this is inappropriate for a regulated asset.²²¹ Further, the notice period for a change in tariffs (clause 11.4) should revert to 30 days, as tariff changes can have a substantial impact on DBP and its customers.
1225. Additionally, WESCEF submitted that DBP's proposed deletion of the words "*could not be predicted prior to the*" in clause 11.5(a)(iii) should not be approved, because the change will act as a mechanism for DBP to recover costs that were not originally recovered due to an oversight on the part of DBP.²²² WESCEF also considered that clause 11.5(e) should not be approved, because it would enable DBP to pass additional charges through to shippers that had not been approved by the regulator.
1226. BHP Billiton submitted that the breadth of expenses that are potentially covered by DBP's proposed pass-through regime is too broad, and therefore, has the potential to lower the risks of the DBNGP to the extent that this should be reflected in a lower rate of return.²²³ BHP Billiton suggested that the cost pass-through events in DBP's current access arrangement be retained – that is, cost pass-through events are limited to costs associated with a change in law, and additional costs payable to the Land Access Minister.²²⁴

Revenue cap price control

1227. CPMM expressed concerns that third parties seeking new or recontracted access to the DBNGP would pay a disproportionate share of the cost burden due to the pairing of a higher reference tariff and a revenue cap adjustment, as well as from the discount that DBP has given to other shippers who accepted DBP's recontract deal.²²⁵
1228. WESCEF submitted that DBP's proposed revenue cap adjustment for its reference tariffs would have the effect of transferring volume risk to shippers contracted to the pipeline, and that this would introduce volatility into DBP's tariffs.²²⁶ WESCEF also considered that DBP's proposed revenue cap adjustment should be rejected, and

²²¹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 4.

²²² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 4.

²²³ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 12.

²²⁴ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 12.

²²⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the ERA's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 11 June, 2015, p. 11.

²²⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 3.

that CPI escalation should remain as an escalation of the reference tariffs, rather than of the initial total revenue.²²⁷

1229. BHP Billiton submitted that if demand risk is transferred to shippers, then it would be appropriate for the regulatory decision to include a lower rate of return in the calculation of reference tariffs than would apply under a price cap.²²⁸
1230. BHP Billiton also contended that as a transmission network operator, DBP was able to facilitate the market for gas demand and the use of its asset, and that a price cap (rather than a revenue cap) would therefore incentivise DBP to promote efficient use of its infrastructure.²²⁹ BHP Billiton considered that there exists the potential for a number of issues regarding the application of a revenue cap in the context of the DBNGP, including:²³⁰
- the provisions proposed by DBP are vague and would therefore require significant revision in order to ensure that DBP does not simply classify new load as being on services that are outside of the cap, and to classify reductions in load as pertaining to services that are within the cap, thereby allowing DBP to retain any additional revenue;
 - demand forecasts must be carefully reviewed by the Authority for reasonableness, as the reference tariffs proposed by DBP assume a substantial drop from the third access arrangement period in both capacity reservation and throughput; and
 - the proposed conforming capital expenditure recently incurred for increasing the capacity of the pipeline should be examined carefully in the context of the forecasts for reduced throughput and capacity reservation.

Draft Decision

1231. The Authority considered each of DBP's proposed amendments to the tariff variation mechanism, as set out in turn below.

CPI formula variation

1232. The Authority did not accept DBP's proposed revenue cap price control (refer paragraph 1249 below). Consequently, it also did not accept the proposed changes to the CPI formula variation and required the following amendment:

Required Amendment 19

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

²²⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June, 2015, p. 3.

²²⁸ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

²²⁹ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

²³⁰ BHP Billiton, *Public Submission in Response to DBNGP (WA) Transmission Pty Ltd's Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May, 2015, p. 11.

Tax change variation

1233. The Authority noted DBP's proposal to amend (new) clause 11.4 of the proposed revised access arrangement, which details the meaning of "tax changes variation" as follows.

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

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

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

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

1234. The Authority considered that moving the provision for carbon tax from the “tax changes variation” to the “new costs variation” was reasonable, particularly as potential future costs in relation to carbon may not be in the form of a tax change. However, in considering the proposed amendment, the Authority noted that it was unclear why there was a need for separate variations for “tax changes” and “new costs”. The Authority considered 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 was identical. The Authority required the following amendment:

Required Amendment 20

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

1235. The Authority noted DBP’s proposal to revise the approval process effectively results in the regulator being required to object to a proposed tariff variation for it to not take effect, and also prescribes the form and criteria for how the regulator can make an objection. The Authority referred to NGR 97(4) that requires a tariff variation to give the regulator adequate oversight or powers of approval over variation of the reference tariff. The Authority considered DBP’s proposed revisions did not provide the regulator with adequate oversight or powers of approval in relation to tariff variations. On that basis, the Authority did not approve the proposed revisions and required the current approach, where DBP must seek the regulator’s approval for a tariff variation, to be maintained.

1236. In relation to DBP’s proposal that increases in tariffs due to a tariff variation may be invoiced within 50 business days of the variation taking effect, the Authority noted this time period was the same as the current time period by which DBP must refund any decreases. The Authority considered applying a similar time period for implementing tariff increases was reasonable.

1237. DBP proposed to reduce the current notice period for tariff variations from 30 business days to 20 business days. As noted by WESCEF, tariff changes could have substantial impact on DBP and its customers. The Authority noted DBP did not provide any reason for why it considered the time period should be reduced. The Authority considered reducing the time period would not provide adequate notice to customers of tariff variations and hence rejected the proposed shortening of the notice period.

1238. CPMM submitted that a flat increase in the tariff component, which includes non-variable components, was inappropriate and therefore variation should apply only to the variable input cost components of the tariff. The Authority noted the tariff variation mechanism did not specify how the tariff adjustment would be made. The Authority considered the tariff variation should be amended to specify that any variation in tariff is applied appropriately to either the “capacity charge” (if it relates to a fixed cost) or the “commodity charge” (if it relates to a variable cost).

1239. Taking the above matters into consideration, the Authority required the following amendment:

Required Amendment 21

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

11.411.3. Tax Changes Variation means the following mechanism:

- (a) The Operator has established the Reference Tariff for the Reference Service on the basis of forecast expenses for certain Taxes and Carbon Costs for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure (Included Taxes and Carbon Costs).
- (b) If a Tax Change occurs in relation to the Included Taxes and Carbon Costs during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs), then:
 - (i) if the changes in expenditure incurred or to be incurred as a result of the Tax Change are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services (Rule 91 Criteria) and the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator must vary the Reference Tariff to deal with the financial impact of the Tax Change; and
 - (ii) if the changes in expenditure incurred or to be incurred as a result of the Tax Change satisfy the Rule 91 Criteria and the changed amount of the relevant Included Tax and Carbon Cost is higher than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period - the Operator may vary the Reference Tariff to recover the financial impact of the Tax Change.
- (c) Before the Operator varies the Reference Tariff under clause 11.4(b)11.3(b), the Operator must provide a written notice to the Regulator (Tax Change Notice) which:
 - (i) in the case of a Tax Change where the changed amount of the relevant Included Tax and Carbon Cost is lower than the amount for that relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure for the Current Access Arrangement Period – is submitted within 30 Business Days of the date when the Operator became aware of the relevant Tax Change;
 - (ii) outlines the amount of the relevant Included Tax and Carbon Cost that was included in the forecast operating expenditure in the Current Access Arrangement Period;
 - (iii) provides evidence of the amount of the Tax Change;
 - (iv) provides evidence that the Tax Change satisfies the Rule 91 Criteria;
 - (v) specifies the scope of the financial impact of the Tax Change;
 - (vi) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Tax Change; and
 - (vii) states the effective date for the variation to the Reference Tariff to take effect.
- (d) The Operator must not vary the Reference Tariff under clause 11.3(b)(ii) unless:

- (i) the Operator provides a Tax Change Notice to the Regulator; and
 - (ii) the Regulator, after considering the Tax Change Notice, gives prior written approval to the variation.
- (e) The Operator may submit one or more Tax Change Notices each Year. Each Tax Change Notice may incorporate a number of claims relating to different Tax Changes.
- (f) The minimum notice period for a Tax Change Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.
- (g) If the Tax Change Notice results in a reduction in the Reference Tariff, the Operator must, within 50 Business Days of the date of the Tax Change Notice pay each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.
- (h) If the Tax Change Notice results in an increase in the Reference Tariff, the Operator may, within 50 Business Days of the date of the Tax Change Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
- (i) the Charges actually paid by the Shipper between the date of the Tax Change and the date of the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Tax Change.
- (i) Any variation to the Reference Tariff under this clause 11.4 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

New cost pass-through variation

1240. The Authority noted DBP's proposal to amend (new) clause 11.5 of the proposed revised access arrangement, which details the meaning of "new costs pass through variation" as follows.

- 11.5 41.4 New Costs Pass Through Variation means the following mechanism:
- (a) The Operator may recover certain expenses it or its Related Bodies Corporate incur or are to incur if (but only if) the expenses:
 - (i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;
 - (ii) satisfy the Rule criteria in NGR 91—Criteria (1) for operating expenditure;
 - (iii) ~~could not be predicted prior to the~~ were not included in the Operators' forecast operating expenditure at the time at the revisions to the Access Arrangement were approved;
 - (iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.
 - (b) Expenses which satisfy all criteria in this clause ~~41.4(a)~~ 11.5(a) result in a Cost Pass Through Event.
 - ~~(c)(b)~~ Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause ~~41.4~~ 11.5 are:

- (i) Carbon Costs (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs);
- (ii)(i) a Change in Law; ~~and~~
- (iii) ~~Deleted~~; ~~and~~
- (iii) additional costs not included in the forecast operating expenditure that arise from a change in the type or level of the fees payable to the Land Access Minister under any Access Right relating to the DBNGP and granted under the Dampier to Bunbury Pipeline Act 1998; ~~and~~
- (iv) any other expenses that satisfy all criteria in clause 11.5(a).
- (d)(e) Before the Operator varies the Reference Tariff under this clause 41.4, 11.5, the Operator must ~~obtain~~ provide a written approval from the Regulator to vary the Reference Tariff by providing a notice to the Regulator (Cost Pass Through Event Notice) which:
- (i) ~~must include~~ sets out the substantiation for the Cost Pass Through Event justifying an actual or expected increase to ~~the~~ in the Operator's actual or forecast operating expenditure that is used to calculate the Total Revenue for each year (as applicable) as a result of the Current Access Arrangement Period;
- (ii) ~~provides~~ New Cost, together with the Operator's assumptions, reasons and available evidence—
- A ~~as to how~~ that justify its estimate of the financial impact of the New Cost Pass Through Event has increased the operating expenditure on the operation of the Operator or its Related Bodies Corporate in their roles as service providers on the DBNGP; ~~and~~;
- (ii) B ~~provides~~ the Operator's assumptions, reasons and available evidence that the expenses associated with the Cost Pass Through Event ~~satisfy the Rule 91 Criteria~~ are such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services;
- (iii) ~~specifies~~ the scope of the financial impact of the Cost Pass Through Event;
- (iii) sets out the amount by which the Reference Tariff is to be varied;
- (iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event; and
- (v) states the effective date for the variation to the Reference Tariff to take effect.
- (e) The variation to the Reference Tariff shall take effect on the Variation Date nominated in the Cost Pass Through Event Notice, which must be no earlier than 20 Business Days from the date of the Cost Pass Through Event Notice unless the Regulator, acting as a Reasonable and Prudent Person, objects to the proposed variation to the Reference Tariff on the basis that it can demonstrate one or more of the following grounds for objection:
- (i) the proposed variation to the Reference Tariff does not arise from a Cost Pass Through Event;

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

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

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

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

(g)(d) The Operator may submit one or more Cost Pass Through Notices each Year. Each Cost Pass Through Notice may incorporate a number of claims relating to different Cost Pass Through Events.

~~(e) The minimum notice period for a Cost Pass Through Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.~~

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

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

~~(ii) the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.~~

(h)(g) If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:

(i) the Charges actually paid by the Shipper between the date of the ~~Tax Change~~Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and

(ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.

(i) If the New Costs Pass Through Variation results in an increase in the Reference Tariff by an amount of one per cent or greater, the Operator may, within 50 Business Days of the date of the Cost Pass Through Event Notice invoice each Shipper for a Reference Service an amount equal to the difference between:

(i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and

(ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.

1241. As noted above in relation to the proposed revisions to the “tax changes variation” (refer to paragraph 1234), the Authority considered moving the provision for carbon tax from the tax changes variation to the new costs variation was reasonable, particularly as potential future costs in relation to carbon may not be in the form of a tax. However, in considering the proposed amendment, the Authority noted it is unclear why there is a need for separate variations for “tax changes” and “new costs”. The Authority considered 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 was identical.

1242. DBP proposed to replace the words “*could not be predicted prior to the*” in clause 11.5(a)(iii) with the words “*were not included in*” in relation to the definition of “new costs”. The Authority noted WESCEF’s submission, which considered the change would act as a mechanism for DBP to recover costs that were not originally recovered due to an oversight on the part of DBP. The Authority considered the current wording, “*could not be predicted prior to*” better reflected the intent of the tariff variation mechanism, which was to ensure any legitimate new costs in relation to changes in circumstance outside the control of DBP can be passed through to customers. On that basis, the Authority did not consider it appropriate to broaden the definition as proposed by DBP.
1243. The Authority noted DBP’s proposal to add a new clause 11.5(c)(iv) “any other expenses that satisfy all criteria in clause 11.5(a)”, which broadens the scope of the current new costs variation. BHP Billiton submitted that expanding the breadth of expenses that are potentially covered by DBP’s proposed pass-through regime has the potential to lower the risks of the DBNGP to the extent that it should be reflected in a lower rate of return. BHP Billiton suggested that the cost pass-through events in DBP’s current access arrangement should be retained as costs associated with a change in law, and additional costs payable to the Land Access Minister. The Authority considered the existing clause 11.5(c) adequately captures potential new costs by specifying changes in law and changes in fees payable to the Land Access Minister. The Authority did not consider a general clause, as proposed by DBP, was necessary or appropriate.
1244. As set out above in relation to the tax change variation, the Authority noted DBP’s proposed revisions to the approval process effectively result in the regulator being required to object to a proposed tariff variation for it to not take effect, and also prescribed the form and criteria for how the regulator can make an objection. The Authority referred to NGR 97(4), which requires a tariff variation to give the regulator adequate oversight or powers of approval over variation of the reference tariff. The Authority did not consider DBP’s proposal provided the Regulator with adequate oversight or powers of approval in relation to tariff variations. On that basis, the Authority did not approve the proposed revisions and required the current approach, where DBP must seek the regulator’s approval for a tariff variation, to be maintained.
1245. In relation to DBP’s proposal that increases in tariffs due to a tariff variation may be invoiced within 50 business days of the variation taking effect, the Authority noted this time period was the same as the current time period by which DBP currently must refund any decreases. The Authority considered that applying a similar time period for implementing tariff increases was reasonable.
1246. DBP proposed to reduce the current notice period for tariff variations from 30 business days to 20 business days. As noted by WESCEF, tariff changes can have a substantial impact on DBP and its customers. The Authority noted DBP had not provided any reason for why it considers the time period should be reduced. The Authority considered reducing the time period would not provide adequate notice to customers of tariff variations and rejected the proposed shortening of the notice period.
1247. CPMM submitted that a flat increase in the tariff component, which includes non-variable components, is inappropriate and therefore variation should apply only to variable input cost components of the tariff. The Authority noted the tariff variation

mechanism did not specify how the tariff adjustment should be made. The Authority considered the tariff variation should be amended to specify that any variation in tariff is applied appropriately to either the “capacity charge” (if it relates to a fixed cost) or the “commodity charge” (if it relates to a variable cost).

1248. Taking the above matters into consideration, the Authority required the following amendment:

Required Amendment 22

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

~~11.511.4.~~ 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 ~~11.511.4~~ 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 ~~11.511.4~~, the Operator must obtain written approval from the Regulator to vary the Reference Tariff by providing a notice to the Regulator (Cost Pass Through Event Notice) which:

(i) must include the substantiation for the Cost Pass Through Event justifying an increase to the operating expenditure that is used to calculate the Total Revenue for each year of the Current Access Arrangement Period;

(ii) provides evidence –

A. as to how the Cost Pass Through Event has increased the operating expenditure of the Operator or its Related Bodies Corporate in their roles as service providers on the DBNGP, and

B. that the expenses associated with the Cost Pass Through Event satisfy the Rule 91 Criteria;

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

- (iv) outlines the calculation of the proposed variation to the Reference Tariff as a result of the Cost Pass Through Event; and
- (v) states the effective date for the variation to the Reference Tariff to take effect.
- (d) The Operator may submit one or more Cost Pass Through Notices each Year. Each Cost Pass Through Notice may incorporate a number of claims relating to different Cost Pass Through Events.
- (e) The minimum notice period for a Cost Pass Through Notice to be issued before a variation to the Reference Tariff commences to have effect is 30 Business Days.
- (f) The Operator must not vary the Reference Tariff under clause 11.4(a) unless:
 - (i) the Operator provides a Cost Pass Through Event Notice to the Regulator; and
 - (ii) the Regulator, after considering the Cost Pass Through Event Notice, gives prior written approval to the variation.
- (g) If the New Costs Pass Through Variation results in a reduction in the Reference Tariff by an amount of one per cent or greater, the Operator must, within 50 Business Days of the date of the Cost Pass Through Event Notice pay each Shipper for a Reference Service an amount equal to the difference between:
 - (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event ~~Tax Change~~ and the date that the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (h) If the New Costs Pass Through Variation results in an increase in the Reference Tariff by an amount of one per cent or greater, the Operator may, within 50 Business Days of the date of the Cost Pass Through Event Notice invoice each Shipper for a Reference Service an amount equal to the difference between:
 - (i) the Charges actually paid by the Shipper between the date of the Cost Pass Through Event and the date that the variation to the Reference Tariff commenced to have effect; and
 - (ii) the Charges that the Shipper would have paid for that period if the variation to the Reference Tariff had taken effect on the Date of the Cost Pass Through Event.
- (i) Any variation to the Reference Tariff under this clause 11.5 must be applied appropriately to either the Capacity Charge (if the variation relates to a fixed cost), or the Commodity Charge (if the variation relates to a variable cost).

Revenue cap price control

1249. The Authority noted that DBP proposed inserting a new clause (clause 11.6) in its access arrangement to replace the current price cap control mechanism with a revenue cap price control.

1250. The Authority noted the requirements of NGR 97(2) and 97(3), as set out below:

- (2) A formula for variation of a reference tariff may (for example) provide for:
 - (a) variable caps on the revenue to be derived from a particular combination of reference services; or
 - (b) tariff basket price control; or
 - (c) revenue yield control; or

- (d) a combination of all or any of the above.
- (3) In deciding whether a particular reference tariff variation mechanism is appropriate to a particular access arrangement, the [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.
1251. The NGR 97(2) contemplates a revenue cap price control, however NGR 97(3) sets out the criteria the Authority must have regard to in determining the appropriate tariff variation mechanism.
1252. The Authority considered DBP's proposal to move from the current price cap price control to a revenue cap price control. As noted by BHP Billiton, 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 user of the pipeline.
1253. As set out in DBP's supporting submission, more than 85 per cent of its revenues are earned from contracts with negotiated tariffs not tied to the reference tariffs.²³¹ The Authority noted these negotiated tariffs are effectively a price cap and would not be adjusted for any changes in demand during AA4. DBP proposed that 80 per cent of the reference tariff would be based on a fixed charge, so a significant proportion of revenue is not affected by any change in demand.
1254. The Authority considered DBP's proposal to adjust revenue based on non-reference service volumes is complex and DBP did not provide any mechanism for certifying those volumes. As noted by BHP Billiton, the provisions proposed by DBP are vague and potentially could enable DBP to classify new load as being on services that are outside of the cap and to classify reductions in load as pertaining to services within the cap, thus allowing DBP to retain any additional revenue from new load whilst increasing reference tariffs for any reductions in load.
1255. In any case, as the current capacity is nearly all contracted, the Authority considered the risk of revenue under-recovery in relation to reference services during AA4 was low. Revenues would be rebased at the next access arrangement review, so the period of any potential over or under recovery was, in any case, short.
1256. The Authority considered the current price cap price control resulted in the best incentives for utilisation of the pipeline and meets the NGO. The Authority did not consider changing to a revenue cap would result in better incentives or achievement of the NGO. Furthermore, it would create practical difficulties in administering the

²³¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12*, 31 December 2014, p. 4.

price control mechanism. On that basis, the Authority did not approve DBP's proposal to introduce a revenue cap price control. The Authority required the following amendment:

Required Amendment 23

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

Trailing Average Cost of Debt Variation

1257. As set out in Appendix 4 of the Draft Decision, the Authority did not approve DBP's proposed methodology for the annual update of the cost of debt. Consequently, the tariff variation proposed by DBP also needed to be amended.

1258. The method and automatic formulas for updating the debt risk premium for each regulatory year were set out in Appendix 4G of the Draft Decision. The Authority indicated that it would provide the updated debt risk premium to DBP each year, and that DBP would be required to calculate revised reference tariffs, reflecting the updated debt risk premium, and submit these to the Authority for approval each year. The Authority required the following amendment:

Required Amendment 24

The Trailing Average Cost of Debt Tariff Variation must be amended to reflect the method and automatic formulas set out in Appendix 4G of this Draft Decision and to include calculation of the revised reference tariffs and submission to the Authority for approval.

DBP's Amended Proposal

1259. In response to the Authority's Draft Decision, DBP advises that it does not accept (Draft Decision) Required Amendments 19, 20, 21, 22, 23 or 24.²³² In support of its position, DBP provides the following information.

Response to Amendment 19 – CPI Formula Variation²³³

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.

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.

Response to Amendments 20, 21 and 22 – Tax Change and New Cost Variation Mechanisms²³⁴

7.1^[235] DBP has accepted some of the changes proposed by the ERA but has rejected others and proposes some further amendments to the access

²³² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 8.

²³³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, p. 25.

²³⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 26 – 36.

²³⁵ The Authority notes a paragraph numbering format error in DBP's *Supporting Submission 50* at p. 30 (that is, the paragraph numbering recommences at 7.1 on p. 30).

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.

Response to Amendment 23 – Revenue Cap²³⁶

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 [as identified by the headings] below.

Risk Allocation

Impact on DBP Revenue

Complexity and Lack of Certification of Non Reference Volumes

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

Ability to meet the NGO and practical difficulties

Response to Amendment 24 – Trailing Average Cost of Debt Variation²³⁷

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.

1260. DBP’s specific responses to (Draft Decision) Required Amendments 19, 20, 21, 22, 23 and 24 are considered and discussed in detail under the “Considerations of the Authority” section below (refer paragraph 1263 and following).

Further Submissions

1261. In its further submission to the Authority, and in response to DBP’s amended proposal, WESCEF submits in relation to:²³⁸

- Required Amendments 20 and 21 – that it is not particularly concerned that clauses 11.4 and 11.5 of the Access Arrangement be merged, provided that the drafting is

²³⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 37-39.

²³⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, p. 40.

²³⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, p. 2, paragraphs 3 and 4.

consistent (and reflects the Draft Decision) and that there is no scope for “double recovery” by DBP.

- Required Amendment 23 – WesCEF repeats its objection to the DBP’s proposed revenue cap adjustment. The proposed adjustment is unacceptable as it transfers volume risk to the shippers, which is inconsistent with the regulated rate of return for the asset. The adjustment will also introduce volatility in tariff prices. *[sic]*

1262. In its further submission to the Authority, and in response to DBP’s amended proposal, BHP Billiton indicates support for the Authority’s rejection of DBP’s proposed changes to the cost pass-through mechanism in the Draft Decision. Consistent with BHP Billiton’s previous submission (of 21 May 2015) BHP Billiton submits the following.²³⁹

[T]he breadth of expenses potentially captured by the amendments in the Revised Proposed Access Arrangement to the New Cost Pass Through Variations is too broad; and DBP’s proposed cost pass through mechanism improperly imposes a burden on the Authority to disprove the validity of a proposed cost through requested by DBP, which the Authority is required to discharge within an unreasonable timeframe.

Rule 97(4) of the NGR provides that the mechanism should give the Authority adequate oversight or powers of approval. BHP Billiton submits that DBP’s Revised Proposed Access Arrangement seeks to erode the Authority’s oversight and approval in a manner that is inconsistent with Rule 97(4).

In particular, consistent with the Authority’s Draft Decision⁸, DBP’s amendments to clause 11.5(a) and (b) should be rejected as the intent of the tariff variation mechanism is to ensure that only those legitimate new costs in relation to changes outside DBP’s control are passed on to customers.

In addition, DBP’s amendments to clause 11.5(d) provide that the reference tariff may be varied to reflect a new cost provided that the Authority does not object to such a cost pass through. Moreover, the clause appears to contemplate that the Authority may have as little as 20 business days from being notified of a variation to lodge an objection. Furthermore, the amendments specify limited grounds on which the Authority may reject a cost pass through.

This is different to the approach in the current access arrangement whereby the reference tariff cannot be varied until the Authority approves the variation (without reference to specific grounds). BHP Billiton submits that DBP’s amended process redirects the Authority’s efforts into justifying why a variation should be rejected, by reference to limited grounds and within a potentially restrictive timeframe, and not towards whether it should be approved. Accordingly, BHP Billiton submits that clause 11.5 as proposed by DBP in its Revised Proposed Access Arrangement should be rejected.

BHP Billiton submits that the above observations in relation to 11.5(d) apply equally to clause 11.4(d) (regarding tax changes) as proposed by DBP in its Revised Proposed Access Arrangement.

Considerations of the Authority

CPI formula variation (RA 19)

1263. Consistent with the Authority’s Final Decision to not accept DBP’s proposed revenue cap price control (refer paragraph 1287 below), the Authority does not accept DBP’s

²³⁹ BHP Billiton, *Public Submission in Response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016, pp. 7 and 8.

proposed changes to the CPI formula variation. The CPI Formula Variation must be amended to reflect retaining a price cap.

Required Amendment 17

The Authority has determined that CPI Formula Variation must be amended to reflect retaining a price cap.

Tax changes and new cost pass-through variations (RAs 20, 21 and 22)

1264. The Authority's Draft Decision (at Required Amendment 20) required DBP to consider merging clauses 11.4 and 11.5 of the amended access arrangement to cover both "tax changes" and "new cost pass-through" variations to simplify drafting and to ensure approval process consistency for both variations. As indicated above (at paragraph 1259) DBP's amended proposal does not accept this requirement.
1265. DBP submits that the assessment of "tax changes" and "new costs" involve different considerations and that the assessment of cost pass throughs for "tax changes" and "new costs" should differ. Specifically:²⁴⁰

- 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 (i.e. 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 prudence and efficiency requirements in NGR 91(1).
- 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

²⁴⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 30 – 31, paragraphs 7.5 to 7.7.

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.

1266. The Authority agrees with DBP that a qualitative assessment of prudence and efficiency may not be required in relation to the assessment of a cost pass through in respect of direct costs resulting from a tax change. However, it is noted that the definition of "tax" in the amended access arrangement is extremely wide. Further, the cost pass through is not expressly limited to *direct* costs as a result of a tax change, so it is possible that DBP may seek to include a wider category of expenditure that it says it incurs "as a result of the Tax Change". In these circumstances, the Authority is of the view that it is reasonable to retain the restriction on the pass through of expenditure related to a tax change to expenditure that meets the prudence and efficiency requirements of NGR 91(1).
1267. Whilst the Authority remains of the view that removing the "tax changes" variation and expanding the "new costs" variation to include tax changes could simplify the drafting and administration of these variation mechanisms, the Authority accepts DBP's decision not to merge clause 11.4 and 11.5 of the amended access arrangement. Hence the Authority is satisfied that DBP's amended proposal addresses (Draft Decision) Required Amendment 20.
1268. Subject to (Draft Decision) Required Amendment 20, the Authority's Draft Decision also required DBP to amend the drafting of clause 11.4 and 11.5 of the amended access arrangement, as specified in (Draft Decision) Required Amendments 21 and 22 respectively. As indicated above (at paragraph 1259) DBP's amended proposal does not accept Required Amendments 21 and 22.
1269. In support of its position, DBP has responded to the Authority's Draft Decision reasoning, for not approving its proposal to amend clauses 11.4 and 11.5 of the access arrangement, with additional information grouped under the following headings.²⁴¹ The Authority has considered this information, in turn, below.
- 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
 - 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)
 - Reduction in notice period from 30 business days to 20 business days

²⁴¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 31 – 35.

- Direction as to accounting treatment for application of Tariff Variations
- Definition and application of New Cost
- Clause 11.5(c)

Mechanism requirements

1270. DBP summarises its proposed requirements for the “tax changes” and “new cost pass-through” variation mechanisms as follows.²⁴²

- 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

²⁴² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 31 – 32, paragraphs 7.10 to 7.13.

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”.

1271. The Authority notes DBP’s summary (above) of how its proposed pass-through variation mechanisms are intended to work. The specifics of these mechanisms, are considered below.

Adequate oversight or powers of approval

1272. DBP does not agree with the Authority’s Draft Decision position that the proposed variation mechanisms do not provide the regulator with adequate oversight or powers of approval in relation to tariff variations as required by NGR 97(4).²⁴³ In response to the Authority’s position, DBP makes the following submissions.²⁴⁴

- 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.

²⁴³ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 629 and 637.

²⁴⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 32 – 33, paragraphs 7.14 to 7.17.

- (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.

1273. The Authority remains of the view that DBP's proposed mechanism for oversight or approval of reference tariff variations is not adequate and is not consistent with the NGO. Reasons for this are as follows.

- The Authority must take into account the NGO in considering whether DBP's proposed mechanism is appropriate. DBP's reference tariff variation mechanism effectively reverses the onus of proof in respect of the proposed change. That is, provided DBP issues a relevant notice in relation to the proposed change, the change takes effect within 20 business days of DBP's notice unless the Authority issues a written objection (presumably, prior to that date) and demonstrates (it is not clear to whose satisfaction) one of the grounds specified in the access arrangement is not met.
- The Authority is of the view that, apart from the CPI Formula Variation, the other proposed tariff variation mechanisms are described in broad terms and do not involve simple application of a mechanical formula. In these circumstances, the Authority is of the view that adequate oversight or powers of approval under NGR 97(4) require a positive decision on the part of the regulator that a proposed variation meets the criteria in the access arrangement and is consistent with the NGO before it be given effect. An

automatic approval of the reference tariff variation as a result of a delayed response by the Authority would not be consistent with NGR 97(4). The Authority also considers that it is inappropriate under NGR 97(4), and inconsistent with the NGO, for the Authority to bear the onus of demonstrating that the proposed variation does not meet the relevant criteria. It is DBP who should bear the onus and cost of demonstrating, to the Authority's satisfaction, that its proposed tariff variation is consistent with the criteria specified in the access arrangement and the NGO.

Notice Period

1274. In response to the Authority's Draft Decision to reject DBP's proposal to reduce the notice period for tariff variations from 30 to 20 business days,²⁴⁵ DBP makes the following submissions.

- 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.

1275. The Authority notes DBP's submissions with respect to the notice periods for tax change variation and new cost pass through variation assessments, and, in particular, DBP's decision to restore the notice period for both assessments to 30 business days. The Authority is satisfied that this amendment addresses the requirements of the Draft Decision in respect of the notice period provisions of clauses 11.4 and 11.5 of the amended access arrangement.

Accounting treatment for application of tariff variations

1276. The Authority's Draft Decision agreed with CPMM's submission that a flat increase in the tariff component that includes non-variable components is inappropriate, and variations should apply only to the variable input cost components of the tariff. That is, any variation in tariff should be applied appropriately to either the "capacity charge" (if it relates to a fixed cost), or the "commodity charge" (if it relates to a variable cost).²⁴⁶

1277. In response to the Authority's position, DBP makes the following submission.²⁴⁷

- 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

²⁴⁵ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 631 and 639.

²⁴⁶ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 632 and 640.

²⁴⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 33 – 34, paragraphs 7.21 to 7.22.

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.

1278. As discussed above (refer paragraph 1266), the Authority is of the view that, given the width of the new tax cost pass through mechanism, it cannot be assumed that the proposed variation expenditure will have the same impact as the original included tax. Accordingly, the Authority requires DBP to implement all of its required changes to the accounting treatment of tariff variations.

Definition and application of new cost and wording of (new) clause 11.5(c)

1279. The Authority's Draft Decision²⁴⁸ rejected DBP's (original) proposal to widen the application of the "new cost pass-through variation" mechanism by changing the words of clause 11.5(a)(iii) and adding a new clause 11.5(c)(iv). DBP's (original) proposal is set out below.

11.511.4 New Costs Pass Through Variation means the following mechanism:

- (a) The Operator may recover certain expenses it or its Related Bodies Corporate incur or are to incur if (but only if) the expenses:
- (i) are or will be incurred as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate;
 - (ii) satisfy the Rule criteria in NGR 91-Criteria (1) for operating expenditure;
 - (iii) ~~could not be predicted prior to the~~ were not included in the Operators' forecast operating expenditure at the time at the revisions to the Access Arrangement were approved;
 - (iv) were not included in the Total Revenue for one or more years of the Current Access Arrangement.
- (b) Expenses which satisfy all criteria in this clause ~~11.4(a)~~11.5(a) result in a Cost Pass Through Event.
- (c) ~~(b)~~Cost Pass Through Events which can be recovered through the operation of the mechanism in this clause ~~11.4~~11.5 are:
- (i) Carbon Costs (including any Carbon Costs attributable to the operation of the DBNGP whether incurred by the Operator directly, by payment to any third party or by reimbursement to any of its Related Bodies Corporate where any of those persons are liable for the payment of such Carbon Costs);
 - (ii) ~~(i)~~ a Change in Law; ~~and~~
 - (ii) ~~(ii)~~ ~~[Deleted]~~; ~~and~~
 - (iii) additional costs not included in the forecast operating expenditure that arise from a change in the type or level of the fees payable to the Land Access Minister under any Access Right relating to the DBNGP and granted under the Dampier to Bunbury Pipeline Act 1998; and
 - (iv) any other expenses that satisfy all criteria in clause 11.5(a).

²⁴⁸ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 635 and 636.

1280. DBP does not accept the Authority's position (rejecting its proposal) and makes the following submissions.²⁴⁹

- 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 prudence and efficiency tests in NGR 91(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 [Access Arrangement] 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.
- 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

²⁴⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 34 and 35, paragraphs 7.23 to 7.33.

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 Billiton'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.

1281. The Authority is of the view that the intent of the words "*could not be predicted*" (at clause 11.5(a)(iii)) is to exclude, as cost pass through events, events that DBP should reasonably have been able to foresee at the time of the access arrangement approval process and should therefore have included in its cost forecast at that time. However, the Authority agrees with DBP that the words "*as a result of circumstances beyond the control of the Operator or the relevant Related Body Corporate*" (at clause 11.5(a)(i)) is likely to act as a restriction on DBP's ability to rely on the provision for the pass through of some foreseeable events. But "foreseeability" of an event is different to the question whether the occurrence of the event is beyond DBP's control. It is possible for an event to be foreseeable at the time of the access arrangement and also beyond DBP's control in the sense that DBP is not responsible for the occurrence of the event.

1282. Further, the Authority rejects DBP's submission that, without its amendment to clause 11.5(c)(iv), clause 11.5(c) should be deleted in its entirety. DBP's proposed clause 11.5(c)(iv) is drafted in general terms, and is designed to catch any expenses satisfying the criteria in clause 11.5(a). NGR 97(1)(c) requires a variation of a reference tariff as a result of a cost pass-through to be a defined event. The example

given in the provision is of a cost pass-through for a particular tax. The Authority is of the view that DBP's proposed clause 11.5(c)(iv) is inconsistent with the requirement that a cost pass through event be a defined event in NGR 97(1)(c) and, as such, rejects this proposed amendment.

Additional changes to the tariff variation mechanisms

1283. In responding to the Authority's Draft Decision requirements, DBP indicates that it has identified additional amendments to the tariff variation mechanisms in clauses 11.4 and 11.5 (and associated definitions).²⁵⁰ The additional amendments comprise:

- the definition of "tax change" being amended to delete sub-clause (c);
- the definition of "tax change notice" being amended to correct a cross-reference (from 11.3(c) to 11.4(c));
- the definition of "tax changes variation" being amended to correct a cross-reference (from 11.3 to 11.4);
- changes in drafting to clause 11.4(b) to remove the words "*in relation to the Included Taxes*";
- changes in drafting to clause 11.4(c)(i) to include the words "(if any)";
- the deletion of clause 11.5(c) from the access arrangement; and
- the deletion of the defined terms "tax change" and "new costs" from the access (shipper) contract terms and conditions.

1284. The Authority notes that aside from one of DBP's proposed additional amendments to the tariff variation mechanisms (that is, the deletion of clause 11.5(c)), the additional amendments are to correct drafting/formatting errors or are consequential amendments. Unless otherwise specified in this Final Decision, the Authority accepts these additional amendments to the amended access arrangement.

1285. For the reasons set out above (at paragraph 1273), the Authority requires DBP to amend the drafting of the tariff variation mechanisms in clauses 11.4 and 11.5 of the amended access arrangement, as previously specified in (Draft Decision) Required Amendments 21 and 22 respectively.²⁵¹

1286. For the reasons set out above (at paragraphs 1281 to 1282), the Authority does not agree to the deletion of clause 11.5(c) from the amended access arrangement or DBP's proposed new clause 11.5(c)(iv).

²⁵⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 35-36, paragraphs 7.34 to 7.42.

²⁵¹ The Authority notes that there are clause numbering (formatting) inconsistencies within clause 11.4 and 11.5 of the access arrangement that need to be addressed in the final approved access arrangement document.

Required Amendment 18

Clauses 11.4 (tax change variation mechanism) and 11.5 (new cost pass-through variation mechanism) of the amended access arrangement must be amended as previously specified in Draft Decision Required Amendments 21 and 22 respectively.

Draft Decision Required Amendments 21 and 22 must be further amended to include DBP's proposed additional amendments put forward in its amended proposal that, unless otherwise specified, are accepted.

Revenue cap price control (RA 23)

1287. The Authority's Draft Decision (at Required Amendment 23) required DBP to retain the existing price cap price control mechanism in the proposed revised access arrangement. As indicated above (at paragraph 1259) DBP's amended proposal does not accept this requirement. In support of its position, DBP provides additional information under the following headings:

- Risk Allocation;
- Impact on DBP Revenue;
- Complexity and Lack of Certification of Non Reference Volumes;
- Ability of DBP to manipulate classification of loads to earn higher revenue; and
- Ability to meet the NGO and practical difficulties.

1288. The Authority has considered this additional information in turn below.

Risk Allocation

1289. In its Draft Decision, the Authority noted (as did BHP Billiton) that *"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"*.²⁵² DBP submits that:

- 8.4 ... 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). The logical result of the revenue and pricing principles (upon which investors in DBP rely to underpin their investment) is that provided DBP opex and capex is proven to be efficient and prudent, demand risk should lie with customers rather than with DBP. *[sic]*

1290. The Authority notes that the revenue and pricing principles do not prefer one control mechanism under NGR 97(2) over another. In the case of price regulation (tariff basket price control), the objective of determining reference tariffs for an access arrangement period is to set tariffs that will provide an incentive to the service provider to operate efficiently so as to earn, or exceed, the total revenue that a

²⁵² Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, p. 153, paragraph 645.

benchmark efficient service provider would earn. That is, under price regulation, unlike revenue regulation, the demand forecasting risk is borne by the service provider. This is consistent with the revenue and pricing principle (24(3)), which requires a service provider to be provided with effective incentives in order to promote economic efficiency with respect to reference services provided by the service provider. Revenue and pricing principles (24(4)) and (24(5)) are also relevant as they require regard to be had to the economic costs and risks of the potential for:

- under and over investment by a service provider in a pipeline; and
- under and over utilisation of a pipeline with which a service provider provides pipeline services.

Impact on DBP Revenue

1291. The Authority set out the following considerations in its Draft Decision.²⁵³

- The Authority noted in DBP's (original) submission that more than 85 per cent of its revenues were earned from contracts with negotiated tariffs that were not tied to reference tariffs. Hence, these negotiated tariffs were effectively a price cap that would not be adjusted for any changes in demand during the fourth access arrangement (AA4) period.
- The Authority further noted that DBP was proposing that 80 per cent of the reference tariff would be based on a fixed charge, meaning that a significant proportion of revenue would not be affected by any change in demand.
- The Authority expressed a view that, based on current capacity being nearly all contracted, the risk of revenue under-recovery (in relation to reference services) during AA4 was low. The revenues would be "rebased" at the next access arrangement review, so the period of any potential over or under-recovery would, in any case, be short.

1292. In response to the Authority's (Draft Decision) considerations above, DBP submits the following.²⁵⁴

- 8.5 [W]hilst 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 [draft decision] 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

²⁵³ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraphs 646, 647 and 649.

²⁵⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, p. 38, paragraphs 8.5 to 8.7.

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 Draft Decision] – 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.

1293. The Authority notes that DBP’s “spare capacity register” has not been updated to reflect the additional relinquished capacity outlined by DBP in its amended response to the Draft Decision. That is, the Authority notes that DBP’s amended proposal and supporting submissions were made to the Authority in February 2016, and the spare capacity register (available from DBP’s website) states that it is current as of May 2015.²⁵⁵
1294. In considering DBP’s submissions (above), the Authority has had regard to the revenue and pricing principles of the NGL(WA), and in particular the principles that:
- DBP should be provided with a reasonable opportunity to recover at least the efficient costs it incurs in providing reference services, and complying with a regulatory obligation or requirement (“Principle 24(2)”); and
 - a reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which the tariff relates (“Principle 24(5)”).
1295. In relation to Principle 24(2), the Authority considers that DBP will be provided with reasonable opportunity to recover its efficient costs over the forthcoming access arrangement period based on the demand forecasts for that period. In this regard, the Authority has given detailed consideration to the demand forecasts to be used elsewhere in this Final Decision (refer paragraph 233 and following). In response to DBP’s submission that if the forecast contracted capacity and throughput approved by the Authority prove to be overly optimistic there would be a significant impact to DBP’s actual revenue, the Authority considers this is unlikely to occur. The Authority has no reason to consider the forecasts it approves will be overly optimistic (or pessimistic).
1296. In relation to Principle 25(5), the reference tariffs determined by the Authority under this Final Decision has allowed for a return commensurate with the regulatory and commercial risks involved in providing the reference services to which the tariffs relate. In this regard, the Authority has given detailed consideration to the determination of the relevant reference tariffs elsewhere in this Final Decision.
1297. The Authority has considered DBP’s submission that its proposed revenue cap will not result in an over or under recovery of total revenue and, hence, ensure that DBP will at least recover its efficient costs and better meets the revenue and pricing principle. The Authority is of the view that these outcomes are similarly achieved by the existing price cap that also better supports effective incentives to promote

²⁵⁵ DBNGP (WA) Transmission Pty Ltd, *DBNGP Capacity Register, Current as at May 2015*. Available at: <http://www.dbp.net.au/wp-content/uploads/2015/05/20150527-DBNGP-Capacity-Register.pdf> (accessed 11 June 2016).

economic efficiency (which is another revenue and pricing principle²⁵⁶). That is, the Authority considers that the price cap will additionally, in and of itself, provide an incentive for DBP to undertake efficient investment in the DBNGP so that the provision of pipeline services satisfies the demand of existing users, and will meet any future increases in demand.

Complexity and Lack of Certification of Non Reference Volumes

1298. The Authority's Draft Decision considered that DBP's proposal to adjust revenues based on non-reference service volumes was complex and noted that DBP had not provided any mechanism for certifying those volumes.²⁵⁷ Further, as noted by BHP Billiton, the provisions proposed were vague and could potentially enable DBP to classify new load as being on services that were outside the revenue cap, and to classify reductions in load as pertaining to services within the revenue cap, thus allowing DBP to retain any additional revenue from new load whilst increasing reference tariffs for any reductions in load.

1299. In response to the Authority's Draft Decision position, 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 [Authority] to reject it*".²⁵⁸ Furthermore:

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 [of DBP's Supporting Submission 57] 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.

1300. The Authority assumes that DBP's reference to a "public gas notice board" is in fact a reference to the Gas Bulletin Board (**GBB**) maintained by the Australian Energy Market Operator (**AEMO**). The relevant supporting information that DBP refers to concerning the information available on the GBB is as follows.²⁵⁹

²⁵⁶ Section 24(3) of the NGL(WA) states that "A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes— (a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and (b) the efficient provision of pipeline services; and (c) the efficient use of the pipeline.

²⁵⁷ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraph 648.

²⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, p. 38, paragraphs 8.8 to 8.11.

²⁵⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 8 and 11, paragraphs 2.23 and 2.34.

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)).

...

2.34 ... DBP is obligated under the relevant statutory regimes governing both the retail market and the gas bulletin board to not provide misleading information.

1301. The Authority notes DBP's claim that the information available via the GBB can be used to verify DBP's actual capacity and throughput for the prior year, and hence, DBP does not need to provide a separate verification mechanism. Whilst DBP makes this claim, DBP further states that *"it does consider it appropriate that actual capacity and throughput volumes [to] be justified to the [Authority] before any true up tariff adjustment is made"*.
1302. DBP's claim that the GBB can be used to verify DBP's actual capacity and throughput for the purposes of establishing the "true-up" adjustment for its proposed revenue cap appears to conflict with the information provided by DBP in relation to demand forecasts, which indicated that the GBB volumes cannot be reconciled with chargeable volumes. As set out in its consideration of DBP's demand forecasts, and based on the information provided by DBP in relation to how the figures reported on the GBB are derived, the Authority accepted it is not possible to reconcile the GBB volumes with the information used for the purposes of determining chargeable volumes, and therefore the volumes required for the demand forecast. In particular, as stated by DBP, the flow reported on the GBB is the sum of gas delivered to outlet points regardless of whether the deliveries are full haul, part haul or back haul and provides no information in regard to the type of transportation service. Consequently the Authority does not consider the GBB provides a mechanism for verifying DBP's actual capacity and throughput, either in total or, as would be required for the revenue cap "true-up", by pipeline service (i.e. full haul, part haul, back haul).
1303. In relation to DBP's statement that *"it does consider it appropriate that actual capacity and throughput volumes [to] be justified to the [Authority] before any true up tariff adjustment is made"*, the Authority notes DBP has not put forward any details of how this would be done, other than through the use of the GBB. As outlined above, the GBB is not suitable for verifying DBP actual capacity and throughput volumes. As DBP has not provided any alternative verification mechanism, the Authority does not consider DBP's proposed revenue cap meets the criteria of rule 97(4). That is, it does not give the Authority adequate oversight or powers of approval over the variation of the reference tariff.
1304. In response to DBP's submission 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 [Authority] to reject it"*, the Authority concurs with DBP's comments and makes the following observations.
- Whilst the NGR do contemplate a revenue cap mechanism, a price cap mechanism is also contemplated and importantly, as previously indicated (at paragraph 1290 above), the revenue and pricing principles do not prefer one control mechanism (under rule 97(2)) over another.

- Rule 97(3) of the NGR states that the Authority must have regard to certain things when deciding whether a particular tariff variation mechanism is appropriate to a particular access arrangement, including “*any other relevant factor*” (rule 97(3)(e)). In this regard, the Authority considers the practicality of implementing and assessing a proposed mechanism to be an important relevant factor that it should have regard to. The Authority maintains its view that DBP’s proposal to adjust revenues based on non-reference service volumes is complex and uncertain. As discussed above, as DBP has not proposed a satisfactory mechanism for verifying the revenue cap “true up” the Authority does not consider that DBP has proposed a mechanism that adequately deals with this complexity.

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

1305. In response to the views of the Authority concerning the potential for DBP to potentially 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 submits the following.²⁶⁰

- 8.12 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 DBP’s opinion the formula in Clause 11.6 [of the access arrangement] 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

²⁶⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, pp. 38-39, paragraphs 8.12 to 8.15.

services, and the structure of the mechanism also means that DBP itself cannot manipulate contracts to game the cap.

1306. The Authority's concerns in relation to the classification of services are linked with its concerns regarding a mechanism to verify DBP's actual capacity and throughput volumes. As outlined above, DBP has not provided a mechanism to verify its actual capacity and throughput, by pipeline service (i.e. full haul, part haul or back haul service). As nearly all shippers are (currently) on non-reference services, calculating the regulatory earned revenue requires both an assessment of which reference service should apply and the relevant capacity and throughput volumes. The regulatory earned revenue, and therefore the "true-up" adjustment, will vary depending on how capacity and throughput is apportioned across reference and non-reference services. In the absence of a robust verification mechanism there is the potential for the regulatory earned revenue to be manipulated, and therefore also the "true-up" adjustment and consequent reference tariffs. Whilst the Authority is not suggesting DBP would seek to undertake this type of manipulation, it considers a robust verification mechanism would be needed to ensure it has not occurred.

Ability to meet the NGO and practical difficulties

1307. In reaching its position to require the existing price cap price control mechanism to be retained in the access arrangement, the Authority came to the following conclusion(s) in its Draft Decision.²⁶¹

The Authority considers the current price cap price control results in the best incentives for utilisation of the pipeline and meets the NGO. The Authority does not consider changing to a revenue cap would result in better incentives or achievement of the NGO. Furthermore, it would create practical difficulties in administering the price control mechanism. On that basis the Authority does not approve DBP's proposal to introduce a revenue cap price control.

1308. DBP submits that the Authority's conclusions (as set out above) 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 – 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; and
- 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.

1309. In response to DBP's submission that it is entitled to at least recover its efficient costs and that pushing demand risk onto the service provider is the antithesis of this key principle, the Authority maintains that DBP is provided with a reasonable opportunity to recover its efficient costs under the existing price cap, and is better incentivised to maintain the DBNGP and provide pipeline services to satisfy existing user demand and to meet any increases in demand. In regards to demand risk allocation, the Authority considers that having regard to the revenue and pricing principles, it is more appropriate for demand risk to remain substantially with DBP as the service provider, as discussed at paragraphs 1289 and 1290 above.

²⁶¹ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 22 December 2015, paragraph 650.

1310. In response to DBP's submission that the Authority had provided no details of the practical difficulties in changing from a price cap to a revenue cap, the Authority's main concern was related to the complexity (and hence practical difficulty) of DBP's proposal to adjust revenues based on non-reference service volumes and, in particular, that DBP had not provided any mechanism for certifying those volumes (refer paragraphs 1298 to 1304 above).
1311. Having regard to the above considerations concerning DBP's proposed revenue cap price control, the Authority maintains its view that the existing price cap price control mechanism better meets the NGO and the revenue and pricing principles than DBP's proposed revenue cap price control mechanism.

Required Amendment 19

The Authority has determined that the existing (AA3) price cap price control mechanism is to be retained in the amended access arrangement for the next (AA4) access arrangement period.

Trailing average cost of debt variation (RA 24)

1312. The Authority's Draft Decision (at Required Amendment 24) required DBP to amend the Trailing Average Cost of Debt Variation to reflect the method and automatic formulas set out in Appendix 4G of the Draft Decision, and to include the calculation of the revised reference tariffs for approval. As indicated above (at paragraph 1259) DBP's amended proposal does not accept this requirement.²⁶²

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.

1313. For the reasons set out in Appendix 4, the Authority has not accepted DBP's methodology for calculating the trailing average cost of debt variation. Consistent with its Draft Decision, the Authority has determined that the trailing average cost of debt variation must be calculated using the method and automatic formulas set out in Appendix 4G of this Final Decision.

1314. DBP's amended proposal did not address the second part of Draft Decision Required Amendment 24, which was to include the calculation of the revised reference tariffs for approval by the Authority.

1315. In response to a query from the Authority, DBP provided its views in relation to how the annual tariffs should be updated and approved.²⁶³ DBP considered the incorporation of the trailing average cost of debt in the reference tariff to be a simple process. However, DBP's response was based on the assumption that the Authority would accept DBP's proposed method for calculating the trailing average cost of debt annual update and its proposed revenue cap. As the Authority has not accepted either of these aspects (for the reasons set out elsewhere in this Final Decision), some elements of DBP's response is therefore not relevant.

1316. DBP proposed that the trailing average cost of debt annual update would be undertaken each year using the following process.

- Within five working days following the end of DBP's nominated averaging period (1 June to 30 October), the Authority would provide DBP with the updated cost of debt (updating the risk-free rate and debt risk premium) and supporting information.
- Within ten working days following receipt of the updated cost of debt or ten working days following publication of the September quarter CPI figures by the

²⁶² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57*, 22 February 2016, p. 40, paragraphs 9.1 to 9.3.

²⁶³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to ERA20-FD – Supporting Submission 66*, 29 April 2016.

ABS, whichever is the later date, DBP would provide the Authority with a written response either noting agreement with the Authority's calculation of the updated cost of debt or noting disagreement and the reasons for disagreement. At the same time, DBP would provide its estimate of the revenue cap, updated for the new cost of debt, any true-up in relation to the revenue cap and the resultant varied reference tariff.²⁶⁴

- DBP and the Authority would then work together to finalise the tariff variation and subsequent tariff by the end of the first working week in December.

1317. DBP further noted that the annual updating of the cost of debt had no influence on tax changes or new cost pass-throughs. DBP considered that each of these aspects would feed directly into the revenue cap, just as it considered the annual update in the cost of debt would do. DBP also noted that it considered the tariff variation process, absent any tax changes or new cost pass-through events, as a single process incorporating the annual update of the cost of debt and the CPI adjustment at the same time. DBP's proposed timing incorporated the fact that it does not control when the ABS releases its CPI figures.

1318. The Authority has considered DBP's proposed process for the annual update. As it has not accepted DBP's proposed revenue cap or calculation of the updated cost of debt, it is necessary to amend DBP's proposed process to reflect a price cap and the method determined by the Authority for calculating the trailing average cost of debt. In addition, the Authority considers the five days proposed by DBP for the Authority to undertake its review and approval to be insufficient. The Authority considers it appropriate to allow ten working days (as opposed to five) to undertake the calculation of the updated cost of debt and prepare supporting information.

1319. Having regard to the above considerations, the Authority has determined the annual tariff variation process will be as follows:

- Within 10 working days of the end of the averaging period nominated by DBP (i.e. around mid-November), the Authority will provide DBP with the updated trailing average cost of debt, including supporting information, and updated reference tariffs (in 2015 prices consistent with the Final Decision) to reflect the updated cost of debt (including a copy of the tariff model).
- The updated reference tariffs will be calculated using a model and methodology consistent with that used in the Final Decision:
 - Only the latest tariff that is relevant to the variation year will be calculated and applied for the variation year. The remaining years of the access arrangement period will have the same tariff as that in the variation year.
 - At the same time, the NPV of the Tariff Revenue will be computed each year using the previous (given) annual revenue values and the (updated estimated) future revenue values. The resulting NPV of the Tariff Revenue will equal a revised approved Total Revenue for the access arrangement period. That revised Total Revenue accounts for the updated rate of return, following the annual update of the debt risk premium. The tariffs for the remainder of the regulatory period therefore change to reflect the change in debt risk premium contributing to the rate of return, and the resulting change in the Total Revenue.

²⁶⁴ A formula for updating the revenue cap was provided by DBP.

- Within 10 working days following receipt of the updated cost of debt or 10 working days following publication of the September quarter CPI figures by the ABS, whichever is the later date, DBP must provide the Authority with a written response either noting agreement with the Authority's calculation of the updated cost of debt and updated reference tariffs or noting disagreement and the reasons for disagreement. At the same time, DBP will provide its calculation of reference tariffs after applying the CPI adjustment, as set out in clause 11.2 of the amended access arrangement.
- The reference tariff calculated by DBP will be less than or equal to the reference tariff calculated by the model developed by the Authority and after applying the CPI adjustment and the annual update for the debt risk premium.
- Subject to the Authority approving DBP's calculation of the revised reference tariffs, the Authority will publish the revised tariffs on its website.

Required Amendment 20

The Authority has determined that the annual update of the trailing average debt risk premium must be calculated in a manner consistent with the automatic formulas set out in Appendix 4 ("*Automatic updating formulas for return on debt*") of this Final Decision and that the process for varying the tariffs each year must be as set out in paragraph 1319 of this Final Decision.

Fixed Principles

Regulatory Requirements

1320. Rule 99 of the NGR provides for an access arrangement to include fixed principles:

99. Fixed principles
 - (1) A full access arrangement may include a principle declared in the access arrangement to be fixed for a stated period.
 - (2) A principle may be fixed for a period extending over 2 or more access arrangement periods.
 - (3) A fixed principle approved before the commencement of these rules, or approved by the [ERA] under these rules, is binding on the [ERA] and the service provider for the period for which the principle is fixed.
 - (4) However:
 - (a) the [ERA] may vary or revoke a fixed principle at any time with the service provider's consent; and
 - (b) if a rule is inconsistent with a fixed principle, the rule operates to the exclusion of the fixed principle.

DBP's Original Proposal

1321. Clause 13 of the proposed revised access arrangement sets out the fixed principles to apply under the access arrangement. DBP's proposal retained the existing fixed principles (at clauses 13.1(a) and (b)), without amendment, as follows:

- (a) the method of determination of the Capital Base at the commencement of each year of each access arrangement period as set out in section 7 of the Current Access Arrangement Information;
- (b) the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of:
 - (i) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and
 - (ii) the revenue actually earned from the sale of those services which were services other than Full Haul Services,
 must not:
 - (iii) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or
 - (iv) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.

1322. Consistent with the current access arrangement applying for the third access arrangement period (AA3), DBP proposed for the fixed principles to apply until 31 December 2031.

1323. DBP proposed to add an additional fixed principle (at clause 13.1(c)) relating to the trailing average approach that it proposed for inclusion in the reference tariff variation mechanism. The proposed new clause 13.1(c) states:

The trailing average approach described at Clause 11.7. In respect of the trailing average mechanism, both the methodology and the actual allowed debt cost in a given year are to remain fixed. Thus, if the debt rate formed for year t is five per cent, then it will remain at five percent until that tranche of debt falls away from the trailing average, and the rate for period “t” cannot be changed in period “t + i” to some value other than five per cent.

1324. DBP did not propose a fixed period for new clause 13.1(c).

Submissions

1325. No submissions were received with respect to the fixed principles to apply under the access arrangement.

Draft Decision

1326. The Authority noted that DBP did not propose any amendments to the existing fixed principles (at clauses 13.1(a) and (b)) and that there were no submissions made in relation to these fixed principles. Consistent with its previous decisions, the Authority was satisfied that the fixed principles set out in the proposed revised access arrangement were consistent with the provisions of the NGR that deal with determining the value of the capital base and reference tariffs.

1327. The Authority considered DBP’s proposed new clause 13.1(c) to be unnecessary (i.e. the proposed fixed principle for the application of the debt risk premium (**DRP**) trailing average update to the tariff variation was not required). This was because Appendix 4G of the decision set out the automatic formulas for the annual update of the trailing average, which also included the values which would apply. Appendix 4G was consistent with NGR 87(12), which required that an annual update “*must be effected through the automatic application of a formula that is specified in the decision on the access arrangement for that access arrangement period*”.²⁶⁵ The Authority considered that the method of the automatic formulas should also be inserted in the access arrangement itself, which then links the annual update of the DRP trailing average to the annual tariff variation method.²⁶⁶ The Authority required the following amendment:

Required Amendment 25

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

²⁶⁵ NGR 87(12).

²⁶⁶ By way of example, the method of automatic updates was included in the Access Arrangement for the ATCO GDS Final Decision. See ATCO Gas Australia, *Access Arrangement for the Mid-West and South-West Gas Distribution Systems*, 1 October 2015, Annexure D.

DBP's Amended Proposal

1328. In response to the Authority's Draft Decision, DBP advises that it does not accept (Draft Decision) Required Amendment 25.²⁶⁷

1329. In its amended proposal, DBP has retained clause 13.1(c) in the amended access arrangement, unchanged from its original submission. Further to this, DBP has proposed an additional fixed principle (at new clause 13.1(d)) as follows, with a consequential amendment to clause 15 (Definitions) to define the term "hybrid approach".

13.1 The following are Fixed Principles in accordance with NGR 99:

...

(d) The Hybrid Approach used in the methodology for varying the return on debt for each regulatory year in the Current Access Arrangement Period and subsequent access arrangement periods.

[Clause 15. Definitions]

Hybrid Approach means the risk free rate is set once using the 5 year bank bill swap rate at the outset of each access period and the debt risk premium is estimated using the DRP Approach and the trailing average approach outlined in clause 11.7.

Further Submissions

1330. No further submissions were received with respect to the fixed principles to apply under the amended access arrangement.

Considerations of the Authority

1331. The Authority has not accepted DBP's proposed new clauses 13.1(c), 13.1(d) and new definition in clause 15 (Definitions). The reasoning for the Authority's decision is set out in Appendix 4 of this Final Decision.

Required Amendment 21

The Authority requires DBP to delete clauses 13.1(c), 13.1(d) and the term "Hybrid Approach" in clause 15 (Definitions) from the amended access arrangement.

²⁶⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, p. 8.

Speculative Capital Investment

Regulatory Requirements

1332. Rule 84 of the NGR (Speculative capital expenditure account) states:

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

DBP's Original Proposal

1333. Clause 10 of DBP's current access arrangement includes provision (for the purposes of NGR 84) for any non-conforming capital expenditure, to the extent that it is not to be recovered through a surcharge on shippers or a capital contribution, to be added to a notional fund (the "Speculative Capital Expenditure Account") and dealt with in accordance with NGR 84(2) and 84(3).

1334. DBP's proposed amendment to clause 10 involved stating that the speculative capital expenditure account will increase annually at the "Speculative Investment Rate", which is defined as being the return on equity that is used to estimate the Allowed Rate of Return (Nominal Post Tax).

1335. DBP considered that the rate or return applied to the speculative capital expenditure account should be higher than the allowable rate of return for conforming capital expenditure, as speculative capital expenditure carries a higher risk profile than expenditure that is included in regulated revenue. DBP considered this to be the case because there is no certainty that a non-conforming investment will result in additional revenue to the service provider.²⁶⁸

Submissions

1336. No submissions were received with respect to DBP's proposed amendments to speculative capital investment.

²⁶⁸ DBNGP (WA) Transmission Pty Limited, *Non-Tariff Related Issues – Supporting Submission 5*, 31 December 2014, p. 6.

Draft Decision

1337. The Authority considered DBP's proposal to specify the rate of return in relation to speculative capital expenditure in its access arrangement. As set out in NGR 84(2), the rate at which the speculative capital expenditure increases annually is determined at the ERA's discretion, which may, but need not, be the rate of return implicit in a reference tariff.
1338. DBP did not propose any specific speculative capital expenditure in its original proposal. The Authority considered that it would need to know the nature of any such expenditure before being able to determine an appropriate rate of return. Furthermore, before approving a rate of return for speculative capital expenditure, DBP would need to provide the Authority with details of the specific expenditure to which it would apply and, if it were to seek a higher rate of return than applies to conforming capex, would need to justify its claim, including an explanation as to how it would be consistent with the NGO.
1339. The Authority noted that speculative capital expenditure can only be added to the capital base if and when it meets the requirements for conforming capital expenditure. The Authority did not consider DBP's original proposal, that the rate of return should be set higher for speculative investment because there is no certainty that a non-conforming investment will result in additional revenue to the service provider, would incentivise efficient investment and is unlikely to meet the NGO. The Authority required the following amendment:

Required Amendment 26

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

DBP's Amended Proposal

1340. In response to the Authority's Draft Decision, DBP indicates that it accepts (Draft Decision) Required Amendment 26.²⁶⁹ Accordingly, DBP has updated clause 10 of the amended access arrangement to delete proposed clauses 10.2 and 10.3, relating to the speculative capital expenditure account and speculative investment rate respectively, from the proposed revised access arrangement.

Further Submissions

1341. No further submissions were made to the Authority that addressed speculative capital investment.

Considerations of the Authority

1342. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 26).

²⁶⁹ DBNGP (WA) Transmission Pty Ltd, Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, p. 8.

Terms and Conditions for Reference Services

Regulatory Requirements

1343. In addition to specifying the reference tariff for each reference service, a full access arrangement proposal must specify the other terms and conditions on which the reference service will be provided (rule 48(1)(d) of the NGR).
1344. The NGR do not specify particular requirements for the terms and conditions to apply for each reference service. However, the terms and conditions must be consistent with the NGR and with rule 100 of the NGR.
1345. The Authority has the discretion to withhold its approval of the proposed terms and conditions if, in its opinion, a preferable alternative exists that:
- complies with applicable requirements of the Law; and
 - is consistent with applicable criteria (if any) prescribed by the Law.

DBP's Original Proposal

1346. Clause 4 of the proposed revised access arrangement specified that the terms and conditions to apply to the T1 Service, P1 Service and B1 Service were contained in the “*Access Contract Terms and Conditions*”, as set out in Attachments 2, 3 and 4 of the proposed revised access arrangement.²⁷⁰
1347. The proposed terms and conditions comprised various changes that DBP advised were either in the nature of “substantive changes” or “minor/drafting changes”. DBP provided a summary of the proposed changes and the rationale for each change in a supporting submission, which also contained marked-up versions of the proposed terms and conditions to easily identify the changes proposed.²⁷¹
1348. Substantive proposed changes to the terms and conditions that would apply to the T1 Service, P1 Service and B1 Service included the following:²⁷²
- a change to the definition of “carbon cost” to specify penalties as a cost in relation to any laws applying to greenhouse gas emissions;
 - a change to the definition of “major works” to include planned maintenance, with consequential amendments to clauses 17.2(d), 18(e) and 18(g);
 - a change to the definition of “part haul” to mean a “*gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Outlet Point, but does not include Back Haul*”;

²⁷⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Service Terms and Conditions “Full Haul T1 Contract Terms and Conditions”; Attachment 3 – P1 Reference Service Terms and Conditions “Part Haul P1 Contract Terms and Conditions”; Attachment 4 – B1 Reference Service Terms and Conditions “Back Haul B1 Contract Terms and Conditions”*.

²⁷¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014.

²⁷² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 3-13.

- the deletion of clauses 4.3 to 4.7 that relate to the option to renew the contract, with a consequential amendment to clause 1 to delete the term “original capacity”;
- a change to the provisions that relate to the circumstances where the operator may refuse to receive gas, by amending clause 5.3(e) to delete the words “*subject to determination by operator as a reasonable and prudent person*”;
- a change to clause 5.5 to delete a cross reference to clause 5.3(d), which relates to the DBNGP exceeding its maximum allowable operating pressure, as a basis for claiming that a refusal to deliver is a curtailment in limited circumstances;
- a change to the provisions that relate to the circumstances where the operator may refuse to deliver gas, by amending clause 5.7(b)²⁷³ to delete the words “*to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas*”;
- a change to clause 6.3(e) to specify that a multi-shipper contract in respect of an inlet or outlet point is an agreement that contains terms that satisfy all the conditions outlined in clauses 6.3(e)(i) to 6.3(e)(viii);
- a change to clause 7.8, which relates to out-of-specification gas, to indicate that the operator is entitled to deal with any out-of-specification gas that enters the DBNGP by venting, flaring or burning the out-of-specification gas;
- the deletion of clauses 9.5(c) and 9.5(d) that relate to accumulated imbalance notice provisions;
- changes to the wording of clause 9.5(e),²⁷⁴ which relates to the payment of an excess imbalance charge, by deleting certain words from the clause;
- changes to clause 9.9, which relates to the cashing out of imbalances at the end of each gas month, by inserting new clauses to provide more options to restore shippers’ accumulated imbalances to zero;
- a change to clause 10.1 to clarify that the values specified in clauses 10.1(a), 10.1(b) and 10.1(c) are each an hourly peaking limit;
- changes to clause 10.3, which outlines the consequences of exceeding an hourly peaking limit, by amending the circumstances in which the operator can apply the consequences and deleting clause 10.3(b) and 10.3(c) that require the issuing of notices when peaking limits are exceeded;
- the deletion of clause 10.5 to remove provisions for an “outer hourly peaking limit”;
- a change to clause 11, which sets out provisions relating to overruns, by changing the circumstances in which the operator may give notice in relation to the unavailability or availability of overrun gas (in clause 11.2);

²⁷³ In DBP’s supporting information “*Proposed Terms and Conditions – Supporting Submission 4, p. 7, Item 2.7 Refusal to Deliver Gas*” reference is made to clause 5.7(d). The Authority believes that this reference should be to clause 5.7(b) and not to clause 5.7(d).

²⁷⁴ In DBP’s supporting information “*Proposed Terms and Conditions – Supporting Submission 4, p. 7, Item 2.11 Obligation to pay Excess Imbalance Charge*” reference is made to clause 9.6(e). The Authority believes that this reference should be to clause 9.5(e) and not to clause 9.6(e).

- a change to clause 17.4 to specify that shippers are entitled to refunds of the capacity reservation charge “to the extent that curtailment of the shipper’s [T1] Service exceeds the [T1] permissible curtailment limit for any reason other than” a force majeure event or a circumstance where the curtailment is not to be regarded as a curtailment;
 - changes to clause 20.5 to specify the circumstances in which the [T1] Tariff may be varied, with consequential amendments to delete clause 20.7 (which relates to tax change variations) and insert two new defined terms (“New Costs” and “Tax Change”) at clause 1; and
 - the deletion of clause 26 and clause 45 to remove provisions for the “general right of relinquishment” and “non-discrimination” respectively.
1349. Proposed changes to the terms and conditions that were identified by DBP to be “minor/drafting changes” and that will apply to the T1, P1 and B1 Services were outlined in its supporting submission and comprised:²⁷⁵
- changes to the definition of several terms at clause 1 for reasons of simplicity and/or clarification and relevance;
 - drafting changes to some clauses to reflect current legislation;
 - drafting changes to some clauses to provide consistency of drafting between related clauses; and
 - drafting changes to some clauses to amend typographical and grammatical errors.
1350. Further to the above proposed changes, DBP proposed two additional amendments to the proposed terms and conditions that would apply to the P1 Service. DBP indicated that these proposed changes were inadvertently omitted from the current terms and conditions for the P1 Service that applied for the third access arrangement period (AA3); and that the changes aligned the P1 Service terms and conditions with the terms and conditions for the T1 Service.²⁷⁶ The proposed changes comprised:
- the addition of clause 20.6 that sets out provisions relating to the “goods and services tax”, and
 - changes to clause 22.3 and 22.7 to amend the number of working days in which a default is to be remedied.

Submissions

1351. The Authority received three public submissions that commented on provisions of the proposed terms and conditions and DBP’s (original) proposed amendments.²⁷⁷ The matters raised in these submissions were addressed as part of the Authority’s Draft Decision considerations below.

²⁷⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 14-16.

²⁷⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 17.

²⁷⁷ Submissions from BHP Billiton, CITIC Pacific Mining Management Pty Ltd (**CPMM**) and Wesfarmers Chemicals, Energy & Fertilisers (**WESCEF**).

Draft Decision

1352. In its assessment of the proposed changes to the terms and conditions that would apply to the T1, P1 and B1 reference services, the Authority considered the following:
- the rationale for variations to the proposed terms and conditions from those established under existing access contracts for pipeline services (i.e. full haul, part haul and back haul services) negotiated with shippers;
 - concerns raised by existing and prospective shippers with the current terms and conditions applying to the third access arrangement period (AA3) and with proposed revisions to those terms and conditions;
 - operational and practical considerations in the operation of the pipeline;
 - a balancing of interests between DBP and users, including consideration of common principles of contracting; and
 - whether drafting changes in expression of certain terms achieve DBP's expressed intention and whether these changes may have other unintended consequences.
1353. With regard to DBP's proposed changes that were identified to be in the nature of "minor/drafting changes", unless otherwise specified in the Draft Decision the Authority was satisfied that the changes were intended to, and did, improve the overall drafting of the terms and conditions. Hence, the Authority accepted the proposed changes made for those reasons, subject to any required amendments as specified in the Draft Decision (and summarised below under "Considerations of the Authority" in this Final Decision, refer paragraph 1359 and following).

DBP's Amended Proposal

1354. Clause 4 of DBP's amended proposal specifies that the terms and conditions upon which DBP will grant access to the T1, P1 and B1 Services, are those terms and conditions for the T1, P1 and B1 Services contained in the "*Access Contract Terms and Conditions*".²⁷⁸ Specifically, those terms and conditions are set out in Attachments 2, 3 and 4 of the access arrangement.²⁷⁹
1355. In support of its amended proposal, DBP provides a separate supporting submission that summarises the changes made in response to the Authority's Draft Decision and the rationale for each change.²⁸⁰ The supporting submission also contains marked-up versions of the amended terms and conditions to easily identify the changes that have been made.

²⁷⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Access Arrangement Document*, p. 8.

²⁷⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 2 "T1 Reference Service Terms and Conditions"; Attachment 3 "P1 Reference Service Terms and Conditions"; and Attachment 4 "B1 Reference Service Terms and Conditions"* (herein referred to as the "**amended terms and conditions**").

²⁸⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016.

Further Submissions

1356. Further submissions, which comment on DBP's amended terms and conditions, were received from WESCEF²⁸¹ and BHP Billiton.²⁸²
1357. WESCEF's further submission indicates general support for the Authority's required amendments relating to the terms and conditions for reference services and where DBP has not accepted the Authority's required amendments, WESCEF:
- repeats its previous submissions in response to DBP's original proposal (as set out in its initial submissions dated 2 June 2015);
 - agrees with the Authority's position on these matters as set out in the Draft Decision; and
 - submits that DBP should be required to accept and adopt the required amendments in accordance with the Authority's Draft Decision.
1358. In its further submission, BHP Billiton repeats its initial submissions of 21 May 2015 regarding DBP's amendments to the terms and conditions for reference services and supports the Authority's required amendments to the terms and conditions as outlined in the Draft Decision. In addition, BHP Billiton submits that:²⁸³
- To the extent that DBP has rejected the Authority's required amendments to the terms and conditions for reference services, DBP should be required to accept and adopt the Authority's required amendments in the Draft Decision in its Access Arrangement;
 - DBP has not provided any new or persuasive reasons for the rejection of the Authority's required amendments; and
 - consistent with its Initial Submission, DBP's rejection of the Authority's required amendments will erode shipper protection, increase inefficiency, raise costs and would be contrary to the achievement of the NGO.

Considerations of the Authority

1359. In its final assessment of the changes to the terms and conditions that will apply to the T1, P1 and B1 reference services, the Authority has considered DBP's amended terms and conditions (submitted as part of its amended proposal) and whether the amendments made address the Authority's required amendments that were specified in the Draft Decision. As indicated above, consideration has also been given to the submissions received from interested parties.
1360. In considering DBP's amended terms and conditions, the Authority notes that DBP has stated its intentions to review the terms of the *Standard Shipper Contract (SSC)*

²⁸¹ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016 (herein referred to as "**WESCEF's further submission**").

²⁸² BHP Billiton, *Public Submission in Response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016 (herein referred to as "**BHP Billiton's further submission**").

²⁸³ BHP Billiton, *Public Submission in Response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016, pp. 9-10.

following the completion of the access arrangement (review/approval) process.²⁸⁴ The Authority is of the understanding that any revisions to the SSC will be determined through negotiations between DBP and relevant shippers.

Clause 1 – Interpretation

1361. Clause 1 of the amended terms and conditions sets out the definitions and interpretation of terms used. DBP proposes amendments to several terms, each of which are considered below.

“Access Request Form”

1362. In its original proposal DBP made, as a "minor/drafting change", changes to the defined term "access request form" as follows:

Access Request Form means the access request form in ~~the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended~~ [Schedule 1](#).

1363. DBP's stated rationale for the proposed change was to "simplify definition, clarify form".²⁸⁵ No submissions from interested parties were received concerning this proposed change.

1364. The Authority determined that the proposed change would substantially alter the meaning of the definition to produce a futile result. The defined term "access request form" is used in the proposed terms and conditions²⁸⁶ to refer to the particular access request form that has been actually completed and entered into by DBP and the shipper, not just the template of that form in Schedule 1 of the terms and conditions (as DBP's proposed change would have it). Hence, if the proposed change were to be made, then the definition would refer to an empty template with none of the particulars for the contract specified in it. As a result, the "contract" could be void for uncertainty. The Authority required the following amendment:

Required Amendment 27

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

1365. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 27.²⁸⁷ Accordingly, DBP has updated the term "access request form" in clause 1 of the amended terms and conditions to read as follows:

²⁸⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.52, 2.95, 2.160 and 2.174.

²⁸⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

²⁸⁶ For example, see definition of "contract" and also clauses 3.3, 4.1, 4.2, 4.6, 4.7, 5.11, 6.1, 14.9, 17.7, 26, 29.1, 29.3, 29.4, 30.1 and 38 of the proposed terms and conditions.

²⁸⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.3 and 2.4.

Access Request Form means the access request form in Schedule 1 [entered into between the Operator and the Shipper to which these Terms and Conditions are appended](#).

1366. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 27).

“Carbon Cost”

1367. In its original proposal DBP changed the term “carbon cost” by inserting the following words:

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

1368. DBP indicated the rationale for the change related to the *Carbon Farming Initiative Amendment Bill* (now enacted as the *Carbon Farming Initiative Amendment Act 2014*, (Schedule 2, Part 1)) of which will, with effect from 1 July 2016, amend the *National Greenhouse and Energy Reporting Act 2007* to establish a system (the “emissions reduction safeguard mechanism”) whereby past emissions of a designated large facility are used to set targets for future emissions, with penalties imposed for exceeding those set targets.²⁸⁸ DBP submitted that this would expose it to a risk of additional costs that it has little or no control over for reasons relating to increased demand, the uncertainty of permit trading availability and the inability to recover penalties if they are imposed.

1369. CPMM made the following comments with respect to this change.²⁸⁹

- The Operator should be permitted to pass through only its *direct* costs and, in respect of costs reasonably incurred to reduce greenhouse gas emissions or mitigate their effect, only those *direct* costs to the extent that they do not exceed the direct costs avoided by taking those actions;
- ... for the purposes of the emission reduction safeguard mechanism... CPMM understands that relevant emitters will be able to surrender prescribed carbon units if required to reduce the net emissions number... avoid an excess emissions situation occurring, and thus avoid the imposition of a penalty; and
- Since the Operator may vary the reference tariff for Tax Changes (which include Carbon Costs) to recover the cost of acquiring prescribed carbon units, CPMM rejects the proposed change to “Carbon Cost” to include penalties...

1370. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change. The Authority considered that it should be within the ability of a pipeline operator, acting reasonably and operating the pipeline efficiently, to manage its obligations under the statutory

²⁸⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 3.

²⁸⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 32-33.

emissions reduction safeguard mechanism (when in force) and other laws in such a way that it does not break the law or incur penalties. DBP had not provided adequate justification why it would not be able to do this.

1371. Further, the Authority noted that the new wording proposed by DBP would have effect more widely than necessary to deal with the particular concern raised by DBP in relation to the penalties arising under the statutory emissions reduction safeguard mechanism. Accordingly, the Authority was not prepared to accept DBP's insertion of the words "*(for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law)*" into the definition of carbon cost. However, the Authority was prepared to accept DBP's insertion of the words "*or its Related Bodies Corporate*" into the definition.
1372. The Authority noted that DBP's insertion of the words "*for the avoidance of doubt*" highlighted an unsatisfactory degree of uncertainty in the existing definition of carbon cost as to whether or not penalties are included in "costs". The Authority was of the view that this uncertainty should be resolved by amending the definition of "carbon cost" and required the following amendment:

Required Amendment 28

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

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

1373. In its amended proposal, DBP did not accept the Authority's (Draft Decision) Required Amendment 28 and instead proposed that the term "carbon cost" be changed to mean:²⁹⁰

Carbon Cost means any costs ~~(excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law)~~ arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect ~~and~~ the costs incurred in acquiring and disposing of or otherwise trading emissions permits and any penalties reasonably incurred in managing or complying with such obligations and liabilities.

1374. In support of its amended proposal, DBP states that "*the amendments proposed by the ERA to the definition of "Carbon Cost" do not adequately protect DBP from its potential exposure to additional costs arising from the National Greenhouse and*

²⁹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 7, paragraph 2.13.

*Energy Reporting Act 2007 (Cth) and associated clean energy legislation.*²⁹¹ Furthermore, DBP submits the following.²⁹²

- 2.8 [DBP] has little or no control over the reasons relating to increased demand, the uncertainty of permit trading availability and the inability to recover penalties if they are imposed. The level of DBP's net emissions is almost entirely dependent on levels of throughput of the DBNGP by shippers. Other than ensuring delivery of service, DBP is unable to control these levels of utilisation of its asset and are therefore exposed to potential carbon costs due to acts and omissions of shippers.
- 2.9 DBP agrees with the submission advanced by CPMM as referred to by the ERA in its Draft Decision that DBP ought to be able to surrender prescribed carbon units if required to reduce the net emissions number and thus avoid the imposition of a penalty. DBP's concerns with the imposition of a penalty under the relevant legislation arise where, despite acting as a reasonable and prudent operator, it is unable to purchase Australian Carbon Credit Units (ACCU) to mitigate its exposure, such as where there is a shortfall in the issue or availability of ACCUs in the market.
- ...
- 2.12 DBP does not seek a unilateral right to pass through penalties where such costs could have been avoided through reasonable and prudent management, nor should it be expected to undertake projects under the Emissions Reduction Fund to generate its own ACCUs where such projects are not part of DBP's standard business practices. However, DBP does not expect that it ought to be liable for an exposure to costs where such reasonable and prudent management for whatever reason fails to yield a quantity of ACCUs from the market to mitigate against any issue of penalties.

1375. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF considers DBP's proposed amended definition of carbon cost should be changed as follows.²⁹³

[T]he words "and any penalties reasonably incurred in managing or complying with such obligations" in the definition of "carbon costs" should be amended to read "and any penalties reasonably incurred in managing or complying with such obligations, provided that such penalties are not incurred as a result of the Operator failing to act as a Reasonable and Prudent Person who is endeavouring to minimise the overall costs referred to in this definition" [sic] or similar to ensure that the Operator is not able to recover penalties incurred where it has not acted reasonably.

1376. In a further submission to the Authority, and in response to third party submissions, DBP indicates the following.²⁹⁴

- 2.4 DBP notes that, with the removal of the definition of "Tax Change" in the reference service terms and conditions that were included in DBP's Amended [Access Arrangement] Proposal, the defined term "Carbon Cost"

²⁹¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.7.

²⁹² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.8, 2.9 and 2.12, pp. 5-6.

²⁹³ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 5, p. 2.

²⁹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, pp. 5-6, paragraphs 2.3 to 2.7.

is no longer referred to in DBP's proposed terms and conditions (as set out in DBP's Submission 52) for the AA4 period.

- 2.5 DBP therefore considers that the defined term "Carbon Cost" should be deleted from clause 1 of the proposed T1, B1 and P1 terms and conditions.
- 2.6 DBP however notes that the definition of "Carbon Cost" referred to in section 15 of DBP's Access Arrangement document ought to be updated to reflect the defined term used (and now proposed to be removed) from the reference service terms and conditions.
- 2.7 In considering the comments made by WCEF, DBP has no objection to the introduction of the "Reasonable and Prudent Person" test but considers that the requirement to endeavour to minimise overall costs is an unnecessary drafting addition, given this is already an expectation on pipeline operators as part of the "Reasonable and Prudent Person" test. DBP therefore proposes the following amendment to the definition of "Carbon Cost" (shown as a mark up against the Draft Decision terms and conditions):

"Carbon Cost means any costs (excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law) arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and, the costs incurred in acquiring and disposing of or otherwise trading emissions permits and any penalties reasonably incurred in managing or complying with such obligations, provided that such penalties are not incurred as a result of the Operator failing to act as a Reasonable and Prudent Person."

1377. The Authority considers that DBP's further proposed amendment to the definition of "Carbon Cost" (above) addresses the concerns of (Draft Decision) Required Amendment 28 and the Authority therefore accepts the proposed amendment with some minor amendments for clarity (refer paragraph 1378 below). The Authority agrees with DBP's comment that the requirement to endeavour to minimise overall costs is already an expectation on pipeline operators as part of the "reasonable and prudent person" test.

1378. As indicated by DBP, the Authority notes that with the deletion of the term "tax change" from the amended terms and conditions (refer paragraph 1682), the defined term "carbon cost" is no longer required. Hence, the Authority agrees with DBP that the term "carbon cost" should be removed from clause 1 of the amended terms and conditions. However, as the term "carbon cost" is still referred to within the amended access arrangement,²⁹⁵ the Authority considers the term should remain defined in clause 15 (Definitions) of the amended access arrangement, using the amended definition proposed by DBP, with additional minor amendments (as shown in mark-up below) for clarity. That is:

Carbon Cost means any costs arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by any of them to reduce greenhouse gas emissions or mitigate their effect, the costs incurred by the Operator or its Related Bodies Corporate in acquiring and disposing of or otherwise trading emissions permits and any penalties reasonably incurred by any of the Operator or its Related Bodies Corporate in managing or complying with such obligations, provided that such penalties are not incurred as a result of the Operator or its Related Bodies Corporate failing to act as a Reasonable and Prudent Person.

²⁹⁵ See, for example, the definition of "Tax Change" at clause 15 (Definitions) of the amended access arrangement.

“Major Works”

1379. In its original proposal DBP changed the definition of “major works” to include planned maintenance and made consequential amendments to clauses 17.2(d), 18(e) and 18(g). The term “planned maintenance” remained unchanged as *“maintenance of the DBNGP which is scheduled in advance and of which the Shipper is given reasonable, and in any event not less than 3 Gas Days, written notice”*.
1380. DBP indicated the change would streamline and simplify the terms and conditions for the following reasons.²⁹⁶
- Under clause 17.2, curtailments are permitted when necessary to undertake major works (clause 17.2(b)) and planned maintenance (clause 17.2(d)). By including “planned maintenance” in the definition of “major works” clause 17.2 is streamlined as clause 17.2(d) can be deleted.
 - The access contract will be simplified through a single notice and planning regime applying to both major works and planned maintenance. The notice provisions for major works in clause 17.6 will apply to planned maintenance.
1381. CPMM, WESCEF and BHP Billiton all commented on DBP’s change to the definition of “major works”.
1382. CPMM submitted that *“the consequences of including Planned Maintenance in the definition of Major Works go further than simply streamlining clause 17.2 and introducing a single notice and planning regime”*.²⁹⁷ CPMM identified other consequences of the proposed change related to the provisions for the permissible curtailment limit (at clause 17.3(c)) and capacity reservation charge (at clause 17.4). CPMM further indicated that since 1995, contracts have had two regimes for outages: (1) planned maintenance, for which outages count towards the two per cent permissible curtailment limit and (2) major works, for which outages do not count towards the two per cent permissible curtailment limit.
1383. WESCEF indicated that the proposed amendments to include planned maintenance in the definition of major works should not be approved for reasons relating to the calculation of the probability of supply under clause 3.2 of the proposed terms and conditions.²⁹⁸ WESCEF submitted that the inclusion of planned maintenance in the definition of major works will exclude such maintenance from the calculation of the probability of supply, which it believes will be *“detrimental to shippers as it may result in a lower actual probability of supply as curtailments for planned maintenance are excluded from the calculation”*.²⁹⁹
1384. BHP Billiton submitted that *“DBP should not be immune from liability for Direct Damages caused by Curtailment due to Planned Maintenance. Accordingly... DBP’s*

²⁹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 3-4.

²⁹⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 33.

²⁹⁸ Clause 3.2(d) of the proposed terms and conditions reads: *“In this clause 3.2 probability of supply means the probability that Gas Transmission Capacity in the DBNGP will not, for any reason other than Major Works, fall below a particular cut-off level”*.

²⁹⁹ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

proposed changes to clause 17.2 and the inclusion of 'Planned Maintenance' in the definition of 'Major Works' should be reversed".³⁰⁰

1385. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change which, in the Authority's view, was likely to result in an additional exemption from the operator being liable for curtailing more than two per cent each year under clause 17.3 of the terms and conditions. Taking into account the concerns raised by CPMM, WESCEF and BHP Billiton, the Authority did not approve DBP's changes to the definition of "major works" or to DBP's consequential amendments to clauses 17.2(d), 18(e) and 18(g). The Authority required the following amendment:

Required Amendment 29

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

1386. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 29.³⁰¹ Accordingly, DBP has updated the term "major works" in clause 1 of the amended terms and conditions to exclude planned maintenance and has reversed the consequential amendments that were made to clauses 17.2(d), 18.(e) and 18(g).

1387. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 29).

"Original Capacity"

1388. In its original proposal DBP deleted, as a "minor/drafting change", the term "original capacity" from the terms and conditions. DBP claimed the term was not used and related to options to extend the term, which had been removed from the reference service.³⁰²

1389. The Authority noted DBP's change was consequential on the proposed deletion of the renewal option provisions at clauses 4.3 to 4.7 of the terms and conditions (refer paragraph 1422 below). Hence, its removal was only acceptable if clauses 4.3 to 4.7 were deleted from the terms and conditions. As the Authority concluded that DBP's proposed deletion of the renewal option provisions at clauses 4.3 to 4.7 was neither justified nor acceptable (refer paragraph 1427 below), the Authority also considered that DBP's proposed deletion of the definition of "original capacity" was neither justified nor acceptable. The Authority required the following amendment:

³⁰⁰ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

³⁰¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.14 and 2.15.

³⁰² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

Required Amendment 30

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

1390. In response to the Authority’s Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 30.³⁰³ Accordingly, DBP has reinstated the term “original capacity” in clause 1 of the amended terms and conditions.

1391. The Authority is satisfied that DBP’s amended proposal addresses the required amendment (Draft Decision RA 30). The Authority notes that DBP’s agreement to reinstate the term “original capacity” is related to amendments to clauses 4.3 to 4.7 of the terms and conditions, which is discussed at paragraph 1422 and following of this Final Decision.

“Outlet Station”

1392. In its original proposal DBP made, as a "minor/drafting change", changes to the term "outlet station" as follows.

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

1393. DBP's stated rationale for the change was *"to ensure that costs of maintaining gate stations are included"*.³⁰⁴ No submissions were received concerning this proposed change.

1394. The Authority noted that DBP’s proposed change, if approved, would be inconsistent with the common understanding (as reflected in the SSC) that:

- a "gate station" is the metering equipment site associated with a "physical gate point" (being a point marking the boundary between the DBNGP and the gas distribution network); and
- a "physical gate point" is not the same as an "outlet point" (being a point where a shipper has contracted to receive gas from DBP).³⁰⁵

1395. Given this understanding, the Authority was concerned that it made no sense to say that the metering equipment site associated with an outlet point "includes" a metering equipment site associated with a physical gate point (i.e. a "gate station"). The Authority was of the view that the drafting of the terms and conditions could be improved to remove the inconsistency and make better sense, if the definition of outlet station were amended to read the same as in the SSC, with a definition of

³⁰³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.16 and 2.17.

³⁰⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

³⁰⁵ Refer to the definition of "physical gate point" in the SSC, which reads: *"Physical Gate Point means a flange, joint or other point marked in the description of the DBNGP system in the Access Arrangement Information as a point that marks the boundary between the DBNGP and a Distribution Network. A Physical Gate Point is not an Outlet Point"*.

"gate station" added in the same terms as used in the SSC.³⁰⁶ The Authority required the following amendment:

Required Amendment 31

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

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

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

"Gate Station means the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services."

1396. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 31.³⁰⁷ Accordingly, DBP has:

- updated the term "outlet station" in the amended terms and conditions, using the same wording that was specified in (Draft Decision) Required Amendment 31, and
- inserted a new term "gate station" in clause 1 of the amended terms and conditions, using the same wording that was specified in (Draft Decision) Required Amendment 31.

1397. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 31).

"Part Haul"

1398. In its original proposal, DBP changed the definition of "part haul service" at clause 15 (Definitions) of the access arrangement to specify that it is *"a service to provide forward haul on the DBNGP which is not a full haul service and where the outlet point is upstream of compressor station 9 (CS9) on the DBNGP, regardless of the location of the outlet [inlet³⁰⁸] point, but does not include back haul"*.

³⁰⁶ In clause 1 of the SSC, "gate station" means: *"the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure protection, reserve flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services."*

³⁰⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.18 and 2.19.

³⁰⁸ The Authority has confirmed with DBP (email response of 30 November 2015, "Re: Information Request – ERA11") that the reference to "Outlet" point is a typographical error and the correct reference should be to "Inlet" so that the proposed definition to Part Haul Service means *"a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul"*.

1399. Further to this change, DBP also changed the definition of “part haul” under clause 1 of the terms and conditions as follows:

Part Haul means gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Outlet [Inlet³⁰⁹] Point, but does not include Back Haul, a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation:

~~Services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP,~~

~~Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP, and~~

~~Services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.~~

1400. DBP put forward, in its access arrangement submissions, a number of reasons for the change, including:³¹⁰

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

1401. CPMM and WESCEF both commented on DBP’s proposal to amend the definition of part haul. CPMM stated in its submission to the Authority that it *“has no objection to the proposed amendment”* to the definition of part haul.³¹¹ In contrast, WESCEF submitted that the proposed amendments should not be accepted for the same reasons that it raised in response to DBP’s proposal to amend the description of the proposed P1 Service under clause 3 (Pipeline Services) of the access arrangement.³¹²

1402. The Authority gave detailed consideration to the matters raised by DBP in relation to its change to the term “part haul (service)” when it considered the NGR requirements for pipeline services. Accordingly, having regard to the reasons stated by the

³⁰⁹ The Authority has confirmed with DBP (email response of 30 November 2015, “Re: Information Request – ERA11”) that the reference to “Outlet” point is a typographical error and the correct reference should be to “Inlet”.

³¹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 4-5.

³¹¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 34.

³¹² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3 and 5.

Authority in regards to Pipeline Services, the Authority was of the view that DBP's changes to the definition of "part haul" in the terms and conditions should not be accepted. This decision was consistent with the Authority's decision in relation to DBP's proposed changes to the description of the P1 Service (i.e. the definition of "part haul service") in the access arrangement. The Authority required the following amendment:

Required Amendment 32

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

1403. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 32 and instead maintains its position to define the part haul service in the access arrangement (at clause 15 – Definitions) as follows:

Part Haul service means a service to provide Forward Haul on the DBNGP which is not a Full Haul service and where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.

1404. The Authority has considered DBP's amended proposal and its supporting submissions in detail in the Pipeline Services chapter of this Final Decision (refer paragraph 55 and following). For the reasons set out in detail in that chapter, the Authority does not consider that DBP has provided adequate justification for its proposed amendment to the current (AA3) definition of part haul that would prevent the service including delivery downstream of CS9. Further, the Authority is of the view that the necessary demand required by rule 101 of the NGR exists for a part haul service with the current (AA3) definition of part haul and that such a service would best achieve the NGO and revenue and pricing principles.

1405. Consistent with these considerations, the term "part haul", under clause 1 of the amended terms and conditions, should retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 22

The term "part haul", under clause 1 of the amended terms and conditions, must retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period. That is:

Part Haul service means a pipeline service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation:

- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

Clause 2.5(e) – Compliance with ring fencing

1406. In its original proposal DBP made changes to clause 2.5(e) of the terms and conditions to update legislation references to the current version of the NGL(WA) as follows.

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

1407. DBP considered the proposed change to be a “minor/drafting change”.³¹³ No submissions were received concerning this proposed change.

1408. The Authority was of the view that the change was erroneous and did not update the legislative references in the clause to the current legislation. The current wording of the terms and conditions applying to the access arrangement for the third access arrangement period (AA3) was correct. The ring fencing requirements were still in Part 2 of Chapter 4 of the NGL(WA) (which DBP was proposing to change). The Authority also noted that Chapter 4 of the NGL(WA) was referred to in clause 2.5(e) of the SSC. Hence, the Authority rejected the change and required the following amendment.

Required Amendment 33

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

1409. In response to the Authority’s Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 33.³¹⁴ Accordingly, DBP has updated clause 2.5(e) in the amended terms and conditions to read as follows:

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

1410. The Authority is satisfied that DBP’s amended proposal addresses the required amendment (Draft Decision RA 33).

Clause 3.2 – Capacity service

1411. Clause 3.2 of the proposed terms and conditions sets out provisions relating to capacity service.

1412. In its original proposal DBP changed the wording of clause 3.2(a), including the deletion of existing clause 3.2(a)(i), which stated that the T1 Service “*can only be Curtailed in the circumstances specified in clause 17.2*”. DBP made changes to clause 3.2(a) as follows.

- a) The T1 Service is the Full Haul Gas transportation service ~~provided under this contract~~ which gives the Shipper a right of access to Gas Transmission

³¹³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

³¹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.22 and 2.23.

Capacity and which, subject to the terms and conditions of this Contract, to access capacity of the DBNGP and which (subject, in all cases, to clauses 8.15 and 17.9): to clause 17.9:

- (i) ~~can only be Curtailed in the circumstances specified in clause 17.2;~~
- i) ~~(ii)~~ is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- ii) ~~(iii)~~ is treated the same in the Nominations Plan as all other ~~shipper~~ shippers with a T1 Service, a P1 Service or a B1 Service, or a T1 Service under the Standard Shipper Contract, and in the order of priority with respect to other Types of Capacity Service referred to in clause 8.8.

1413. DBP considered the changes to clause 3.2 to be a "minor/drafting change".³¹⁵

The proposed changes simplify the description, eliminate unnecessary words and bring the description of the T1 Service into line with the Operator's SSC, to prevent confusion about the nature of the service.

1414. CPMM noted DBP's change and submitted that it was not a minor drafting change and hence should be reinstated.³¹⁶

1415. WESCEF also commented on DBP's proposed change to clause 3.2. WESCEF expressed concern over the removal of clause 3.2(a)(i). WESCEF believed the change would amend the certainty of the T1 and P1 services in the interests of DBP and was adverse to the interests of shippers, hence, existing clause 3.2(a)(i) should not be deleted.³¹⁷

1416. The Authority also noted that DBP had not provided any explanation for its proposed deletion of the cross-reference to clause 8.15 ("Default provision for Renomination process") in the opening paragraph of clause 3.2(a), and that clause 3.2(a) of the SSC still contained a cross reference to "clause 8.16" ("Aggregated T1 Service"). Presumably, at least one of these cross-references was incorrect.

1417. Having regard to the submissions of interested parties, the Authority considered that DBP's change was not wholly a "minor/drafting change" and that DBP had not provided adequate justification for the change to clause 3.2(a). The Authority required the following amendment.

Required Amendment 34

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

³¹⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

³¹⁶ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 53.

³¹⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

1418. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 34.³¹⁸ Accordingly, DBP has updated clause 3.2(a) in the amended terms and conditions to read as follows:

- (a) The T1 Service is the Full Haul Gas transportation service [provided under this Contract](#) which gives the Shipper a right, [subject to the terms and conditions of this Contract](#), ~~of~~ access to Gas Transmission Capacity [of the DBNGP](#) and which, (subject in all cases to clauses [8.17](#) and [17.9](#)):
- (i) [can only be Curtailed in the circumstances specified in clause 17.2](#);
 - (ii) is treated the same in the Curtailment Plan...
 - (iii) is treated the same in the Nominations Plan...

1419. The Authority notes that clause 3.2(a) of DBP's amended terms and conditions (above) substantially reproduces the same wording as clause 3.2(a) in the current terms and conditions for the third access arrangement (AA3) period, with the exception of a cross reference to clause 8.17. In the current (AA3) terms and conditions the cross reference is a reference to clause 8.15 (not 8.17).

1420. The Authority queried the identified cross-reference anomaly with DBP. DBP advised that:³¹⁹

- the clause reference to clause 8.17 ("Aggregated T1 Service") in clause 3.2(a) of the amended access arrangement is correct; and
- the reference to clause 8.15 ("Default provision for Renomination process") was a clause referencing error or a typographical error and ought to have referred to clause 8.17 ("Aggregated T1 Service") instead.

1421. Taking this response into consideration, the Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 34).

[Clauses 4.3 to 4.7 – Options to renew contract](#)

1422. Clauses 4.3 to 4.7 of the current terms and conditions applying to the T1, P1 and B1 reference services, under the access arrangement for the third access arrangement period (AA3), set out the following provisions:

- option to renew contract (clause 4.3);
- conditions to be satisfied before exercising an option (clause 4.4);
- notice exercising an option (clause 4.5);
- first option period (clause 4.6); and
- second option period (clause 4.7).

1423. In its original proposal, DBP removed these provisions from the terms and conditions, by deleting these clauses and making a consequential amendment to clause 1 to delete the term "original capacity".

³¹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.24 and 2.25.

³¹⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Response to ERA12-FD to ERA14-FD – Supporting Submission 63*, 22 March 2016, pp. 6-7.

1424. DBP submitted that “access contracts for a reference service (where spare capacity exists) are for a minimum term of two years... it would be inconsistent with the [NGO] to provide a shipper with an option to extend a two year term contract”.³²⁰ The reasons for this were indicated by DBP to be as follows.

- DBP would not be able to deal with access requests made by other prospective shippers until all existing shippers have had the opportunity to exercise their options...
- In the event that a shipper elects not to exercise its option, DBP and the prospective shipper may have already decided to undertake an expansion of the capacity of the pipeline...
- ... it is open to shippers with reference service access contracts to apply for a new Access Contract towards the end of their term, in which case, they would be on the same position as all prospective shippers seeking access. It would be inequitable if a party has a number of short term options that it enters into when there was spare capacity and a new shipper has little opportunity to access the same transport volume as spare capacity becomes limited.

1425. CPMM made several comments on DBP’s proposal to delete clauses 4.3 to 4.7 from the terms and conditions, of which were summarised as follows.³²¹

- There must be a balance between the operator’s ability to plan future demand and expansions, with the needs of shippers to match gas transport capacity to project life spans. The risk of DBP being forced to expand the pipeline to provide capacity for a prospective user, where existing capacity has to be reserved in case an existing shipper elects to exercise a renewal option, and DBP then being left with surplus capacity where the existing shipper does not in fact exercise that option, can be prevented by requiring the option to be exercised in advance to precede the construction start date.
- DBP has greater bargaining power when there is less flexibility built into the reference service terms and conditions. In theory whilst matters (such as renewal options) can be negotiated, in practice anything not prescribed in the regulated terms and conditions are either not accommodated, or are accommodated with additional benefits to the pipeline operator.
- In practical terms, shippers do not have the time or resources to commence an access dispute. Hence, shippers seeking access are at a substantial negotiating disadvantage, with the disadvantage being greater when there is less flexibility built into the reference terms and conditions.

1426. While clearly there was disagreement between DBP and CPMM as to how the requirements of the NGO should be interpreted in relation to these renewal options, the Authority noted the suggestions put forward by CPMM in its submission to address the operational issues that had been raised by DBP.

1427. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the change. The Authority was of the view that, in this case, the NGO (including promotion of the efficient operation and use of the DBNGP for the long term interests of gas consumers) is likely to be

³²⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 5-6.

³²¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 35-36.

best served by retaining the flexibility for shippers offered by the renewal options. The Authority required the following amendment:

Required Amendment 35

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

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

1428. In its amended proposal, DBP does not agree with the Authority's (Draft Decision) Required Amendment 35 and is of the view that the Authority's decision "*does not address the requirements of the NGO*" and "*has failed to adequately appreciate the views of DBP and submissions made by shippers*".³²² In support of its views, DBP provides the following information.³²³

2.28 ... [T]he options to renew contracts applying under the AA3 framework create the risk that DBP may be compelled to expand the pipeline to provide capacity for a prospective shipper in circumstances where existing capacity is reserved for the exercise of options by an existing shipper. If these options are not exercised, this will result in a surplus capacity on the pipeline and an additional capital expenditure that was not incurred efficiently.

2.29 ... CPMM correctly identifies the tension and need for balance under the NGO between the operator's ability to plan future demand and expansions with the needs of shippers to match gas transport capacity to project life spans and future demand requirements. As per DBP's previous submissions, the current framework does not achieve this balance; rather, it creates inefficiencies in the operator's ability to allocate available capacity to prospective and existing shippers. CPMM notes that the risk of DBP being left with surplus capacity where an existing shipper does not exercise its options to renew its contract term and proposes that the option be exercised in advance to precede the construction start date of any expansion.

1429. DBP believes that the risk arising from existing provisions relating to the duration of the contract can be mitigated by the introduction of "put and call" options into the amended terms and conditions.³²⁴

2.30 DBP is of the view that this risk may be mitigated by granting existing shippers with 'put and call' options to extend the duration of their contract which will make available spare capacity on the pipeline when required by prospective shippers and no longer required by existing shippers. This mechanism will operate as follows:

- (a) Operator will receive a reference service access request form from a prospective shipper for capacity on the DBNGP commencing at

³²² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 8, paragraph 2.27.

³²³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 8.

³²⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 8-9.

the Requested Reference Service Start Date as specified in the access request form;

- (b) Operator will identify all shippers with tranches of reference service contracted capacity for the applicable reference service expiring more than 12 months prior to the Requested Reference Service Start Date (given the latest date that a Shipper can exercise an Option under clause 4.5 is 12 months before the Shipper's Capacity End Date);
- (c) Operator will issue notices to all shippers identified in paragraph (b) requiring each shipper to either relinquish or exercise its option(s) to extend the duration of its reference service;
- (d) Shippers will respond to operator confirming their election or relinquishment of their option(s) within 15 days (noting that third party shippers may request a Requested Reference Service Start Date 30 days after the date the access request is submitted) or otherwise such option(s) are deemed to have lapsed (consistent with the current regime in clause 4.5); and
- (e) Operator, now having knowledge of the level of capacity available as at the Requested Reference Service Start Date, will be able to offer spare capacity to the prospective shipper or otherwise undertake an expansion of the DBNGP to secure additional capacity.

1430. Consistent with its rationale for the introduction of “put and call” options into the amended terms and conditions, DBP proposes to retain clause 4.5 of the current (AA3) terms and conditions and make the following amendments to clauses 4.3, 4.4, 4.6 and 4.7 of the amended terms and conditions.³²⁵

4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, ~~and 4.7~~ and 4.8, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (Original Capacity) each for a period of 1 year (Option).

4.4 Conditions to be satisfied before exercising an Option

Shipper may only validly give notice exercising an Option if Shipper:

- (a) is not in default ... and
- (b) complies with the requirements of clauses 4.5 or 4.8 of this Contract.

...

4.6 First Option Period

If Shipper gives a notice in accordance with clauses 4.5 or 4.8 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year and:

- (a) the Capacity End Date ... and
- (b) this clause 4.6 ...

4.7 Second Option Period

³²⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 9-10, paragraph 2.31.

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clauses [4.5](#) or [4.8](#) exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year and:

- (a) the Capacity End Date ...
- (b) clauses 4.3, 4.4, 4.5 and this clause 4.7 ...

1431. In line with the above proposed amendments, DBP proposes to insert new clause 4.8 into the amended terms and conditions as follows:

4.8 Put and call of Options

- (a) If Operator receives an access request form from a shipper (other than the Shipper) which specifies a Requested Reference Service Start Date occurring more than 12 months prior to the Shipper's Capacity End Date and at the time of receipt of the access request form there is insufficient Contracted Capacity to meet the needs of the access request and Shipper has one or more Options that it has not exercised, then Operator must give a written notice to the Shipper as soon as practicable after receipt of the access request form from the shipper:
 - (i) confirming receipt of the access request form, the Requested Reference Service Start Date and the amount of Contracted Capacity which is the subject of the access request form; and
 - (ii) requiring Shipper to confirm whether Shipper intends to exercise its available Options or wishes for those Options to lapse;
- (b) No later than 15 days after receipt of the Operator's notice issued under clause 4.8(a) and notwithstanding clause 4.5, a Shipper may give written notice to the Operator that it wishes to exercise its available Options. If such notice is not given before such time or the Shipper confirms that it wishes for those Options to lapse, the Options lapse, are of no force and effect whatsoever, and cannot be exercised.

1432. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF considers that *"it is not reasonable to change the current regime where the shipper has an option to extend the term, to require the shipper to elect whether to exercise options at an earlier date if the Operator has received an access request and there is insufficient spare capacity"*.³²⁶ WESCEF indicates:

This is inconsistent with DBP pushing for the removal of the general right of relinquishment (see Required Amendment 60) and creates greater uncertainty and flexibility for shippers, particularly those considering investment in infrastructure. Further, shippers may not have certainty over gas supply at a time when they are being asked to commit to exercise an option for gas transmission capacity. WesCEF submits that clause 4.8 should be deleted and the general relinquishment right reinstated (see Required Amendment 60). An alternative approach may be to allow shippers to voluntarily relinquish capacity, or voluntarily waive its option rights in the event that there is insufficient spare capacity. If the DBP's proposed new clause 4.8 is accepted (which WesCEF submits it should not be), then the timeframe in clause 4.8(b) does not provide a shipper with anywhere near enough time to make an important decision about exercise of option, and should be, at a minimum 90 days.

1433. In a further submission to the Authority, and in response to third party submissions, DBP indicates that it disagrees with WESCEF's views about its proposed "put and

³²⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, pp. 2-3, paragraph 6.

call” options being unreasonable and inconsistent with DBP’s response to (Draft Decision) Required Amendment 60.³²⁷

- 2.9 DBP disagrees with WCEF view that DBP’s proposed “Put and call” of options to make available spare capacity for prospective shippers is unreasonable and inconsistent with DBP’s response to Required Amendment 60 which seeks the removal of the general right of relinquishment. This is so for the following reasons:
- (a) DBP reiterates its view that the proposed “Put and call” option is reasonable and consistent with the NGO, given that it creates efficiencies in correctly allocating available capacity to prospective shippers and avoids or defers capital investment in expansions of the pipeline where not required (see Submission 52, paragraphs 2.26-2.31).
 - (b) DBP also considers that this is entirely consistent with its submission in relation to Required Amendment 60. DBP reiterates its view (see submission 52, paragraphs 2.153-2.163) that having certainty in its capacity commitments on the DBNGP provides DBP with revenue certainty which in turn provides DBP with a greater ability to fund future expansions of its assets for the long term interests and utilisation of gas users. Where a “Put and call” option is exercised by an existing shipper to make available spare capacity to a prospective shipper, there is generally no change in contracted capacity on the DBNGP due to the prospective shipper taking up the spare capacity made available by the existing shipper. Accordingly, DBP can have continued certainty over the level of contracted capacity that has been committed on its asset to provide the required revenue certainty.
- 2.10 DBP also disagrees that the proposed approach of WCEF, which removes the flexibility proposed by DBP in its submission to make spare capacity more readily available to potential shippers, will lead to inefficient capital investment in pipeline expansions for prospective shippers in circumstances where it may be unnecessary to do so. WCEF’s alternative positions to allow shippers to voluntarily relinquish capacity or voluntarily waiver option rights do not provide any certainty over the commitments of shippers to take contracted capacity on the DBNGP and is strongly opposed by DBP.
- 2.11 Lastly, DBP notes that WCEF’s proposed 90-day lead time for the exercise of any “Put and call” option will force DBP to amend its queuing policy for prospective shippers to obtain spare capacity to accommodate such a lead time. This will potentially create greater inefficiencies in utilisation of the pipeline to the detriment of prospective shippers.

1434. The Authority has considered DBP’s amended proposal to retain clauses 4.3 to 4.7 of the current terms and conditions applying to the T1, P1 and B1 reference services, and to amend those clauses and insert a new clause 4.8 providing for a “put and call” option. The Authority has also considered WESCEF’s submissions on DBP’s amended proposal.

1435. The Authority notes the recent comments of the Australian Competition Tribunal in *Applications by Public Interest Advocacy Centre Ltd and Ausgrid [2016] ACompT 1*, at [77], on the proper construction of the NGO –

“The ultimate objective reflected in the ...NGO is to direct the manner in which the ...national natural gas market [is] regulated, that is, in the long term interests of

³²⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.8 to 2.11.

consumers of ...natural gas ...with respect to the matters specified. The [provision proceeds] on the legislative premises that [the] long terms interests [of consumers] are served through the promotion of efficient investment in, and efficient operation and use of, ...natural gas services. This promotion is to be done "for" the long term interests of consumers. It does not involve a balance as between efficient investment, operation and use on the one hand and the long term interests of consumers on the other. Rather, the necessary legislative premise is that the long term interests of consumers will be served by regulation that advances economic efficiency."

1436. The Authority notes WESCEF's submission that the put and call option will potentially require a shipper to make a premature decision about whether it will exercise one or both of its options in the future. The Authority considers that there may be circumstances where the timing of a request by a prospective shipper for access to capacity is made on or around the time that a shipper is due to exercise (or not exercise, as the case may be) its option (given that an option must be exercised no later than 12 months before the capacity end date). However, it could be one month before, or many months before the capacity end date that a put and call option is received, and the shipper has not started the commercial decision making process of whether to exercise its option.
1437. Notwithstanding this potential difficulty for shippers, the Authority considers that DBP's submissions in support of a "put and call option" provide adequate justification for the amendments to clauses 4.3, 4.4, 4.6 and 4.7, and the insertion of new clause 4.8. In particular, the Authority considers that having certainty in its capacity commitments on the DBNGP provides DBP with a greater ability to fund future expansions of its assets for the long term interests and utilisation of gas users and to ensure that there is efficient capital investment in pipeline expansions for prospective shippers only in circumstances where it is necessary to do so (i.e. where there is no spare capacity). Unnecessary expansions of the pipeline may lead to higher costs for consumers in the long term.
1438. In these circumstances, the Authority accepts DBP's amendments to clauses 4.3, 4.4, 4.6 and 4.7 and the insertion of new clause 4.8 to the amended terms and conditions for the T1, P1 and B1 reference services. However, the Authority considers that WESCEF makes a valid point regarding the timeframe in proposed clause 4.8(b), that this does not provide a shipper with enough time to make an important decision about the exercise of its option. Recognising the difficulty that shippers may face as a result of the "put and call option" – namely, the potential to have to make an important commercial decision many months before the capacity end date – the Authority agrees that the time allowed (i.e. 15 days) is not sufficient.
1439. Noting DBP's response that a timeframe of 90 days would require DBP to amend its queuing policy to accommodate this lead time, the Authority sought additional information from DBP. Specifically, the Authority sought to:
- clarify that the reference to "15 days" in clause 4.8(b) is as intended (that is, DBP did not mean "*business days*"); and
 - identify the specific aspects of the "*queuing policy*" that would need to be amended to accommodate a 90-day lead time as proposed by WESCEF.
1440. In response to the Authority request, DBP made the following submissions.³²⁸

³²⁸ Email response regarding: "*ERA Information Requests ERA20-FD and ERA21-FD*" (received 7 June 2016).

Firstly, the reference to 15 days in clause 4.8(b) was intended as written and should be interpreted to mean 'calendar days' not business days.

Secondly, DBP does not agree with the WCEF's proposal for a 90-day lead time for the exercise of a put and call option and has proposed 15 days to allow DBP to meet the current queuing requirements. The current queuing policy approved by the ERA requires DBP to respond to an Access Request within 20 business days which is outlined at cl. 5.3(b) of the DBNGP Access Arrangement.

DBP submits that this amendment would have a deleterious effect to other shippers who seek pipeline capacity on a tighter time frame than 90 days. In a scenario where there is no spare capacity, DBP would not be in a position to inform a prospective shipper of availability of capacity for 90 business days while other shippers consider their future use of their options.

A queue with such a long lead time will cause uncertainty for prospective shippers seeking capacity, and will also delay the time DBP could be progressing a FEED Study (under cl 5.3(b)(ii) of the current and proposed access arrangement) with the prospective shipper to develop additional capacity if another shipper does not forfeit its option to capacity.

Additionally, in DBP's experience prospective shippers generally seek pipeline capacity in much shorter time frames than the 90 day lead time proposed by Wesfarmers. It has not been uncommon for a prospective shipper to request capacity within 10 business days. DBP also points to the Varanus Island incident where a number of shipper were seeking additional pipeline capacity on an immediate basis. In these circumstances a 90 day lead-time would not allow DBP to respond adequately to the market and efficiently allocate pipeline resources to those who require them on a timely basis.

If the ERA is of the mind to adopt WCEF's proposal, DBP submits that the timeframe specified in clause 5.3(b) of the proposed access arrangement (Submission 50) would need to be amended from 20 business days as currently stated to at least 90 calendar days, however it is DBP's view that this amendment would not be an efficient use of pipeline capacity and would not contribute to the National Gas Objective.

1441. The Authority has given consideration to the additional information provided by DBP and is of the view that the 20 business day queuing policy requirement (at clause 5.3(b) of the access arrangement) is not an adequate reason for not allowing existing shippers a longer timeframe to decide if they wish to relinquish their extension options. The Authority's view is based on the following reasons.

- While DBP relies on the 20 business day timeframe in its queuing policy (at clause 5.3(b) of the access arrangement) as justification for its proposed 15 day response time proposed in clause 4.8(b) of the amended terms and conditions, the 20 business day requirement³²⁹ does not actually prevent DBP allowing an existing shipper longer than 20 business days in which to respond on whether or not it wishes to keep its extension option. That is, clause 5.3(b) of the access arrangement and NGR 112(3) merely require DBP to respond to the shipper who is requesting capacity within 20 business days:
 - in the case of clause 5.3(b) of the access arrangement – to request more information concerning the shipper's request or advise the shipper that further investigations are required; and
 - in the case of rule 112(3) of the NGR – to advise the shipper whether DBP can provide the requested service or advise the shipper that further investigations are required.

³²⁹ The 20 business day requirement in clause 5.3(b) of the access arrangement appears to be based on rule 112(3) of the NGR.

- In both cases (outlined above), where DBP does not have sufficient uncontracted capacity available to meet the shipper's request, DBP can comply with both clause 5.3(b) of its queuing policy and rule 112(3) of the NGR by responding to the shipper (within 20 business days) that it needs to undertake "further investigation" of existing shippers to see if any of them wish to relinquish their contracted capacity (including by relinquishing any extension option). Furthermore, despite the "FEED Proposal" label that DBP attaches to the further investigation option in clause 5.3(b), the Authority considers that that is only a label and should not be taken as limiting the type of further investigation to FEED studies or otherwise. There is no such limitation on "further investigation" in NGR 112(3).
1442. The Authority also notes the requirements of rule 100 of the NGR that the access arrangement must be consistent with the NGO. DBP claims that WESCEF's submission, that DBP's proposed 15 day limit in proposed clause 4.8(b) should be amended to at least 90 calendar days, would not be an efficient use of pipeline capacity and would not contribute to the NGO (refer paragraph 1440 above). However, DBP's submissions do not appear to consider the position or interests of the existing shipper who would (if DBP's proposal were to be implemented), be expected at any time, with little or no prior notice, to make a potentially major decision concerning its existing rights to future use of the DBNGP. An extension option is a proprietary right that will have some economic value and DBP's proposed amendment would give the existing shipper little or no notice, and only 15 days in which to decide either to confirm it will exercise the option (committing it to a potentially significant investment in the DBNGP) or relinquish that option (i.e. be expropriated without compensation). As WESCEF has submitted, DBP's proposed timeframe in clause 4.8(b) *"creates greater uncertainty"* and *"does not provide a shipper with anywhere near enough time to make an important decision about exercise of option"*. WESCEF considers a minimum of 90 days would be required for such an important decision.
1443. The Authority is of the view that the submissions put forward by DBP for needing an existing shipper's response quickly, because the shippers requesting services may require the services within a shorter timeframe than 90 days, are not realistic scenarios. In the context of extension options, even if an existing shipper responds quickly to DBP's request concerning an extension option and elects to relinquish the option, that will not free up capacity on the DBNGP within less than 90 days. This is because, if the option is still exercisable when DBP makes its request of the option holder, this means that it must be for an extension that cannot occur for at least 12 months (i.e. clause 4.5 of the access arrangement requires the option holder to give at least 12 months' notice to exercise the option). So, if an existing option holder relinquishes its option to extend, the capacity made available by that relinquishment will not become available until at least 12 months away (far beyond the "10 business days" or "immediate" needs claimed by DBP in its examples).
1444. With regard to DBP's claimed justification based on "uncertainty" and "delay" and "efficient use of pipeline capacity", this needs to be set against the "uncertainty" and potential expropriation for existing shippers and the potential for inefficiencies if existing shippers (having already made an "investment" in the DBNGP) are forced to make a hasty decision to either confirm they will take an extension (which it may later turn out they do not need), or forfeit their extension option (which it may later turn out they actually do need, but hence will instead have to rejoin the queue). Furthermore, there is also no guarantee that, where an existing shipper forfeits its extension option, the future capacity that is thereby made available will actually be

utilised by the shipper requesting capacity (for example, negotiations may fall through).

1445. Equally, the Authority notes that WESCEF's claimed "minimum of 90 days" notice requirement is untested as to its efficiency. However, it seems reasonable to expect that significant investment decisions (e.g. new or expanded mining operations) that require securing significant capacity for gas supply on the DBNGP are not likely (if done prudently) to be ones that are taken in very short timeframes. Indeed, in this context, 45 days or even 90 days do not sound unrealistic and (as noted above) the "20 business day" requirement in DBP's queuing policy should not constrain this decision making process concerning whether or not to exercise available options.
1446. Having regard to the above considerations, the Authority considers that the timeframe proposed in clause 4.8(b) should be amended to at least 45 days. The Authority also requires some further amendments to the drafting of clause 4.8 for clarity, as follows.

4.8 Put and call of Options

- (a) If Operator receives an duly completed access request form from a shipper (~~other than the Shipper~~ Third Party Access Request) which specifies a start date for the requested service ~~Requested Reference Service Start Date~~ occurring more than 12 months prior to the Shipper's Capacity End Date and at the time when the service requested in ~~of receipt of the~~ Third Party Access Request ~~access request form~~ will be required there is, or is reasonably likely to be, insufficient Contracted Capacity to meet the ~~needs~~ requirements of the Third Party ~~a~~ Access Request and the Shipper has one or more Options that it has not exercised, then the Operator must give a written notice to the Shipper as soon as practicable after receipt of the access request form from the other shipper:
- (i) confirming receipt of the Third Party Access Request ~~access request form~~, the start date for the requested service ~~Requested Reference Service Start Date~~ and the amount of Contracted Capacity which is requested in ~~the subject of the~~ Third Party Access Request ~~access request form~~; and
 - (ii) requiring the Shipper to confirm whether the Shipper intends to exercise its available Options or wishes for those Options to lapse;
- (b) No later than ~~15~~ 45 days after receipt of the Operator's notice issued under clause 4.8(a) and notwithstanding clause 4.5, a Shipper may give written notice to the Operator that it wishes to exercise its available Options. If such notice is not given before such time or the Shipper confirms that it wishes for those Options to lapse, the Options lapse, are of no force and effect whatsoever, and cannot be exercised.

Required Amendment 23

Clause 4.8 of the amended terms and conditions, relating to put and call options, must be amended to read as specified in this Final Decision (refer paragraph 1446).

Clause 5.3 – Operator may refuse to receive gas

1447. Clause 5.3 of the proposed terms and conditions sets out the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point.
1448. In its original proposal DBP changed the wording of clause 5.3(e) as follows:

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior

notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

...

- e) ~~subject to determination by the Operator as a Reasonable and Prudent Person,~~ by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;

1449. DBP submitted that the change should be made for the following reasons:³³⁰

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

1450. CPMM and WESCEF both commented on DBP's proposal to change clause 5.3(e).

- CPMM objected *"to any erosion of a requirement that the operator must make determinations under the contract as a reasonable and prudent person"*.³³¹
- WESCEF considered the change to clause 5.3(e), as well as clause 5.3(g), to be *"contrary to the interest of shippers seeking access... not reasonable or justified (WESCEF cannot see any reason why DBP should be entitled to act other than as a reasonable and prudent person in these circumstances)"*.³³²

1451. The Authority noted that DBP's change to clause 5.3(e) would alter the substance of the test that DBP must satisfy before it could refuse to deliver gas under clause 5.3(e), and that this could have potentially significant detrimental consequences for shippers. The Authority considered there were better ways of clarifying the drafting of clause 5.3(e) that did not involve removing the important "reasonable and prudent person" qualification.

1452. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change. Accordingly, the Authority rejected DBP's change and required the following amendment:

³³⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 6.

³³¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 36-37.

³³² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

Required Amendment 36

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

~~“subject to determination by the Operator as a Reasonable and Prudent Person to the extent that it is reasonably necessary to do so (as determined by the Operator acting as a Reasonable and Prudent Person), by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;”~~

1453. In its amended proposal, DBP does not agree with the Authority’s (Draft Decision) Required Amendment 36 and instead proposes to amend clause 5.3(e) to read as it currently reads in the terms and conditions applying to the third access arrangement (AA3). That is:

subject to determination by the Operator as a Reasonable and Prudent Person, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;

1454. DBP submits that:³³³

2.33 [T]he decision of the ERA not only fails to clarify the drafting of clause 5.3(e) but also creates an additional test to be undertaken by operator which further limits DBP’s ability to exercise its contractual rights to refuse to receive gas from shippers at an inlet point.

2.34 Relevantly, the ERA’s proposed amendments now require the operator to determine whether such refusal by the operator is “reasonably necessary to do so” which, in turn, must be “determined by the Operator acting as a Reasonable and Prudent Person”.

2.35 The imposition of this limitation on DBP’s rights was not advocated in any submission by third parties or by DBP. DBP considers that the ERA’s amendment is not achievable in practice, given that DBP may be required to act instantaneously to restore integrity to pipeline service given that this right is triggered by a shipper reducing capacity through negligence, breach of contractual term or other misconduct.

2.36 Even if achievable to implement in practice, the ERA’s proposed amendments would create significant administrative burden, through the requirement to implement further controls into its pipeline control system, to determine whether such refusal is “reasonably necessary” in the circumstances.

2.37 For the reasons above, the amendments proposed by the ERA will not promote efficient operation or use of the DBNGP for the long term interests of gas consumers. DBP has considered the submissions of its shippers and requests that clause 5.3(e) of the proposed terms and conditions ... should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

1455. The Authority did not receive any further submissions from third parties on this issue.

1456. Having regard to DBP’s rationale for its proposal to amend clause 5.3(e) of the amended terms and conditions, so that the clause reads the same as clause 5.3(e) of the current terms and conditions applying to the third access arrangement (AA3),

³³³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 10-11, paragraphs 2.33 to 2.37.

the Authority is satisfied that this addresses the intent of the required amendment (Draft Decision RA 36). That is, clause 5.3(e) maintains the important “reasonable and prudent person” qualification.

1457. Further to the initial proposed change to clause 5.3(e), DBP made changes to clause 5.3(g) in its original proposal. DBP identified the changes to be a “minor/drafting change” to clarify and simplify the drafting of the clause.³³⁴

- g) ~~to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day, if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity~~ [at the relevant Inlet Point](#).

1458. CPMM made the following comments on the change to clause 5.3(g):³³⁵

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

1459. As stated above (refer paragraph 1450), WESCEF considered the change to clause 5.3(g) to be “*contrary to the interest of shippers seeking access...not reasonable or justified (WESCEF cannot see any reason why DBP should be entitled to act other than as a reasonable and prudent person in these circumstances)*”.³³⁶

1460. The Authority noted that DBP's proposed change was more than a "minor/drafting change" as it altered the substance of the test that DBP must satisfy before it can refuse to receive gas under clause 5.3(g) and created potentially significant detrimental consequences for shippers. DBP's proposed change replaced a test that required two thresholds to be satisfied before DBP could refuse to receive gas (i.e. exceeding contracted capacity at the inlet point and interference with other shipper's rights to firm capacity at the inlet point), with a test that required only one threshold to be satisfied (i.e. interference with other shipper's rights to firm capacity at the inlet point). The change could therefore make it easier for DBP to refuse to receive gas under clause 5.3(g) and create far greater uncertainty for shippers (who could no longer be assured that DBP could not refuse to receive gas under clause 5.3(g), so long as they keep within their contracted capacity at the inlet point).

³³⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 14.

³³⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 37-38.

³³⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

1461. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change. Accordingly, the Authority rejected DBP's change and required the following amendment:

Required Amendment 37

Clause 5.3(g) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should retain the words: "to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day,".

1462. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 37 and maintains that its original proposal is consistent with the NGO in promoting efficient operation and use of the DBNGP for the long term interests of gas consumers. In support of its position DBP provides the following information.³³⁷

- 2.40 The current test in clause 5.3(g) relevantly requires that DBP may only exercise its right to refuse to receive gas where:
- (a) the shipper has received in excess of the aggregate of all of its contracted capacity at the relevant inlet point on that gas day; and
 - (b) the receipt of such gas would interfere with other shippers' rights to their contracted firm capacity.
- 2.41 Accordingly, where a shipper is interfering with other shippers' rights to their contracted firm capacity, DBP is presently unable to exercise its right to refuse to receive that shippers' gas until such time as that shipper has received the aggregate of its contracted capacity at the inlet point. In these circumstances, a number of third party shippers will experience interference and interruptions to their service delivery. DBP questions how such an arrangement can be consistent with the NGO given that it prioritises the rights of one shipper to the potential detriment of many.
- 2.42 DBP notes that there are multiple situations where the activities of one shipper at an inlet point may interfere with other shippers' rights to their contracted firm capacity, such as receipt of high intraday flows of gas from a producer during commissioning of a production facility or through other unforeseen events. DBP's behavioural charges (such as imbalance, peaking and overrun charges) are low relative to other pipelines in Australia and globally and do not always act as a sufficient deterrent against such shipper behaviour. DBP encounters circumstances of shippers ignoring the impost of such charges on the basis that it is financially beneficial for that shipper to incur such charges rather than suffer asset outages.
- 2.43 In these circumstances, DBP ought to be able to exercise its rights to refuse to receive gas to protect third party shippers during the occurrence of the event interrupting service delivery, rather than being restricted from acting until such time as the interfering shipper has received the aggregate of its contracted capacity on that gas day.
- 2.44 DBP notes that this may reduce certainty of service delivery for the particular shipper that is interfering with other shipper's rights, however such rights will enable DBP, acting as a Reasonable and Prudent Person, to provide greater certainty of service delivery to all other shippers who are not causing interference on the pipeline.

³³⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp.11-12.

1463. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF notes that DBP's amendments to clause 5.3(g) "*appear to give DBP the right to refuse to accept gas up to a shipper's Contracted Capacity for the benefit of delivering other shippers' Contracted Capacities. This would enable DBP to prefer one shipper over another (or others)*".³³⁸ WESCEF reiterates its previous submissions made on this matter in response to DBP's original proposal.
1464. In a further submission to the Authority, and in response to third party submissions, DBP confirms that its proposed amendments do enable DBP to prioritise one shipper over another (or others).³³⁹ DBP provides the following information to support its ability to do so.
- 2.13 DBP's proposed amendment to clause 5.3(g) included in the Amended [Access Arrangement] Proposal that was addressing Amended 37 seeks to allow the Operator to refuse to receive gas from a shipper at an inlet point up to (and beyond) a shipper's contracted capacity where that shipper is interfering with other shippers' rights. As per WCEF's submission, this enables DBP to prioritise one shipper over another (or others).
 - 2.14 This concept is not unique and DBP highlights the various curtailment plan hierarchies, curtailment rights and other rights to refuse to receive or deliver gas which already entitle DBP to prioritise capacity of certain shippers over others.
 - 2.15 DBP's position set out in its submission (see paragraphs 2.38 – 2.45 of Submission 52) is that, in circumstances where one shipper is interfering with other shippers' rights to their contracted firm capacity, DBP is presently unable to exercise its right to refuse to receive that shippers' gas until such time as that shipper has received the aggregate of its contracted capacity at the inlet point. In this circumstance, the interfering shipper is receiving capacity in priority to all other shippers at the relevant inlet point.
 - 2.16 DBP's proposal seeks to provide priority of capacity to those shippers that are not interfering with other shippers' rights, ahead of those shippers that are the source of the interference.
1465. The Authority has considered DBP's further submissions and those of WESCEF on the proposed amendment to clause 5.3(g).
1466. The Authority considers that while there is clearly some justification for DBP to have greater ability to control the activities of a shipper at an inlet point that interfere with other shippers' rights to their contracted firm capacity (such as receipt of high intraday flows of gas from a producer during commissioning of a production facility or through other unforeseen events), DBP has not provided adequate justification for its proposed deletion of the threshold requirement in clause 5.3(g) that the inlet point contracted capacity must have been exceeded before DBP can take action to discipline the shipper for its behaviour. Doing so would leave shippers with no clarity or certainty as to what behaviour DBP *would* consider amounted to interference with other shippers' rights enabling DBP to intervene by refusing receipt of gas under clause 5.3(g).
1467. The Authority considers a shipper's rights and obligations should be set out clearly in the agreement so that, so long as the shipper operates within those rights and

³³⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 5, p. 2.

³³⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.12 to 2.16.

obligations, there should be no interference caused to other shippers' rights to their contracted firm capacity. If, despite operating within those rights and obligations, a shipper does cause such interference, then that suggests a structural problem in the drafting of the agreement and/or operation of the pipeline, rather than any fault on the part of the shipper for which receipt of its gas should be refused.

1468. While the Authority acknowledges that the "reasonable and prudent person" test provides shippers with a safeguard against the operator refusing to receive gas in circumstances other than where shippers are interfering with other shippers' rights to their contracted firm capacity, the Authority considers that shippers still need to have greater clarity and certainty as to what they are allowed (and what they are not allowed) to do before action is taken against them under clause 5.3.
1469. Accordingly, rather than deleting the contracted capacity exceedance threshold from clause 5.3(g) (as proposed by DBP), the Authority considers that clause 5.3(g) should instead be amended to clearly set out all of the situations in which conduct by a shipper will trigger DBP's right (acting as a "reasonable and prudent person") to refuse receipt of the shipper's gas if necessary to prevent interference to another shipper's rights to contracted firm capacity at the same inlet point. In this regard, while DBP has asserted that there are "multiple situations" where the activities of one shipper at an inlet point may interfere with other shippers' rights to their contracted firm capacity, the only example given by DBP is "receipt of high intraday flows of gas from a producer during commissioning of a production facility or through other unforeseen events". The Authority therefore considers that this excessive intraday flow issue could be addressed by stipulating an inlet point MHQ limit in the agreement and providing in clause 5.3(g) that exceeding that limit would allow DBP to refuse receipt of the shipper's gas at the inlet point if DBP considers "as a reasonable and prudent person" that receiving that gas would interfere with other shippers' rights to their contracted firm capacity at the relevant inlet point. As DBP has not indicated any other examples of the "multiple situations" it claims exist, the Authority is not at this point in time prepared to speculate on what they may be or therefore to make any amendment to clause 5.3(g) in respect of them.
1470. Accordingly, the Authority rejects DBP's proposed amendment to clause 5.3(g) and instead requires that clause 5.3(g) and the definition of "MHQ" in clause 1 of the amended access arrangement be amended as follows.

5.3 Operator may refuse to Receive gas

In addition to any other rights and remedies that may be available to it under this Contract or under any Law, the Operator may (subject to clause 5.4(a)), without prior notice to the Shipper, refuse to Receive Gas from the Shipper at an Inlet Point in all or any of the following cases:

...

(g) to the extent that either:

- (i) at any time during a Gas Day, the Receipt of that Gas at an Inlet Point exceeds the Shipper's MHQ for that Inlet Point for that Gas Day; or
- (ii) the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity, in respect of that Inlet Point for that Gas Day.

and if the Operator considers, as a Reasonable and Prudent Person, that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Inlet Point.

[In Clause 1 of the amended terms and conditions the defined term "MHQ" should be amended as follows.]

MHQ means:

- (i) for an Outlet Point on a particular Gas Day in respect of a shipper, means (subject to clause 17.7(c)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Outlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper; and
- (ii) for an Inlet Point on a particular Gas Day in respect of a shipper, means one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Inlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper.

Required Amendment 24

Clause 5.3(g) of the amended terms and conditions, relating to the circumstances where the operator may refuse to receive gas, must be amended to read as specified in paragraph 1470 of this Final Decision.

Additionally, the term "MHQ" in clause 1 of the amended terms and conditions must also be amended to read as specified in paragraph 1470 of this Final Decision.

Clause 5.4 – Notification of refusal to receive gas

1471. Clause 5.4 of the proposed terms and conditions sets out the circumstances in which the operator is to give notice to the shipper of a refusal to receive gas. In summary, the operator must:

- use its reasonable endeavours to give the shipper advanced notice of any impending refusal to receive gas (clause 5.4(a));
- if no advanced notice is given, notify the shipper of a refusal as soon as practicable after the refusal (clause 5.4(b)); and
- as soon as practicable, notify the shipper of the reasons for a refusal to receive gas (clause 5.4(c)).

1472. In its original proposal DBP made changes to the wording of clause 5.4(c) to insert the word "reasonably" to make the requirement to notify the shipper of the reasons for a refusal to receive gas "as soon as reasonably practicable". DBP considered the change in wording to be a "minor/drafting change".³⁴⁰

1473. CPMM indicated that it did not support DBP's change to clause 5.4(c) and believed that DBP had not provided adequate reasoning as to why the current standard, of providing notice as soon as practicable, should be changed. CPMM submitted:³⁴¹

This is an important operational event. It can cause the shipper to incur imbalance penalties, and can result in contractual consequences under its gas purchase

³⁴⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

³⁴¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 53-54.

agreements. The shipper needs to know quickly so it can start making alternative arrangements.

1474. The Authority considered that, if the insertion of "reasonably" caused the standard to be degraded in substance (as CPMM submitted) then the proposed change would not be a "minor/drafting change". On balance, the Authority was of the view that there was likely to be little difference in practice between an obligation to do something "as soon as practicable" and to do it "as soon as reasonably practicable". On this basis, the Authority considered that DBP's proposed change was in the nature of a "minor/drafting change" which was acceptable.
1475. DBP's amended proposal did not readdress this particular matter and no further submissions were received from other interested parties in response to the Authority's Draft Decision. Hence, the Authority maintains its position with respect to DBP's proposed change to clause 5.4(c). That is, the Authority accepts DBP's proposed change to clause 5.4(c)).

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

1476. Clause 5.5 of the proposed terms and conditions sets out the circumstances in which the refusal to receive gas is to be considered a curtailment under the contract and taken into account in determining whether the permissible curtailment limit for a gas year has been exceeded.
1477. In its original proposal DBP changed clause 5.5 by deleting a cross reference to clause 5.3(d), which related to the DBNGP exceeding its maximum allowable operating pressure (**MAOP**) as a basis for claiming that a refusal to deliver is a curtailment in certain circumstances. DBP indicated the reason for this change to be:³⁴²

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

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

1478. CPMM indicated that it objected to DBP's proposal "*on the basis that the operator is unlikely to be considered as having failed to act as a [reasonable and prudent person] in this situation*".³⁴³
1479. The Authority considered that the "reasonable and prudent person" requirement is an important safeguard and should not be lightly removed. If a reasonable and prudent person could have avoided having to refuse to receive gas because of a MAOP issue, then DBP should have also done so. The reasons put forward by DBP appeared to be claims based largely on matters that it considered to be beyond its prevention or control. However, it is still necessary to apply the reasonable and

³⁴² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 6-7.

³⁴³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 38.

prudent person test to any such situation to determine if it is genuinely beyond DBP's prevention or control, or could have been prevented or controlled, had DBP acted as a reasonable and prudent person.

1480. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change. Accordingly, the Authority was of the view that the proposed change should be rejected, and required the following amendment:

Required Amendment 38

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

1481. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 38 and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following information.³⁴⁴

- 2.47 DBP notes the views of the ERA that the "reasonable and prudent person" requirement is an important safeguard and should be applied to all such situations to determine whether such situations are genuinely beyond DBP's prevention or control.
- 2.48 DBP reiterates the rationale for this amendment in its submission that in all such plausible situations, it is beyond DBP's prevention or control to mitigate against an event of maximum allowable operating pressure (MAOP) occurring. Relevantly:
- (a) MAOP is set by the design of the pipeline;
 - (b) other than system use gas (which forms an insignificant quantum of daily gas receipts and deliveries), all gas transported on the pipeline is supplied by, and at pressures controlled by, the shippers on the DBNGP;
 - (c) DBP ought to be entitled to refuse receipt in such circumstances without risk of penalty.

1482. No further submissions were received by the Authority that readdress this particular issue.

1483. The Authority has given consideration to DBP's further submission (which largely repeats its original submission) and remains of the view, for the reasons set out in its Draft Decision (and summarised at paragraph 1479 above), that clause 5.5 of the amended terms and conditions should retain the cross reference to clause 5.3(d).

Required Amendment 25

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

³⁴⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 12.

Clause 5.7 – Operator may refuse to deliver gas

1484. Clause 5.7 of the proposed terms and conditions sets out the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point.

1485. In its original proposal DBP changed the wording of clause 5.7(b)³⁴⁵ as follows:

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

...

- b) ~~to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas, by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;~~

1486. DBP submitted the change should be made for the same reasons as the change that was made to clause 5.3(e) (refer paragraphs 1447 and following of this decision). DBP indicated that the reasons for the change to clause 5.7(b) were *“repeated, but in relation to deliveries of gas rather than receipt of gas”* and that the proposed change aimed to clarify clause 5.7(b) and make it consistent with the corresponding clause of 5.3(e).³⁴⁶

1487. CPMM believed that the proposed change was *“an attempt by DBP to obtain substantial commercial leverage”* and indicated that the Authority should be mindful of the *“oddities”* contained within the contract.³⁴⁷ Further comments submitted by CPMM included:

- The current wording of clause 5.7(b) only permitted a suspension of supply in response to a contractual breach when it was necessary to protect pipeline integrity. The proposed change would allow DBP the ability to suspend supply in all breach circumstances, including circumstances of “misconduct”, which CPMM considered to be an undefined and broad concept.
- Peculiarities of the contract resulted in the refusal to accept or deliver gas operating in parallel to the normal curtailment regime, and not counting towards curtailment limits. CPMM believed this arrangement gave DBP extra advantages (and the shipper extra uncertainties) not normally found in a gas transmission agreement.
- Operationally, from the point-of-view of a shipper, there was no difference between a refusal to accept or deliver gas and a curtailment.

1488. The Authority noted that DBP's change to clause 5.7(b) (like its change to clause 5.3(e) and discussed above at paragraph 1447) would alter the substance of the test that DBP must satisfy before it can refuse to deliver gas under clause 5.7(b). This could have potentially significant detrimental consequences for shippers.

³⁴⁵ In its submission to the Authority (*“Proposed Terms and Conditions – Supporting Submission 4”*), DBP cites this change to be a change to clause 5.7(d).

³⁴⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

³⁴⁷ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 38-40.

1489. As with the Authority's comments on clause 5.3(e), the Authority considered that there were better ways of clarifying the drafting of clause 5.7(b) that did not involve removing the important "reasonable and prudent person" qualification. Alternatively, the Authority noted that DBP did not have an equivalent to clause 5.7(b) in its SSC and accordingly, the Authority had no objection to DBP removing clause 5.7(b) in its entirety from the terms and conditions.
1490. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the proposed change. Accordingly the Authority was of the view that the proposed change should be rejected and required the following amendment:

Required Amendment 39

Clause 5.7(b) of the proposed terms and conditions, relating to the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point, should retain the words: "to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas,".

1491. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 39.³⁴⁸ Accordingly, DBP has reinstated the words "*to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas,*" in clause 5.7(b) of the amended terms and conditions.
1492. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 39).

Clause 5.10 – No liability for refusal to deliver gas

1493. Clause 5.10 of the proposed terms and conditions limits DBP's liability for refusing to deliver gas in the circumstances set out in clause 5.9. The Authority notes that the drafting of clause 5.10 is almost identical to that used in clause 5.6 (which limits DBP's liability for refusing to receive gas in the circumstances set out in clause 5.5).
1494. In its original proposal DBP made changes (as "minor/drafting change") to clause 5.6 to correct an ambiguity in the existing drafting, of which the Authority accepted.³⁴⁹ The Authority considered a similar change should also be made to clause 5.10 in relation to liability for refusal to deliver gas. The Authority recommended the following amendment:

Required Amendment 40

Clause 5.10 of the proposed terms and conditions should be amended as follows:

"Subject to clause 23.2, and clause 17 when a Refusal to Receive Gas is deemed a Curtailment, the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies."

³⁴⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 13, paragraph 2.53.

³⁴⁹ No submissions were received on DBP's proposed "minor/drafting change" to clause 5.6 of the proposed terms and conditions.

1495. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 40.³⁵⁰ Accordingly, DBP has updated clause 5.10 of the amended terms and conditions using the same wording as proposed by the Authority.
1496. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 40).

Clause 5.13 – Additional rights to refuse to receive or deliver gas

1497. Clause 5.13 details provisions relating to additional rights to refuse to receive or deliver gas.
1498. The Authority noted that clauses 5.13(b) and 5.13(c) of DBP's original proposal contained various references to "*clause 5.12(a)*". The Authority considered these references to be drafting errors (as there is no "clause 5.12(a)" in the proposed terms and conditions) and required the following amendment:

Required Amendment 41

Clauses 5.13(b) and 5.13(c) of the proposed terms and conditions, relating to additional rights to refuse to receive or deliver gas, should be amended to replace references to "clause 5.12(a)" with references to "clause 5.13(a)".

1499. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 41.³⁵¹ Accordingly, DBP has updated clauses 5.13(b) and (c) of the amended terms and conditions to correct the cross reference drafting errors that the Authority identified.
1500. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 41).

Clause 5.14 – Shipper's gas installations

1501. Clause 5.14 sets out provisions relating to the gas installations of shippers.
1502. The Authority noted that clause 5.14(a) of DBP's original proposal contained a reference to "*this clause 5.13*", which the Authority considered to be a drafting error that should instead refer to "this clause 5.14". Similarly, the Authority noted that clauses 5.14(b)(ii) and 5.14(c) of DBP's original proposal contained references to "*clause 5.13(b)(i)*", which the Authority also considered to be drafting errors that should instead refer to "clause 5.14(b)(i)". The Authority required the following amendment:

Required Amendment 42

Clause 5.14 of the proposed terms and conditions, relating to shipper's gas installations, should be amended as follows:

- Clause 5.14(a) should be amended to replace a reference to "clause 5.13" with a reference to "clause 5.14".

³⁵⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.55.

³⁵¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.57.

- Clauses 5.14(b)(ii) and 5.14(c) should be amended to replace references to “clause 5.13(b)(i)” with references to clause “5.14(b)(i)”.

1503. In response to the Authority’s Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 42.³⁵² Accordingly, DBP has updated clause 5.14 of the amended terms and conditions to correct the cross reference drafting errors that the Authority identified.

1504. The Authority is satisfied that DBP’s amended proposal addresses the required amendment (Draft Decision RA 42).

Clause 6.3 – Multi-shipper inlet and outlet points

1505. Clause 6.3 of the proposed terms and conditions sets out provisions relating to multi-shipper inlet and outlet points, which are points at which more than one shipper delivers (in the case of an inlet point) or receives (in the case of an outlet point) gas from the operator.

1506. In its original proposal DBP changed clause 6.3(e) to specify that a multi-shipper agreement (**MSA**), in respect of an inlet point or outlet point, is an agreement that contains terms that satisfy all the conditions outlined in clauses 6.3(e)(i) to 6.3(e)(viii). The specific changes were as follows:

- c) ~~The Operator must promptly enter into a~~ A Multi-shipper Agreement in respect of an Inlet Point or Outlet Point ~~if~~ is an agreement that contains terms that satisfy all of the following ~~apply to the Multi-shipper Agreement:~~
 - i) if any one of ...

1507. DBP believed that the drafting of clause 6.3(e) did not make sense and may have been a drafting error that was maintained in the terms and conditions, and hence the reason for the drafting change.³⁵³

1508. Whilst CPMM acknowledged the drafting of clause 6.3(e) was somewhat “*inelegant*”, it disagreed with DBP’s drafting error reasoning and objected to the proposed change. CPMM submitted that the operator should be required to enter into a MSA in the circumstance set out in clause 6.3(e). CPMM made the following points.³⁵⁴

- The current wording required DBP to enter into a MSA if the agreement met the circumstances specified in the clause – DBP’s change would remove this obligation.
- A MSA was important to shippers as a means of risk mitigation, as it allowed a shipper to mitigate the take or pay risk under its gas sales and gas transportation by finding alternative sources of, or markets for, gas during its, or its suppliers’, outages.
- A MSA was largely an agreement between affected shippers as to how commingled gas flows will be apportioned, but required DBP to be a party for operational reasons. Removing the obligation for DBP to enter into such an

³⁵² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.59.

³⁵³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

³⁵⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 40-41.

agreement would impact on shippers' risk mitigation efforts and increase DBP's negotiating position (or "bargaining power").

1509. The Authority was of the view that, contrary to DBP's stated rationale for the proposed change, the drafting of current (AA3) clause 6.3(e) did have sufficient clarity of meaning to make sense. The Authority noted that if changes were to be made to improve the drafting, it should be possible to do that without altering the substance and meaning of the clause. However, DBP's change would substantially alter the substance and meaning of the clause. If the substance and meaning of the clause was to be altered, then DBP needed to provide good justification for doing this.
1510. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification for the change. Accordingly, the Authority was of the view that the proposed change should be rejected and required the following amendment:

Required Amendment 43

Clause 6.3(e) of the proposed terms and conditions, relating to multi-shipper inlet and outlet points, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1511. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 43.³⁵⁵ Accordingly, DBP has updated clause 6.3(e) of the amended terms and conditions so that the clause reads the same as clause 6.3(e) of the current terms and conditions for the third access arrangement (AA3).
1512. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 43).

Clause 6.5 – Allocation of gas at outlet points

1513. Clause 6.5 of the proposed terms and conditions sets out provisions relating to the allocation of gas at outlet points.
1514. In its original proposal DBP made changes to clauses 6.5(b) and 6.5(c), which were identified to be in the nature of "minor/drafting changes". DBP considered these minor drafting changes necessary "to ensure consistent terminology (*Receives Gas, rather than take Delivery of*), to avoid confusion and to note that it relevant deliveries are for a Gas Day at any particular Outlet Point" [sic].³⁵⁶ The changes made to clauses 6.5(b) and 6.5(c) were as follows:

6.5 Allocation of Gas at Outlet Points

...

- b) If Shipper and any other shipper ~~take Delivery of~~ Receives Gas from Operator at the Outlet Point on a Gas Day then, if there is a Multi-shipper Agreement in relation to the Outlet Point, Shipper's proportional share of Gas Delivered by the Operator at the Outlet Point ~~must~~ on that Gas Day will be as determined under the Multi-shipper Agreement.

³⁵⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.61.

³⁵⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

- c) If there is no Multi-shipper Agreement in relation to an Outlet Point ... then Shipper's proportional share of Gas at the Outlet Point is to be determined by Operator (acting as a Reasonable And Prudent Person) by (inter alia) reference to Daily Nominations at the Outlet Point for that Gas Day across all Capacity Services and Spot Transactions across all shippers, and Shipper will be deemed to have Received ~~that~~the proportionate share so determined of the Gas Delivered ~~to~~by the Operator at that Outlet Point on that Gas Day at a constant rate over that Gas Day.

1515. CPMM believed that DBP's proposal to add the words "*at a constant rate over that Gas Day*" (at clause 6.5(c)) was not trivial. CPMM submitted that:

If DBP, making the determination as a Reasonable and Prudent Person (under line 7 of this clause), has information about the different consumption profiles of the multiple shippers at that point (e.g. if one is a constant-rate plant and one a peaking power generator), it should be required to use that information in making its determination, not ignore it. [sic]

1516. Further to the changes at clauses 6.5(b) and 6.5(c), DBP also made amendments to clause 6.5(d), which outlined the order in which gas that is delivered by the operator to an outlet point is deemed to be received by the shipper. DBP deleted the third ordered item as follows, and did not provide any specific reasoning for the deletion.³⁵⁷

Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:

- (i) first, Gas for any available T1 Service (which shall include any available Aggregated T1 Service);
- (ii) second, Gas for any available Capacity Services (other than T1 Service) in the order set out in clause 8.8(a); and
- (iii) third, ~~Gas for any available Capacity under any Spot Transaction; and~~
- ~~(iv) fourth,~~ other gas.

1517. WSECEF submitted that the change to clause 6.5(d)(iii), along with other changes to clause 17.9(c)(iii) and 9.5(a) (as discussed elsewhere in this decision document), should not be approved. WSECEF believed the changes altered the nature of spot transactions in a manner that was adverse to the interests of a shipper utilising spot capacity.³⁵⁸

1518. Having regard to the submissions of interested parties, the Authority considered that the addition of the words "*at a constant rate over that Gas Day*" to clause 6.5(c) and the change to clause 6.5(d) were not "minor/drafting changes", and that DBP had not provided adequate justification for these changes. Accordingly, given the lack of justification, the Authority required the following amendment:

³⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A "T1 Reference Service Terms and Conditions – marked-up version"*, p. 34.

³⁵⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

Required Amendment 44

Clause 6.5 of the proposed terms and conditions, relating to the allocation of gas at outlet points, should be amended as follows:

- Subclause 6.5(c) should be amended to remove the words “at a constant rate over that Gas Day”; and
- Subclause 6.5(d) should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1519. In its amended proposal, DBP does not accept the Authority’s (Draft Decision) Required Amendment 44 and maintains its original proposal. In support of its position DBP provides the following information.³⁵⁹

2.63 ... [I]n respect of subclause 6.5(c), DBP advises that the rates of gas delivery at outlet points is not administered on an hourly basis, but is rather aggregated over a given gas day. DBP at present does not have systems in place to determine the different consumption profiles of multiple shippers at an outlet point on an hourly or intraday basis or have access to such information, as CPMM alleges in its submission. The implementation of such systems would require additional capital and operating expenditure by DBP which it considers is not an efficient operation or use of the DBNGP for the long term interest of gas consumers when alternative contractual arrangements are able to address the uncertainty.

2.64 ... [I]n respect of subclause 6.5(d), DBP is of the view that its proposed amendment should be approved. Notwithstanding the submissions from interested parties, DBP notes that the amendment to clause 6.5(d) has been proposed to simplify the drafting and remove uncertainty that currently exists.

2.65 Relevantly, Capacity Service is defined in clause 1 to mean “any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided”. This definition relevantly includes any available Capacity under any Spot Transaction, and accordingly it is unnecessary to separately refer to Capacity under any Spot Transaction in clause 6.5(d).

2.66 This intention is made clear given that clause 6.5(d)(ii) ranks available Capacity Services “in the order set out in clause 8.8(a)”. Clause 8.8(a) in turn prioritises the scheduling of capacity services according to the “Point Specific Curtailment” set out in Schedule 6. Relevantly, the Point Specific Curtailment hierarchy in Schedule 6 makes reference to Spot Capacity, and therefore the deemed order of receipt of gas, as specified in DBP’s proposed amendment, addresses the receipt of gas for any available Capacity under any Spot Transaction.

1520. In its further submission to the Authority, and in response to DBP’s amended proposal, WESCEF considers that there is no reason to remove the priority of spot transactions and the relevance of spot capacity when calculating the imbalance limit.³⁶⁰ WESCEF reiterates its submissions made on the proposed amendments to clauses 6.5(d), 9.5(a) and 17.9(c)(iii) in its previous submission responding to DBP’s original proposal.

³⁵⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 13-14, paragraphs 2.63 to 2.66.

³⁶⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 8, p. 3.

1521. The Authority has considered DBP's further submissions and those of WESCEF.
1522. As to DBP's proposed amendment to clause 6.5(c) of the terms and conditions, the Authority notes CPMM's submission appears to be premised on an assumption that DBP has relevant per shipper outlet point consumption information. However, in its submission DBP has advised that it does not presently have systems in place to determine the different consumption profiles of multiple shippers at an outlet point on an hourly or intraday basis, nor does it have access to such information. DBP only has daily aggregates which they use (averaged based on a constant flow). Further, DBP claims that it is more efficient (and consistent with the NGO) to deal with this issue by contract than by installing costly metering systems. On this basis, the Authority is prepared to accept DBP's proposed amendment to clause 6.5(c) of the amended terms and conditions.
1523. As to DBP's proposed amendment to clause 6.5(d) of the terms and conditions, the Authority notes DBP's justification for the proposed change. However, the Authority considers that the amendment should only be accepted in part and that further amendments should be made to clause 6.5(d). This is because whilst DBP has explained why it considers that capacity under any spot transaction is included in the ordered list of gas deemed to be received by the shipper, on the face of clause 6.5(d), it is not abundantly clear that capacity under any spot transactions is specifically included.
1524. Therefore, the Authority requires a further amendment to DBP's proposed amendments to clause 6.5(d) of the amended terms and conditions to include a specific reference to "Capacity under any Spot Transactions" as follows. The Authority considers that this further amendment will not cause confusion from an interpretation point of view.

6.5 Allocation of Gas at Outlet Points

...

- (d) Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:
- (i) first, Gas for any available T1 Service (which shall include any available Aggregated T1 Service);
 - (ii) second, Gas available for any available Capacity Services (other than T1 Service) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a); and
 - (iii) third, other gas."

Required Amendment 26

Clause 6.5(d)(ii) of the amended terms and conditions, relating to the allocation of gas at outlet points, must be amended to read as follows:

(ii) second, Gas available for any available Capacity Services (other than T1 Service) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a); and

Clause 6.16 – Certain installations taken to comply

1525. In its original proposal DBP made amendments to clause 6.16 of the proposed terms and conditions that were indicated to be a “minor/drafting change” for plain English drafting and clarification purposes.³⁶¹ DBP’s proposed drafting specified that, despite any other provisions of the contract, certain installations relating to “existing stations” were taken to comply in all respects with the provisions of the contract, including clauses 6.6 to 6.11, which related to the:

- design and installation of inlet stations (clause 6.6);
- design and installation of inlet point connection facilities (clause 6.7);
- design and installation of outlet stations (clause 6.8);
- requirements relating to inlet stations and outlet stations (clause 6.9);
- notional gate point (clause 6.10); and
- maintenance charge for inlet stations and outlet stations (clause 6.11).

1526. Under the current terms and conditions applying for the third access arrangement period (AA3), the cross-referencing in clause 6.16 is to clauses 6.6 to 6.10, not clauses 6.6 to 6.11 as proposed by DBP.

1527. WESCEF noted DBP’s drafting amendments to clause 6.16 and believed that the reference to clause 6.11 should be a reference to clause 6.9.³⁶² That is, certain installations relating to existing stations were taken to comply in all respects with the provisions of the contract, including clauses 6.6 to 6.9.

1528. The Authority noted that DBP has not provided any justification for its amendment of the clause cross-referencing in clause 6.16 from “clause 6.10” to “clause 6.11”. Further, WESCEF’s proposed change of the cross reference from clause 6.10 to clause 6.9 did appear to make more sense, given that neither clause 6.10 (“Notional Gate Point”) nor clause 6.11 (“Maintenance Charge for Inlet Stations and Outlet Stations”) appeared to be dealing with matters that existing stations and facilities and pre-1995 SECWA metering arrangements relating to them would be expected to comply with.

³⁶¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

³⁶² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

1529. Having regard to the submissions of interested parties, the Authority considered that, while the change to clause 6.16 was generally acceptable, the cross referencing to clause 6.11 did not appear to be correct, nor had it been adequately justified by DBP. On balance, therefore, the Authority preferred the suggestion made by WESCEF that the cross-referencing in clause 6.16 be changed to "*clauses 6.6 to 6.9*". The Authority required the following amendment:

Required Amendment 45

Clause 6.16 of the proposed terms and conditions, relating to the compliance of certain installations, should be amended to replace the cross-referencing to "clauses 6.6 to 6.11" with cross-referencing to "clauses 6.6 to 6.9".

1530. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 45.³⁶³ Accordingly, DBP has updated clause 6.16 of the amended terms and conditions to replace the cross-referencing to "clauses 6.6 to 6.11" with cross-referencing to "*clauses 6.6 to 6.9*".

1531. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 45).

Clause 7.8 – Shipper's liability for out-of-specification gas

1532. Clause 7.8 outlines the treatment of any out-of-specification gas that enters the DBNGP without agreement from the operator.

1533. In its original proposal DBP made changes to this clause, at sub-clauses 7.8(b)(i) and (ii), to indicate that the operator is entitled to deal with any out-of-specification gas that enters the DBNGP by venting, flaring or burning the out-of-specification gas (by comparison, only venting is permitted under the existing wording of clause 7.8(b) applying to the third access arrangement (AA3)).

1534. DBP indicated the change would ensure the options of flaring or burning out-of-specification gas were available to the operator to use when necessary, and reflected the practical operation of the pipeline.³⁶⁴ It would also ensure that the operator could deal with out-of-specification gas issues as quickly as possible.

1535. CPMM believed the addition of the option to "burn" out-of-specification gas could have broader commercial consequences as it would include the burning of such gas in a compressor turbine. CPMM submitted that "*if the gas is good enough to be allowed into the pipeline for use as compressor fuel, then it should not be treated as undelivered [gas] under clause 7.8(b)(ii)*".³⁶⁵

1536. Having regard to the submissions of interested parties, the Authority considered that:

- DBP should have the flexibility to vent, burn or flare out-of-specification gas as it thinks fit (acting as a reasonable and prudent person and consistently with the NGO); and

³⁶³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.69.

³⁶⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 7.

³⁶⁵ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 41.

- if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and (as the shipper did not supply the gas for that purpose) the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

1537. Accordingly, the Authority was of the view that the proposed change to clause 7.8 would be acceptable if additional drafting was included to the above effect. The Authority required the following amendment:

Required Amendment 46

Clause 7.8 of the proposed terms and conditions, relating to the shipper's liability for out-of-specification gas, should be amended to indicate that if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

1538. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 46 and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following information.³⁶⁶

- 2.73 [DBP] does not consider it is appropriate to create a mechanism to reimburse shippers for out-of-specification gas that is used or dealt with by the operator for the following reasons:
- (a) Multiple inlet points are physically connected at compressor stations on the DBNGP, limiting DBP's ability to control the passage of out-of-specification gas through compressor stations;
 - (b) The delivery of out-of-specification gas into the DBNPG is totally within the control of the shipper and is outside the control of DBP. The onus is on the shipper to ensure that gas entering the pipeline system complies with the gas specifications;
 - (c) Receipt of out-of-specification gas into the DBNGP can create severe operational integrity issues to the detriment of other users of the pipeline and should not be encouraged or incentivised through financial means;
 - (d) DBP is mandated by legislation, in particular the Gas Supply (Gas Quality Specifications) Act 2009 (WA), to accept short term risk on all gas excursions before a Pipeline Impact Agreement is required to be entered into by the shipper and operator;
 - (e) Pipeline operators require a mechanism that facilitates immediate decision making in respect of the treatment of out-of-specification gas. This should not include the making of financial decisions as part of that process;
 - (f) Notice requirements already exist in the terms and conditions under clause 7.7 which permit the operator, at its own risk, to agree to receive out-of-specification gas from a shipper at an inlet point and to agree on terms and conditions (including the terms of any financial reimbursement) appropriate for the receipt of that gas;
 - (g) Clause 7.8 governs the liability regime where out-of-specification gas enters the pipeline without the Operator's agreement under

³⁶⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 15-16.

clause 7.7. In this situation, shippers indemnify DBP for the impact of out-of-specification gas that DBP has not consented to or agreed terms in relation to acceptance of on the pipeline. It is anomalous in the context of this accepted regime for DBP to pay a shipper for out-of-specification gas burnt by the Operator;

- (h) DBP expects that out-of-specification gas delivered by the shipper at an inlet point would be deemed to not have been delivered, and the shipper would not be financially liable, under the terms of its Gas Sales Agreements with the relevant producer. Whilst DBP is not privy to such agreements, it notes that clause 11.4 of the AMPLA Model Gas Sales Agreement (Version 1) provides the following:

"11.4 Consequences of Buyer rejection of Off-Specification Gas

If the Buyer notifies the Sellers' Representative that it rejects the proposed delivery of Off-Specification Gas, then:

- (a) the Sellers must, if possible, stop making available Off-Specification gas;
- (b) the quantity of Off-Specification Gas so rejected is deemed not to be Delivered Gas and the Buyer is not liable to pay for that Off-Specification Gas; and

if Off-Specification Gas which has been rejected by the Buyer is actually delivered to the Buyer, title to that Off-Specification Gas passes to the Buyer but, subject to any limitation of liability under this agreement, the Seller is liable to the Buyer, and must recompense the Buyer for, for any Direct Loss incurred by the Buyer, including Direct Loss incurred by a Transporter which the Buyer is required to pay to that Transporter."

- 2.74 The retention of DBP's ability to vent, flare or burn out-of-specification gas as set out in its proposed revised Access Arrangement ensures DBP is capable of quickly managing gas excursions on the pipeline to promote efficient operation and use of the DBNGP. The current regime also provides a disincentive for shippers to permit out of specification gas from entering the pipeline system.

1539. No further submissions were received by the Authority that readdress this particular issue. Absent any further submissions, the Authority has given consideration to DBP's further submission and is of the view that these submissions, on balance, now provide adequate justification for DBP's proposed amendment to clause 7.8 of the amended terms and conditions.
1540. The Authority notes DBP's submission that it expects out-of-specification gas delivered by the shipper at an inlet point to be deemed to not have been delivered and the shipper would not be financially liable under the terms of its gas sales agreements with the relevant producer; however, the Authority proceeds with caution on this point. As DBP notes, DBP (and the Authority) is not privy to the terms of shippers' gas sales agreements and those agreements may or may not adhere to DBP's expectations.
1541. Furthermore, DBP's submission, that receipt of out-of-specification gas into the DBNGP can create severe operational integrity issues to the detriment of other users of the pipeline and should not be encouraged or incentivised through financial means, does not, in the Authority's view, of itself support DBP's position. This is because clause 7.7 of the proposed terms and conditions already provides that the operator and shipper may agree terms and conditions (including pricing) on which the operator will (at its own risk) agree to receive out-of-specification gas from the shipper. However, and in light of DBP's submissions regarding the operation of the current regime in respect of out-of-specification gas entering the DBNGP, the Authority considers that the efficient operation and use of the DBNGP for the long term interests of consumers in respect of price, quality, safety, reliability and security

of supply of natural gas does not warrant a payment by the operator to the shipper for the burning of out-of-specification gas.

1542. DBP notes that the treatment of out-of-specification gas should not require the operator to make a financial decision as a part of this process (in addition to the immediate decision making in respect of the treatment of the gas). The Authority considers that any requirement to make a financial decision as a part of the process of deciding how to treat out-of-specification gas may detract from the achievement of the NGO – that is, the efficient operation and use of the pipeline for the long term interests of consumers.

Clause 8.2 – Requests for advance information

1543. Clause 8.2 of the proposed terms and conditions sets out provisions that provide for the operator to request advance estimates from the shipper to assist the operator with its planning and forecasting.

1544. In its original proposal DBP made drafting changes to clause 8.2(a) to remove certain wording as follows.³⁶⁷ No specific reasoning was provided for the change.

To assist in its planning and forecasting, the Operator may ~~from time to time, acting as a Reasonable and Prudent Person,~~ request the Shipper to provide it with advance estimates (covering such periods and in such detail as the Operator may determine) ~~in good faith~~ of the Shipper's likely Nominations which information will be governed by the provisions of clause 28.

1545. CPMM noted DBP's changes to clause 8.2(a) to remove certain words, with no explanation given for the change. CPMM submitted that *"there is no reason not to maintain the same standard of behaviour, to ensure that this clause cannot be abused or become an onerous ongoing pre-nominations regime"*.³⁶⁸

1546. Having regard to the submissions of interested parties, the Authority considered that the changes to clause 8.2(a) potentially gave DBP a wider discretion in how it exercised its right to request advance estimates (by removing the safeguard for shippers that is provided by the reasonable and prudent person qualification) and removed the obligation for shippers to provide estimates in good faith. Accordingly, given the current lack of justification, the Authority was of the view that the changes should be rejected as not being more likely to achieve the NGO than the existing wording. The Authority required the following amendment:

Required Amendment 47

Clause 8.2(a) of the proposed terms and conditions, relating to requests for advance information, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1547. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 47.³⁶⁹ Accordingly, DBP has updated clause 8.2(a)

³⁶⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A "T1 Reference Service Terms and Conditions – marked-up version"*, p. 46.

³⁶⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 41.

³⁶⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.76.

of the amended terms and conditions so that the clause reads the same as clause 8.2(a) of the current terms and conditions for the third access arrangement (AA3).

1548. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 47).

Clause 9.5 – Accumulated imbalance limit

1549. Clause 9.5 of the proposed terms and conditions sets out provisions relating to shippers' accumulated imbalance limits.

1550. In its original proposal DBP removed the provisions relating to the issuing of accumulated imbalance notices by deleting clauses 9.5(c) and 9.5(d) from the terms and conditions. The apparent effect of these proposed changes would be to create a more inflexible eight per cent imbalance limit, with imbalance charges applying immediately if it is exceeded, without any "cure period" (contrary to what is currently permitted).

1551. DBP indicated the reason for the change was that the notice provisions do not work in practice. DBP also submitted that:³⁷⁰

- the base reference service should not give shippers the right to excess imbalance rights above 8% above contracted capacity. DBP management understands that globally, the standard is 2% above contracted capacity; and
- the changes proposed remove notification provisions and provide that once 8% limit is hit, charges for the imbalance automatically apply without the notice provisions (notice to all other shippers etc.) applying. *[sic]*

1552. Both CPMM and WESCEF commented on DBP's deletion of clauses 9.5(c) and 9.5(d) from the terms and conditions.

- CPMM indicated that the DBNGP has been operating in accordance with the notice requirements in clause 9.5 for over a decade, hence CPMM rejected DBP's rationale that the notice provisions were "*unworkable*". CPMM also believed that the operator was equipped to deal with accumulated imbalances in excess of accumulated imbalance limits on any given gas day, and to notify shippers.³⁷¹
- WESCEF indicated that the proposed amendments to clause 9.5 would remove the operator's obligation to issue notices to all other shippers with a negative or positive accumulated imbalance; remove provisions that protect a shipper when it uses its best endeavours to reduce its imbalance; and remove the concept of an outer imbalance limit. WESCEF believed that this was contrary to the interests of shippers because it removed flexibility and reasonable protections.³⁷²

1553. The Authority was of the view that any change to the imbalance regime would need to be justified based on the NGO. That is, DBP would need to show how the change

³⁷⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 7-8.

³⁷¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 41-42.

³⁷² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 6-7.

promoted the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas, despite the claimed adverse impact it would have on shipper flexibility and efficiency.

1554. Clearly (according to the submission from CPMM) the notice provisions were "workable" in the sense that notices could and had been given in practice. It was not clear whether DBP meant that, despite giving notices, the notices had not "worked" in the sense of achieving an improvement in shipper balancing behaviour. However, if shippers did adhere to the eight per cent imbalance limit more strictly, DBP had not shown how that improvement in behaviour would justify the change based on the NGO. DBP had not demonstrated that current shipper balancing behaviour was actually causing an adverse impact on pipeline integrity (or other shippers) that might be argued to be contrary to the long term interests of consumers of natural gas with respect to price, quality, safety, reliability or security of supply of natural gas. The Authority posed the question "what evidence is there that pipeline integrity or other NGO considerations are genuinely threatened by current shipper balancing?"
1555. Further, if DBP's change were to be implemented, DBP did not show how its proposed eight per cent imbalance limit with no-notice default for the reference service contracts, would improve pipeline integrity or other NGO considerations, given that most shippers are not on the reference service contract and would not necessarily be subject to the proposed eight per cent imbalance limit with automatic default (i.e. the SSC retains provisions that are substantially the same as clauses 9.5(c) and 9.5(d)). Unless that position was also changed, it would seem that shippers on a reference service could be exposed to a form of discrimination in this respect.
1556. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification to delete clauses 9.5(c) and 9.5(d). Accordingly, the Authority was of the view that the change should be rejected unless it could be justified consistent with the NGO. The Authority required the following amendment:
- Required Amendment 48
- Clauses 9.5(c) and 9.5(d), relating to the accumulated imbalance limit, should not be deleted from the proposed terms and conditions.
1557. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 48 and maintains its original proposal ought to be accepted. DBP maintains that the deletion of clauses 9.5(c) and (d), and other amendments to clause 9.5 that were not easily identified³⁷³ in its original proposal, are:³⁷⁴
- (a) needed because current terms are ineffectual and unworkable in practice;
 - (b) necessary to provide a more efficient utilisation of the DBNGP; and
 - (c) justified based on the NGO.
1558. In particular, the Authority notes that DBP had originally proposed to amend clause 9.5(b) to change the circumstances in which the operator can apply the

³⁷³ DBP advises that not all proposed amendments to clause 9.5, submitted as part of its original proposal, were identified in the marked-up version of the proposed terms and conditions provided.

³⁷⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 16, paragraph 2.79.

consequences of exceeding the accumulated imbalance limit. Specifically, DBP proposed to change clause 9.5(b) to provide that the operator may refuse to receive gas from the shipper or refuse to deliver gas to the shipper without:

- the operator having to consider whether the continuation of the accumulated imbalance limit will have a material adverse impact on the integrity or operation of the DBNGP, or will adversely impact (or is likely to adversely impact) on any other shipper's entitlements; and
- the operator having to give the shipper a notice to reduce its imbalance to the accumulated imbalance limit, which requires the shipper to use its best endeavours to immediately comply, or procure compliance with, the notice.

1559. The proposed changes to clause 9.5(b) also removed the requirement on the operator to act as a "reasonable and prudent person" in determining whether to refuse to receive or deliver gas. Furthermore, the Authority notes that DBP also intended in its original proposal to delete current (AA3) clauses 9.5(g) and (h) from the amended terms and conditions, which outline the conditions relating to the payment of an "excess imbalance charge".

1560. In support of its proposed amendments to clause 9.5 DBP provides the following information.³⁷⁵

Ineffectual and unworkable in practice

- 2.81 DBP notes that it has, for some time, advocated for a change to the imbalance regime. The current notification regime requires DBP to coordinate with and issue a notice to the shipper to address the shipper's imbalance position and attempt to ameliorate the impact of the shipper's imbalance position. In practice, many imbalance events occur outside business hours. Given a significant number of shippers do not have representatives available outside of business hours, the notice does not result in any immediate change to shipper behaviour and therefore limits the ability of the pipeline operator to mitigate the impact of that shipper's imbalance position.
- 2.82 Without an ability to effectively levy Excess Imbalance Charges on shippers, DBP is of the view that the current provisions in clause 9.5 are inadequate to incentivise and motivate shippers to comply with the imbalance regime set out under the proposed terms and conditions.
- 2.83 DBP is of the view that, under the access arrangement terms and conditions proposed by DBP, shippers hold sufficient rights to manage imbalances and to control their imbalance positions, for the following reasons:
- (a) Notification of Imbalances: By way of clause 9.4 of the terms and conditions, every shipper is notified of its Accumulated Imbalance and Daily Imbalance by way of an Accumulated Imbalance Notice issued to shippers before 13:30 hours on each Gas Day. Accordingly, each shipper on the DBNGP is expressly informed of its daily and cumulative imbalance position to enable it to modify its behaviour and remain within the relevant imbalance limits.
 - (b) Trading of Imbalances: Clause 9.9 of the terms and conditions provides each shipper with an ability to exchange all or part of its Accumulated Imbalance with another shipper on the DBNGP, by 12:00 hours on the next Working Day, on any terms that those parties may agree. Accordingly, this provides an ability for each

³⁷⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 16-19.

shipper to unilaterally agree, outside of any involvement with the pipeline operator, to exchange and thereby reduce its imbalance position with other shipper to mitigate its potential exposure to imbalance charges.

- (c) Control over Transportation Usage: DBP is of the view that each shipper has a myriad of options to adjust its usage of gas transportation services and gas demand requirements to ensure that it does not exceed its Accumulated Imbalance Limits. These include, but are not limited to:
 - (i) direct control over its gas demand requirements through the management of its end user or asset;
 - (ii) Advance Nomination rights under clause 8.18 of the reference service terms and conditions which provide an ability for each shipper to provide advance notice of its forecast gas transportation requirements; and
 - (iii) Initial Nomination and Renomination rights under clauses 8.9 and 8.11 which provide an ability for each shipper to adjust its nomination requirements, up to 20:00 hours on each Gas Day, to mirror its gas transportation requirements with its gas demand usage on any given Gas Day.
- (d) Imbalance Limits: ... DBP's management is of the view that DBP's imbalance limits are set at a very high level, in contrast to Australian and global averages, which already provide substantial, generous margins of flexibility for shippers before any imbalance charges are incurred. CPMM alleges in its submissions to the ERA that the Accumulated Imbalance is, at times, arbitrary in nature and submits that each shipper ought to be able to exceed this limit where it can do so without harm, rather than reducing plant output. This example highlights the approach and views that shippers currently take to the present imbalance regime. DBP notes that a shipper has no transparency over the intermittent state of the DBNGP and is not in a position, and ought to not be in a position, to unilaterally determine whether its behaviour on the pipeline will, or will not, have any impact on pipeline operations or on the ability of other shippers to access their contracted capacity. The presence of imbalance limits and charges are crucial controls and disincentives that ought to be available to the operator to ensure pipeline integrity is maintained for the benefit of all customers.

Necessary to provide a more efficient utilisation of the DBNGP

- 2.84 The present imbalance regime, as discussed above, does not provide a sufficient disincentive to shippers to manage imbalances within the Accumulated Imbalance Limits, which can and has impacted on pipeline operations in the past. DBP is of the view that the NGO dictates a balance to be found between offering sufficient flexibility on the pipeline to shippers and ensuring shipper behaviour does not impact on pipeline operations and the capacity utilisation of other shippers.
- 2.85 This is a common view held by many pipeline operators in Australia. In APA's recent public submission to East Coast Gas Inquiry, APA advises:

"In determining the contractual limits, APA has to be mindful of effects on pipeline capacity and the subsequent impact on other shipper's contracted services and the ability to operate the pipeline. For example, if imbalance tolerances are high, then this may impact on transport services, storage capacity and line pack if used by all shippers at the same time."
- 2.86 DBP considers that the current imbalance regime is currently sterilising pipeline utilisation that the pipeline operator can otherwise offer to shippers through other services which is reducing the efficient utilisation of the asset.

- 2.87 The impact caused by over-restrictive gas balancing requirements through the offering of generous pipeline flexibility rights is well documented. For example, the authors of the paper *Gas Balancing Rules Must Take into account the Trade-off between Offering Pipeline Transport and Pipeline Flexibility in Liberalized Gas Markets* note:
- “The European practice of providing a longer balancing interval and offering free tolerances actually means giving free short term storage or free short term flexibility. Free in this context means that the costs are socialized in the balancing tariff. So, shippers who need more flexibility, especially intra-day, pay less than the costs they cause to the network system. Shippers who require less flexibility pay more than the costs caused by their actual use of the flexibility. Consequently, this free line-pack flexibility may inhibit the development of other less costly short term flexibility sources ...”
- 2.88 Those same authors highlight that the adoption of restrictive gas balancing requirements by certain European Union members have enabled the utilisation of balancing services for shippers that have specific balancing needs to be met. The authors note that this unbundling of pipeline services from line-pack flexibility allows the pipeline operator to share the costs between shippers in a more correct way.
- 2.89 In addition to the inefficiencies created by restrictive gas balancing regimes, bodies of literature also exist demonstrating that such regimes can have substantial impacts on pipeline operations to the detriment of services for all pipeline users, as DBP has experienced to date under the current imbalance regime. For example, the authors of the following quotation noted that during a particular December 1989 cold spell, various US pipelines were owed more than twice the amount of gas that they owed others:
- “Pipelines also express concern that such imbalances can be used as a substitute for firm sales service during peak periods, an incentive that is encouraged by low financial penalties for imbalances and long make-up periods to correct imbalances. This incentive can become a serious problem if the entire system exhibits an aggregate imbalance during a peak period, which is highly likely. In effect, there is a ‘run on the bank,’ where all accounts are motivated to exercise overdraft privileges. Under the pipeline’s sales service obligation, the pipeline is bound to have the inventory of gas to honor such aggregate imbalances up to its contract demand level for firm sales.”
- 2.90 Typically, the imbalance of one shipper needs to be viewed as a whole over the imbalances of all shippers on the DBNGP to determine the effect that imbalances are having on the integrity of the asset. At its best, a small overall imbalance position may cause an increase in fuel costs and may limit the abilities of some Other Reserved Services, such as the ability for shippers to utilise storage services. At its worst, such as during a producer outage where shippers will typically take more gas from the DBNGP than they deliver at the producer inlet point, this can drastically reduce linepack over a number of hours in a Gas Day which can result in unavailability of Overruns, service unavailability of some Other Reserved Services, such as storage agreements, and Operational Balancing Agreements, and potential curtailment of gas transportation services.
- 2.91 To date, every single producer outage, and resulting shipper behaviour through imbalances and other behavioural activities, has resulted in substantial depletions of DBNGP line pack which has resulted in the above impacts to service delivery. This has included the Public Utilities Office (PUO) activating the Gas Supply Disruption Response Plan, through the initiation of the Operations Management Group, on 6 June 2014 and 20 January 2015 in response to DBP’s depleted line pack. These events arose not due to the production outage itself, given sufficient gas production capacity remained unutilised by Shippers from other production facilities, but rather arose due to shippers continuing to take gas from DBNGP line pack during the production outage in excess of the quantity of gas being received into the DBNGP, causing substantial negative imbalance positions on the DBNGP.

Justified based on the NGO

- 2.92 For the reasons set out above, DBP is of the view that its proposed terms and conditions relating to the imbalance regime under clause 9.5 will promote the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.
- 2.93 DBP acknowledges that the proposed changes to terms and conditions present a greater probability that Excess Imbalance Charges may be payable by shippers on the DBNGP... DBP is of the view that the imposition of such charges is unlikely to occur in practice given the shipper's current myriad of options presently available to manage imbalance positions on the DBNGP. DBP is, however, of the view that the change to imbalance regime will incentivise positive shipper behaviour.
- 2.94 [S]uch positive changes in behaviour will have a corresponding positive impact on the ability of the pipeline operator to manage future producer outages and other imbalance events to ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.
- 2.95 Lastly, DBP notes the views of the Authority that the proposed imbalance regime is not present in DBP's current SSC contracts. Notwithstanding the dichotomy of services offered under the SSC and the reference service, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC. DBP is of the view that, given the current low level of utilisation of reference services on the DBNGP, the transition of imbalance regimes under the current access arrangement will reduce the impact on service delivery.

1561. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF states that it *"does not agree with DBP's assertion that the current arrangements relating to imbalances and unavailability notices are ineffective and unworkable"*. WESCEF considers *"it is entirely appropriate for shippers to have the protections that are set out in the original forms of these clauses"*.³⁷⁶

1562. In light of DBP's further submissions and those of WESCEF, the Authority is of the view that DBP's proposed amendments are not justified based on the NGO – that is, that the proposed amendments do not promote the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas and in spite of the claimed adverse impact it would have on shipper flexibility and efficiency.

1563. The Authority notes the information cited by DBP relating to the operations of other pipelines within Australia and abroad. Whilst this information provides insight into the operations of other pipelines, the Authority's considerations are focused on the operations of the DBNGP. In this regard the Authority has given consideration to the imbalancing regime and provisions of clause 9.5, and the specific changes to these provisions proposed by DBP in the context of the DBNGP. These considerations are discussed below.

³⁷⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 9, p. 3.

Clause 9.5(b)

1564. The Authority notes DBP's submission that the notices are unworkable under the current regime because "[g]iven a significant number of shippers do not have representatives available outside of business hours, the notice does not result in any immediate change to shipper behaviour..." However, the Authority does not consider DBP has provided sufficient justification for its proposed deletion of the notification to shippers option in clause 9.5(b)(iii). If for whatever reason (including any lack of availability of representatives outside business hours) a shipper chooses to ignore the notice, then DBP would still have the option (subject to clause 9.5(f)) of refusing to receive or deliver gas under clause 9.5(b)(iv), or to take further action under clauses 9.5(d) and (e) to require the shipper to cure the imbalance or pay excess imbalance charges. Such curative action is required to take place over subsequent gas days, so the fact that the original notice may have been received out-of-hours is unlikely to prevent that curative action being taken. If DBP gives the notice in clause 9.5(b)(iii), it is for the shipper to decide what (if any) systems (including out-of-hours coverage) they put in place to deal with it, or else face the consequences of refusal of gas receipts/deliveries under clause 9.5(b)(iv), and/or (if they do not take the necessary curative action under clause 9.5(d)) excess imbalance charges under clause 9.5(e). Presumably shippers will implement whatever they consider to be efficient for them in their circumstances.

1565. However, the Authority has noted a drafting error in current (AA3) clause 9.5(b) that needs to be corrected to make better sense of the clause and to avoid uncertainty – in the first paragraph of clause 9.5(b) the word "then," should be replaced with the word "and".

Clause 9.5(f)

1566. In the Authority's view, DBP's proposed deletion of current (AA3) subclause 9.5(f)(i) has some apparent merit. Clause 9.5(f) provides as follows:

- (f) The Operator may not:
 - (i) issue a notice pursuant to clause 9.5(b)(iii) or refuse to Receive or Deliver Gas pursuant to clause 9.5(b)(iv) unless it has, to the extent reasonable in the circumstances, first endeavoured to co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit; or
 - (ii) other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii)."

1567. The Authority accepts that the requirement in subclause 9.5(f)(i) to "*co-operate with the Shipper to ameliorate the impact of the Shipper exceeding its Accumulated Imbalance Limit*" before DBP can issue a notice under clause 9.5(b)(iii), or refuse to receive or deliver gas under clause 9.5(b)(iv), introduces a potentially significant delay into the process of dealing with imbalances that seems both unnecessary (as shippers already have the means to prevent and control their imbalances and it is unclear why they would need any assistance from DBP to do so) and potentially inefficient from an operational perspective. The Authority therefore accepts the proposed deletion of current (AA3) subclause 9.5(f)(i), but considers the remainder of the current clause 9.5(f) should be reinstated.

1568. The Authority notes DBP's assertion that it has visibility over the intermittent state of the DBNGP and that it is in a position to determine whether shipper behaviour on

the DBNGP will, or will not, have any impact on pipeline operations or on the ability of other shippers to access their contracted capacity. That being the case, then the Authority considers that the terms of subclause 9.5(b)(i) and (ii) can, and should be, retained in the amended terms and conditions.

1569. In the Authority's view, DBP's comments regarding the options available to shippers to manage imbalance positions on the DBNGP are valid. DBP also notes that *"producer outage[s], and resulting shipper behaviour through imbalances and other behaviour activities, has resulted in substantial depletions of DBNGP line pack which has resulted in the above impacts to service delivery"*. However, the Authority also notes that there may be circumstances beyond the control of the shipper causing the imbalance and the shipper should be given the opportunity (following receipt of a notice) to use its best endeavours to rectify the imbalance.

Clauses 9.5(c), (d), (g) and (h)

1570. In relation to the provisions in current (AA3) clauses 9.5(c), (d), (g) and (h), the Authority accepts DBP's proposed deletion of the provisions in current clause 9.5(g), (which overlaps with the excess imbalance charge provisions in current clause 9.5(e) (as discussed below) and, to the extent it would duplicate the "excess imbalance charge" is considered contrary to the NGO), but requires the provisions in current clauses 9.5(c), (d) and (h) to be reinstated for the following reasons.

1571. Current (AA3) clause 9.5(c) ensures that if one shipper receives an imbalance notice then all shippers who have a similar imbalance should receive a similar imbalance notice. The Authority considers this is an important provision to help ensure there is no unfair discrimination between shippers. DBP proposes deleting clause 9.5(c), but the Authority considers DBP has not provided any good justification why this provision should be removed.

1572. Current (AA3) clause 9.5(d) provides for a shipper who receives an imbalance notice under clause 9.5(b)(iii) to take curative action, which can avoid having to pay excess imbalance charges under clause 9.5(e). The Authority considers this is an important provision to help ensure shippers have a reasonable opportunity to take curative action and avoid charges. DBP proposes deleting clause 9.5(d), but the Authority considers DBP has not provided any good justification why this provision should be removed.

1573. Current (AA3) clause 9.5(h) provides three exceptions where the excess imbalance charge is not payable.

- (h) No Excess Imbalance Charge under clause 9.5(cg) is payable in respect of that part (if any) of the imbalance that is attributable to:
 - (i) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
 - (ii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
 - (iii) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(h)(i) or 9.5(h)(ii),

1574. DBP has proposed deleting the last two of these exceptions (i.e. clauses 9.5(h)(ii) and 9.5(h)(iii)).

- With regard to DBP's proposed deletion of clause 9.5(h)(ii), the Authority considers that it is important that shippers be given timely notice of their imbalances by DBP so that they may take appropriate corrective action (including to mitigate the excess imbalance charges they may incur). It is difficult to see on what basis DBP would be justified in claiming excess imbalance charges for an imbalance in respect of which it has not given the shipper the requisite notice. The Authority is of the view that DBP has not provided adequate justification for the deletion of clause 9.5(h)(ii) and accordingly, the Authority requires that clause 9.5(h)(ii) be reinstated.
- With regard to DBP's proposed deletion of clause 9.5(h)(iii), the Authority notes that the scope of this proposed exception would, on its face, appear fairly limited – as it is expressed only to apply to remedying imbalances arising on a prior gas day and then only *"to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(h)(i) or 9.5(h)(ii)"*. However, to the extent that clause 9.5(h)(iii) does provide any valuable protection to shippers, the Authority is of the view that shippers should be allowed to retain that protection unless it can be shown there is a valid justification for removing it. DBP has not provided adequate justification for removal of the protection in clause 9.5(h)(iii). Accordingly, the Authority requires that clause 9.5(h)(iii) be reinstated.

1575. Furthermore, the Authority reiterates its Draft Decision consideration that there is a potential for shippers on reference services to be exposed to a form of discrimination if shippers on regulated contracts are able to operate balancing within an eight per cent imbalance limit with no automatic default (particularly in circumstances where the SSC contains terms similar to those of current clauses 9.5(c) and 9.5(d)).

1576. Having regard to the above considerations, the Authority requires the following changes to the amended terms and conditions.

- Proposed clauses 9.5(b), 9.5(c) and 9.5(d) to be amended to reinstate the wording in clauses 9.5(b), 9.5(c) and 9.5(d) respectively of the current (AA3) terms and conditions, but, in the first paragraph of clause 9.5(b) replace the word “then” with the word “and”.
- Proposed clause 9.5 to be amended to reinstate:
 - as new clause 9.5(f), the wording in clause 9.5(f) of the current (AA3) terms and conditions, but excluding subclause (i) of current clause 9.5(f), so that new clause 9.5(f) reads as follows:

"(f) The Operator may not, other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii)."
 - at new clause 9.5(g), the wording in clause 9.5(h) of the current (AA3) terms and conditions.

Clause 9.5(e)

1577. Further to deleting clauses 9.5(c) and 9.5(d) from the terms and conditions, DBP also changed the wording of current (AA3) clause 9.5(e) in its original proposal by

deleting certain words as follows.³⁷⁷ DBP indicated the change would simplify the imbalance regime.³⁷⁸

~~If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the~~ The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit ~~up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day~~ each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

1578. CPMM submitted that while the change to clause 9.5(e) may simplify the imbalance regime for the operator, it is detrimental to the shipper for the following reasons:³⁷⁹

- A Shipper may have exceeded its Accumulated Imbalance Limit for reasons outside its control so should have the opportunity to reduce the imbalance before Excess Imbalance Charges are imposed.
- The two-stage imbalance regime emerged from the arms-length 2004 renegotiations, and provides a more sophisticated balance between the shipper's and the pipeliner's interests than DBP's proposed more blunt instrument.
- The philosophy underlying the two-stage balancing (and peaking and overrun) regime is that the impact of an excursion depends on the prevailing circumstances at the time. Sometimes, the pipeline is in stress, and the shipper must manage its flows carefully to avoid harming other shippers or impacting efficient pipeline operation. But on many occasions the pipeline can tolerate excursions without harm or loss. Imposing too restrictive a regime can unnecessarily reduce shipper flexibility, and hence efficiency, in managing their own gas flows. There is no point requiring a shipper to reduce its plant's output (of electricity, crushed ore, or whatever) in order to comply with an arbitrary limit, in circumstances where that limit can be exceeded without harm. Conversely, if the excursion would cause harm, the shipper can and should be required to comply with the limits. The current two-stage regime, although more complex, implements this balance, and CPMM recommends that it be retained. *[sic]*

1579. As with DBP's changes to clauses 9.5(c) and 9.5(d), the Authority was of the view that DBP would need to show how the change to clause 9.5(e) was necessary and consistent with the NGO. That is, how would the change promote the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas, given the claimed adverse impact it would have on shipper flexibility and efficiency?

1580. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for the change to clause 9.5(e).

³⁷⁷ In DBP's supporting submission reference is made to clause 9.6(e). The Authority believes this to be an error, with the correct reference being to clause 9.5(e).

³⁷⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 8.

³⁷⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 42-44.

Accordingly the Authority was of the view that the proposed change should be rejected unless it could be justified consistent with the NGO. The Authority required the following amendment:

Required Amendment 49

Clause 9.5(e) of the proposed terms and conditions, relating to the payment of an excess imbalance charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1581. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 49 and maintains its original proposal ought to be accepted.³⁸⁰ In support of its position DBP reiterates its justification for modifications to the imbalance regime that were provided in response to (Draft Decision) Required Amendment 48 (refer paragraph 1558 above).³⁸¹
1582. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF reiterates that it *"does not agree with DBP's assertion that the current arrangements relating to imbalances and unavailability notices are ineffective and unworkable"*. WESCEF considers *"it is entirely appropriate for shippers for have the protections that are set out in the original forms of these clauses"*.³⁸²
1583. In light of the Authority's rejection of DBP's proposed amendments to clauses 9.5(b), 9.5(c) and 9.5(d), the Authority also rejects (with one exception) DBP's proposed amendments to clause 9.5(e) on the basis that the change is not adequately justified by reference to achievement of the NGO.
1584. The one exception is DBP's proposed deletion of the words "up to the Outer Accumulated Imbalance Limit". DBP's proposed deletion of the overlapping provision in current (AA3) clause 9.5(g) is similar to clause 9.5(e), in that it imposes an Excess Imbalance Charge, but unlike clause 9.5(e), does not limit the amount of that charge by reference to the Outer Accumulated Imbalance Limit. To enable DBP to retain the ability to charge an Excess Imbalance Charge for the entire amount of excess outside the Accumulated Imbalance Limit, the words "up to the Outer Accumulated Imbalance Limit" need to be deleted from clause 9.5(e). The Authority considers this would be consistent with achieving the NGO.
1585. Hence, the Authority requires clause 9.5(e) to be reinstated in the amended terms and conditions, using the same wording as the current (AA3) terms and conditions, but deleting from it the words "up to the Outer Accumulated Imbalance Limit".

Clause 9.5(a)

1586. Additionally, in its original proposal DBP amended the wording of clause 9.5(a) as follows. The amendments were identified by DBP to be a "minor/drafting change" in

³⁸⁰ DBP notes that given its response to (Draft Decision) Required Amendment 48 (refer paragraphs 1557 and 1558 of this decision document), the proposed amendments to clause 9.5(e) of the terms and conditions in its original proposal are now amendments to clause 9.5(c) in its amended proposal.

³⁸¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.99.

³⁸² Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 9, p. 3.

which the new drafting maintained the current meaning of the clause in fewer words.³⁸³

The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the ~~sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions)~~ for that Gas Day.

1587. CPMM submitted that there should be *"no intention to remove Spot Capacity from the imbalance limit"*.³⁸⁴
1588. WSECEF noted DBP's amendment to clause 9.5(a), along with other proposed changes to clauses 6.5(d)(iii) and 17.9(c)(iii) (as discussed elsewhere in this decision), should not be approved. WSECEF believed the amendments altered the nature of spot transactions in a manner that was adverse to the interests of a shipper utilising spot capacity and claimed that the exclusion of spot transactions in calculating the imbalance limit reduced the shipper's flexibility.³⁸⁵
1589. The Authority noted that DBP's proposed "minor/drafting change" to clause 9.5(a) on the face of it had the potential to exclude spot transactions from calculating the imbalance limit and may cause uncertainty and/or confusion. If, as DBP claimed, the remaining words should have the same meaning (i.e. no change to the pre-existing inclusion of spot transactions in calculating the imbalance limit), then the proposed change would seem to have failed to achieve this. If changes were to be made to improve the drafting, it should be possible to do that without altering the substance and meaning of the clause. However, DBP's proposed change appeared to substantially alter the substance and meaning of the clause.
1590. Having regard to the submissions of interested parties, the Authority considered that DBP's change to clause 9.5(a) was not a "minor/drafting change" and DBP did not provide adequate justification for the change. Accordingly, the Authority was of the view that the proposed change should be rejected, and required the following amendment:
- Required Amendment 50
- Clause 9.5(a) of the proposed terms and conditions, relating to the shipper's accumulated imbalance limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.
1591. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 50 and maintains its original proposal ought to be accepted. In particular, *"DBP remains of the view that its proposed amendment to clause 9.5(a) is consistent with the intention to not remove Spot Capacity from the imbalance limit"*

³⁸³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 15.

³⁸⁴ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 55.

³⁸⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

and is implemented to simplify the content of clause 9.5(a)".³⁸⁶ In support of its position DBP provides the following information.³⁸⁷

2.104 [DBP proposes to amend clause 9.5(a) as follows:]

The Shipper's **Accumulated Imbalance Limit** for a Gas Day is 8% of the ~~sum of the Shipper's Capacity under Spot Transactions and quantities referred to as Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service and any Capacity under Spot Transactions)~~ for that Gas Day.

2.105 DBP has relevantly removed the references to Spot Transactions from the quantity of Shipper's Contracted Capacity. Contracted Capacity [sic]³⁸⁸ is defined in both DBP's proposed access arrangement terms and conditions and the AA3 terms and conditions as follows:

Capacity Service means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided.

2.106 This definition includes Spot Transactions for the purchase of Spot Capacity, being Gas Transmission Capacity on the DBNGP. The original wording in clause 9.5(a) originates from the SSC version of clause 9.5(a), under which it is necessary to expressly refer to Spot Transactions in clause 9.5(a) given Spot Transactions are carved out from the SSC definition of Capacity Service. Relevantly, Capacity Service is currently defined under the SSCs is as follows (emphasis added):

Capacity Service means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided, other than under a Spot Transaction.

2.107 DBP considers that there is potential confusion, from an interpretation point of view, to expressly refer to Spot Transactions in clause 9.5(a) but to omit references to Spot Transactions in other parts of the reference service terms and conditions where references to Shipper's Capacity Services are made.

2.108 DBP is therefore of the view that DBP's proposed amendments to clause 9.5(a) retains the intention, and simplifies the drafting, of the clause and ought to be accepted by the ERA.

1592. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF considers that there is no reason to remove the priority of spot transactions and the relevance of spot capacity when calculating the imbalance limit.³⁸⁹ WESCEF reiterates its submissions made on the proposed amendments to clauses 6.5(d), 9.5(a) and 17.9(c)(iii) in its previous submission responding to DBP's original proposal.

1593. The Authority notes DBP's justification for the proposed change to clause 9.5(a). However, the Authority considers DBP's proposed drafting creates confusion and may change the meaning of the clause, contrary to what DBP claims is intended. This is because the defined term "contracted capacity" (as defined in clause 3.3)

³⁸⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.103.

³⁸⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 20.

³⁸⁸ The Authority believes the reference to "Contracted Capacity" by DBP should be a reference to "Capacity Service" as this is the term that DBP goes on to define within its submission.

³⁸⁹ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 8, p. 3.

only refers to T1 Service capacity and so (despite DBP pointing out that the defined term "capacity service" does include "spot capacity") the phrase "*Shipper's Contracted Capacity across all of the Shipper's Capacity Services*" (used by DBP in its proposed clause 9.5(a)) does not include spot capacity, because it only picks up the T1 Service (if any) across those contracted services. That means that the express references to the "shipper's capacity under spot transactions" need to be retained in clause 9.5(a). The Authority therefore rejects DBP's proposed amendment and requires that the original AA3 wording in clause 9.5(a) be reinstated.

Amendments to clause 9.5

1594. Consistent with the above considerations, regarding DBP's proposed changes to clause 9.5 that relate to the accumulated imbalance limit, the Authority requires clause 9.5 of the amended terms and conditions to be amended as follows.

9.5 Accumulated Imbalance Limit

- (a) The Shipper's Accumulated Imbalance Limit for a Gas Day is 8% of the sum of the Shipper's Contracted Capacity under Spot Transactions and quantities, referred to as Shipper's Contracted Capacity, across all of the Shipper's Capacity Services (including T1 Service and Capacity under Spot Transactions) for that Gas Day.
- (b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished ~~then,~~and the Operator (acting as a Reasonable and Prudent Person) ~~considers that a continuation of that condition; may refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit~~
- (i) will have a material adverse impact on the integrity or operation of the DBNGP; or
- (ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for T1 Capacity, B1 Capacity, P1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,
- then the Operator (acting as a Reasonable And Prudent Person) may, subject to clause 9.5(f):
- (iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or (ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and/or
- (iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.
- (c) If the Operator issues a notice under this clause 9.5 and the Shipper's Accumulated Imbalance is:
- (i) positive, the Operator must issue a similar notice to all other shippers with a positive Accumulated Imbalance in excess of its Accumulated Imbalance Limit; or

- ~~(ii) negative, the Operator must issue a similar notice to all other shippers with a negative Accumulated Imbalance the absolute value of which is in excess of its Accumulated Imbalance Limit. The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit in accordance with clause 20 in respect of each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).~~
- (d) If, after the Operator issues a notice under clause 9.5(b)(iii):

 - ~~(i) subject to clause 9.5(d)(ii), the absolute value of the Shipper's Accumulated Imbalance is reducing each Gas Day, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii); and~~
 - ~~(ii) where the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 9.5(b)(iii). No Excess Imbalance Charge under clause 9.5(e) is payable in respect of that part (if any) of the imbalance that is attributable to the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point.~~
- ~~(e) If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).~~
- ~~(f) The Operator may not other than when due to Force Majeure or by reason of an emergency, refuse to Receive Gas or Deliver Gas pursuant to clause 9.5(b)(iv) without having issued a notice in accordance with clause 9.5(b)(iii).~~
- ~~(g) The Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit in accordance with clause 20 in respect of each Gas Day that the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).~~
- ~~(g) No Excess Imbalance Charge under clause 9.5(eg) is payable in respect of that part (if any) of the imbalance that is attributable to:~~

- (i) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;
- (ii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or
- (iii) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.5(g)(i) or 9.5(g)(ii).

Required Amendment 27

Clause 9.5 of the amended terms and conditions, relating to the accumulated imbalance limit, must be amended to read as specified in paragraph 1594 of this Final Decision.

Clause 9.9 – Cashing out imbalances

1595. Clause 9.9 of the proposed terms and conditions specifies provisions for the cashing out of imbalances at the end of each gas month (whereas under the current terms and conditions applying to the access arrangement cashing out is to occur at the capacity end date).
1596. In its original proposal DBP added new provisions to clause 9.9 to provide more options for restoring the imbalance to zero.

9.9 Cashing out imbalances at end of each Gas Month

- a) The balancing process prescribed in this clause 9.9 is to be undertaken ~~at on~~ the ~~Capacity End Date~~, first day of each Gas Month (except the first Gas Month after the commencement of this contract) in relation to the Shipper's previous month's total Gas inputs to, and total Gas outputs from, the DBNGP.
- b) If at the ~~Capacity End Date~~ end of the last day of a Gas Month, the Shipper's Accumulated Imbalance is a positive number then, either:
 - i) the Shipper enters into an agreement with the Operator ~~is to~~ for a Storage Service in relation to the Shipper's Accumulated Imbalance amount; or
 - ii) the Operator must pay a fair market price to the Shipper for that Gas, at the rate of \$8.00 per GJ (\$2015) (Imbalance Gas Rate). The Excess Imbalance Rate is escalated from 1 January 2016 on 1 January each year in accordance with the following formula:

$$IGR_n = \$8.00 \times \left(1 + 0.67 \frac{CPI_n - CPI_b}{CPI_b} \right)$$

where:

IGR_n is the Imbalance Gas Rate for the relevant year (expressed in \$ per GJ);

CPI_n means the CPI for the quarter ending on 30 September in the year prior to the year in respect of which the Excess Imbalance Rate is being escalated; and

CPI_b means the CPI for the quarter ending on 30 September 2015.

- c) If at the ~~Capacity End Date~~ end of the last day of a Gas Month, the Shipper's Accumulated Imbalance is a negative number, the Shipper ~~is to~~ must either:
- i) ~~pay a fair market price to the Operator for that Gas;~~ at the Operator's purchase price for that Gas; or
 - ii) deliver sufficient Gas to the Operator to restore the Shipper's Accumulated Imbalance to zero,
- as elected by the Shipper within 3 business days of receiving a Notice from the Operator of the price of that Gas.

1597. DBP submitted the change, to add more options, would provide parties with the flexibility to either enter into a storage agreement with DBP for accumulated imbalances or to cash out the imbalances, depending on the price being paid for gas.³⁹⁰
1598. CPMM, WESCEF and BHP Billiton all commented on DBP's changes to the provisions of clause 9.9.
1599. CPMM submitted DBP's proposal was an unreasonable change that would unfairly disadvantage reference service shippers.³⁹¹ CPMM further indicated that:
- whilst individual volumes affected by this clause may be small (in normal months), the cumulative effect (and the effect in outlier months) may be substantial. Cash flow impact modelling, using historical imbalance data, should be undertaken to determine the actual effects; and
 - DBP's "storage service" is unregulated.
1600. WESCEF submitted that DBP's changes that required imbalances to be cashed out at the end of the month rather than at the end of the capacity end date were unbalanced and unnecessary. The changes, if allowed, "*would significantly reduce the flexibility of the shipper's gas usage, and WESCEF is of the view that the current provisions in relation to imbalances... provide sufficient incentive on shippers to stay in balance [sic]*".³⁹²
1601. BHP Billiton indicated that it did not support DBP's changes to clause 9.9, and submitted that the clause should remain as was and refer to a "*fair market value as the amount payable by shippers and DBP in the event of an accumulated imbalance*".³⁹³
1602. As indicated above in relation to DBP's changes to clause 9.5 (refer paragraph 1549 and following), the Authority was of the view that any change to the imbalance regime would need to be justified by reference to its effect on achievement of the NGO. If DBP considered that the existing imbalance regime was not achieving the NGO, then it must explain more clearly why that is the case and how its proposed changes

³⁹⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 8.

³⁹¹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 44-45.

³⁹² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 5.

³⁹³ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

would better achieve the NGO. In this regard, for example, DBP did not provide clear justification based on the NGO for:

- its proposal to have the cashing-out occur monthly, instead of once-off at the capacity end date;
- its proposal to switch the cashing-out pricing from a "fair market price" to (in the case where DBP must pay shippers) an arbitrary \$8 per GJ rate, and (in the case where shippers must pay DBP) whatever price DBP paid for the gas (without any safeguards to prevent DBP incurring on-charging an unreasonably high price); or
- its proposal to offer shippers a storage service on unregulated pricing as an alternative to being paid the arbitrary \$8 per GJ rate by DBP.

1603. The Authority noted that even if DBP's amendments were implemented for the reference service contracts, DBP had not shown how this would have any meaningful impact on improving pipeline integrity (if that was a real concern in relation to imbalances) or other NGO considerations, given that most shippers are not on the reference service contract and would not necessarily be subject to the proposed new cashing-out regime (i.e. the SSC (at clause 9.10) retains provisions that are substantially the same as the existing clause 9.9 of the terms and conditions). Unless that position is also changed, it would seem that shippers on a reference service would be exposed to a form of discrimination in this respect.

1604. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification for its amendment of clause 9.9. Accordingly, the Authority was of the view that the proposed change should be rejected unless it could be justified consistent with the NGO. The Authority required the following amendment:

Required Amendment 51

Clause 9.9 of the proposed terms and conditions, relating to the cashing out of imbalances, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1605. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 51.³⁹⁴ Accordingly, DBP has updated clause 9.9 of the amended terms and conditions so that the clause reads the same as clause 9.9 of the current terms and conditions for the third access arrangement (AA3).

1606. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 51).

Clause 10.3 – Consequences for exceeding hourly peaking limit

1607. Clause 10.3 of the proposed terms and conditions specifies the consequences of exceeding an hourly peaking limit. An "hourly peaking limit" is stated in clause 10.1 of the proposed terms and conditions to be:³⁹⁵

³⁹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.110.

³⁹⁵ DBP indicates in its supporting submission that clause 10.1 has been amended to change the drafting of the clause to clarify that the values in (a), (b) and (c) are each an hourly peaking limit. The Authority notes that the amendment to which DBP refers to is a drafting and/or formatting amendment and that the actual wording of the clause remains unchanged.

- a) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points on the DBNGP;
- b) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points in pipeline zone 10; and
- c) 125% in winter and 120% in summer of the aggregate MHQ calculated across all outlet points in pipeline zone 10B,

(each of the limits in (a), (b) and (c) being an **Hourly Peaking Limit**).

1608. In its original proposal DBP amended clause 10.3 to change the circumstances in which the operator can apply the consequences of exceeding an hourly peaking limit. Specifically, DBP proposed to change clause 10.3(a) of the terms and conditions to provide that the operator may (subject to clause 10.3(e) or clause 10.3(f)) do either, or both, of:³⁹⁶

- issue a notice requiring the Shipper to reduce its take of Gas, in which case the Shipper must comply immediately or procure immediate compliance and stop exceeding the Hourly Peaking Limit; or
- refuse to Deliver gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Peaking limit is within the Hourly Peaking Limit.

1609. DBP specified that the changes removed the requirement that:

- the Operator can only carry out these steps if the peaking will have a material adverse impact on the DBNGP or adversely impact any other capacity or reserved service; and
- notice must only require reduction in take of Gas to the extent reasonably required to ameliorate the condition that there is an impact on other Shippers [*sic*].

1610. Furthermore, the changes made the requirement on shippers to reduce its gas take an absolute requirement and not a "best endeavours" requirement. DBP submitted this change to be reasonable as the shipper still had a large degree of flexibility within the allowed peaking limit.³⁹⁷

1611. In addition to the changes to clause 10.3(a), DBP also proposed to delete clause 10.3(b) and 10.3(c) from the terms and conditions, which require the issuing of notices when peaking limits are exceeded. DBP submitted these clauses should be deleted as the requirement to issue notices to all shippers is unworkable in practice and is an administrative burden.³⁹⁸ DBP indicated that shippers are able to access their peaking behaviour through the customer reporting system and hence are able to manage this behaviour.

1612. CPMM, WESCEF and BHP Billiton all commented on DBP's changes to clause 10.3.

- CPMM objected to the proposed changes and submitted that the notice provisions of clause 10.3 should be maintained. CPMM indicated that these notice requirements had been in place for over a decade and believed that DBP was attempting to shift the risk and flexibility of balance in its own favour

³⁹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

³⁹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

³⁹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 9.

and against the shipper without advancing any justification for why that was necessary or consistent with the NGO. CPMM believed that the more sophisticated two stage mechanism should be retained.³⁹⁹

- WESCEF believed the changes to clause 10.3 would allow the operator greater discretion with respect to issuing notices to shippers when hourly peaking limits are exceeded. The changes would require shippers to comply with the notice requirements immediately as opposed to using best endeavours to comply, and remove the requirement for the operator to issue similar notices to all other shippers.⁴⁰⁰
- BHP Billiton did not support the proposed changes, which if allowed, would mean that where a shipper exceeds the hourly peaking limit DBP could unilaterally reduce delivery of gas regardless of the operational impact of the exceedance.⁴⁰¹

1613. The Authority was concerned to see that any change to the terms and conditions was properly justified based on a real need for the change in order to promote the NGO. Accordingly, it seemed contrary to the NGO for DBP to remove the pre-requirements in clause 10.3(a) that there be a material adverse impact on the integrity or operation of the DBNGP, or that there be an actual or likely adverse impact on other capacity or reserved services. DBP had not shown why it thought the current provisions of clause 10.3 of the terms and conditions are not functioning consistently with the NGO, nor why it thought its changes would better achieve the NGO than the current wording of clause 10.3.

1614. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification, consistent with the NGO, for its proposed amendment of clause 10.3. Accordingly the Authority was of the view that the proposed change should be rejected, and required the following amendment:

Required Amendment 52

Clause 10.3 of the proposed terms and conditions, relating to the consequences of exceeding an hourly peaking limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1615. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 52 and maintains that its original proposal ought to be accepted. In support of its position DBP makes reference to the information provided in response to (Draft Decision) Required Amendment 48 (refer paragraphs 1557 and 1558), noting that the information and concepts raised are equally applicable to the management of peaking behaviour on the DBNGP and proposed amendments to clause 10.3. Further to this information, DBP reiterates the following with respect to the clause 10.3 amendments.⁴⁰²

³⁹⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 45-47.

⁴⁰⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 5-6.

⁴⁰¹ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

⁴⁰² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 21-22.

2.113 ... [A]mendments to clause 10.3 are:

- (a) **needed because current terms are ineffectual and unworkable in practice:** DBP highlights its submissions which note the difficulties with deliveries of notices to and coordinate with shippers outside business hours and the generous peaking limits afforded to shippers under the current terms and conditions.

...

Upon receipt of this notice, shippers are required to use best endeavours to comply with or procure compliance with the notice. As previously discussed, most shipper representatives are not available outside of business hours and accordingly are unlikely to act before peaking naturally subsides. In the event that a shipper representative is available to act on the notice, clause 10.3(a) only requires each shipper to use best endeavours and typically, by such time, the peaking event has passed.

Practically, and as demonstrated above, the current peaking regime does not enable DBP to influence peaking behaviour because shippers are not incentivised to act on the notices and. In any event, by the time DBP is able to comply with the relevant notice regime, the peaking event is in decline or has passed.

- (b) **necessary to provide a more efficient utilisation of the DBNGP:** Where a shipper's rate of peaking is beyond its average hourly contracted capacity entitlement, the pipeline operator is required to make spare capacity available to satisfy the peaking service requirements of that shipper. This can involve temporary utilisation of another shipper's contracted capacity rights on the DBNGP to meet this requirement...
- (c) **justified based on the NGO:** DBP reiterates its views that, given the shipper's current options presently available to manage peaking behaviours on the DBNGP, the change to the peaking regime will incentivise positive shipper behaviour which will have a corresponding positive impact on the ability of the pipeline operator to manage peaking events and corresponding impacts on pipeline service availability. DBP is of the view that its proposed amendments ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.

1616. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF indicates that it is concerned that DBP has not properly explained its reasoning for its proposed amendments to clauses 10.3 (relating to the hourly peaking limit) and 10.5 (relating to the outer hourly peaking limit).⁴⁰³ WESCEF indicates its understanding of the peaking limit provisions to be as follows.

WesCEF's understanding of the peaking provisions is that the Hourly Peaking Rate applies to each GJ of Gas Received in excess of the Hourly Peaking Limit, and in excess of the Outer Hourly Peaking Limit. Accordingly, there is no difference in the rate. However, clause 10.5 provides the Operator with absolute rights under clause 10.5 if a shipper has exceeded its Outer Hourly Peaking Limit, whereas there are some considerations that need to be satisfied before the Operator exercises rights under

⁴⁰³ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 10, p. 3.

clause 10.3 if the shipper has exceeded its Hourly Peaking Limit. In WesCEF's view, the original form of clauses 10.3 and 10.5 are appropriate and should be retained.

1617. In a further submission to the Authority, and in response to third party submissions, DBP indicates that whilst WESCEF's understanding of the provisions of clauses 10.3 and 10.5 appears to be correct, WESCEF has appeared to misunderstand the necessity of DBP's proposed amendments to these provisions.⁴⁰⁴

2.18 WCEF appears to have correctly understood the operations of clauses 10.3 and 10.5 of the reference service terms and conditions, and the application of the Hourly Peaking Charge, but appears to have misunderstood DBP's necessity for proposing amendments to those provisions.

2.19 At present, DBP only has absolute rights to charge the Hourly Peaking Charge under clause 10.5 once the Outer Hourly Peaking Limit is exceeded. This is intended to act as an incentive to shippers to not exceed the Outer Hourly Peaking Limits. However, DBP's rights under clause 10.3 to levy the Hourly Peaking Charge are conditional on numerous contractual requirements.

2.20 DBP, in its Submission 52, discusses the importance of achieving balance between pipeline flexibility, which sterilises pipeline utilisation, and methods to ensure shipper behaviour does not impact on pipeline operations. See paragraphs 2.84 – 2.91 in this regard (which equally apply to peaking rights).

2.21 DBP reiterates its submissions in paragraph 2.113 of Submission 52, under which it highlights why it is currently unable to comply with the preconditions in clause 10.3 before it is able to impose the Hourly Peaking Charge. To achieve the objectives of the NGO, and achieve the balance between pipeline efficiency and controlling shipper behaviour, DBP is of the view that its proposed amendments to clause 10.3 and 10.5 are necessary.

1618. DBP says that it is *"currently unable to comply with the preconditions in clause 10.3 before it is able to impose the Hourly Peaking Charge"*. The Authority agrees with WESCEF's submission that DBP has undertaken this practice during the current terms and conditions and in the Authority's view, the proposed removal of the requirements in clause 10.3(a) does not promote the efficient operation and use of the DBNGP for the long term interests of consumers in respect of price, quality, safety, reliability and security of supply. The removal of the requirements in current clause 10.3(a)(i) and (ii) from the terms and conditions appears to favour DBP in terms of being able to raise revenue where the peaking limit is exceeded, even in circumstances where there is no operational impact on the DBNGP. In the Authority's view, this would not advance the achievement of the NGO.

1619. Further, the Authority is not satisfied that removal of clauses 10.3(b) and 10.3(c) of the current terms and conditions for reference services will serve the promotion of the NGO even at the expense of shipper flexibility.

⁴⁰⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.17 to 2.21.

Required Amendment 28

Clause 10.3 of the amended terms and conditions, relating to the consequences of exceeding an hourly peaking limit, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 10.5 – Outer hourly peaking limit

1620. Clause 10.5 of the current terms and conditions applying to the T1, P1 and B1 reference services, under the access arrangement for the third access arrangement period (AA3), sets out provisions relating to an “outer hourly peaking limit”. The outer hourly peaking limit is stated to be 140 per cent of the aggregate maximum hourly quantity (MHQ) calculated across all outlet points: (i) on the DBNGP; (ii) in pipeline zone 10; and (iii) in pipeline zone 10B (with each of the limits in (i), (ii), and (iii) being an outer hourly peaking limit).
1621. In its original proposal DBP removed the concept of the outer hourly peaking limit, by deleting clause 10.5 from the terms and conditions. DBP indicated that the outer hourly peaking limit was “a *penalty type clause*” that penalises the shipper, when peaking exceeds 140 per cent, at a higher rate for the entire time that peaking occurs. DBP believed that a simpler charging regime (as provided for under proposed clause 10.3, and discussed above at paragraph 1607 and following) should be imposed, which would be “*cheaper for the shipper and much easier for DBP to administer*”.⁴⁰⁵
1622. CPMM submitted that while DBP’s proposed charging regime (at clause 10.3) would be easier for the operator to administer, it would be detrimental to the shipper, as a shipper may incur peaking charges for reasons outside of its control.⁴⁰⁶ CPMM believed that the current regime, which was negotiated at arms’ length, provided a balance between the shipper’s and operator’s risk and operational flexibility.
1623. WESCEF submitted that DBP’s proposal to delete clause 10.5 should not be approved for the same reasons it believed DBP’s changes to clause 10.3 should not be approved. These reasons were outlined in paragraph 1612 above.
1624. The Authority was concerned to see that any change to the existing regime was properly justified on the basis that it better achieved the NGO. The Authority was also concerned to see that the terms and conditions were consistent with public policy. However, as highlighted by DBP in its rationale for the change, clause 10.5 was “a *penalty type clause*”, penalising the shipper (at a higher rate) if peaking exceeded 140%.⁴⁰⁷ By DBP’s own admission, therefore, this clause would seem to have been established to penalise the shipper rather than simply to recover a genuine pre-estimate of DBP’s actual loss caused by the peaking excess. If indeed

⁴⁰⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 9-10.

⁴⁰⁶ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 47.

⁴⁰⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 10.

the clause is “a penalty type clause”, then it would be contractually void and unenforceable at law (as being contrary to public policy). Accordingly, the Authority agreed with DBP’s suggestion that clause 10.5 be deleted from the terms and conditions. However, as indicated above (at paragraph 1614), the Authority did not agree with DBP’s changes to clause 10.3, and so the existing charging regime under clause 10.3 would apply (without the changes proposed by DBP and assuming the clause was also not a penalty).

1625. Further, the Authority noted that the current SSC retained the outer hourly peaking limit provisions (at clause 10.4), which DBP had claimed to be “a penalty type clause”.

1626. Having regard to the submissions of interested parties and DBP’s own admissions, the Authority considered that clause 10.5 should be deleted (as proposed by DBP), and required the following amendment:

Required Amendment 53

Clause 10.5 of the proposed terms and conditions, relating to the concept of an outer hourly peaking limit, should be deleted from the proposed terms and conditions.

1627. In its amended proposal, DBP does not accept the Authority’s (Draft Decision) Required Amendment 53 and maintains its original proposal ought to be accepted, subject to the Authority approving (in whole or in substantially the same form of) its proposed amendments to clause 10.3 (discussed at paragraph 1607 and following above).⁴⁰⁸ In support of its position, DBP provides the following information.⁴⁰⁹

2.116 The ERA, in its Draft Decision, misconstrues the intention of DBP’s submission and reaches the view that clause 10.5 amounts to a penalty that will be unenforceable and therefore ought to be deleted from the proposed terms and conditions. DBP does not consider that the outer hourly peaking limit constitutes a penalty, but rather that it is “penalty-like” in that it is intended to act as a disincentive to shippers to ensure shippers remain within their peaking limits.

2.117 DBP is of the view that its comments in respect of Draft Decision Amendments #48 and #52 adequately illustrate the potential issues caused to pipeline operations from overly flexible pipeline usage rights afforded to shippers. Relevantly, the costs of pipeline operations to restore and maintain pipeline integrity increases drastically as peaking rights are utilised on the pipeline.

2.118 DBP also notes that under clause 20.4(b) of the current reference service terms and conditions (as approved by the ERA), the operator and shippers have agreed that the outer hourly peaking limit is a genuine pre-estimate of the unavoidable costs, losses and damages that the Operator will incur and that such charges are not a penalty.

1628. In its further submission to the Authority, and in response to DBP’s amended proposal, WESCEF indicates that it is concerned that DBP has not properly explained its reasoning for its proposed amendments to clauses 10.3 (relating to the

⁴⁰⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 23, paragraph 2.119.

⁴⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 22-23.

hourly peaking limit) and 10.5 (relating to the outer hourly peaking limit).⁴¹⁰ WESCEF's understanding of the peaking limit provisions is outlined at paragraph 1616 above.

1629. In a further submission to the Authority, and in response to third party submissions, DBP indicates that whilst WESCEF's understanding of the provisions of clauses 10.3 and 10.5 appears to be correct, WESCEF has appeared to misunderstand the necessity of DBP's proposed amendments to these provisions⁴¹¹ (refer paragraph 1617 above).
1630. The Authority notes DBP's response to the Authority's comment in the Draft Decision that clause 10.5 of the current (AA3) terms and conditions is "a penalty type clause". That is, DBP has clarified that it "*does not consider that the outer hourly peaking limit constitutes a penalty, but rather that it is "penalty-like" in that it is intended to act as a disincentive to shippers to ensure shippers remain within their peaking limits*". Having regard to DBP's additional supporting information, the Authority accepts DBP's explanation and accepts DBP's original proposal to remove the concept of the outer hourly peaking limit, by deleting clause 10.5 from the terms and conditions.

Clause 11 - Overrun

1631. Clause 11 of the proposed terms and conditions sets out provisions relating to overruns.
1632. In its original proposal DBP amended these overrun provisions by changing the circumstances in which the operator may give notice in relation to the unavailability or availability of overrun gas, at clause 11.2(a) as follows:
- a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, ~~but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity.. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.~~
1633. DBP submitted the following as reasoning for the proposed change.

- Overrun gas is gas delivered above the Shippers aggregate contracted capacity. The Operator should be able to cut out overrun gas, as this goes above the contractual entitlements of the shipper under the T1 service.
- As per [the requirements] for peaking and imbalances, the notice requirements are administratively onerous and unworkable for DBP. The provision should be streamlined so that it is a meaningful right for DBP to ensure that Shippers do not take more than they are entitled to under their Reference Service contract.

⁴¹⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, p. 3, paragraph 10.

⁴¹¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.17 to 2.21.

- Shippers have constant access to CRS information to enable them to monitor and manage their gas flow, and in the event that CRS is not available, the Operator is not entitled to exercise its rights under this clause.

1634. CPMM, WESCEF and BHP Billiton all commented on DBP's changes to clause 11.2.

- CPMM submitted that the changes are another example of the operator seeking to streamline its operations to the detriment of shippers. CCPM believed that an overrun should be prevented if it will cause harm, but "*if the overrun is operationally and commercially harmless, it should be allowed to be corrected without penalty*".⁴¹²
- WESCEF submitted that the changes should not be approved as the changes will "*remove the qualifications on the operator to issue unavailability notices in respect to overrun gas and the requirement that the operator issue similar notices to all other shippers taking overrun gas*".⁴¹³ WESCEF believed that there needs to be a balance between the management of taking overrun gas, providing shippers with flexibility and notice, and not discriminating between shippers.
- BHP Billiton indicated that DBP's changes should not be allowed as the changes "*mean that DBP can now restrict use in the event of an overrun (irrespective of [the] impact of the overrun on other shippers)*".⁴¹⁴

1635. The Authority was concerned to see that any change was properly justified based on a real need for the change in order to promote the NGO. For example, DBP claimed that the existing notice requirements are "administratively onerous", but did not provide any evidence of how this affects operational efficiency within the NGO context. Nor did shippers, in their submissions, provide any evidence to show how the "flexibility" they claimed they had under the existing provisions fed through to the long term interests of consumers of natural gas. Accordingly, without evidence of impact on the NGO, it was hard for the Authority to assess whether the NGO was best served by accepting DBP's change or maintaining the status quo under the current terms and conditions applying for the third access arrangement period (AA3). However, the Authority was generally of the view that the current terms and conditions should continue unless there was justification for changing them.

1636. The Authority noted that if DBP considered that the existing overruns regime was not achieving the NGO, it must explain more clearly why this was the case and how the proposed changes would better achieve the NGO. In this regard, for example, DBP argued that it "*should be able to cut out overrun gas, as this goes above the contractual entitlements of the shipper under the T1 service*",⁴¹⁵ yet DBP did not link this claim to its proposed change and how it would better achieve the NGO. Furthermore, DBP's assertion that overrun gas "*goes above the contractual entitlements of the shipper under the T1 service*" ignores that, under the current terms and conditions, a shipper does have a right to overrun unless DBP can justify

⁴¹² CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 47-48.

⁴¹³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

⁴¹⁴ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

⁴¹⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 10.

giving an “unavailability notice” under clause 11.2(a). DBP's changes to clause 11.2(a) to effectively make it easier for DBP to give an unavailability notice was therefore not in the nature of preventing a shipper "going above its contractual entitlement" (as DBP claimed), but in fact would arguably undermine a shipper's existing contractual entitlement to overrun.

1637. The Authority noted that under the current terms and conditions for the reference service, applying for the third access arrangement period (AA3), taking overrun gas is not a type of breach or default by the shipper (as DBP seems to be claiming). On the contrary, the taking of overrun gas can be seen as a practical way of making efficient use of the pipeline and, as such, seems consistent with the NGO and should be allowed to continue except where some overriding interest or NGO consideration prevails. However, the change DBP was proposing to clause 11.2(a), to remove the requirement that the overrun must impact or be likely to impact on another shipper's entitlement to its nomination before DBP can issue an unavailability notice, seemed to remove the very kind of thing that DBP should be considering when operating the pipeline, if doing so is consistent with the NGO.
1638. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification for its change and was therefore of the view that the change should be rejected unless justified consistent with the NGO. The Authority required the following amendment:

Required Amendment 54

Clause 11.2(a) of the proposed terms and conditions, relating to the issuing of an unavailability notice, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

1639. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 54 and instead proposes to update clause 11.2(a) of the amended terms and conditions as follows.⁴¹⁶

The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an **Unavailability Notice**) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, ~~but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity.~~ The Operator must, at the same time, give an Unavailability Notice to all other shippers ~~that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.~~

1640. In support of its position DBP makes reference to the information provided in response to (Draft Decision) Required Amendment 48 (refer paragraphs 1557 and 1558), noting that the information and concepts raised are equally applicable to the management of overrun on the DBNGP and proposed amendments to clause 11.2(a). Further to this information, DBP reiterates the following with respect to the proposed clause 11.2(a) amendments.⁴¹⁷

⁴¹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.132.

⁴¹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs pp. 23-24.

Needed because current terms are ineffectual and unworkable in practice

- 2.123 The current limitation on DBP's right to issue overrun unavailability notices to shippers is overly prescriptive and unable to be complied with in practice. Relevantly, it is not possible for the pipeline operator to ascertain the impacts of an overrun event until sometime after the event has transpired. In particular, the ability to utilise additional capacity on the DBNGP at any given time, being overrun gas, is constantly developing. The state of the pipeline at any given time is dynamic in nature, which depends on the quantity and timing of the use of overrun gas against the current gas transportation demands on the asset, peaking levels, imbalance levels, gas quality and pressure and environmental, seasonal variables.
- 2.124 It is therefore not possible to determine whether "Shipper overrun will impact or is likely to impact on any other shipper's entitlement" to its pipeline services until after the overrun run event has concluded.
- 2.125 DBP again notes that each shipper has constant access to CRS information to manage its gas flows and has various options to adjust its usage of gas transportation services, gas demand requirements and contracted capacity levels to ensure that it doesn't need to utilise overrun gas.
- 2.126 DBP appreciates the concerns of WESCEF in relation to the issue of overrun notices to other shippers. As outlined above, DBP is unable to practically issue overrun notices specifically to shippers that are taking overrun and therefore proposes that it issue overrun notices to all shippers of the relevant reference service.

Necessary to provide a more efficient utilisation of the DBNGP

- 2.127 DBP issues unavailability notices to shippers in circumstances where significant distress has occurred or is occurring on the pipeline. This may include loss of linepack due to natural gas production facility outages, loss of compression on the pipeline or other emergency state conditions. In such circumstances, the utilisation of overrun gas by shippers results in a direct loss of linepack used to support other pipeline services on the DBNGP and increases the probability of curtailment of these services. DBP has recently experienced an incident of one shipper electing to take overrun gas in such circumstances, despite the existence of the unavailability notice and the imposition of an unavailability overrun charge on the basis that the losses that would otherwise at its downstream asset due to reduced gas supply would outweigh the costs incurred through the unavailability overrun charge. [sic]
- 2.128 Whilst the inadequacy of DBP's behavioural charges is not directly relevant to DBP's proposed terms and conditions under clause 11.2(a), DBP considers that this example is supportive of DBP's intention to seek a more balanced overrun regime which permits greater control over shipper behaviour.

...

Justified based on the NGO

- 2.130 DBP reiterates its views that, given the shipper's current options presently available to manage overrun behaviours on the DBNGP, the change to the overrun regime will incentivise positive shipper behaviour which will have a corresponding positive impact on the ability of the pipeline operator to better manage overrun events and corresponding impacts on pipeline service availability. DBP is of the view that its proposed amendments ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.
- 2.131 DBP also notes that it is presently required under clause 11.2(a) of the reference service terms and conditions to only give an unavailability notice acting as a reasonable and prudent person, which provides protections to

shippers that DBP cannot unilaterally issue such notices at its unfettered discretion, but rather must exercise that discretion as a reasonable and prudent person.

1641. No further submissions were received by the Authority that readdress this particular issue. Absent any further submissions, the Authority has given consideration to DBP's further submission and is of the view that the amendments proposed by DBP should be rejected.
1642. The Authority does not consider that the "reasonable and prudent person" test is sufficient protection for shippers such that unavailability notices will not be issued on an arbitrary basis. This is because the test does not of itself require the operator to consider whether the overrun will impact, or is likely to impact, on any other shipper's entitlement to its Facility Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity. The current words *"but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Facility Nomination for T1 Capacity, any other Reserved Service or allocated Spot Capacity"* of clause 11.2(a) should be re-instated.
1643. Furthermore, DBP's arguments at paragraphs 2.123 and 2.127 of its further submissions appear to be inconsistent – at paragraph 2.123, DBP states that *"it is not possible for the pipeline operator to ascertain the impacts of an overrun event until sometime after the event has transpired..."*; on the other hand, at paragraph 2.127, DBP states that it *"issues unavailability notices to shippers in circumstances where significant distress has occurred or is occurring on the pipeline"*. If the impact on the pipeline is not known until sometime after the event, then how can notices be issued in circumstances where there is significant distress on the pipeline?

Required Amendment 29

Clause 11.2(a) of the amended terms and conditions, relating to the issuing of an unavailability notice, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 17.4 – Refund of capacity reservation charge

1644. Clause 17.4 outlines the circumstances in which the shipper is entitled to a refund of the capacity reservation charge.
1645. In its original proposal DBP changed the wording of clause 17.4 as follows:
- To the extent that curtailment of the Shipper's T1 Service is ~~Curtailed~~ exceeds the T1 Permissible Curtailment Limit for any reason other than:
- (a) an event of Force Majeure where the Shipper is the Affected Party; or
 - (b) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment,
- the Shipper is entitled to a refund of the Capacity Reservation Charge in respect of the Capacity Curtailed for the relevant period.
1646. DBP indicated that no refund should apply for curtailments associated with major works (including planned maintenance) or the remedy of a safety issue, provided the relevant curtailment does not exceed the T1 permissible curtailment limit (that is,

two per cent of the time in the relevant gas year).⁴¹⁸ DBP submitted the reasons for this position to be:

- [DBP] should be entitled to have a certain amount of “down time” each year to carry out maintenance and major works, up to a limit that is sufficient time for DBP to carry out the works as a Reasonable & Prudent Person, operating the DBNGP in accordance with Good Gas Industry Practice. This is up to the T1 Permissible Curtailment Limit.
- This position is supported by the 98% reliability premise of the DBNGP.
- If the time taken for such activities exceeds the T1 Permissible Curtailment Limit, then the refund should apply.

1647. CPMM acknowledged that the operator should be entitled to have a certain amount of time each year to carry out maintenance and major works, up to the relevant permissible curtailment limit. CPMM believed DBP’s change to clause 17.4 did not, however, entitle the shipper to a refund of the capacity reservation charge if the time taken for such activities exceed the relevant curtailment limit for the following reasons:⁴¹⁹

- Under clause 17.2(b), the Operator may Curtail the Capacity Services whenever it needs to undertake any Major Works which, by virtue of the Operator’s proposed change [to the definition of Major Works], also includes Planned Maintenance.
- Under clause 17.3(c), a Curtailment in the circumstances set out in clause 17.2(b) is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the relevant Permissible Curtailment Limit to be exceeded.
- To achieve the objective described in the rationale for change, the reference to clause 17.2(b) should be deleted from clause 17.3(c)(i).

1648. WESCEF believed DBP’s change to clause 17.4 was “*unreasonable, clearly in the interests of DBP and contrary to the interests of shippers and an attempt to change the nature of the reference services*”. WESCEF further submitted that “*the curtailment limit should not diminish the shipper’s entitlement to a refund in the event of a curtailment*”.⁴²⁰

1649. As submitted by WESCEF, DBP’s change would change the nature of the reference service, yet DBP did not provide any clear NGO-based justification why it thought the clause 17.4 refund should only apply where the curtailment exceeds the two per cent T1 permissible curtailment limit. DBP already has the benefit of a liability limitation under clause 17.3(b) in respect of its two per cent T1 permissible curtailment limit, which is currently balanced by the refund under clause 17.4 so that, in effect neither party “loses out” because of curtailments within the two per cent limit. DBP escapes liability, but in return shippers do not have to pay capacity reservation charge for a service they are not getting.

⁴¹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 11.

⁴¹⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 48-49.

⁴²⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

1650. Further, CPMM pointed out valid reasons why DBP's change does not actually achieve the objective described by it in its rationale (because major works are already not counted in the two per cent T1 permissible curtailment limit, by virtue of the exclusion of clause 17.2(b) contained in clause 17.3(c)(i)).⁴²¹
1651. The Authority also noted that DBP had not made the same change to the comparable provision(s) in the SSC (at clause 17.4).
1652. Having regard to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for its change and was therefore of the view that the change should be rejected. The Authority required the following amendment:
- Required Amendment 55
- Clause 17.4 of the proposed terms and conditions, relating to the refund of the capacity reservation charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.
1653. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 55 and maintains that its original proposal ought to be accepted, in addition to a further amendment to clause 17.3(c)(i) of the amended terms and conditions to remove a reference to clause "17.2(b)" (as suggested by CPMM in its submission on DBP's original proposal – refer paragraph 1647 above).⁴²²
1654. In support of its position DBP indicates that it has addressed the concerns raised by interested parties in response to its original submission; namely:⁴²³
- that planned maintenance does not form part of the definition of "major works" and hence does not contribute towards the curtailment limit under the amended terms and conditions (refer paragraph 1386 of this decision document);
 - that DBP's rationale for the proposed change is achieved by amending clause 17.3(c)(i) to remove a reference to clause "17.2(b)"; and
 - that DBP provides justification based on the NGO as to why the capacity reservation charge refund (under clause 17.4) should only apply where the curtailment exceeds the two per cent curtailment limit.
1655. In relation to providing NGO-based justification DBP's provides the following information.⁴²⁴
- 2.139 DBP considers that its proposed amendment to clauses 17.3(c)(i) and 17.4 are consistent with the NGO. Relevantly, DBP is of the view that it is reasonable to afford a certain period of "downtime" to a pipeline operator to

⁴²¹ The Authority notes that, in accordance with its determination on DBP's proposed change to the definition of "major works" (refer to paragraph 1379 of the Draft Decision), the Authority has determined that "planned maintenance" should not be included in major works and DBP's proposed deletion of clause 17.2(d) should not be made.

⁴²² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.141.

⁴²³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraphs 2.136 to 2.138.

⁴²⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 25.

undertake needed major work activities. Such works are crucial for ensuring that pipeline integrity and asset life is preserved in the long term for the benefits of its long term gas users. DBP ought to be able to undertake such works without liability and without risk of revenue losses to ensure that such major works are undertaken diligently, without haste, so as to ensure all necessary rectification works are carried out to required standards, as a reasonable and prudent person, and in accordance with all pipeline licences and approvals. The preservation of capacity reservation revenue during this period provides the correct incentives to the operator to ensure major works are undertaken to this standard.

2.140 Furthermore, as set out in clause 17.7 and in the definition of “Curtailed”, a curtailment is any reduction in a shipper’s contracted capacity. Accordingly, during a curtailment a shipper may still receive part of its service offering (whether that be under a regulated transportation service, storage service or other service). In these circumstances, it is reasonable that the shipper ought to still contribute to the delivery of those services. DBP submits that its proposed amendment to clauses 17.3(c)(i) and 17.4 set a reasonable cap on DBP’s ability to recover reservation charges whilst providing consideration for the provision of part service.

1656. In its further submission to the Authority, and in response to DBP’s amended proposal, WESCEF submits that:⁴²⁵

[C]ause 17.4 should provide for the refund of the Capacity Reservation Charge for all curtailed capacity, not just in excess of the T1 Permissible Curtailment Limit, as per the original form of clauses 17.4. The amendments proposed by DBP are in the financial interests of DBP and to the financial disadvantage of shippers, with no clear adjustment elsewhere (for example by way of reduction in tariffs) to reflect the advantage to DBP and disadvantage to shippers.

1657. In a further submission to the Authority, and in response to third party submissions, DBP considers that WESCEF’s comments (*“that DBP’s amendments are solely for the benefit of DBP and not for the benefit of shippers”*) are inconsistent with the views of another of DBP’s shippers – CPMM.⁴²⁶ DBP reiterates that its proposed response to (Draft Decision) Required Amendment 55 adopts the amendment proposed by CPMM and that this amendment is consistent with the NGO for the reasons set out in its supporting submission (refer paragraphs 1654 and 1655 above).

1658. The Authority has considered DBP’s further submissions and those of WESCEF. The Authority is of the view that DBP’s further submissions do not provide adequate justification as to why the proposed change is necessary in accordance with the NGO, and observes that DBP has simply re-iterated the position that it is reasonable to afford a certain period of ‘downtime’ to the pipeline operator to undertake major work activities. The Authority does not disagree that the pipeline operator is entitled to a reasonable period of ‘downtime’; however, the justification given does not explain why the amendment to clause 17.4 is necessary and justified by the NGO such that the shippers’ entitlement to refunds for curtailments is to be limited to the T1 Permissible Curtailment Limit.

1659. The Authority will allow DBP’s further proposed amendment to clause 17.3(c)(i) of the amended terms and conditions (to remove a reference to clause “17.2(b)”).

⁴²⁵ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 11, p. 4.

⁴²⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.22 and 2.23.

However, and for the reasons set out above, the Authority is of the view that the proposed change to clause 17.4 should be rejected.

Required Amendment 30

Clause 17.4 of the amended terms and conditions, relating to the refund of the capacity reservation charge, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Clause 17.5 – Operator’s rights to refuse to receive or deliver gas

1660. Clause 17.5 of the proposed terms and conditions sets out provisions relating to the operator’s rights to refuse to receive or deliver gas as follows.

Subject to clauses 5.5 and 5.9, where the Operator exercises its rights to refuse to Receive Gas or Deliver Gas under or in accordance with:

- (a) clause 5.3 (the Operator may refuse to Receive Gas);
- (b) clause 5.7 (the Operator may refuse to Deliver Gas),

such act is not to be regarded as a Curtailment for the purposes of clauses 17.3(b)(iii), 17.3(c)(ii) and 17.4(b).

1661. In its original proposal DBP indicated that it sought to change clause 17.5, by deleting the reference to clause 5.9, with the reason for the change being a “*consequential change due to [the] deletion of clause 5.9*”.⁴²⁷

1662. The Authority noted that whilst DBP indicated a proposed drafting change to clause 17.5, the proposed terms and conditions submitted did not reflect any drafting changes to this effect (that is, clause 5.9 remained in the proposed terms and conditions unchanged from the current terms and conditions applying to the third access arrangement period (AA3)). CPMM also noted this and submitted that the reference to clause 5.9 should be retained in any case for the following reason.⁴²⁸

[C]ause 5.9 is a major element in rectifying the long-term structural defect in the DBNGP contracts which created separate and inconsistent regimes for refusal to receive/deliver gas on one hand, and curtailment on the other. The effect on the shipper is the same in either case – no gas flows – and the contract should not leave room for the operator to exploit the structural error to avoid accountability, by characterising a non-receipt or non-delivery as a clause 5 even rather than a clause 17 event. [sic]

1663. The Authority noted that if DBP was proposing a change to clause 17.5, which was not entirely clear (given the lack of any change shown to clauses 17.5 or 5.9 in its proposed terms and conditions⁴²⁹), then having regard to the submissions of interested parties, the Authority considered that DBP’s proposed change was not a “minor/drafting change” and DBP did not provide adequate justification for its

⁴²⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

⁴²⁸ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 55-56.

⁴²⁹ Including the “marked-up” version of the proposed terms and conditions submitted.

proposed amendment of clause 17.5. The Authority was therefore of the view that the change should not be made (or if it is made the change should be rejected). The Authority required the following amendment:

Required Amendment 56

Clause 17.5 of the proposed terms and conditions, relating to the operator's rights to refuse to receive or deliver gas, should retain the cross reference to clause 5.9 of the proposed terms and conditions; and

Clause 5.9 ("Refusal to Deliver Gas is a Curtailment in limited circumstances") of the proposed terms and conditions should not be deleted from the proposed terms and conditions.

1664. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 56.⁴³⁰ Accordingly, DBP's amended terms and conditions retains clause 5.9 and the cross reference to it in clause 17.5.

1665. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 56).

Clause 17.9 – Priority of curtailment

1666. Clause 17.9 of the proposed terms and conditions sets out provisions for the priority of curtailment.

1667. In its original proposal DBP deleted clause 17.9(c)(iii) from the terms and conditions as follows.

~~(iii) Capacity under Spot Transactions which resulted from Daily Bids must be Curtailed with the lower priced Daily Spot Bid Price being Curtailed before the higher priced Daily Spot Bid Price.~~

1668. DBP considered the amendment to be a "minor/drafting change" and provided the following reasoning for deleting the clause.⁴³¹

This clause provides that Capacity under Spot Transactions that resulted from Daily Bids must be curtailed with the lower priced daily spot bid price being curtailed before the higher priced Daily Spot Bid Price. These definitions and clause 3.5 that related to Spot transactions were removed from the 2010 AA and this clause is no longer relevant – ie how spot capacity is curtailed is irrelevant to the shippers under this contract. [sic]

1669. WESCEF believed that DBP's amendment to clause 17.9(c)(iii), along with its proposed amendments to clauses 6.5(d)(iii) and 9.5(a) (as discussed elsewhere in this decision), changed the nature of spot transactions in a manner that was adverse to the interests of a shipper utilising spot capacity.⁴³²

1670. The Authority was of the view that existing clause 17.9(c)(iii) provided shippers with a right in relation to curtailment of spot capacity transactions, which DBP was seeking to remove. If the exact same right was securely enshrined for shippers elsewhere, such as might apply if, for example, it were included in separate regulated

⁴³⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.143.

⁴³¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

⁴³² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 6.

terms on which shippers contract for spot capacity, then its removal from clause 17.9 would arguably be irrelevant for shippers (as claimed by DBP). However, if the right was not located elsewhere, then its removal from clause 17.9 was potentially a material change for shippers and hence not just a “minor/drafting change” as claimed by DBP.

1671. Having regard to the submissions of interested parties, the Authority considered that DBP's change to clause 17.9(c)(iii) was not a "minor/drafting change" and that DBP had not provided adequate justification for the amendment. The Authority was therefore of the view that the change to clause 17.9(c)(iii) should be rejected unless proper justification for it was provided. The Authority required the following amendment:

Required Amendment 57

Clause 17.9(c)(iii) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the priority of curtailment, should not be deleted from the proposed terms and conditions.

1672. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 57 and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following information.⁴³³

2.146 DBP again reiterates, which the ERA appears to have accepted, that the rights of shippers applying to spot transactions (which formerly existed under clause 3.5) was removed from the 2010 AA and this clause is no longer relevant to the reference service. DBP also notes that the definitions for “Daily Bids” and “Daily Spot Bid Price”, as referred to in clause 17.9(c)(iii) are not provided for in the proposed terms and conditions.

2.147 DBP is of the view that there is no necessity to retain the spot transaction curtailment mechanism within the proposed reference service on the basis that:

- (a) the reference service does not apply to spot transactions and such rights will be contained in a separate (potentially regulated) agreement;
- (b) shippers have no rights to exercise such priority of curtailment rights under the proposed reference terms and conditions and it is inappropriate to include irrelevant rights in this instrument;
- (c) there is substantial uncertainty whether shippers could, in any event, exercise their rights under this spot transaction curtailment mechanism in respect of their rights to acquire spot capacity under a separate agreement; and
- (d) at a practical level, a separate spot capacity agreement will need to contain a mechanism for administering any potential curtailment of spot capacity to assist with the administration of pipeline operations.

1673. No further submissions were received by the Authority that readdress this particular issue. Absent any further submissions, the Authority has given consideration to DBP's further submission and is of the view that DBP has now provided adequate justification for the proposed removal of clause 17.9(c)(iii) from the amended access arrangement, in particular, that rights in respect of spot transactions will be contained

⁴³³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 26.

in a separate agreement. The Authority therefore accepts DBP's proposed amendment to delete clause 17.9(c)(iii) from the amended terms and conditions.

Clause 20.5 – Adjustment to T1 tariff

1674. Clause 20.5 of the proposed terms and conditions outlines the circumstances in which adjustments to the T1 tariff can be made.

1675. In its original proposal DBP amended clause 20.5 to specify the circumstances in which the T1 tariff may be varied as follows.

- a) The Parties acknowledge that:
 - i) as at the commencement of this Contract, the T1 Tariff has been calculated in the manner set out in section 3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism;
 - ii) the T1 Tariff may be further varied for:
 - (A) CPI Changes;
 - (B) Tax Changes;
 - (C) New Costs;
 - (D) Revenue cap adjustments undertaken in accordance with clause 11.5 of the Access Arrangement;
 - (E) The annual update of the trailing average cost of debt calculation in accordance with clause 11.6 of the Access Arrangement; and
 - (F) any other type of cost variation that the Regulator may approve from time to time,

arising after the date of this Contract, that meet the relevant criteria in the Reference Tariff Variation Mechanism; and
- b) the T1 Tariff shall be re-set to reflect any new T1 Tariff approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.
 - ~~(ii) any adjustment of the T1 Tariff during the term of this Contract will be in accordance with the Reference Tariff Variation Mechanism.~~

1676. Consequential amendments that arose from the changes to clause 20.5 were indicated by DBP to be the deletion of clause 20.7, which relates to tax change variations, and several changes to clause 1 (Definitions) of the proposed terms and conditions. Changes to clause 1 included: (1) the insertion of the term “new costs”; (2) an amendment to the term “tax change”; and (3) the deletion of the term “tax change notice”, as follows.

New Costs means costs arising due to a change in Law and additional costs not included in the forecast operating expenditure that arise from a change in the type or level of fees payable to the Land Access Minister under any Access Right relating to the DBNGP and granted under the Dampier to Bunbury Pipeline Act 1998.

...

Tax Change means:

- a) any Tax which was not in force as at the commencement of the Current Access Arrangement Period is validly imposed on the Operator or any of its Related Bodies Corporate;
- b) any Tax which was in force and validly imposed on the Operator or any of its Related Bodies Corporate as at the commencement of the Current Access Arrangement Period is repealed;

- c) any Carbon Cost...
- d) the rate at which a Tax...
- e) the basis on which a Tax... Execution Date.

~~**Tax Change Notice** has the meaning given to it in clause 20.7(c).~~

1677. DBP indicated several reasons for the changes to clause 20.5 and consequential amendments.⁴³⁴

- The changes to clause 20.5 would make reference to the tariff variation mechanism in the proposed revised access arrangement and remove duplication of parts of the mechanism from the proposed terms and conditions. These changes would:
 - avoid duplication of parts of the access arrangement;
 - avoid confusion from having only the parts of the access arrangement relating to tax changes incorporated in the terms and conditions; and
 - prevent changes being made in the terms and conditions that are not reflected in the access arrangement (and vice versa).
- With the changes to clause 20.5, clause 20.7 of the proposed terms and conditions dealing with tax change variations would no longer be required. Detailed tax change and new cost variation provisions would all be contained within the proposed revised access arrangement under the tariff variation mechanism (at clauses 11.4 and 11.5).
- The insertion of the term “new costs” in clause 1 of the proposed terms and conditions was identified as a consequential amendment arising from the proposed changes to clause 20.5, with the definition taken from clause 11.4(b) [*sic*]⁴³⁵ of the access arrangement.
- The amendment to the term “tax change”, by inserting the words “*b) any Tax which was in force... as at the commencement of the Current Access Arrangement Period is repealed*”, was proposed to ensure that where a tax is repealed the reduction in tax expense is passed through to the shipper.
- With the changes to clause 20.5, the term “tax change notice” would no longer be required and hence be deleted from clause 1 of the proposed terms and conditions.

1678. CPMM noted the term “CPI changes”, as proposed to be included by DBP at clause 20.5(a)(ii), was not a defined term in the proposed terms and conditions. CPMM further noted the following inconsistencies with DBP’s proposed changes and reasoning for the changes:⁴³⁶

⁴³⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, pp. 11-12.

⁴³⁵ The Authority notes DBP’s reference to clause 11.4(b) of the proposed revised access arrangement is incorrect. The definition of “new costs” appears to be derived from clause 11.5(c) of the proposed revised access arrangement.

⁴³⁶ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority’s Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 49-50.

- Revenue cap adjustments and trailing average cost of debt are covered in the Access Arrangement at clauses 11.6 and 11.7 respectively, rather than at clauses 11.5 and 11.6.
 - The Operator's rationale for this proposed change is to avoid duplication and confusion... [h]owever, clause 20.5 introduces some inconsistency in that Carbon Costs are dealt with as a Tax Change in the Access Contract but as a New Cost under clause 11.5 of the [access arrangement].
 - The Operator's rationale also refers to the new method of setting the tariff proposed by DBP being reflected in subclauses 20.5(a)(iv) and (v), which subclauses do not exist in the proposed amended Access Contract terms and conditions. [sic]
1679. WESCEF noted DBP's proposed amendment to include "CPI changes" in clause 20.5(a)(ii) and submitted that the term did not appear to be defined in the terms and conditions. WESCEF believed that the term "CPI changes" should be a defined term.⁴³⁷
1680. Having regard to the submissions of interested parties, the Authority agreed with DBP's stated aims to avoid duplication, confusion and inconsistency by having the tariff variation mechanism in the access arrangement as the "sole source of truth" with a cross-reference to it, rather than re-stating it in the proposed terms and conditions. However, the Authority was of the view that the drafting currently offered by DBP contained inaccuracies and inconsistencies and risked causing the very problems that DBP claimed it was seeking to overcome.
1681. The Authority considered that the drafting of DBP's proposed change to clause 20.5 required improvement so that it more simply cross-referred to the tariff variation mechanism in the proposed revised access arrangement (without listing, in clause 20.5, any components of that mechanism). The Authority required the following amendment:
- Required Amendment 58
- Clause 20.5(a)(ii) of the proposed terms and conditions, relating to the adjustment of the T1 tariff, should be amended to read:
- "the T1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and"
1682. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 58.⁴³⁸ Accordingly, DBP has updated clause 20.5(a)(ii) to read as required by the Authority. Furthermore, DBP has removed the terms "new costs" and "tax change" from clause 1 of the amended terms and conditions as the inclusion of these terms were consequential amendments of the proposed change to clause 20.5(a)(ii) (which is no longer proposed).
1683. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 58).

⁴³⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

⁴³⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 150.

Clause 25.5 – Pipeline Trustee’s acknowledgments and undertakings

1684. Clause 25.5 of the proposed terms and conditions detail the acknowledgements and undertakings of the pipeline trustee.

1685. In its original proposal DBP made changes to these acknowledgements and undertakings by deleting subclause 25.5(f) from the proposed terms and conditions:

25.5 Pipeline Trustee’s Acknowledgments and Undertakings

(a) In this clause...

(b) The Pipeline Trustee...

(c) The Pipeline Trustee...

(d) The Shipper acknowledges...

(e) The Pipeline Trustee...

~~(f) Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, the Pipeline Trustee shall not dispose of the whole or any part of its right, title or interest in the DBNGP without requiring the disposee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:~~

~~(i) assumes all, or the relevant portion, of the Pipeline Trustee’s obligations under this Contract in respect of Shipper (and Shipper agrees that the Pipeline Trustee will be released to the extent that the Pipeline Trustee’s obligations are assumed); and~~

~~(ii) acknowledges that its obligations under such assumption of obligations extend to Operator’s obligations under the Relevant Agreements,~~

~~consistent with this clause 25.5.~~

~~(g)~~(f) Subject to clause 25.5(g)...

~~(h)~~(g) If the dispose... beyond the project structure.

1686. DBP believed the change was a “minor/drafting change” as the provisions of clause 25.5(f) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3) are already covered by clause 25.4.⁴³⁹

1687. WESCEF believed DBP’s deletion of clause 25.5(f) to be unreasonable and submitted the clause should be retained in its current form. In particular, WESCEF believed DBP’s proposal would “*remove the certainty that was previously provided to shippers that the DBNGP won’t be disposed of leaving the Operator with no ability to meet its contractual obligations under the shipper contract [sic]*”.⁴⁴⁰

1688. The Authority also noted that while DBP’s stated rationale for the proposed deletion of clause 25.5(f) was that the provisions were “*already covered by existing clause 25.4*”, this did not appear to be the case. Clause 25.4 of the current terms and conditions deals with “assignment” by a “party” (which, as defined, may or may not include the pipeline trustee depending on context) of “rights and interests under this contract”, whereas clause 25.5(f) deals with “disposal” (different and potentially

⁴³⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

⁴⁴⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

wider than "assignment") by the pipeline trustee of any of its "right, title or interest in the DBNGP" (different from "rights and interests under this contract").

1689. Having regard to the submissions of interested parties, the Authority considered that DBP's deletion of clause 25.5(f) was not a "minor/drafting change" and that DBP had not provided adequate justification for the deletion. The Authority was therefore of the view that the deletion of clause 25.5(f) should be rejected. The Authority required the following amendment:

Required Amendment 59

Clause 25.5(f) of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the Pipeline Trustee's acknowledgements and undertakings, should not be deleted from the proposed terms and conditions.

1690. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 59.⁴⁴¹ Accordingly, DBP has reinstated clause 25.5(f) into the amended terms and conditions.

1691. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 59).

Clause 26 – General right of relinquishment

1692. Clause 26 of the current terms and conditions, applying to the access arrangement for the third access arrangement period (AA3), sets out provisions relating to relinquishment rights.

1693. In its original proposal DBP removed these provisions from the terms and conditions, by deleting clause 26 in its entirety. DBP submitted that the general right of relinquishment should be removed for the following reasons:⁴⁴²

- the term of these contracts are potentially as low as 2 years. There is no call for relinquishment rights in this circumstance; and
- shippers have the right to trade their capacity under clause 27 if for some reason they need less than they have contracted for.

1694. CPMM submitted the following in response to DBP's proposal to delete clause 26 from the proposed terms and conditions.⁴⁴³

Relinquishment rights should only be deleted if the Operator can offer assurances that flexible Access Contract periods will be offered to prospective shippers seeking access so that they are not locked-in to excessively long contracts for capacity services.

1695. The Authority was concerned to see that any change was properly justified based on a real need for the change in order to promote the NGO. The Authority was of the view that the shipper's right of relinquishment improved the efficiency of the

⁴⁴¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.152.

⁴⁴² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 13.

⁴⁴³ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 51.

reference service by better allowing unutilised capacity to be utilised. DBP did not provide any justification for how the right of relinquishment could reduce efficiency.

1696. The Authority was also of the view that DBP's deletion of clause 26 would represent a substantial change to the terms of the reference service through a restriction on the right of relinquishment. With such a substantial change to the terms and conditions, the Authority expected that the proposal for the change would be supported by a clear demonstration that an improvement in efficiency would justify the change. DBP did not provide any such demonstration. Further, the Authority noted that the SSC retained this right of relinquishment clause unchanged.
1697. Having had regard also to the submissions of interested parties, the Authority considered that DBP had not provided adequate justification for its proposed deletion of clause 26. The Authority was therefore of the view that the proposed change should be rejected. The Authority required the following amendment:

Required Amendment 60

Clause 26 of the current terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to the general right of relinquishment, should not be deleted from the proposed terms and conditions.

1698. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 60 and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following information.⁴⁴⁴

Promotion of NGO and efficiencies

- 2.156 DBP is of the view that its proposed amendment is consistent with the NGO and promotes the efficient operation and use of the DBNGP for the long term interest of gas consumers. DBP considers that the achievement of the NGO in these circumstances requires the achievement of balance between offering flexibility in capacity commitments to shippers and retaining a certain level of commitment from shippers to underpin utilisation and financial support for the DBNGP.
- 2.157 In respect of flexibility in capacity commitments, DBP reiterates its views that there are a number of existing mechanisms under the proposed reference service terms and conditions that already provide shippers with rights to manage their commitments to capacity under the reference service. These include the shippers' rights to trade spare, unutilised capacity to existing and prospective shippers, to assign its reference service to another entity and to waive renewal options under the reference service.
- 2.158 In respect of capacity commitments from shippers on the DBNGP, DBP advises that a minimum contractual commitment from shippers (absent of relinquishment rights) provides greater revenue certainty to the asset which provides DBP with a greater ability to fund future expansions of the assets for the long term interests and utilisation of gas users. DBP has a strong history of undertaking expansions of the DBNGP. Each expansion was underpinned and funded through long term contracts on the DBNGP. The inclusion of relinquishment rights in the reference service terms and conditions will accordingly remove any certainty of term of those reference services and have a material impact on the pipeline operator's ability to facilitate any expansions of the asset in the future.

⁴⁴⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 27-28.

- 2.159 Furthermore, the omission of relinquishment rights will provide greater certainty in capacity utilisation levels on the pipeline which will promote the following further efficiencies on the DBNGP:
- (a) allow certainty in forecasting of capacity utilisation levels and availability of spare capacity on the asset to determine potential timing and necessity for pipeline expansions and enhancements;
 - (b) allows for longer term forecasting in SUG requirements which will ensure greater efficiencies in costs through daily SUG use and enable more competitive SUG price negotiations through longer term contracts; and
 - (c) allow the pipeline operator to plan maintenance activities around utilised and unutilised pipeline assets based on certainty of transportation and pipeline service demands.
- 2.160 The ERA notes that the SSC retains the right of relinquishment as enshrined in clause 26. Notwithstanding the dichotomy of services offered under the SSC and the reference service, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC.

Flexibility in duration of contracts

- 2.161 DBP notes that it is mandated, by way of the definition of “reference service” in clause 3.3(d) of the Access Arrangement, to offer a minimum term of 2 years to prospective shippers where spare capacity is available, inclusive of options for extension of this term.
- 2.162 DBP notes that this commitment is substantially less than the 15 year minimum term required under DBP’s SSC terms and conditions and that this commitment in term is also able to be renegotiated outside of the access arrangement regime to accommodate different shipper requirements in contract duration.

1699. No further submissions were received by the Authority that readdress this particular issue. Absent any further submissions, the Authority has given consideration to DBP’s further submission and is of the view that DBP’s proposed amendment to remove clause 26 from the amended terms and conditions should not be accepted.
1700. The Authority acknowledges that DBP has attempted to justify the deletion of clause 26 by reference to the promotion of the NGO, in particular, that the deletion of the clause will allow the operator to have greater revenue certainty to the asset and a greater ability to fund future expansions of the asset.
1701. However, the Authority considers that the general relinquishment right in clause 26 of the current (AA3) terms and conditions is not insignificantly different to the other mechanisms which DBP says already provide shippers with rights to manage their commitments to capacity under the reference service (that is, rights to trade spare utilised capacity to existing and prospective shippers, rights to assign reference service to another entity and rights to waive renewal options under the reference service). For example, the general relinquishment right gives the shipper the right to relinquish capacity to the operator and (by its nature) does not require the shipper to enter into any contractual agreement; whereas the right under clause 27 gives the shipper the right to trade capacity to other shippers, but requires the shipper to enter into a sub-contract with the other shipper. The general relinquishment right provides the shipper with the option to specify the date that the relinquishment will take effect; on the other hand, a trade of capacity under clause 27 can take time.

1702. In the Authority's view, DBP's argument that *"the inclusion of relinquishment rights in the reference service terms and conditions will accordingly remove any certainty of terms of those reference services and have a material impact on the pipeline operator's ability to facilitate any expansions of the asset in the future"*, appears flawed as the general relinquishment rights exist in the current (AA3) period. DBP has not provided any evidence where any expansion or potential expansion of the DBNGP has been thwarted in the past due to the shippers' general relinquishment rights.
1703. Furthermore, it is not clear how the other mechanisms, which provide shippers with rights to manage their commitments to capacity under the reference service, are different from the general relinquishment right in not contributing to the uncertainty of capacity on the DBNGP.
1704. Finally, the Authority notes that DBP's submission that *"...it is mandated, by way of the definition of "reference service" in clause 3.3(d) of the Access Arrangement, to offer a minimum term of 2 years to prospective shippers where spare capacity is available, inclusive of options for extension of this term"* is incorrect. Clause 3.3(d) of the access arrangement does not state that the minimum two (2) year term is inclusive of options for extension of this term.

Required Amendment 31

Clause 26 of the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to the general right of relinquishment, must not be deleted from the amended terms and conditions.

Clause 28.6 – Information received by operator

1705. Clause 28.6 of the proposed terms and conditions sets out provisions relating to information received by the operator. The Authority noted that clause 28.6(a)(i)(B) contained a reference to *"clauses 0 and 28.5"*, which appeared to be a drafting error. The Authority required the following amendment:

Required Amendment 61

Clause 28.6 of the proposed terms and conditions and conditions, relating to information received by the operator, should be amended to replace a reference to *"clauses 0 and 28.5"* with a reference to *"clauses 28.4 and 28.5"*.

1706. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 61.⁴⁴⁵ Accordingly, DBP has updated clause 28.6 of the amended terms and conditions to replace a reference to *"clauses 0 and 28.5"* with a reference to *"clauses 28.4 and 28.5"*.

1707. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 61).

⁴⁴⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.165.

Clause 29.3 – Notice generally

1708. Clause 29 of the proposed terms and conditions sets out provisions relating to notices.

1709. In its original proposal DBP made changes to clauses 29.3(a) and 29.3(b) to include a provision for giving notices by email, which it considered to be a "minor/drafting change". DBP claimed the rationale for the change was *"in line with [the] Electronic Communications Act, and reinforces [clause] 29.4(d)"*.⁴⁴⁶

29.3 Notices generally

- a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by email to, or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses, email addresses and facsimile numbers of the Parties are as set out in the Access Request Form.
- c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State and a facsimile number which are to take effect in substitution for the details set out in this clause.
- d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

1710. No third parties made submissions on this proposed change.

1711. The Authority noted that DBP's stated rationale of being *"in line with [the] Electronic Communications Act"* was unclear as no such Act exists. While legislation does exist at both State and Federal levels to enable electronic transactions to be effective at law (see the *Electronic Transactions Act 2011 (WA)* and the *Electronic Transactions Act 1999 (Cth)*), the Authority was not aware of any statutory requirement that contracts between commercial parties that must allow notices to be given by email if the parties do not consent to it.

1712. DBP's stated rationale also claims the change *"reinforces [clause] 29.4(d)"*. However, while clause 29.4(d) does contemplate that notices may be sent by email, it expressly requires that *"any notice sent by email must be sent by and to the email addresses set out in the Access Request Form (Dedicated Email Address)." There is no provision in clause 29.4(d) for an email address to be changed from that set out in the Access Request Form. The current drafting of DBP's proposed changes to clause 29.3(a) and 29.3(b) would therefore be inconsistent with clause 29.4(d) (as currently drafted) in that the changes seem to allow a party to change its email address from that set out in the Access Request Form, whilst clause 29.4(d) does not permit that to happen.*

1713. While the Authority agreed in principle that it is likely to be convenient for the parties to be able (subject to clauses 29.1 and 29.2) to give notices by email and change

⁴⁴⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 16.

their "dedicated email address" under clause 29.4(d), the current changes proposed by DBP did not completely achieve this aim. Changes would be required to clauses 29.3(c) and 29.4(d) to make expressly clear that while a "dedicated email address" must be used, it can be changed by subsequent notice.

1714. Considering DBP's stated rationale for the proposed change, the Authority believed that the use of the alternate words would better achieve this rationale. The Authority required the following amendment:

Required Amendment 62

Clause 29.3 of the proposed terms and conditions, relating to the communication of notices generally, should be amended to:

- make expressly clear that while a dedicated email address must be used, the dedicated email address can be changed by subsequent notice;
- at clause 29.3(a), use the words "or is sent by email to the Dedicated Email Address" instead of the words "or is sent by email to"; and
- at clause 29.3(b), use the words "Dedicated Email Addresses" instead of the words "email addresses".

1715. In response to the Authority's Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendment 62.⁴⁴⁷ Accordingly, DBP has updated clauses 29.3(a), (b) and (c) of the amended terms and conditions as follows:

29.3 Notices generally

- (a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by email to [the Dedicated Email Address](#), or is sent by facsimile transmission to the facsimile number, last notified under this clause.
- (b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses, ~~email addresses~~ [Dedicated Email Addresses](#) and facsimile numbers of the Parties are as set out in the Access Request Form.
- (c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State, [of a Dedicated Email Address](#) and a facsimile number which are to take effect in substitution for the details set out in this clause.

1716. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 62).

Clause 45 – Non-discrimination clause

1717. Clauses 45.1 and 45.2 of the current terms and conditions, applying to the access arrangement for the third access arrangement period (AA3), set out provisions relating to non-discrimination.

- Clause 45.1 provides that access to DBNGP information, other than information relating to an inlet point, outlet point or gate station which is specific to an individual shipper, must be provided to shippers at substantially the same time and in the same format.

⁴⁴⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 2.167.

- Clause 45.2 provides that the operator (and system operator) must, in operating and expanding the DBNGP, treat all shippers (including shippers which are associates of a relevant company) on an arms' length basis.

1718. In its original proposal DBP has removed these non-discrimination provisions from the terms and conditions, by deleting clause 45 in its entirety and making a consequential amendment to clause 1 to delete the term "relevant company". DBP submitted clauses 45.1 and 45.2 are not required for the following reasons.⁴⁴⁸

- Clause 45.1 is not required as:
 - information relevant to the shipper regarding maintenance is provided under the other terms of this contract;
 - this information is largely available on the internet or on the IMO bulletin board;
 - CRS largely controls information provided to shipper regarding gas flows and this is in a pre-set real time format that all shippers have access to. *[sic]*
- Clause 45.2 is not required as:
 - there is no longer any ring fencing requirement between the Operator and its owners as WestNet and Alinta are no longer owners or involved in operation of the DBNGP;
 - it is accepted that Alcoa as foundation shipper has a different shipper contract to other shippers, and that non-discrimination provisions do not apply to Alcoa;
 - provisions in the NGL prevent information being provided to a person who is carrying on a related business and prevents entry into associate contracts (ss. 140, 147 NGL). *[sic]*

1719. CPMM, WESCEF and BHP Billiton all commented on DBP's proposal to delete the non-discrimination provisions (clauses 45.1 and 45.2) from the proposed terms and conditions.

1720. Whist CPMM indicated that it has no in-principle objection to the proposed deletion of clause 45, it believed that consideration should be given as to whether the proposed revised access arrangement would contain adequate protections:

- for shippers on regulated access contracts, as compared with recontracting shippers; and
- against favourable treatment toward any shipper related to DBP or its owners.⁴⁴⁹

1721. WESCEF submitted the non-discrimination clause should be retained to ensure fairness between all shippers.⁴⁵⁰ Similarly, BHP Billiton also submitted the clause

⁴⁴⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 13.

⁴⁴⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, pp. 51-52.

⁴⁵⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 7.

should be retained as the reasons provided by DBP “provide no basis for the wholesale deletion of the protections afforded to shippers under clause 45”.⁴⁵¹

1722. The Authority noted that the wording of clause 45.1 appeared to have originated from undertakings given by DBP and others to the ACCC in 2004 under section 87B of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*).⁴⁵² Those ACCC undertakings are no longer in force.⁴⁵³ When in force, amongst other things, they required that DBP ensure the SSC offered by DBP for the T1 service include confidentiality and non-discrimination obligations as set out in schedule 1 to the ACCC undertaking dated 25 October 2004 (which included at item 45.2 of that schedule, the wording now found in clause 45.1 of the existing terms and conditions and in clause 45.2 of the SSC).⁴⁵⁴
1723. Given that the ACCC undertakings that originally required the inclusion of clause 45.1 in DBP's T1 service shipper contracts are no longer in force, there could be a strong argument for allowing DBP's proposed deletion of clause 45.1. However, as pointed out by CPMM and WESCEF, while a substantially identical provision remains in the SSC (at clause 45.2), if clause 45.1 is deleted from the proposed terms and conditions then shippers on regulated access contracts would have lower protection from discrimination, as compared with recontracting shippers.
1724. With regards to DBP's proposed deletion of clause 45.2, the Authority noted that, as DBP claimed, much of the protection provided by clause 45.2 in relation to dealings with associates is already covered by provisions in the NGL(WA). However, the fundamental protection in clause 45.2 requiring treatment of all shippers (whether or not associates) on an arms' length basis is not replicated in the NGL(WA). Further, the Authority noted that the SSC contained a substantially identical provision to clause 45.2 of the existing terms and conditions (at clause 45.3 of the SSC). Once again therefore, as pointed out by CPMM and WESCEF, while a substantially identical provision remains in the SSC (at clause 45.3), if clause 45.2 is deleted from the proposed terms and conditions then shippers on regulated access contracts would have lower protection from discrimination, as compared with recontracting shippers.
1725. Having regard to the submissions of interested parties, the Authority considered that DBP did not provide adequate justification for its proposed deletion of clause 45 from the proposed terms and conditions. The Authority was therefore of the view that the

⁴⁵¹ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd's proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 15.

⁴⁵² Undertaking dated 25 October 2004 to the ACCC given under section 87B of the *Trade Practices Act 1974* by Alinta Limited, Alinta Network Services Pty Ltd, Alcoa of Australia Limited, AMPCI Macquarie Infrastructure Management No.1 Limited as the responsible entity of the Diversified Utility and Energy Trust No. 1, AMPCI Macquarie Infrastructure Management No.2 Limited as the responsible entity of the Diversified Utility and Energy Trust No. 2 and DBNGP Holdings Pty Limited (as varied on 10 March 2010). **(First DBNGP Undertaking)**

Undertaking dated 1 November 2004 to the ACCC given under section 87B of the *Trade Practices Act 1974* by Epic Energy (WA) Transmission Pty Ltd (ABN 69 081 609 190) (as varied on 10 March 2010). **(Second DBNGP Undertaking)**

⁴⁵³ The First DBNGP Undertaking was withdrawn on 24 November 2011. The Second DBNGP Undertaking terminated in accordance with its terms (section 3.2) on the date on which the First DBNGP Undertaking terminated.

⁴⁵⁴ See section 5.5(d) of the original First DBNGP Undertaking, which became section 5.2 of the First DBNGP Undertaking as varied on 10 March 2010. See also section 4 of the Second DBNGP Undertaking.

proposed change should be rejected. The Authority required the following amendment:

Required Amendment 63

Clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the third access arrangement period (AA3), relating to non-discrimination, should not be deleted from the proposed terms and conditions.

1726. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 63 and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following further information.⁴⁵⁵

- 2.169 DBP confirms the ERA's understanding that the drafting of clause 45.1 and 45.2 originated from undertakings given by DBP and others and to the ACCC in 2004 under section 87B of the *Trade Practices Act 1974 (Cth)*. Those undertakings, and the need to maintain ringfencing, was removed due to the departure of Alinta and WestNet from the ownership and operation of the DBNGP. Accordingly, the necessity to retain the provisions of clause 45.1 no longer exists.
- 2.170 In relation to clause 45.1, DBP notes that the rights afforded to shippers under clause 45.1 are superfluous to the numerous bundles of rights existing under the reference service terms entitling each shipper to information relevant to that shipper. Without limitation, these include access to the following:
- (a) outlet metering equipment signals, under clause 15.5(a)(i);
 - (b) any other form of metering data requested from shipper from time to time, under clause 15.5(a)(ii);
 - (c) accumulated imbalance notices, under clause 9.4;
 - (d) gas delivery quantities delivered to each shipper at relevant outlet points via CRS, under clause 15.5(d);
 - (e) gas delivery quantities received by a shipper at physical gate points, under clauses 15.5(e), 15.5(f) and 15.5(g);
 - (f) records and information produced by primary metering equipment, under clause 15.15(c);
 - (g) information substantiating the issue of any curtailment notice, under clause 17.6(e);
 - (h) information relevant to substantiate any charges invoiced to a shipper, under clause 21;
 - (i) books, accounts, records and inventories of all matters connected with or relating to the reference service contract, under clause 31;
 - (j) gas market information publicly available from the IMO bulletin board; and
 - (k) other such information made available to shippers from time to time through the good faith of the operator.
- 2.171 For the reasons above, DBP is of the view that the redundant provisions of clause 45.1 ought to be removed from the reference service terms and conditions as per DBP's proposed terms and conditions.
- 2.172 In relation to clause 45.2, DBP reiterates its views ... noting the lifting of the ACCC undertakings with the departure of Alinta and WestNet from the

⁴⁵⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 29-30.

ownership and operation of the DBNGP business. DBP also notes that clause 45.2 replicates the statutory obligations mandated on DBP under sections 140 and 147 of the National Gas Law. These provisions place restrictions on DBP to prevent the disclosure of information to a person who is carrying on a related business and prevents the entry into associate contracts. Such associate contracts can only be entertained with consent from the regulator, thereby preserving arms' length dealings.

- 2.173 DBP suggests that the standards dictated by the National Gas Law ought to apply to pipeline operator. In these circumstances, it is not appropriate to couch legislation in contract when changes can be made to legislation beyond the control of the pipeline operator.
- 2.174 The ERA notes that the SSC retains the right of discrimination as enshrined in clause 26. Notwithstanding the dichotomy of services offered under the SSC and the reference service, and proceeding on the basis that there are sufficient protection measures contained elsewhere in the SSCs, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC.

1727. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF submits that:⁴⁵⁶

[T]he non-discrimination provisions should be retained. One shipper, Alcoa, still retains an interest in the DBNGP and there may be other, less obvious, interests that could influence behaviour. In the case of a monopoly infrastructure asset, WesCEF submits that non-discrimination clauses are appropriate and important for the protection of all shippers.

1728. In a further submission to the Authority, and in response to third party submissions, DBP provides the following information.⁴⁵⁷

- 2.25 DBP is of the view that it is irrelevant to justify the retention of the non-discrimination clauses on the basis that Alcoa still retains an interest in the DBNGP for the following reasons:
- (a) On 31 March, Alcoa announced that it was selling all of its equity interest in DBP to DUET2;
 - (b) The ACCC was not concerned about any anti-competitive effects of Alcoa holding a 20% interest in DBP because:
 - (i) the interest of Alcoa in the DBNGP was not the subject of the ACCC undertakings that were given when the consortium including DUET and Alcoa bought DBP in 2004;
 - (ii) the ACCC agreed to withdraw the undertakings in 2011 even when Alcoa retained its 20% ownership in DBP
- 2.26 Furthermore, as set out in paragraphs 2.168 – 2.175 of its Submission 52, clause 45.2 is enshrined in sections 140 and 147 of the National Gas Law, and therefore the removal of this provision from the reference service does not undermine any contractual protections of shippers.

1729. The Authority has considered DBP's further submissions and those of interested parties. Notwithstanding DBP's further submissions, the Authority remains of the view that clause 45 of the existing terms and conditions applying to the access

⁴⁵⁶ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 12, p. 4.

⁴⁵⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to 3rd Party Submissions – Supporting Submission 62*, 5 April 2016, paragraphs 2.24 to 2.26.

arrangement for the third access arrangement (AA3) period should not be deleted from the amended terms and conditions. In the Authority's view:

- as noted in the Draft Decision, clause 45.1 of the current (AA3) terms and conditions applies to all shippers (not just associates). Furthermore, rights to the information listed in sub-clauses (a) to (c) of clause 45.1 does not (according to DBP's list at paragraph 2.170(a) to (k) of its supporting submissions) appear to be specifically provided for in the terms and conditions.
- despite DBP's submission that clause 45.2 replicates the statutory obligations mandated on DBP under section 140 (and section 147) of the NGL(WA), clause 45.2 is wider than section 140 of the NGL because it covers and applies to more than "marketing staff" (as defined in section 138 of the NGL(WA)).

Required Amendment 32

Clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to non-discrimination, must not be deleted from the amended terms and conditions.

Proposed changes to the P1 Service

1730. Further to the above proposed amendments to the terms and conditions that will apply to the T1, P1 and B1 reference services, DBP proposed two additional amendments in its original proposal to the terms and conditions that will apply to the P1 Service.

1731. DBP's proposed amendments the P1 Service terms and conditions comprised:

- the insertion of clause 20.6 (with subclauses (a) to (h)) that set out the provisions relating to the "goods and services tax"; and
- amendments to clause 22.3 and 22.7 to amend the number of working days in which a default is to be remedied:
 - the number of working days in which a default is to be remedied by the shipper, after a shipper default notice has been given, was changed from 40 to 20 working days (clause 22.3(b)(ii)); and
 - the number of working days in which a default is to be remedied by the operator, after an operator default notice has been given, was changed from 20 to 40 working days (clause 22.7(b)(i)).

1732. DBP indicated that the proposed amendments (above) were inadvertently omitted from the current terms and conditions for the P1 Service that apply for the current (AA3) access arrangement period. The amendments (if approved) would align the P1 Service terms and conditions with the terms and conditions for the T1 Service.⁴⁵⁸

⁴⁵⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4*, 31 December 2014, p. 17.

1733. CPMM noted DBP's amendments to the proposed terms and conditions to apply to the P1 Service and queried why the default rectification periods are different for the operator and the shipper.⁴⁵⁹
1734. The Authority was of the view that CPMM's submission raised a valid query, and required that the default rectification periods in the terms and conditions applying to the P1 Service be the same for both the operator and shipper. As DBP did not provide any rationale for the discrepancy in these rectification periods, the Authority was of the view that the rectification period for both the operator and shipper should be the lesser of 20 working days (and not 40 working days).
1735. Further, the Authority was also of the view that the default rectification periods in the terms and conditions applying to the P1 Service, T1 Service and B1 Service should be consistent with each other. Hence, the Authority required that the default rectification periods in the proposed terms and conditions applying to the T1 Service and B1 Service (at clauses 22.3 and 22.7) be changed to match the rectification periods specified in the proposed terms and conditions applying to the P1 Service (at clauses 22.3 and 22.7). The Authority required the following amendments:

Required Amendment 64

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service, relating to the number of working days in which a fault should be remedied, should be amended so that the default rectification periods are the same for both the operator and shipper, and being 20 working days.

Required Amendment 65

Clauses 22.3 and 22.7 of the proposed terms and conditions applying to the T1 Service and B1 Service, relating to the number of working days in which a fault should be remedied, should be amended to be consistent with clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service.

1736. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendments 64 and 65, and maintains that its original proposal ought to be accepted. In support of its position DBP provides the following information.⁴⁶⁰
- 2.180 In its Submission 4, DBP indicated that the proposed amendment was inadvertently omitted from the current terms and conditions for the P1 reference service as it applied to the current AA3 access arrangement. DBP's proposed amendment aligned the P1 service terms and conditions with the terms and conditions for the T1 and B1 reference services, reducing the costs associated with administering contracts by aligning the terms.
- 2.181 In response to the query raised by CPMM, DBP responds as follows. The pipeline operator and the shippers have inherently different obligations to meet under the terms and conditions of the reference services that are the subject of clauses 22.3(b)(ii) and 22.7(b)(ii). This is evident from the differences in events concerning the shipper and operator that give rise to potential events of default.
- 2.182 For instance, the obligations of the shipper under clauses 22.1(b), 22.1(c) and 22.1(f), as referred to in clause 22.3(b)(ii) are materially different from

⁴⁵⁹ CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, p. 57.

⁴⁶⁰ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 30-32, paragraphs 2.180 to 2.192.

the obligations of the operator under the reference services. These obligations of the shipper include the following:

Provision of Gas that meets the Operating Specification or the temperature or pressure specifications in the Contract (clauses 7.1 & 7.4)

- 2.183 Shippers are required under clauses 7.1 and 7.4 of the reference terms and conditions to provide gas that meets the operating specifications, temperature and pressure specifications mandated by the contract. The contract contemplates circumstances where a shipper fails to provide gas that meets these requirements.
- 2.184 Such events require rectification as soon as possible to ensure integrity of pipeline linepack and operations for all shippers. For such events 20 Working Days is an ample period of time in these circumstances which ensures attention is maintained on restoring gas quality to required contractual specifications to ensure pipeline services can continue to be provided to third party shippers.

Compliance with Curtailment Notice (clause 22.1(c))

- 2.185 A shipper is required to strictly comply with the directions of a curtailment notice issued under clause 17.8. Such compliance is required to ensure linepack can be maintained to offer pipeline services for relevant pipeline services.
- 2.186 As per a default for out-of-specification gas, such events require rectification as soon as possible to ensure integrity of pipeline linepack and operations for all shippers. Whilst DBP has rights to curtail shipper's deliveries at the inlet point, the absence of such gas deliveries can have an impact on linepack availability and must be restored as soon as possible. Again, a period of 20 Working Days to restore any default with clause 22.1(c) is sufficient in these circumstances.

Parts with Possession of its undertaking relating to the use of Gas Delivered under the Contract (clause 22.1(c))

- 2.187 This obligation is unique to the shipper and requires the shipper to comply with and remain responsible for its undertakings relating to the use of Gas Delivered under the Contract. Similarly, a default remediation period of 20 Working Days disciplines the shipper to restore any undertakings that were sold or transferred.
- 2.188 As can be shown from above, in all conceivable circumstances a period of 20 Working Days is ample time to afford to a shipper to remedy any default occurring under the reference service terms and conditions.
- 2.189 In contrast, the obligations of the operator under clause 22.5(a), as referred to in clause 22.7(b)(i), present a decidedly different level of risk that calls for a separate remediation period. Such defaults of the operator may arise, for example, due to a failure of the operator to meet required standards of gas delivery under the relevant reference service. As previously disclosed to the ERA, the operation of a pipeline is dependent on a multitude of variables which can add numerous complexities to any remediation of default events.
- 2.190 For example, in circumstances where the default relates to a physical fault of the pipeline (and force majeure rights are not available), the rectification of that default may depend on equipment lead times for relevant replacement parts, on contractor availability and the duration of installation works, weather conditions on site and on other shipper and landowner activities. Such events require a remediation period in the order of 40 Working Days to resolve or implement.
- 2.191 As indicated by CPMM in its submission, the majority of the current terms of the reference service contract emerged from the arms-length 2004 renegotiations. The default times applicable to both shipper and operator

were negotiated by the parties on an independent, arms' length basis to ensure the remediation periods reflected the potential exposure and risk matrices of each party.

- 2.192 The operator highlights that the changes proposed by the ERA have not been analysed against the NGO and, by shortening the current remediation period from 40 Working Days to 20 Working Days, greatly increase the potential exposure to the operator to default and disputes. Such material changes cannot be in the interests of long term users of the pipeline, the efficient operation of the pipeline or to facilitate the aspirations of the NGO in any way.

1737. No further submissions were received by the Authority that readdress these issues relating to the P1 Service. Absent of any further submissions, the Authority has given consideration to DBP's further submission.
1738. As to (Draft Decision) Required Amendment 64, the Authority considers, in light of DBP's submissions, that there may be circumstances which warrant a different length of time for the operator (as opposed to the shipper) to rectify a default. The Authority is prepared to accept a period of 40 Working Days for the operator to remedy the default, provided that a further amendment is made to clause 22.3(b)(ii) in respect of the default referred to in clause 22.1(b). That is, the time period within which the shipper is required to remedy a default for the shipper's due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained in the contract and such default is material in the context of the contract as a whole.
1739. The Authority considers that the default referred to in clause 22.1(b) of the terms and conditions applying to the P1 Service is not dissimilar in nature to the operator's default referred to in clause 22.5(a). Similar to the reasoning provided for the extended timeframe for the operator to remedy a clause 22.5(a) default, the Authority considers that there may be circumstances warranting an extended timeframe for compliance with a clause 22.1(b) default. Therefore, the Authority requires an amendment to clause 22.3(b) to carve out the timeframe for remedy of a clause 22.1(b) default and provide a 40 Working Day timeframe.
1740. The Authority requires these amendments to also be made to clauses 22.3(b) of the amended terms and conditions applying to the T1 Service and the B1 Service.
1741. The Authority notes DBP's submission that the *"changes proposed by the ERA have not been analysed against the NGO and, by shortening the current remediation period from 40 Working Days to 20 Working Days, greatly increase the potential exposure to the operator to default and disputes..."* However, contrary to DBP's suggestion, the ERA has not attempted to shorten the current remediation period for operators. In fact, current (AA3) clause 22.7(b)(i) of the terms and conditions for the P1, T1 and B1 Services specify "20 Working Days" within which the operator is to remedy the default.
1742. Having regard to the above considerations, the Authority requires the following amendments to the amended terms and conditions.
- Clause 22.3(b) of the amended terms and conditions for the P1 Service is to be amended as follows:
 - (b) The Shipper is not in default under this Contract and the Operator may not terminate this Contract under clause 22.4(b) or commence the exercise of any remedy under clause 22.4(a):

- (i) in respect of an event described in clauses 22.1(a), 22.1(d) or 22.1(e), unless it has given a Shipper Default Notice, and until 5 Working Days have elapsed after the Shipper receives that Shipper Default Notice; ~~and~~
- (ii) in respect of an event described in clauses ~~22.1(b)~~, 22.1(c) or 22.1(f), unless it has given a Shipper Default Notice and until ~~20~~40 Working Days have elapsed after the Shipper receives that Shipper Default Notice, and
- (iii) in respect of an event described in clause 22.1(b), unless it has given a Shipper Default Notice and until 40 Working Days have elapsed after the Shipper receives that Shipper Default Notice,

and the event has not been remedied within the relevant period specified in (i), (ii) or (iii) above.

- The Authority also requires clause 22.3(b) of the amended terms and conditions applying to the T1 Service and B1 Service, relating to the number of working days in which a fault should be remedied, to be amended to be consistent with clause 22.3(b) of the amended terms and conditions applying to the P1 Service (as set out above).

Required Amendment 33

Clause 22.3(b) of the amended terms and conditions for the P1 Service, relating to the number of working days in which a fault is to be remedied, must be amended to read as specified in paragraph 1742 of this Final Decision.

Required Amendment 34

Clause 22.3(b) of the amended terms and conditions for the T1 Service and B1 Service, relating to the number of working days in which a fault is to be remedied, must be amended to be consistent with clause 22.3(b) of the amended terms and conditions applying to the P1 Service.

Additional proposed amendments to the amended terms and conditions

1743. Further to addressing the required (Draft Decision) amendments discussed above, DBP has proposed numerous additional amendments to the amended terms and conditions, which DBP states are *“not the subject of any express amendment raised by the ERA but were nonetheless the subject of the proposed terms and conditions as lodged as part of DBP’s access arrangement proposal”*.⁴⁶¹ The additional amendments comprise amendments to the following clauses:⁴⁶²

- Clause 5.3(a)(ii) – Operator may refuse to Receive Gas
- Clause 5.7(b)(ii) – Operator may refuse to Deliver Gas
- Clause 5.7(b)(iv) – Operator may refuse to Deliver Gas

⁴⁶¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 3.2.

⁴⁶² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 33-36, paragraphs 3.4 to 3.28.

- Clause 14.7 – Charges for relocation
- Clause 17.7(b)(i) – Content of a Curtailment Notice and Initial Notice
- Clause 20.4(a)(v) – Other Charges
- Clause 20.4(c) – Other Charges
- Clause 28.3(b)(iv) – Permitted Disclosure
- Clause 38 – Revocation, Substitution and Amendment
- Clause 41 – Stamp Duty
- Schedule 7 – Form of Tripartite Deed

1744. The Authority notes that aside from three of DBP’s proposed additional amendments (refer paragraphs 1746 to 1758 below) the additional amendments are to correct “drafting errors” within the terms and conditions or are otherwise “minor in nature” to improve the drafting of the terms and conditions. Unless otherwise specified in this Final Decision, the Authority is satisfied that these amendments are intended to, and do, improve the overall drafting of the amended terms and conditions. The Authority therefore accepts these additional amendments, subject to the required amendments specified elsewhere in this decision document.

1745. However, the Authority notes that DBP’s proposal for an amendment to:

- clause 5.7(b)(ii) in the B1 Service terms and conditions, should in fact be a proposal for an amendment to clause 5.7(a)(ii) of those terms and conditions (as no such clause 5.7(b)(ii) exists); and
- clause 5.7(b)(iv) in the B1 Service terms and conditions, should in fact be a proposal for an amendment to clause 5.7(a)(iv) of those terms and conditions (as no such clause 5.7(b)(iv) exists).

Clause 14.7 – Charges for relocation

1746. In its amended proposal, DBP proposes additional amendments to clause 14.7 of the amended terms and conditions that will apply to the P1 Service and B1 Service.⁴⁶³

For the P1 reference service:

14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.
- (b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), [in addition to the matters described in clause 14.7\(c\)](#), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the

⁴⁶³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, paragraph 3.12.

Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.

- (c) Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in Gas being transported to an Outlet Point ~~up~~down stream of Compressor Station 9 on the DBNGP so that a ~~Full~~Part Haul service becomes a ~~Part~~Full Haul service, any Capacity so relocated is to:
- (i) ~~remains~~be treated as if it were on the same terms and conditions as Full Haul Capacity for T1 Service, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - (ii) ~~is~~be treated under this Contract as though it was Full Haul Capacity.

For the B1 reference service:

14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, ~~or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.~~
- (b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), in addition to the matters described in clause 14.7(c), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.
- (c) Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in:
 - (i) ~~remains on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges~~the New Inlet Point being downstream of the Existing Inlet Point or the New Outlet Point being upstream of the Existing Outlet Point (or both), the Charges under this Contract must be calculated and paid using the Distance Factor applicable to that New Inlet Point or New Outlet Point (or both), as the case may be; or; and
 - (ii) ~~is treated under this Contract as though it was Full Haul Capacity~~the New Inlet Point being upstream of the Existing Inlet Point or the New Outlet Point being downstream of the Existing Outlet Point, the Charges under this Contract must be calculated and paid using the Distance Factor applicable to that Existing Inlet Point or Existing Outlet Point (or both), as the case may be.

1747. DBP provides the following information in support of its additional amendments:⁴⁶⁴

- 3.10 DBP notes that clause 14.7 of the P1 and B1 reference services contain a mechanism for the relocation of Contracted Capacity under the P1 and B1 reference services which mirrors the relocation regime under the T1 reference service.
- 3.11 Given the nature of the P1 and B1 reference services, in contrast to the T1 reference service, DBP considers it is not appropriate to apply a regime for

⁴⁶⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, pp. 33-34.

relocating Full Haul T1 capacity to a part haul or back haul service. DBP is of the view that the T1 relocation regime may have been inadvertently included in the P1 and B1 reference services.

- 3.12 DBP proposes amending clause 14.7 of the P1 and B1 reference services to incorporate the appropriate relocation mechanism that applies to the P1 and B1 SSC services [as outlined above].

1748. No submissions were received by the Authority that address these additional proposed amendments to clause 14.7 of the amended terms and conditions for the P1 Service and B1 Service. Absent of any further submissions, the Authority has given consideration to DBP's submission that these additional amendments are required.

1749. The Authority notes that DBP's proposed wording for clause 14.7(c), of the P1 reference service terms and conditions, is drafted based on its own proposed definition of "full haul service" (which takes CS9 alone as the threshold for dividing full haul and part haul). Consistent with the Authority's decision to reject DBP's proposed definition of full haul service (refer paragraph 155), clause 14.7(c) must be amended accordingly. Hence, based on the Authority's required definition of full haul service, clause 14.7(c) of the P1 reference service terms and conditions should be amended as follows.

- (c) Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in Gas being transported [from an Inlet Point upstream of mainline valve 31 \(MLV31\) on the DBNGP](#) to an Outlet Point downstream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to:
- (i) be treated as if it were on the same terms and conditions as Full Haul Capacity for T1 Service, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - (ii) be treated under this Contract as though it was Full Haul Capacity.

Required Amendment 35

Clause 14.7(c) of the amended terms and conditions for the P1 Service, relating to charges for relocation, must be amended to read as specified in paragraph 1749 of this Final Decision.

1750. With regard to the proposed changes to clause 14.7, of the B1 reference service terms and conditions, the Authority accepts DBP's changes (as outlined in paragraph 1746 above).

Clause 17.7(b)(i) – Content of a Curtailment Notice and Initial Notice

1751. In its amended proposal, DBP notes that whilst its original proposal deleted clause 17.7(b)(i) from the proposed terms and conditions, the changes were not easily identified because they were omitted from the marked-up version of the proposed terms and conditions. DBP submits that the substance of the amendment "is to

remove the requirement that an Initial Notice issued in respect of a curtailment contains the reasons for the Curtailment⁴⁶⁵:

- (b) An Initial Notice must specify the Operator's estimate of:
 - ~~(i)~~ the reasons for the Curtailment;
 - ~~(ii)~~(i) the starting time of the Curtailment; and
 - ~~(iii)~~(ii) the portion of the Shipper's Contracted Capacity that is to be Curtailed.

1752. In support of its position, to delete clause 17.7(b)(i) from the amended terms and conditions, DBP provides the following information.⁴⁶⁶

- 3.15 DBP considers that it is impractical to provide for this requirement under an Initial Notice because:
 - (a) at the time of issuing an Initial Notice to Shippers, the specific reasons for and details of the Curtailment are unlikely to be known by DBP;
 - (b) DBP is already required to provide the reasons for a Curtailment separately under a Curtailment Notice, as set out in clause 17.7(a)(i); and
 - (c) the inclusion of clause 17.7(b)(i) creates additional administrative burden on pipeline resources.

1753. In its further submission to the Authority, and in response to DBP's amended proposal, WESCEF submits that it *"cannot see any valid justification as to why DBP shouldn't be required to provide the reason in the Initial Notice in clause 17.7(b)(i). DBP will clearly have these details and it is important for shippers' planning purposes to have this information"*.⁴⁶⁷

1754. The Authority has considered DBP's submissions and those of WESCEF, and considers that WESCEF makes a valid point in its submissions. An operator must issue an "Initial Notice" (in addition to a "Curtailment Notice") to the Shipper where the reason for the curtailment is "Major Works" (as per clause 17.6(b)(i) of the terms and conditions). The Authority does not see how the requirement for the reasons for the curtailment to be included in the initial notice *"creates additional administrative burden on pipeline resources"* because the operator would only undertake major works where there is a reason to do so, and as the works would need to be planned in advance, there would at least be some information available to provide shippers. The Authority also notes that the current requirement in clause 17.7(b)(i) does not specify the level of detail that needs to be specified in the initial notice – simply that a reason needs to be provided. The reason for the major works will also need to be specified in the Curtailment Notice (provided after the Initial Notice).

1755. The Authority considers that DBP has not provided adequate justification for the proposed deletion of clause 17.7(b)(i). The Authority is of the view that DBP's additional amendment to clause 17.7(b)(i), to remove the requirement for details to

⁴⁶⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 35, paragraphs 3.13 and 3.14.

⁴⁶⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 35.

⁴⁶⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, paragraph 15, p. 4.

be specified in the initial notice, should be rejected. The Authority requires clause 17.7(b)(i) of the current (AA3) terms and conditions be reinstated.

Required Amendment 36

Clause 17.7(b)(i) of the existing terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to the content of an initial notice, must not be deleted from the amended terms and conditions.

Clause 20.4(a)(v) – Other Charges

1756. In its amended proposal, DBP notes that clause 20.4(a)(v) contains a reference to "...clauses 0, 6.6, 14.7 and 15.11 ..." which it says appears to have previously been a reference to clause 5.11(d) (System Use Gas) under which shippers indemnified the operator in respect of the cost of additional gas incurred by the operator in supplying system use gas.
1757. DBP considers that as there is no such indemnity under the reference service terms and conditions in clause 5, the reference to clause 5.11(d) (which currently reads as clause "0") in clause 20.4(a)(v) should be removed such that clause 20.4(a)(v) reads as follows:
- (v) any charges or tother sums payable under clauses 6.6, 14.7 and 15.11 or elsewhere in this Contract,
1758. The Authority agrees with DBP's proposal to remove the reference to clause 5.11(d) (which currently reads as clause "0") in clause 20.4(a)(v) of the amended terms and conditions).

Queuing Requirements

Regulatory Requirements

1759. Under section 2 of the NGL(WA) “queuing requirements” mean the *“terms and conditions providing for the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity and developable capacity”*.

1760. Under rule 48(1)(e) of the NGR, if an access arrangement is to contain queuing requirements, the access arrangement must set out the queuing requirements. Pursuant to rule 103(1)(a) of the NGR the access arrangement for a transmission pipeline must contain queuing requirements. As the DBNGP is a transmission pipeline, its access arrangement must contain queuing requirements.

1761. Rule 103 of the NGR states as follows:

103. Queuing requirements

- (1) An access arrangement must contain queuing requirements if:
 - (a) the access arrangement is for a transmission pipeline; or
 - (b) the access arrangement is for a distribution pipeline and the [ERA] notifies the service provider that the access arrangement must contain queuing requirements.
- (2) If the [ERA] gives a notification under subrule (1), the access arrangement must contain queuing requirements as from the commencement of the first access arrangement period to commence after the date of the notification (but this requirement lapses if the [ERA] by notice to the service provider, withdraws the notification).
- (3) Queuing requirements must establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.
- (4) Queuing requirements might (for example) provide that the order of priority is to be determined:
 - (a) on a first-come-first-served basis; or
 - (b) on the basis of a publicly notified auction in which all prospective users of the relevant spare capacity or developable capacity are able to participate.
- (5) Queuing requirements must be sufficiently detailed to enable prospective users:
 - (a) to understand the basis on which an order of priority between them has been, or will be, determined; and
 - (b) if an order of priority has been determined – to determine the prospective user's position in the queue.

1762. The Authority has full discretion in relation to queuing requirements.⁴⁶⁸

⁴⁶⁸ Refer to r. 40(3) of the NGR.

1763. Rule 112 of the NGR describes the process for a prospective user of a covered pipeline (such as the DBNGP) to request a pipeline service. Pursuant to rule 112(2), the request must be made in writing and must:
- state the time or times when the pipeline service will be required and the capacity that is to be utilised; and
 - identify the entry point where the user proposes to introduce natural gas to the pipeline or the exit point where the user proposes to take natural gas from the pipeline or, if the requested service is a haulage service, both entry and exit points; and
 - state the relevant technical details (including the proposed gas specification) for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to, or from, the pipeline.
1764. Pursuant to rule 112(3) of the NGR the service provider must, within 20 business days after the date of the request, respond to the request by informing the prospective user:
- whether the service provider can provide the requested pipeline service; and
 - if so, the terms and conditions on which the service provider is prepared to provide the requested pipeline service; or
 - that the service provider needs to carry out further investigation to determine whether it can provide the requested pipeline service and set out a proposal for carrying out the further investigation.

DBP's Original Proposal

1765. Clause 5 of the proposed revised access arrangement deals with the submission and consideration of access requests and queuing requirements as follows.
- Clause 5.1 – Informal requests and reports
 - Clause 5.2 – Submission of access requests
 - Clause 5.3 – Assessment of access requests
 - Clause 5.4 – Queuing requirements
1766. The requirements relating to the submission and consideration of access requests (clauses 5.1, 5.2, 5.3) remained largely consistent with the requirements under the existing access arrangement applying for the current (AA3) access arrangement period (2011 to 2015), with the exception of a new “creditworthiness requirement” that DBP proposed to include.
1767. DBP proposed a new creditworthiness requirement at clause 5.2 of the proposed revised access arrangement (new clause 5.2(c)(vi)), and outlined its justification for the proposed amendment in a separate supporting submission to the Authority.⁴⁶⁹ The proposed new creditworthiness requirement was indicated to be as follows:

⁴⁶⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014.

5.2 Submission of Access Request

...

- c) An Access Request must be made in writing and must state:
- i) whether the service requested ...
 - ii) in the case of an Access Request ...
 - iii) a Commencement Date for the Service ...
 - iv) a Capacity End Date for the Service ...
 - v) relevant technical details ...
 - vi) [Relevant financial information that would be required by a reasonable and prudent person to assess the Prospective Shippers' ability to meet financial obligations made under the Access Contract.](#)
 - vii) ~~vi~~-In the case of a ...

1768. The queuing requirements of clause 5.4 of the proposed revised access arrangement were consistent with the queuing requirements under the existing access arrangement applying for the current (AA3) access arrangement period (2011 to 2015), and provide for:

- a single queue for access to all services, both reference and non-reference services; and
- a priority of access in accordance with the time that a compliant access request is received or deemed to be received by DBP.

Submissions

1769. No submissions were received by the Authority about DBP's proposed changes to introduce a creditworthiness requirement at clause 5.2 of the proposed revised access arrangement.

Draft Decision

1770. The Authority considered the parts of clause 5 of the proposed revised access arrangement that deal with:

- the submission and consideration of access requests (clauses 5.1 to 5.3), and
- the queuing requirements of access requests (clause 5.4).

1771. The NGR do not require a full access arrangement proposal to include information about the processes for access requests. However, as the proposed revised access arrangement contained such processes and DBP proposed an amendment to these processes, the Authority gave consideration to whether the information was consistent with the provisions of the NGR and with the NGO.

1772. The Authority noted DBP's proposed creditworthiness requirement is in effect just one of the "other terms and conditions on which the reference service will be provided" that must be specified in the access arrangement.⁴⁷⁰ The existing terms and conditions for the T1, P1 and B1 reference services already contemplate that

⁴⁷⁰ Refer to rule 48(1)(d)(ii) of the NGR.

the creditworthiness of the shipper will be assessed in this way (and security obtained from the shipper in appropriate cases) – for example, see:

- Clause 1 – definition of "Approved Prospective Shipper"
- Clause 30.4 – Creditworthiness of Shipper
- Clause 30.5 – Failure to Satisfy Operator of Creditworthiness
- Schedule 1 (item 5 (Creditworthiness) of template Access Request Form)

1773. Further, the Authority noted DBP's reasoning for the proposed amendment, in particular, that the creditworthiness requirement will apply to all prospective shippers, thereby ensuring all users are treated on a fair and reasonable basis. Given this reasoning, the Authority was of the understanding that shippers with the same credit rating (including any associates of DBP) who are required to provide security would be required to provide the same level of security. That is, a shipper who is an associate of DBP would be required to bear the cost of providing security, if DBP required security from a non-associated shipper with the same (or better) credit rating as the DBP associate.

1774. Taking the above matters into account, the Authority considered DBP's proposed amendment to insert new clause 5.2(c), to include a requirement for an access request to include relevant financial information to enable an assessment of the prospective shipper's ability to meet its financial obligations under the access contract, was appropriate and consistent with the existing access regime.

1775. As a minor drafting point, the Authority noted that DBP had misplaced the apostrophe in *Prospective Shippers'* in its drafting of proposed new section 5.2(c)(vi), which should read "Prospective Shipper's". The Authority required the following amendment:

Required Amendment 66

Clause 5.2(c)(vi) of the proposed revised access arrangement, relating to queuing requirements, should be amended to read:

"Relevant financial information that would be required by a reasonable and prudent person to assess the Prospective ~~Shippers'~~Shipper's ability to meet financial obligations made under the Access Contract."

1776. In the absence of any proposed material revisions to the queuing requirements, and subject to the minor required amendment above, the Authority was satisfied that the queuing requirements under clause 5 of the proposed revised access arrangement satisfied the requirements of rule 103 of the NGR.

DBP's Amended Proposal

1777. In response to the Authority's Draft Decision, DBP has addressed (Draft Decision) Required Amendment 66 by correcting the word "*Shipper's*" in clause 5.2(c)(vi) of the amended access arrangement.

Further Submissions

1778. No further submissions were made to the Authority that addressed queuing requirements.

Considerations of the Authority

1779. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 66).

Capacity Trading Requirements

Regulatory Requirements

1780. A full access arrangement must, inter alia, set out capacity trading requirements (rule 48(1)(f) of the NGR).

1781. Rule 105 of the NGR provides for capacity trading requirements in an access arrangement.

105. Capacity trading requirements

- (1) Capacity trading requirements must provide for transfer of capacity:
 - (a) if the service provider is registered as a participant in a particular gas market – in accordance with rules or Procedures governing the relevant gas market; or
 - (b) if the service provider is not so registered, or the relevant rules or Procedures do not deal with capacity trading – in accordance with this rule.
- (2) A user may, without the service provider's consent, transfer, by way of subcontract, all or any of the user's contracted capacity to another (the **third party**) with the following consequences:
 - (a) the transferor's rights against, and obligations to, the service provider are (subject to paragraph (b)) unaffected by the transfer; but
 - (b) the transferor must immediately give notice to the service provider of:
 - (i) the subcontract and its likely duration; and
 - (ii) the identity of the third party; and
 - (iii) the amount of the contracted capacity transferred.
- (3) A user may, with the service provider's consent, transfer all or any of the user's contracted capacity to another (the **third party**) with the following consequences:
 - (a) the transferor's rights against, and obligations to, the service provider are terminated or modified in accordance with the capacity trading requirements; and
 - (b) a contract arises between the service provider and the third party on terms and conditions determined by or in accordance with the capacity trading requirements.
- (4) The service provider must not withhold its consent under subrule (3) unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
- (5) An adjustment of rights and liabilities under subrule (3) does not affect rights or liabilities that had accrued under, or in relation to, the contract before the transfer took effect.
- (6) The capacity trading requirements may specify in advance conditions under which consent will or will not be given, and conditions to be complied with if consent is given.

1782. Pursuant to rule 100(a) of the NGR, the capacity trading requirements must also be consistent with the NGO (as set out in section 23 of the NGL(WA)).

DBP's Original Proposal

1783. Clause 6 of the proposed revised access arrangement detailed the capacity trading requirements to apply under the access arrangement. DBP proposed to amend these requirements as follows:

6.1 A Shipper of any Haulage Service may transfer all or any of the Shipper's contracted capacity:

- a) Where the Operator is registered as a participant in a particular gas market – in accordance with the rules or procedures governing the relevant gas market; or
- b) Where the Operator is not registered for the purposes of clause 6.1(a) - in accordance with NGR 105 and clauses 6.2 to 6.5.

6.2 A Shipper of any Haulage Service may:

- a) without the Operator's consent transfer by way of subcontract, all or any of the Shipper's contracted capacity to another Shipper in accordance with clause 27.2 of the Access Contract Terms and Conditions for each reference service.
- b) Subject to any [Pre-existing Contractual Right], with the Operator's prior written consent transfer all or any of the Shipper's contracted capacity to another (Third Party) in accordance with clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service and clause 6.3.

6.3 ~~6.2.~~ Operator must not withhold its consent under clause ~~6.1(b)~~6.2(b) unless it has reasonable grounds, based on technical or commercial grounds for doing so.

6.4 ~~6.3.~~ In addition to any conditions outlined in clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service, and without limitation, the following are examples of reasonable technical or commercial grounds that the Third Party and the Shipper must comply with before Operator will consent under clause ~~6.1(b)~~6.2(b):

- a) The Third Party must comply with the Queuing Requirements in clause 5.4.
- b) The Shipper must reimburse Operator for all reasonable costs incurred by Operator in processing and determining the Shipper's consent request (including legal costs, internal costs and other costs as reasonably determined) whether or not the transfer proceeds to completion, subject to Operator providing, if requested by the Shipper, an estimate for the costs that Operator expects to incur (which estimate will not limit the costs which must be reimbursed under this clause ~~6.3(b)~~).

6.5 ~~6.4.~~ If Operator consents to the transfer of all or any of the Shipper's contracted capacity to a Third Party under clause ~~6.1(b)~~6.2(b), the following consequences arise:

- a) the Shipper's rights and obligations are terminated except that any rights or liabilities that accrued under, or in relation to, the Access Contract before the date on which Operator grants consent are not affected; and
- b) an Access Contract arises between the Operator, DBNGP (WA) Nominees Pty Ltd (in its capacity as Trustee for the DBNGP WA Pipeline Trust) and the Third Party on terms and conditions determined by or in accordance with this section 6.

1784. DBP submitted that the proposed amendments to the capacity trading requirements aimed to:⁴⁷¹

- recognise that a secondary trading market may be established during the access arrangement period; and
- add clarity to the costs that the shipper must reimburse to the operator for processing consent requests.

Submissions

1785. Alinta Energy did not support provisions being made in the proposed revised access arrangement for a formal gas capacity trading market. Alinta Energy submitted that there are no current plans for a formal compulsory trading market, and that the proposed provisions are therefore speculative. Further, Alinta Energy considered that it would be more appropriate to use the cost pass through mechanism contained within the proposed revised access arrangement if a market is implemented in the future.⁴⁷²

1786. WESCEF noted DBP's proposed amendment to clause 6.2(b) to include the words "*subject to any [Pre-existing Contractual Right]*" and indicated that the term "pre-existing contractual right" did not appear to be defined within the access arrangement. WESCEF considered that DBP should provide a proposed definition for this term and give interested parties an opportunity to comment on the proposed definition.⁴⁷³

Draft Decision

1787. In assessing DBP's proposed changes to the capacity trading requirements in clause 6 of the proposed revised access arrangement, the Authority considered whether the proposed amendments were consistent with the NGO and the requirements of rule 105 of the NGR.

1788. The Authority noted that DBP's proposed amendments to clause 6.1 substantially reproduced what is required by rule 105(1) of the NGR. However, the Authority was of the view that the addition of the words "*and clauses 6.2 to 6.5*" at the end of clause 6.1(b) extended the provision beyond what is required by rule 105(1)(b), and raised the question as to whether the proposed amendments in clauses 6.2 to 6.5 were in accordance with rule 105.

1789. With respect to (new) clause 6.2(a) of the proposed revised access arrangement, the Authority noted it substantially reproduced what is required by rule 105(2) and is

⁴⁷¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 4, paragraph 4.5.

⁴⁷² Alinta Energy, *Submission in response to Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020*, 2 June 2015, p. 5, paragraph 7.1.

⁴⁷³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 5, paragraph (i).

hence consistent with the rule, provided clause 27.2 of the proposed terms and conditions (to which clause 6.2(a) refers) was also consistent with rule 105(2).⁴⁷⁴

1790. With respect to the proposed amendments to (new) clause 6.2(b), that is the addition of the words “*Subject to any [Pre-existing Contractual Right]*” and “*prior written*”, DBP did not provide an explanation as to why the drafting changes were made and how the changes were consistent with rule 105 of the NGR.
1791. As noted by WESCEF in its submission, DBP did not defined the term “pre-existing contractual right”, so it is unclear what this was intended to cover. Amongst other things, it was unclear as to whether it was meant to refer just to a pre-existing right accrued under the particular haulage contract where capacity is being traded, or whether it could also refer to a right under any other contract between DBP and the shipper. If the former, it may already be covered by rule 105(5) and clause 6.5(a) of the proposed revised access arrangement, and hence there would be no need to insert the words “*Subject to any [Pre-existing Contractual Right]*” in clause 6.2(b). In any event, as indicated by WESCEF, the term “pre-existing contractual right” should be explained and interested parties given an opportunity to comment.
1792. The Authority also noted rule 105 does not expressly require the service provider's consent to a transfer to be “prior” or “written”. Although both of those things may evidence a prudent approach, the proposed amendment could potentially prevent a shipper from having the flexibility to obtain consent in some unwritten form and/or after the event. Further, the requirement for consent to be in writing is arguably inconsistent with clause 27.4(f) of the proposed terms and conditions, which allows for consent to be deemed (and therefore not in writing) where DBP does not give notice to reject a transfer request within the time limit set by clause 27.4(d) of the proposed terms and conditions.
1793. In the circumstances, and in the absence of any sound justification for the insertion of the words “*Subject to any [Pre-existing Contractual Right]*” and “*prior written*” the Authority was of the view that DBP’s proposed changes to (new) clause 6.2(b) should be rejected. The Authority required the following amendment:

Required Amendment 67

Clause 6.2(b) of the proposed revised access arrangement, relating to the transfer of a shipper’s contracted capacity with the operator’s consent, should be amended to remove the words “Subject to any [Pre-existing Contractual Right]” and “prior written”.

1794. With respect to the proposed amendment to (new) clause 6.4(b), that is the insertion of the words “*(including legal costs, internal costs and other costs as reasonably determined) whether or not the transfer proceeds to completion,*” the Authority made the following observations:
- DBP’s stated rationale for making the amendment was that it aimed to clarify the costs that the shipper must reimburse the operator for in processing consent requests.⁴⁷⁵
 - The proposed words appeared to clarify the existing requirement in clause 6.4(b) for a shipper to reimburse DBP for all reasonable costs incurred by DBP

⁴⁷⁴ With regard to clause 27.2(b) of the proposed terms and conditions to apply to the T1, P1 and B1 reference services, the Authority believes that the reference to “other shipper” should be changed to “third party”.

⁴⁷⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 4, paragraph 4.5.

in processing and determining the shipper's consent request as a pre-condition to DBP giving its consent, by specifying that the costs to be reimbursed can include "legal costs, internal costs and other costs as reasonably determined" and must be reimbursed "whether or not the transfer proceeds to completion."

- Rule 105(6) of the NGR allowed DBP to specify in advance its "conditions under which consent will or will not be given, and conditions to be complied with if consent is given." However, NGR rule 105(4) required DBP to not withhold its consent to a transfer of capacity under rule 105(3) unless it had "reasonable grounds, based on technical or commercial considerations, for doing so."

1795. On this basis, DBP was in effect claiming that if it is not reimbursed for its "legal costs, internal costs and other costs as reasonably determined, whether or not the transfer proceeds to completion", then that would (in DBP's view) be a reasonable ground (based on commercial considerations) for refusing to give consent to the transfer.

1796. The Authority considered it reasonable and consistent with the NGO for DBP to recover the costs incurred by it in processing and determining a shipper's transfer consent request, and that these costs be recovered direct from the shipper (user) making the request (provided the costs have not already been recovered elsewhere). Furthermore, the Authority considered that it is reasonable to expect the shipper (user) to pay these costs irrespective of whether or not consent to the transfer is given, provided DBP demonstrated that the costs in question had been reasonably and properly incurred. The Authority required the following amendment:

Required Amendment 68

Clause 6.4(b) of the proposed revised access arrangement, relating to reasonable technical or commercial grounds that must be complied with before the operator will consent to a transfer, should be amended to indicate that the shipper must reimburse the operator for all costs incurred irrespective of whether or not consent to the transfer is given, only where DBP can demonstrate that the costs have been reasonably and properly incurred.

1797. The Authority further noted clause 27 ("Trading or Transferring Contracted Capacity") of DBP's proposed terms and conditions, which would apply to the T1, P1 and B1 reference services, contained provisions for dealing with capacity trading that remained unchanged from the existing terms and conditions applying for the third access arrangement period (AA3). The Authority considered that the provisions in clause 27 the proposed terms and conditions be consistent with the amended capacity trading provisions under clause 6 of the proposed revised access arrangement. The Authority required the following amendment:

Required Amendment 69

Clause 27 of the proposed terms and conditions, relating to the trading or transferring of contracted capacity, should be consistent with the proposed amendments to clause 6 ("Capacity Trading Requirements") of the proposed revised access arrangement.

DBP's Amended Proposal

1798. In its amended proposal, DBP does not accept the Authority's (Draft Decision) Required Amendment 67 and instead addresses the Authority's reasoning for not

approving its proposed amendments to clause 6 of the access arrangement; namely.⁴⁷⁶

- (a) DBP has not provided any explanation as to why the drafting changes have been made and how the changes are consistent with NGR 105 [paragraph 917 of the Draft Decision];
- (b) DBP has not defined what a “Pre-existing Contractual Right” is, so it is unclear what it is intended to cover [paragraph 918 of the Draft Decision];
- (c) NGR 105 does not expressly require the service provider’s consent to a transfer of capacity to be “prior” or “written”. Although these requirements could be a prudent approach, they could potentially prevent a shipper having the flexibility to obtain consent in some unwritten form and/or after the event [paragraph 919 of the Draft Decision].
- (d) [T]he requirement for consent to be in writing is potentially inconsistent with clause 27.4(f) of the proposed terms and conditions, which allows for consent to be deemed (and therefore not in writing) where DBP does not give notice to reject a transfer request within the time limit set by clause 27.4(d) of the proposed terms and conditions [paragraph 919 of the Draft Decision].

4. In support of its position, DBP provides the following information.⁴⁷⁷

- 3.5 As noted by the ERA, DBP’s provisions facilitating transfers of capacity as between shippers closely follow NGR 105. *[sic]*
- 3.6 Clauses 27.3 and 27.4 of the Access Contract terms and conditions, together with paragraphs 6.2(b) through to 6.5 of the Access Arrangement, govern the circumstances where a Shipper intends to transfer part or all of their capacity under an Access Contract to a third party and the parties intend for the new third party to be primarily responsible for the rights and obligations under the Access Contract for the transferred capacity. That is, the parties intend for the new third party to take novation of the Access Contract terms and conditions and have a direct relationship with DBP. These clauses have not changed.
- 3.7 Clauses 6.2(b) to 6.5 of the proposed Access Arrangement are totally consistent with the provisions in NGR 105(3) to NGR 105(6). They are not identical however, as they provide some more detail and information by way of examples of what DBP can require a new party to comply with in order for DBP to provide its consent to the novation of the original Shipper’s rights and liabilities going forward in respect of the transferred capacity.
- 3.8 As to the matters raised by the ERA in paragraph 917, DBP notes that in paragraph 4 of submission 5 (Non-tariff related matters) in the proposed access arrangement submissions, DBP did explain the reasons as to why the drafting changes were proposed (see paragraph 4.5 of submission 5). It is apparent from the Draft Decision that the ERA has not considered these submissions.
- 3.9 Further to the information provided in these submissions, DBP notes that:
 - (a) Prior consent is required under the NGR: Where a third party wishes to replace the original Shipper as a party to the access contract and the original party wishes to “step out” of the contractual arrangements with DBP, so as to ensure that going forward from the date of the transfer of

⁴⁷⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, p. 10, paragraphs 3.2 and 3.3.

⁴⁷⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, pp. 10-12, paragraphs 3.5 to 3.12.

capacity the new shipper is primarily liable to DBP in terms of its rights and obligations under the shipper contract, then DBP's consent is required. This is consistent with NGR 105(3) to NGR 105(6) in that NGR 105(4) and NGR 105(6) have the effect that:

- (i) No new contract can arise until consent is provided (NGR 105(4)); and
 - (ii) DBP may stipulate in advance conditions for provision of consent (NGR 105(6)).
- (b) In the case of DBP, it has obligations under its financing documents to obtain the consent to these sorts of transactions in relation to key access contracts. Without the consent being formalised, it will make it more difficult to obtain consent of DBP's financiers and, if DBP is required to re-finance any of its debt in circumstances where there is uncertainty about a change in shipper, DBP may not be able to re-finance its debt. The consequences for DBP and the pipeline, if this were to occur, are significant and would risk efficient investment in the pipeline.
- (c) If the submission in paragraph (b) is not accepted, consent in writing is preferable when the parties are effectively novating contractual rights and liabilities and DBP is entering into a new contract with the third party. Written consent crystallises effective dates for cessation of liability vis-a-vis DBP under the Access Contract in relation to the traded capacity for the exiting Shipper and commencement of rights and liabilities for the third party taking the transfer of that capacity;
- (d) the words "pre-existing contractual right" were intended to be a reference to "relevant protected contractual right" in section 321 of the NGL. This section of the NGL ensures that these contractual rights rank ahead of the capacity trading provisions of the AA. As such the inclusion of these words is consistent with the NGL and NGR. However, in the Amended AA Proposal, DBP has removed the brackets and included a definition in the definitions section of the Access Arrangement document.
- 3.10 As to the matters raised by the ERA in paragraph 917, DBP refers to paragraph 3.9(d) above.
- 3.11 As to the matters raised by the ERA in paragraph 919, under the NGL prior consent is required for a transfer in the circumstances of paragraph 6.2(b) of the proposed access arrangement. Prior consent in writing is prudent given that the incoming shipper is creating a new contract with DBP. By the effective novation of rights and obligations with respect to the relevant capacity, as set out in paragraphs 3.9(a) and 3.9(b) above.
- 3.12 As to the ERA's reasoning that the requirement for consent to be in writing is potentially inconsistent with clause 27.4(f) of the proposed terms and conditions, DBP submits that the deemed approval available under clause 27.4(f) is just a fall-back position to ensure that DBP deals with such requests in a timely manner and gives shippers some comfort that a transfer of capacity can occur on existing terms if for some reason DBP is not efficient in dealing with the request for transfer. This is not inconsistent with the proposal to require prior written consent in paragraph 6.2(b) of the proposed access arrangement. Read together, in the event that DBP does not respond to the Request for Approval within 5 days, then approval is deemed to have been provided.

1799. In addition to the information provided in response to the (Draft Decision) required amendments, DBP submits that further amendments should be made to clause

6.2(b) of the amended access arrangement, “to make it clear that clause 6.5 applies to a novation of part of all of an access contract as contemplated by [the] NGR”.⁴⁷⁸

1800. Given the above information, the specific updates that DBP intends to make to clause 6 of the amended access arrangement are indicated to be as follows.⁴⁷⁹

6. CAPACITY TRADING REQUIREMENTS

...

6.2 A Shipper of any Haulage Service may:

- (a) without the Operator’s consent transfer by way of subcontract, all or any of the Shipper’s contracted capacity to another Shipper in accordance with clause 27.2 of the Access Contract Terms and Conditions for each reference service.
- (b) Subject to any {Pre-existing Contractual Right}, with the Operator’s prior written consent transfer all or any of the Shipper’s contracted capacity to another (Third Party) in accordance with clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service and ~~clause~~ clauses 6.3 and 6.5 below.

...

6.4 In addition to any conditions outlined in clauses 27.3 and 27.4 of the Access Contract Terms and Conditions for each reference service, and without limitation, the following are examples of reasonable technical or commercial grounds that the Third Party and the Shipper must comply with before Operator will consent under clause 6.2(b):

- (a) The Third Party must comply with the Queuing Requirements in clause 5.4.
- (b) The Shipper must reimburse Operator for all ~~reasonable~~ costs incurred by Operator in processing and determining the Shipper’s consent request (including legal costs, internal costs and other costs as reasonably determined) whether or not the transfer proceeds to completion, ~~subject to Operator providing, if requested by the Shipper, an estimate for the costs that Operator expects to incur (which estimate will not limit the costs which must be reimbursed under this clause).~~ provided that the Operator can demonstrate that the costs have been reasonably and properly incurred.

1801. A definition for the term “pre-existing contractual right” has also been added to clause 15 (Definitions) of the amended access arrangement.

Pre-existing Contractual Right means a relevant protected contractual right as referred to in section 321 of the NGL.

Further Submissions

1802. In its submission subsequent to the Authority’s Draft Decision, WESCEF:⁴⁸⁰

⁴⁷⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, p. 12, paragraph 3.13.

⁴⁷⁹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix C – Access Arrangement Document (mark-up against original AA proposal)*, pp. 14 and 35.

⁴⁸⁰ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, pp. 1-2.

- repeats its previous submissions on DBP's proposed changes (as set out in its initial submissions dated 2 June 2015);
- agrees with the Authority's position as set out in the Draft Decision; and
- submits that DBP should be required to accept and adopt the required amendments in accordance with the Authority's Draft Decision.

1803. The Authority did not receive any further submissions from other interested parties on this issue.

Considerations of the Authority

Drafting of clause 6.2(b) – use of the term 'pre-existing contractual right'

1804. In considering DBP's amended proposal to further amend clause 6.2(b) of the access arrangement, the Authority acknowledges that DBP had in its original proposal indicated that the original proposed changes (to clause 6 of the proposed revised access arrangement) were aimed at:⁴⁸¹

- recognising that a secondary trading market may be established in the [access arrangement] period; and
- adding clarity to costs that the Shipper must reimburse Operator in processing consent requests. *[sic]*

1805. The Authority notes that DBP's updated drafting of clause 6.2(b) in its amended proposal substantially reproduces its original proposal, except that:⁴⁸²

- the square brackets have been removed from around the term "Pre-existing Contractual Right"; and
- the transfer of contracted capacity is now stated as being in accordance with clause 6.5 as well as clause 6.3.

1806. The term "Pre-existing Contractual Right" is also now defined at clause 15 (Definitions) of the amended access arrangement.

1807. In defining the term "pre-existing contractual right" as "*a relevant protected contractual right as referred to in section 321 of the NGL*", the Authority is of the view that DBP has addressed the concerns raised by WESCEF in its submission(s). Absent any further submissions from interested parties, on the inclusion and definition of the term, the Authority is satisfied that DBP has substantiated its reasons to include the term "pre-existing contractual right" in clause 6.2(b) of the amended access arrangement, including that the inclusion of the words is consistent with the NGL and the NGR (the definition of this term incorporating the definition of the term in the NGL).

1808. However, the Authority considers that the definition could be improved by replacing the words "referred to" with "defined" in the definition of "pre-existing contractual

⁴⁸¹ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, paragraph 4.5, p. 4.

⁴⁸² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix C – Access Arrangement Document (mark-up against original AA proposal)*, p. 14.

right" as follows. The Authority considers that its proposed amendment to the definition is more accurate.

Pre-existing Contractual Right means a "relevant protected contractual right" as referred to and defined in section 321 of the NGL.

Required Amendment 37

The term "Pre-existing Contractual Right" at clause 15 (Definitions) of the amended access arrangement must be amended to read as follows:

Pre-existing Contractual Right means a "relevant protected contractual right" as referred to and defined in section 321 of the NGL.

1809. With respect to DBP maintaining the requirement for the operator's consent to be "prior written consent" under clause 6.2(b) of the amended access arrangement, the Authority notes the additional reasoning provided by DBP to support this position. Having regard to this information the Authority agrees that the effect of NGR 105(3) is that DBP must provide consent before a transfer between the service provider and the third party can take effect, save in circumstances where consent has been unreasonably withheld. In practice, therefore, it is likely that a shipper will want to obtain DBP's consent before entering into a contract to transfer capacity.
1810. The Authority also considers DBP's submission that "*written consent crystallises effective dates for cessation of liability vis-a-vis DBP under the Access Contract in relation to the traded capacity for the existing shipper and commencement of rights and liabilities for the third party taking the transfer of that capacity*" is a valid consideration. In the circumstances, the Authority considers DBP's requirement for prior written consent to be reasonable.
1811. Further, the Authority does not object to DBP's amendment to clause 6.2(a) to provide that the transfer of contracted capacity is to be in accordance with clause 6.5, as well as clause 6.3.

Drafting of clause 6.4(b) – reimbursement of costs

1812. The Authority notes that DBP has updated clause 6.4(b) of the amended access arrangement to address (Draft Decision) Required Amendment 68 – that the shipper must reimburse the operator for all costs incurred, irrespective of whether or not consent to transfer capacity is given, but only where DBP can demonstrate that the costs have been reasonably and properly incurred.
1813. The Authority is satisfied that DBP's amended proposal addresses the required amendment (Draft Decision RA 68).

Consistency between clause 6 of the access arrangement and clause 27 of the proposed terms and conditions for reference services

1814. The Authority notes that DBP has advised that it considers the amendments made to clause 6 of the access arrangement are consistent with clause 27 of the reference service terms and conditions to apply under the access arrangement.⁴⁸³ Specifically:

- (a) [The] changes made to clause 6.1: Clause 6 of the access arrangement and clause 27 of the proposed terms and conditions are consistent in this respect, because the National Gas Law and National Gas Rules cannot be contracted out of.
- (b) [The] changes made to clause 6.2: Clause 6 of access arrangement and clause 27 of the proposed terms and conditions are consistent in this respect, because there can be no pre-existing contractual right in a reference service contract, given the definition of “pre-existing contractual right”.

1815. Subject to a further proposed amendment to clause 27.10 of the reference service terms and conditions (to apply to each of the T1, P1 and B1 Services), DBP indicates that it is of the view that clause 27 of the amended terms and conditions is consistent with clause 6 of the amended access arrangement.⁴⁸⁴ DBP proposes to update clause 27.10 of the amended terms and conditions as follows:

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably determined) by reason of the Request for Approval and any Resumption.

1816. Having regard to DBP’s response to addressing the Authority’s required amendment in relation to the reimbursement of costs under clause 6.4(b) of the access arrangement, the Authority notes that DBP’s proposed amendment to clause 27.10 of the terms and conditions reproduces the same wording contained in clause 6.4(b) of the access arrangement. Specifically, the wording clarifies the type of expenses to be reimbursed as “*including legal costs, internal costs and other costs as reasonably determined*”.

1817. However, the Authority considers that, to maintain the consistency with clause 6 (specifically clause 6.4(b) of the access arrangement), clause 27.10 of the terms and conditions should be further amended as follows:

The Shipper must, when requested by the Operator, reimburse the Operator for all ~~reasonable~~ expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably ~~determined~~ incurred) by reason of the Request for Approval and any Resumption, provided that the Operator can demonstrate that the costs have been reasonably and properly incurred.

⁴⁸³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 32, paragraph 2.195.

⁴⁸⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52*, 22 February 2016, p. 32, paragraph 2.196.

Required Amendment 38

Clause 27.10 of the amended terms and conditions, relating to administrative expenses from the trading or transferring of contracted capacity, must be amended as follows:

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably ~~determined~~incurred) by reason of the Request for Approval and any Resumption, provided that the Operator can demonstrate that the costs have been reasonably and properly incurred.

Extensions and Expansions

Regulatory Requirements

1818. The NGR provides for extension and expansion requirements.

104. Extension and expansion requirements
 - (1) Extension and expansion requirements may state whether the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline or may allow for later resolution of that question on a basis stated in the requirements.
 - (2) Extension and expansion requirements included in a full access arrangement must, if they provide that an applicable access arrangement is to apply to incremental services, deal with the effect of the extension or expansion on tariffs.
 - (3) The extension and expansion requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.

1819. Extension and expansion requirements are defined under section 2 of the NGL(WA).

extension and expansion requirements means –

- (a) the requirements contained in an access arrangement that, in accordance with the Rules, specify—
 - (i) the circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and
 - (ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that arrangement applies; and
 - (iii) whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and
- (b) any other requirements specified by the Rules as extension and expansion requirements; ...

1820. In addition to the definitions under section 2 of the NGL(WA), the NGL(WA) also provides for extension and expansion requirements.

18. Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a covered pipeline.

For the purposes of this Law—

- (a) an extension to, or expansion of the capacity of, a covered pipeline must be taken to be part of the covered pipeline; and
- (b) the pipeline as extended or expanded must be taken to be a covered pipeline,

if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline as extended or expanded.

1821. Under rule 100 of the NGR, the extension and expansion policy must also be consistent with the National Gas Objective (**NGO**).

DBP's Original Proposal

1822. Clause 7 (“Extensions and Expansions”) of the proposed revised access arrangement sets out provisions that deal with:

- the obligations of the operator to extend the DBNGP and/or expand the capacity of the DBNGP;
- determining whether extensions or expansions will become part of the covered pipeline; and
- the effect of extensions and expansions on reference tariffs.

1823. DBP proposed several amendments to these extension and expansion provisions, which DBP indicated would:⁴⁸⁵

- clarify when an extension or enhancement becomes part of the covered pipeline;
- implement a timeline for determining whether an expansion is (or is not) part of the covered pipeline;
- provide additional guidance on matters that should be addressed in a coverage notice;
- require detailed reasoning to support the determination of whether an expansion is (or is not) part of the covered pipeline;
- clarify that works completed under the gas quality regime and funded by a third party is not an expansion of capacity; and
- improve the drafting of provisions that relate only to extensions or enhancements.

1824. Clause 7.3 of the proposed revised access arrangement sets out provisions relating to extensions, expansions and enhancements of the DBNGP for a purpose other than meeting obligations to the holder of a capacity expansion option. DBP proposed to amend clause 7.3 such that:

- an extension or enhancement becomes part of the covered pipeline immediately from when consent is granted to the operator to operate the extension or enhancement under the *Petroleum Pipelines Act*,⁴⁸⁶ unless the operator elects otherwise (clause 7.3(a)); and
- an expansion becomes part of the covered pipeline immediately from when consent is given to the operator to operate the expansion under the *Petroleum Pipeline Act* (clause 7.3(b)), except:
 - where the operator notifies the regulator, in an “expansion non-coverage request notice” that the expansion is not to become part of the covered pipeline; and

⁴⁸⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 3.

⁴⁸⁶ *Petroleum Pipelines Act 1969 (WA)*.

- the regulator advises the operator, within 30 business days of receiving the expansion non-coverage request notice, that it is “not reasonably satisfied” that application of the access arrangement to such an expansion is inconsistent with the national gas objective and coverage criteria, with detailed reasons for its decision outlined.

1825. Clause 7.10 of the current access arrangement applying for the third access arrangement period (AA3) details the treatment of any expansion that is undertaken as a result of the application of provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*. DBP proposed to amend this clause to:

- specify that any extension, enhancement or expansion to be undertaken as a result of the application of this Act is to be part of the covered pipeline, and
- in circumstances where the funding of the extension, enhancement or expansion is made by a third party, the operator will not benefit, through increased revenue, from any amounts of third party expenditure that has been rolled into the capital base.

1826. Further to the above proposed amendments, DBP proposed the following drafting amendments to clauses 7.4 and 7.5 of the proposed revised access arrangement.

- Clause 7.4 details several factors that the operator may have regard to when considering whether to treat an extension or enhancement as part of the covered pipeline. DBP proposed to amend subclauses 7.4(a), (b) and (d) to remove references to “expansion”, as clause 7.4 is only relevant to extensions or enhancements.
- DBP proposed to add the words “*for the next access arrangement*” to clause 7.5 to specify that any extensions, expansions or enhancements of the DBNGP that become part of the covered pipeline will not affect the reference tariff before the revisions commencement date for the next access arrangement.
- DBP proposed to add the words “*at any time*” to clause 7.5(b) so that, if an extension, expansion or enhancement becomes part of the covered pipeline, then the operator may submit proposed revisions to the access arrangement under rule 50 of the NGR “at any time”.

Submissions

1827. Both BHP Billiton⁴⁸⁷ and WESCEF⁴⁸⁸ commented on DBP’s proposed amendments to clause 7 of the proposed revised access arrangement.

1828. BHP Billiton submitted that DBP’s proposed changes should be rejected as the proposed amendments suggest a procedure that is not sufficiently timely; improperly impose an obligation on the regulator to demonstrate why an expansion should (or

⁴⁸⁷ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, pp. 3, 12-14.

⁴⁸⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3-4.

should not) be part of the covered pipeline; and provide inadequate time for the regulator to consider any election by DBP for non-coverage of an expansion.⁴⁸⁹

1829. BHP Billiton noted that clause 7.3 of the proposed revised access arrangement gives DBP the ability to elect whether or not an extension, enhancement or expansion is to become part of the covered pipeline. In relation to extensions and enhancements, this election must be made “at some point in time”, whereas there is no timeframe specified for elections in relation to expansions. BHP Billiton considered DBP’s proposal to be similar to the “election mechanism” in the extensions and expansions policy proposed by Goldfield Gas Transmission Pty Ltd (**GGT**) for the access arrangement for the Goldfields Gas Pipeline (**GGP**).⁴⁹⁰ BHP Billiton cited its submission on GGT’s proposed election mechanism for the GGP where it submitted that such an approach created risk in “*that users are not given sufficient protection or the Authority is not able to properly consider the implications of a proposed election*”.⁴⁹¹ In particular:

- in the case of the Goldfields Gas Pipeline, the ability for the operator to elect ‘at some point in time’ has resulted in the Authority’s decisions on coverage being made after extension/expansion capacity has been contracted, with users not having the opportunity of a clear and efficient contracting path (a negotiated versus a regulated service) and therefore not being able to mitigate against the extraction of monopoly rents. This is inefficient and undermines the rationale for having coverage elections in the first place; and
- it does not allow the Authority sufficient time to properly consider whether a decision to consent to a proposed election contributes to the achievement of the NGO, which ultimately means the Authority’s election is of limited benefit to users. [*sic*]

1830. In order to manage such risk, BHP Billiton submitted that the proposed revised access arrangement for the DBNGP should provide for the following:

- if DBP is to elect for an extension, enhancement or expansion not to become part of the Covered Pipeline, it must make this election prior to the extension, enhancement or expansion automatically becoming part of the Covered Pipeline as provided in clauses 7.3(a) and (b) of the proposed extensions and expansions policy (which occurs upon the consent to operate the extension, enhancement or expansion being granted under the Petroleum Pipelines Act); and
- until the Authority has made a determination in relation to any election by DBP for an extension, enhancement or expansion not to become part of the Covered Pipeline, or the extension, enhancement or expansion automatically becomes part of the Covered Pipeline by operation of the extensions and expansions policy (as discussed above), DBP should be prevented from entering into agreements with users in respect of the additional capacity. [*sic*]

1831. BHP Billiton also commented on DBP’s proposed changes that require the Authority (as the regulator) to justify coverage and detail the way in which the justification is made.⁴⁹²

⁴⁸⁹ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 12.

⁴⁹⁰ Goldfield Gas Transmission Pty Ltd’s proposed access arrangement for the Goldfields Gas Pipeline and other related documents are available from the Authority’s website: <https://www.erawa.com.au/gas/gas-access/goldfields-gas-pipeline> (accessed 19 October 2015).

⁴⁹¹ BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 13.

⁴⁹² BHP Billiton, *Public Submission in response to DBNGP (WA) Transmission Pty Ltd’s proposed revision to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement*, 21 May 2015, p. 14.

- BHP Billiton noted the current provisions of the access arrangement that provide for all expansions to automatically become part of the covered pipeline, unless DBP can demonstrate to the Authority that an expansion should not. BHP Billiton submitted that *“this is an appropriate approach to the assessment of expansions, and is consistent with the [NGR] and the NGO”*. BHP Billiton indicated that it does not support DBP’s proposal to change this approach by placing the onus on the Authority to determine whether an expansion should (or should not) become part of the covered pipeline where DBP elects for an expansion to be uncovered.
- BHP Billiton also noted that in addition to placing the onus on the Authority to justify why an expansion should (or should not) be covered, DBP proposed that where the Authority determines that an expansion should become part of the covered pipeline it must: (1) provide detailed reasons and (2) provide these reasons within 30 business days of receiving an expansion non-coverage request notice from DBP. BHP Billiton considered a period of 30 business days to be materially inadequate.

1832. WESCEF noted DBP’s proposed amendments to clause 7.3(a), which allows the operator to elect (at some point in time) for an extension or enhancement to not become part of the covered pipeline. WESCEF submitted that the timing of the election should be clarified to provide certainty as to whether an extension or enhancement will be part of the covered pipeline within an appropriate timeframe, for example, no later than 30 business days before the consent to operate the extension or enhancement is granted.⁴⁹³

Draft Decision

1833. The Authority considered that whilst DBP provided a summary of its view of the “effects” of its proposed changes to clause 7 of the proposed revised access arrangement,⁴⁹⁴ DBP did not provide any statement of the rationale for its proposed changes with reference to the NGO, and in particular how the proposed changes may further the NGO. In contrast, BHP Billiton had (in its submission to the Authority) indicated how DBP’s proposed changes may undermine the gas access regime, including the NGO, for example:

- by DBP “gaming” the timing for when DBP can elect that an extension, expansion or enhancement is not to be covered so that prospective users face uncertainty and are channelled into contracting for a negotiated rather than a regulated service, thereby potentially exposing them to the extraction of monopoly rents and undermining the NGO; and
- by effectively reversing the current “default position” that expansions are to be covered unless DBP can show NGO justification why they should not be, by shifting the onus onto the Authority to show NGO justification why the expansion should be covered, and giving the Authority only a very limited time (30 business days) in which to do so.

⁴⁹³ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, pp. 3-4.

⁴⁹⁴ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement 2016–2020, Non-tariff related issues – Supporting Submission 5*, 31 December 2014, p. 3, paragraph 3.6.

1834. The Authority noted that if there is an NGO-based justification for tightening up the timing for when DBP can elect for an extension or expansion to be uncovered, then the proposal put forward by BHP Billiton in its submission (i.e. the election must be made before consent to operate is granted) appeared to be more consistent with the NGO than that proposed by DBP. Furthermore, consistent with what WESCEF suggested in its submission, the election should be made a reasonable time before consent to operate is granted under the Petroleum Pipelines Act.⁴⁹⁵
1835. In any case, the Authority considered the drafting of DBP's proposed amendment to clause 7.3(b) was poorly drafted and seemed to contain a significant error, which rendered it effectively contrary to what the Authority believed DBP was probably attempting to achieve. That is, on DBP's proposed drafting, clause 7.3(b) effectively provided that an expansion was taken to be covered except where:
- DBP notified the Authority (by way of an "expansion non coverage request form") that DBP did not want it to be covered (i.e. clause 7.3(b)(i)); and
 - the Authority gave DBP a notice that the Authority was "not reasonably satisfied" that coverage of the expansion is "inconsistent" with the NGO (i.e. clause 7.3(b)(ii)).
1836. Due to the double negative used by DBP in proposed clause 7.3(b)(ii) (i.e. "not" satisfied that coverage is "inconsistent" with NGO), the drafting seemed to be saying that the exception from coverage sought by DBP would only apply if the Authority is satisfied that it would be consistent with the NGO for it to be covered (which is illogical and inconsistent with the philosophy behind the gas access regime).
1837. Furthermore, the Authority identified several other drafting issues with DBP's proposed changes to clause 7.3 of the proposed revised access arrangement that should be addressed.
- There was no correct full citation of the "*Petroleum Pipelines Act*" (i.e. the "*Petroleum Pipelines Act 1969 (WA)*").
 - There was no definition for the term "*Coverage Criteria*", which was proposed to be used in clause 7.3(b)(ii).
 - There appeared to be a grammatical/typographical error in the proposed drafting of clause 7.3(b)(ii) (the Authority believed the words "*of the Coverage Criteria*" should probably be "or the Coverage Criteria").
1838. In light of DBP's failure to provide adequate justification for its proposed changes, the submissions from interested parties and matters raised above, the Authority was of the view that the proposed changes to clause 7.3 should be rejected. The Authority required the following amendment:
- Required Amendment 70
- Clause 7.3 of the proposed revised access arrangement, relating to when an extension (or enhancement) or expansion is to become part of the covered pipeline, should remain as currently drafted in the access arrangement applying to the third access arrangement period (AA3).
1839. Further to the above, the Authority noted DBP's proposed drafting change to clause 7.4, to remove references to "expansion" in subclauses 7.4(a), (b) and (d), as clause 7.4 is only relevant to extensions or enhancements. In line with this proposed

⁴⁹⁵ *Petroleum Pipelines Act 1969 (WA)*.

drafting change (and DBP's rationale for the change) the Authority believed the drafting of clause 7.3(a) should be amended to remove the reference to "expansion", as clause 7.3(a) is also only relevant to extensions (or enhancements). The Authority required the following amendment:

Required Amendment 71

Clause 7.3(a) of the proposed revised access arrangement, relating to when an extension (or enhancement) is to become part of the covered pipeline, should be amended to remove the reference to "expansion" as this clause only relates to extensions (or enhancements).

1840. In relation to clause 7.5(b), the Authority noted DBP's proposal to add the words "*at any time*" so that, if an extension, expansion (or enhancement) becomes part of the covered pipeline, then the operator may submit proposed revisions to the access arrangement under rule 50 of the NGR "at any time". As with its other proposed changes, DBP provided no justification (NGO-based or otherwise) as to why this change was made, nor explained what effect(s) it was intended to have.

1841. No third party submissions were made specifically regarding this change to clause 7.5(b).

1842. While it was not clear as to why the change was made, it appeared to allow DBP to circumvent the revision submission date set in the access arrangement in accordance with rule 50 of the NGR. The Authority believed that DBP may have intended to refer to rule 65, which deals with applications to vary the access arrangement and permits such an application to be made at any time, save during the revision submission date and the commencement of the new access arrangement period (rule 65(2)). As DBP did not put forward any basis as to why the requirements in rule 65, for variations to the access arrangement should not apply, the Authority was of the view that the proposed change to clause 7.5(b) to add the words "*at any time*" should be rejected. The Authority required the following amendment:

Required Amendment 72

Clause 7.5(b) of the proposed revised access arrangement, relating to the submission of proposed revisions to the access arrangement when an extension, expansion or enhancement of the DBNGP becomes part of the covered pipeline, should be amended to remove the words "at any time".

1843. Further to the considerations of the Authority above, the Authority noted DBP's use of the words "extensions or enhancements", when referring to changes to the covered pipeline that are not expansions of the capacity of the pipeline. The Authority considered the use of these words together may cause confusion as it is not expressly apparent what the differences are between an "extension" and "enhancement". In the absence of any clear definition for the term "enhancement" the Authority was of the view that references to the word "enhancement" should be deleted from clause 7 of the proposed revised access arrangement. The Authority required the following amendment:

Required Amendment 73

Clause 7 of the proposed revised access arrangement, relating to extensions and expansions, should be amended to remove references to “enhancement”.

DBP’s Amended Proposal

1844. In response to the Authority’s Draft Decision, DBP advises that it accepts (Draft Decision) Required Amendments 71 and 72.⁴⁹⁶ Accordingly, in its amended proposal, DBP has updated:

- clause 7.3(a) of the amended access arrangement to remove the reference to “expansion”, and
- clause 7.5(b) of the amendment access arrangement to remove the words “at any time”.

1845. DBP does not however, accept (Draft Decision) Required Amendments 70 and 73 and instead addresses the Authority’s reasoning for not approving these proposed amendments to clause 7 of the access arrangement; namely:⁴⁹⁷

- the drafting changes to clause 7.3, relating to when an extension (or enhancement) or expansion is to become part of the covered pipeline, and
- the use of the term “enhancement” throughout clause 7.

1846. In support of its position DBP provides the following information.⁴⁹⁸

DBP response to reasons for Amendment #70

4.7 The changes to clause 7.3 of the proposed access arrangement in the Original AA Proposal:

- (a) provide clarity as to when an extension or enhancement of the DBNGP (“Extension”) becomes part of the Covered Pipeline. The changes enable DBP to elect that the Extension becomes part of the Covered Pipeline as soon as DBP is granted consent to operate the Extension under the PPA;
- (b) provide that the Operator (DBP) may elect for an Extension to be not covered at some point in time, giving DBP flexibility as to when/if it makes a non-coverage election in relation to an Extension;
- (c) provide clarity as to when an expansion of the DBNGP (“Expansion”) becomes part of the Covered Pipeline. The changes provide that the Expansion becomes part of the covered pipeline as soon as DBP is granted consent to operate the Expansion under the PPA;
- (d) provide that the Operator may notify the ERA that it wants the Expansion to not be covered, and then provides a timeframe for the ERA to respond to the non-coverage request.

...

⁴⁹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, paragraph 4.5.

⁴⁹⁷ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, paragraph 4.6.

⁴⁹⁸ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, pp. 13-16.

Response to “No NGO justification by DBP” reason

- 4.9 DBP is of the view that the proposed changes to clause 7.3 of the proposed access arrangement further the NGO by promoting the efficient operation and use of the DBNGP for the long term interest of gas consumers. In particular, (i) operational efficiency is facilitated, (ii) greater certainty is provided to customers in relation to the process, and (iii) administration of the reference service is streamlined by the proposed changes in that they:
- (a) provide clarity about when the extension or enhancement becomes party of the covered pipeline;
 - (b) implement a timetable for a review of a determination of whether the expansion is part of the covered pipeline;
 - (c) clarify what should be contained in a coverage notice;
 - (d) require the ERA to provide their reasons for a determination about coverage;
 - (e) remove uncertainty in the drafting.
- 4.10 DBP considers that the substantive effect of the changes proposed for clause 7.3 are not materially different from the AA3 access arrangement.
- (a) The intent of DBP’s proposed clause 7.3(a) is that there is a presumption that an Expansion is covered from the date it becomes licensed to operate under the PPA, unless DBP requests otherwise. Consistent with AA3 access arrangement, if DBP notifies the ERA that an Extension is not to become part of the covered pipeline, that Extension is excluded from coverage. DBP has clarified that it can elect to exclude the Extension at any time (before or after DBP is granted permission to operate under the PPA). The AA3 access arrangement did not specify when DBP could elect to exclude the Extension from coverage and the implication was that this could occur at any time – DBP’s amendments make this explicit. Accordingly the proposed amendments to this clause clarify what was already in place in AA3.
 - (b) The intent of DBP’s clause 7.3(b) is that there is a presumption that an Expansion is covered from the date it becomes licensed to operate under the PPA, unless DBP requests otherwise. In respect of Expansions, the ERA has the option to reject an application from DBP for exclusion from coverage. The ERA can consider DBP’s notice seeking exemption from coverage for an Expansion and either reject or accept it. It is implicit in the mechanism that DBP will have to provide justification as to why the Expansion should be excluded from coverage so that the ERA can reach a decision. DBP’s proposed amendments require that the ERA provide its reasons for rejection of exemption from coverage and a time frame for doing so.
- 4.11 The amendments promote efficiency in operation of the pipeline and facilitate customer access and certainty where there is a request for an Expansion from a customer by ensuring that there is not an open-ended timetable for the ERA to review the application for non-coverage by DBP.

Response to “Shipper based NGO justification given” reason

- 4.12 The claims made by the shipper outlining two circumstances in which the proposed changes may undermine the gas access regime (including the NGO) are baseless and are contradicted by what has occurred in practice when there was in place extensions/expansions requirements that gave DBP even more flexibility and discretion about when an expansion or extension was part of the covered pipeline than what is in the current access arrangement.

- 4.13 What occurred in practice was as follows:
- (a) The decision by DBP to fund \$1.8 billion in expanding of the capacity of the DBNGP by almost 60% over a series of three expansion projects.
 - (b) [T]he timing of each expansion project was driven by the shippers' requirements, not DBP.
 - (c) DBP elected to make each expansion part of the covered pipeline but the shipper still agreed to negotiate a tariff rather than pay the reference tariff.
 - (d) That election was made after the expansion was commissioned.
- 4.14 Without detracting from the above submissions, DBP concedes that the drafting in clause 7.3 could be improved and so has made the following changes in the Amended AA Proposal:
- (a) The word "expansion" has been removed from clause 7.3(a);
 - (b) "Coverage Criteria" has been defined in the definitions section to read – "means the criteria in section 15 of the NGL"; and
 - (c) Clause 7.3(b)(ii) has been modified to read as follows:

within 30 Business Days of receiving the [Expansion](#) Non Coverage Request Notice, the Regulator advises the Operator by notice in writing that it is ~~not~~ reasonably satisfied that application of the access arrangement to such expansion is ~~inconsistent~~ [consistent](#) with the National Gas Objective of ~~the~~ [and](#) Coverage Criteria (**Coverage Notice**). The Coverage Notice must contain detailed reasons for why the Regulator is ~~not~~ [reasonably](#) satisfied that the application of the access arrangement to such expansion is ~~inconsistent~~ [consistent](#) with the National Gas Objective and Coverage Criteria. If the Regulator does not issue a Coverage Notice to the Operator under this clause within 30 Business Days of receiving the Expansion Non Coverage Request Notice, the Regulator will be deemed to have [not](#) been thus satisfied and the expansion will not be part of the Covered Pipeline.^[499]

DBP response to reasons for Amendment # 73

- 4.15 The ERA seeks an amendment to remove references to "enhancement" from clause 7 of the access arrangement. This would have the effect that enhancements to the DBNPG that are not extensions or expansions may not be captured as part of the covered pipeline.
- 4.16 DBP often carries out capital works on the pipeline that enhance the operations of the pipeline but do not result in an expansion or an extension. Important examples of this are:
- (a) Upgrades to the SCADA system;
 - (b) Potential pipeline enhancements or works carried out that are required to maintain the integrity of the pipeline due to rezoning and urban sprawl.
- 4.17 The ERA has not indicated why it is consistent with the Coverage Principles for such pipeline improvements to be removed from this clause. Such works have always been considered to be within the scope of clause 7 of the

⁴⁹⁹ The mark-ups shown are taken from DBP's Supporting Submission 50 – Appendix C (i.e. the access arrangement document marked-up to show changes against DBP's original access arrangement proposal).

access arrangement DBP considers that such works to the DBNGP should remain captured by that clause.

Further Submissions

1847. In its submission subsequent to the Authority's Draft Decision, BHP Billiton indicates that it supports the Authority's rejection of DBP's proposed changes to the extensions and expansions requirements.⁵⁰⁰ BHP Billiton restates its position in its previous submission (dated 21 May 2015) to the Authority.

DBP's proposed amendments to the extensions and expansions policy should be rejected by the Authority, and the current extensions and expansions policy should continue to apply unamended on the basis that DBP's proposed amendments to the extensions and expansions policy:

- propose a procedure that is not sufficiently timely;
- improperly impose the obligation on the Authority to demonstrate to DBP why an expansion should or should not become part of the covered pipeline; and
- provide inadequate time for the Authority to consider any election by DBP for non-coverage of an expansion.

1848. In its submission subsequent to the Authority's Draft Decision, WESCEF restates its previous submissions (dated 2 June 2015) in response to DBP's original proposed changes to clause 7 of the access arrangement, and indicates support for the Authority's Required Amendment 70.⁵⁰¹

Considerations of the Authority

Drafting changes to clause 7.3

1849. The Authority has considered DBP's proposed alternate drafting of clause 7.3 in its amended proposal and the further submissions made by BHP Billiton and WESCEF.

Extensions (clause 7.3(a))

1850. With regard to the redrafting of clause 7.3(a), the Authority notes that DBP has updated the reference to legislation to specify the year of the applicable legislation and that it is State based legislation (i.e. the *Petroleum Pipelines Act 1969 (WA)*). In addition, DBP has removed the reference to "expansion" in response to (Draft Decision) Required Amendment 71. With the exception of these changes, DBP's amended proposal maintains the same drafting as its original proposal, including the provision for DBP to elect "at some point in time" that an extension (or enhancement) will not become part of the covered pipeline.

1851. In their further submissions to the Authority, both BHP Billiton and WESCEF restate their previous submissions on DBP's proposed changes to the extensions and expansions requirements (refer paragraphs 1827 to 1832 of this decision document for BHP Billiton's and WESCEF's previous submissions).

⁵⁰⁰ BHP Billiton, *Public Submission in Response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016, p. 8.

⁵⁰¹ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, p. 4.

1852. DBP's submission claims that the proposed insertion of the words "(at some point in time)" in clause 7.3(a), "clarified" that DBP "can elect to exclude the Extension at any time (before or after DBP is granted permission to operate under the PPA)" and that the "AA3 access arrangement did not specify when DBP could elect to exclude the Extension from coverage and the implication was that this could occur at any time – DBP's amendments make this explicit."⁵⁰² The Authority disagrees with DBP's submission for the following reasons.

- First, the words "at some point in time" are used in conjunction with the words "is to become part of the Covered Pipeline immediately the consent to operate the extension or enhancement is granted to the Operator under the Petroleum Pipelines Act 1969 (WA)". The words "at some point in time" therefore suggest that DBP's election can only be made at some point in time before (not after) the consent to operate is granted. That is because the words "is to become part..." suggest that coverage is to occur in the future (when consent is given), not that it has already occurred at the "point in time" when DBP can elect for non-coverage. So, adding the words "at some point in time" has the potential to create uncertainty and confusion.
- Second, while the current (AA3) access arrangement may not have explicitly specified when DBP could elect to exclude the extension from coverage, the implication was not that this could occur at any time after the extension had become covered. The very clear implication from the use of the words "**is to become** part of the Covered Pipeline, unless Operator elects otherwise" (**emphasis** added) (as used in current (AA3) clause 7.3(a)) is that DBP's election would need to be made before the coverage occurred. If there is a need to explicitly clarify the existing process (as DBP claims it is seeking to do), then this outcome is not achieved by inserting the words "(at some point in time)". Instead, words should be inserted that clearly indicate that the election and notice must be given by DBP before the consent is given under the *Petroleum Pipelines Act 1969*.

1853. Regarding DBP's stated justifications for its proposed changes to clause 7.3, including DBP's claim that:⁵⁰³

- (i) operational efficiency is facilitated, (ii) greater certainty is provided to customers in relation to the process, and (iii) administration of the reference service is streamlined by the proposed changes in that they:
 - (a) provide clarity about when the extension or enhancement becomes party [*sic*] of the covered pipeline;
 - (b) implement a timetable for a review of a determination of whether the expansion is part of the covered pipeline;
 - (c) clarify what should be contained in a coverage notice;
 - (d) require the ERA to provide their reasons for a determination about coverage;
 - (e) remove uncertainty in the drafting,

the Authority is of the view that DBP's proposed insertion of the words "(at some point in time)" into clause 7.3(a) would achieve none of the above things (to the

⁵⁰² DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, paragraph 4.10(a).

⁵⁰³ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58*, 22 February 2016, paragraph 4.9.

extent that they are relevant to clause 7.3(a)). On the contrary, the Authority considers that DBP's proposed insertion of the words "(at some point in time)" into clause 7.3(a) would create uncertainty as to whether an extension (or enhancement) that has become part of the covered pipeline will remain so.

1854. Having regard to the positions submitted by BHP Billiton and WESCEF, DBP's amended proposal and reasoning for its position and the law, the Authority considers that DBP has not provided adequate justification as to why its proposed insertion of the words "*(at some point in time)*" into current clause 7.3(a) would be consistent with the NGL(WA) (including the NGO).
1855. Given that DBP has, by its own misinterpretation, highlighted the potential for misunderstanding the meaning of current clause 7.3(a), the Authority agrees that it would promote clarity, certainty and the NGO, if the correct interpretation of current clause 7.3(a) (i.e. that DBP's election and notice must be given before coverage occurs) were more explicitly stated in clause 7.3(a). Accordingly, the Authority requires that clause 7.3(a) be amended as set out in (Final Decision) Required Amendment 38 (at paragraph 1877 below). For clarity and consistency, similar changes also need to be made to clause 7.3(b).

Expansions (clause 7.3(b))

1856. With regards to the redrafting of clause 7.3(b), the Authority is still of the view that the drafting lacks clarity and is therefore unsatisfactory. The Authority is also concerned at the apparent reversal of the onus of proof and the possibility that the unsatisfactory drafting confers an absolute discretion on DBP to determine that an expansion is not to become part of the covered pipeline, irrespective of whether the application of the access arrangement to the expansion is consistent with the NGO.
1857. Under clause 7.3(b) of the current access arrangement (AA3), if DBP wishes an expansion not to become part of the covered pipeline, the onus is very clearly on DBP to show that applying the access arrangement to the expansion would be inconsistent with the NGO.
1858. Under DBP's proposed revised clause 7.3(b), if DBP gives notice that an expansion is not to become part of the covered pipeline, then (on a literal reading of the currently proposed drafting of clause 7.3(b)(ii)) it appears that the expansion would not become part of the covered pipeline if, within 30 business days, either:
- the regulator gives a notice to DBP that the regulator is reasonably satisfied that the application of the access arrangement to the expansion is consistent with the NGO; or
 - the regulator does not give such a notice.
1859. That is, with DBP's currently proposed drafting of clause 7.3(b)(ii):
- the onus is now on the regulator to show why the application of the access arrangement to the expansion is consistent with the NGO (not, as under the current (AA3) access arrangement, on DBP to show that applying the access arrangement to the expansion would be inconsistent with the NGO); and
 - it is arguable (or at least uncertain because of the drafting) that DBP effectively has absolute discretion to determine that an expansion is not to become part of the covered pipeline, irrespective of whether the application of the access arrangement to the expansion is consistent with the NGO. If DBP were allowed such an absolute discretion, it could, for example, give rise to issues

concerning allocation of costs (between the portion of the pipeline that is covered by the access arrangement and the portion that is not) that may prove to be inconsistent with the NGO.

1860. With regard to the issue of the onus of proof, the Authority is of the view that the proponent of the proposed change should bear the responsibility of showing that the change is consistent with the NGO. So, where a pipeline is covered by an access arrangement and it is proposed that its capacity is to be expanded, but that the expanded capacity will not be covered by the access arrangement (so that part of the pipeline capacity is covered and part of it is not covered by the access arrangement), the Authority is of the view that the proponent of that change should bear the responsibility of showing that the change is not going to be inconsistent with the NGO. Applying that principle to the current situation means that DBP, and not the Authority, should have the responsibility of showing that having expanded capacity not covered by the access arrangement is not going to be inconsistent with the NGO.
1861. With regard to the issue of discretion, the Authority considers that it is not acceptable for DBP to have the absolute discretion to determine that expanded pipeline capacity is not to be covered by the access arrangement, if that would be inconsistent with the NGO.
1862. Having regard to the positions submitted by BHP Billiton and WESCEF, DBP's amended proposal and reasoning for its position and the law, the Authority considers that expansions should (automatically) be covered by the access arrangement from the point when consent to operate is given under the *Petroleum Pipelines Act 1969 (WA)*, unless DBP can demonstrate to the Authority that the expansions should not be so covered as doing so would be inconsistent with the NGO. This position is consistent with the wording and position of clause 7.3(b) under the current (AA3) access arrangement.
1863. The Authority is therefore of the view that DBP has not provided adequate justification to demonstrate that its proposed changes to current clause 7.3(b) would be consistent with the NGL(WA) (including the NGO). The Authority however accepts that some minor changes to clause 7.3(b) are required to clarify when coverage of the expansion is to take effect (i.e. upon consent to operate under the Act) and when any non-coverage sought by DBP must be determined (i.e. before) and to adopt defined terminology.
1864. Accordingly, the Authority requires that clause 7.3(b) be amended as set out in (Final Decision) Required Amendment 39 (at paragraph 1877 below).

Use of the term "enhancement"

1865. The Authority has considered DBP's reasoning to maintain the use of the term "enhancement" within the amended access arrangement. The Authority notes that the term "enhancement" is not defined in the NGL(WA), the NGR, the current (AA3) access arrangement or DBP's proposed revised access arrangement.
1866. In *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14*, (at [593]) an "expansion" was considered to be a form of "enhancement". The Tribunal stated:

[593] An expansion is the enhancement of the capacity to deliver gas within the geographic range of the DBNGP, such as by the addition of a loop or a compressor.

1867. While DBP does not specifically define "enhancement" in its amended proposal, its submissions⁵⁰⁴ seem to indicate that DBP intends that, when used in clause 7, "enhancement" means *"enhancements to the DBNPG that are not extensions or expansions"* and that these would include *"capital works on the pipeline that enhance the operations of the pipeline but do not result in an expansion or an extension"*. DBP gives the following as "important" examples of such enhancements:
- upgrades to the SCADA system; and
 - potential pipeline enhancements or works carried out that are required to maintain the integrity of the pipeline due to rezoning and urban sprawl.
1868. That is, DBP appears to intend that in clause 7.3, "enhancements" means capital works that enhance pipeline *operation* but do not amount to extensions or expansions.
1869. Rule 48(1)(g) of the NGR requires that a full access arrangement must "set out the extension and expansion requirements" and rule 104(1) provides that these extension and expansion requirements *"may state whether the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline or may allow for later resolution of that question on a basis stated in the requirements"* (**emphasis added**). It is clear that NGR 104 is concerned with extension to, or expansion **of the capacity** of, the pipeline. This makes sense, because rule 104 is about whether the access arrangement applies to incremental services derived from the extended or expanded capacity, because ultimately access arrangements are about access to services using pipeline *capacity*.
1870. As DBP has indicated, it intends its enhancements to be enhancements to *operations*, not extensions or expansions of *capacity*. If DBP's enhancements do not produce any increase in capacity that would allow for incremental services that need to either be brought within or excluded from the access arrangement, then it is hard to see how they fit within rule 104 at all, or why there would be any point in seeking to declare them as being covered, or not covered, by the access arrangement.
1871. DBP's enhancements (i.e. *"capital works on the pipeline that enhance the operations of the pipeline but do not result in an expansion or an extension"*) would seem to be akin to normal operational works on the pipeline. To the extent the pipeline is a "covered pipeline" (as defined in NGL(WA) s2) and DBP's operational "enhancements" (capital works) involve physical additions or adjustments to the existing "pipeline", they are most likely going to automatically form part of that covered pipeline by virtue of being part of or "directly attached" to the pipe or system of pipes (see definition of "pipeline" in NGL(WA) s2). Whether the pipeline operator is able to recover its expenditure on those works under the access arrangement will depend on satisfying the price and revenue regulation requirements under part 9 of the NGR.

⁵⁰⁴ DBNPG (WA) Transmission Pty Ltd, Proposed Revisions DBNPG Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58, 22 February 2016, paragraphs 4.15 and 4.16.

1872. It is not clear that there is any need to give special treatment for these enhancements as is done under clause 7.3 and it may even be contrary to the NGO to do so. For example, clause 7.3(a) would theoretically allow DBP to remove these operational "enhancements" from the covered pipeline, but the Authority is concerned whether this result would be consistent with NGO justification and how this would operate in practice. For example, using DBP's example of an upgrade to the SCADA system (which is part of the DBNGP system described in DBP's pipeline description document, dated 1 January 2016),⁵⁰⁵ if those upgrade works have become part of the covered pipeline, then why would there be any reason (consistent with the NGO) in DBP seeking to have them excluded from the covered pipeline?
1873. The Authority is not aware of any other regulated pipelines using the term "enhancements" in the context of their extensions or expansions of capacity requirements, nor is there any requirement to include such a provision under the NGL or NGR. The Authority is of the view that, where other regulated pipelines require to undertake similar work (e.g. upgrading technology systems, pipeline works), they manage to do so within the existing framework without requiring any special treatment of "enhancements" such as occurs in clause 7.3 of DBP's amended proposal.
1874. With regard to DBP's claim that the Authority *"has not indicated why it is consistent with the [c]overage [p]rinciples for such pipeline improvements to be removed from this clause"*, the Authority assumes that DBP's reference here to "the coverage principles" is to the "pipeline coverage criteria" in NGL(WA) s15, which are to be taken into account when making a pipeline coverage determination (NGL(WA) s100) or revocation (NGL(WA) s107). The "pipeline coverage criteria" are:
- (a) that access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;
 - (b) that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline;
 - (c) that access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety;
 - (d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.
1875. The Authority considers that removal of DBP's operational "enhancements" from clause 7.3 does not create any inconsistency with the "pipeline coverage criteria". The "pipeline coverage criteria" are concerned with access (or increased access) to "pipeline services" (as defined in NGL(WA) s2). As indicated above, the Authority is of the view that, if DBP's operational "enhancements" are made to a covered pipeline (such as the DBNGP) then, to the extent those capital works involve physical additions or adjustments to the existing "pipeline", they are most likely going to automatically form part of that covered pipeline by virtue of being part of or "directly attached" to the pipe or system of pipes (see definition of "pipeline" in NGL(WA) s2). This is so without the need for clause 7.3(a) to specify that this will happen. If anything, the fact that clause 7.3(a) allows DBP to elect that "enhancements" are not to become part of the covered pipeline, creates a greater risk that any "pipeline

⁵⁰⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 1 “Description of the DBNGP System as at 1 January 2016”*.

service" that did arise from the enhancement would not be available for inclusion as a reference service. To that extent, inclusion of "enhancements" in clause 7.3(a) would seem less consistent with the "pipeline coverage criteria" than if "enhancements" are excluded from clause 7.3(a). The Authority is therefore of the view that references to "enhancements" should be removed from clause 7.3 of the amended access arrangement, and consequentially, also from clauses 7.4, 7.5 and 7.10.

1876. Accordingly, the Authority requires that clauses 7.3, 7.4, 7.5 and 7.10 be amended as set out in (Final Decision) Required Amendment 39 (at paragraph 1877 below).

Amendments to clause 7

1877. Given the considerations above, concerning DBP's proposed amendments to clause 7 of the amended access arrangement (relating to the requirements for extensions and expansions), the Authority is of the view that DBP's amended proposal should not be accepted. Clause 7 of the amended access arrangement should be amended as follows.

- 7.3 If the Operator proposes to extend, ~~or~~ expand ~~or enhance~~ the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option:
- (a) an extension ~~or enhancement~~ is to become part of the Covered Pipeline immediately the consent to operate the extension ~~or enhancement~~ is granted to the Operator under the *Petroleum Pipelines Act 1969 (WA)*, unless, before that occurs, the Operator elects otherwise (at some point in time) and Operator will and gives the Regulator notice of an the extension or enhancement which the Operator elects will not become part of the Covered Pipeline; and
 - (b) an expansion is to become part of the Covered Pipeline immediately the consent to operate the expansion is granted to the Operator under the *Petroleum Pipelines Act 1969 (WA)*, except in instances where, before that occurs, the Operator gives the Regulator notice of the expansion which the Operator does not wish to become part of the Covered Pipeline and demonstrates to the Regulator's reasonable satisfaction that application of the access arrangement to such expansion is inconsistent with the National Gas Objective and the Regulator issues a notice that it is thus satisfied.:
 - ~~(i) where the Operator notifies the Regulator in writing that it wishes the expansion to not become part of the Covered Pipeline (Expansion Non Coverage Request Notice); and~~
 - ~~(ii) within 30 Business Days of receiving the Expansion Non Coverage Request Notice, the Regulator advises the Operator by notice in writing that it is reasonably satisfied that application of the access arrangement to such expansion is consistent with the National Gas Objective and Coverage Criteria (Coverage Notice). The Coverage Notice must contain detailed reasons for why the Regulator is reasonably satisfied that the application of the access arrangement to such expansion is consistent with the National Gas Objective and Coverage Criteria. If the Regulator does not issue a Coverage Notice to the Operator under this clause within 30 Business Days of receiving the Expansion Non Coverage Request Notice, the Regulator will be deemed to have not been thus satisfied and the expansion will not be part of the Covered Pipeline.~~

- 7.4 In considering whether to treat an extension ~~or enhancement~~ as part of the Covered Pipeline, Operator may have regard to the following factors:
- (a) the application of the matters set out in NGR 104 in respect of the facilities comprising the extension ~~or enhancement~~;
 - (b) the extent to which the Capacity resulting from the extension ~~or enhancement~~ is Contracted Capacity;
 - (c) the legitimate business interests of Operator;
 - (d) the application of any voluntary right of access to the Capacity resulting from the extension ~~or enhancement~~; and
 - (e) the extent to which any Access Contract under which the extension, or expansion ~~or enhancement~~ capacity is contracted relies upon a determination of the Reference Tariff.
- 7.5 If an extension, or expansion ~~or enhancement~~ of the DBNGP becomes part of the Covered Pipeline, the extension, or expansion ~~or enhancement~~ will not affect the Reference Tariff before the Revisions Commencement Date for the Next Access Arrangement. Although, if an extension, or expansion ~~or enhancement~~ of the DBNGP becomes part of the Covered Pipeline:
- (a) Operator may seek a Capital Contribution from Prospective Shippers or levy a Surcharge on Incremental Shippers in accordance with NGR 82 and 83; and
 - (b) Operator may submit proposed revisions to this Access Arrangement under NGR 50.
- ...
- 7.10 If any extension, ~~enhancement~~ or expansion to be undertaken as a result of the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)* is to be part of the Covered Pipeline and in circumstances where the funding of that extension, ~~enhancement~~ or expansion was made by someone other than the Operator or its Related Bodies Corporate (PIA Expenditure) the Operator and Nominees will not benefit, through increased revenue, from each amount of PIA Expenditure that has been rolled into the capital base through a mechanism equivalent to that in clause 12.4.

Required Amendment 39

Clause 7.3 of the amended access arrangement, relating to the requirements for extensions and expansions, must be amended to read as specified in this Final Decision (refer paragraph 1877).

Consistent with the required amendment to the drafting of clause 7.3, all references to the term “enhancement” must be removed from clauses 7.4, 7.5 and 7.10 of the amended access arrangement, as specified in this Final Decision (refer paragraph 1877).

Further (new) amendments to clause 7

1878. In considering the amendments to clause 7 of the amended access arrangement (outlined above), the Authority became aware of a matter not previously considered as part of its Draft Decision. Consequently, the Authority invited public submissions on this matter.⁵⁰⁶ The matter for consultation relates to clause 7.3 of the amended access arrangement, which specifically excludes expansions that arise from DBP meeting its obligations to the holder of a “capacity expansion option”.

Clauses 7.1, 7.2 and 7.3

1879. Clauses 7.1, 7.2 and 7.3 of the amended access arrangement state the following. These clauses remain unchanged from the current (AA3) access arrangement.

7. Extensions and Expansions
 - 7.1. Operator is not required to fund part or all of the expansion (except in relation to a Capacity Expansion Option, where the provisions of the Capacity Expansion Option require the expansion to be funded by the Operator or an Operator Entity).
 - 7.2. Unless the Operator states otherwise in a Capacity Expansion Option, an expansion of the DBNGP pursuant to the exercise of a Capacity Expansion Option by the holder is to be treated as part of the Covered Pipeline.
 - 7.3. If the Operator proposes to extend, expand or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option:
 - (a) ...
 - (b) ...

1880. As indicated, in considering DBP’s proposed changes to clause 7 of the access arrangement, the Authority noticed the drafting of clause 7.3, which specifically excludes expansions that arise from DBP meeting its obligations to the holder of a Capacity Expansion Option. As set out in clause 7.2, DBP is able to decide whether to state in a Capacity Expansion Option that an expansion made pursuant to the exercise of the option will be uncovered (i.e. the option will not be considered as part of the covered pipeline). When deciding that such an expansion will be uncovered, there is no requirement for DBP to first demonstrate that including the expansion as part of the covered pipeline would be inconsistent with the NGO.

1881. Consistent with its Draft Decision position, the Authority considered the NGO is best achieved by ensuring that all expansions of a covered pipeline are covered, unless it can be demonstrated by DBP that doing so would be inconsistent with the NGO. However, the drafting of the current (AA3) access arrangement would potentially allow an expansion not to be covered without DBP first having to demonstrate that doing so would be inconsistent with the NGO. To address this issue, the Authority considered the following (new) amendments to clauses 7.2 and 7.3 of access arrangement should be made.⁵⁰⁷

- In clause 7.2, replace the opening words *“Unless the Operator states otherwise in a Capacity Expansion Option,”* with the words *“Subject to section 7.3(b),”*; and

⁵⁰⁶ Economic Regulation Authority, *Notice “Access Arrangement for the DBNGP – Proposed Requirement for Final Decision, Public Consultation”*, 1 June 2016.

⁵⁰⁷ As specified in the Authority’s consultation notice of 1 June 2016.

- In clause 7.3, add the following words at the end of the first paragraph before the full stop *"that was originally entered into before [date AA4 changes take effect] and has not been amended since that date to treat as being not part of the Covered Pipeline any expansion of the DBNGP pursuant to the exercise of that Capacity Expansion Option by the holder"*.

1882. The amendments to clause 7.3 aim to ensure that any *existing* Capacity Expansion Options that have been issued on an uncovered basis are grandfathered, but that no other expansions arising from Capacity Expansion Options are allowed to override the NGO requirement in clause 7.3(b).

Public submissions

1883. Two public submissions were received by the Authority in response to its invitation to make submissions on 1 June 2016.

1884. In its submission, BHP Billiton indicates support for the Authority's proposal.⁵⁰⁸ Specifically,

BHPB supports the ERA's proposal to treat capacity expansions that come into existence as a consequence of "capacity expansion options" entered into after the date the AA4 changes take effect in the same manner as any other expansion of capacity to the DBNGP.

As the ERA has accepted, DBP is the only party who, in practice, can expand the capacity of the DBNGP, and so DBP has a similar degree of market power in relation to expansions of capacity as it does in relation to the existing capacity. Accordingly, except for exceptional or unusual cases, the NGO would be advanced by including all capacity expansions as part of the Covered Pipeline, and for this prospect to be known sufficiently in advance so that it allows users to obtain a regulated (rather than negotiated) price for the use of the relevant expanded capacity. The requirement in the draft decision to maintain the current (AA3) extensions and expansions policy – apart from in relation to "capacity expansion options" – is consistent with this outcome.

As the ERA has observed, the special treatment under DBP's proposed extensions and expansions policy of expansions that come about as a consequence of "capacity expansion options" provides a possible mechanism for DBP to side step the standard treatment of expansions. That is, it would be open for DBP to seek to expand capacity pursuant to "capacity expansion options" and for the associated options to state that the capacity created would be uncovered. The market power that DBP retains over expansions to capacity as discussed above would provide it with substantial leverage to require users agree to "capacity expansion options" before expansions proceed and to require users to agree for the "capacity expansion option" to state that the capacity would not be covered.

By treating the coverage of future capacity expansions created through a "capacity expansion option" in the same manner as other capacity expansions (as proposed by the ERA), the prospect of the expansion becoming covered would condition the terms negotiated for a "capacity expansion option" (or whether the capacity came into existence as a consequence of a "capacity expansion option") and would therefore address the market power concerns discussed above.

⁵⁰⁸ BHP Billiton, *Submission re: Access Arrangement for the DBNGP – Proposed Required Amendment for Final Decision*, 9 June 2016.

1885. DBP submits that it would be “wrong” for the Authority to include the proposed (new) amendments in the access arrangement for a number of reasons, which are summarised as follows.⁵⁰⁹ These reasons are considered in turn below.

1. The current drafting of section 7 of the current access arrangement, coupled with the mechanism set out in clause 16 of the negotiated standard shipper contracts (SSC) (which outlines a process for making timely decisions about expanding the capacity of the pipeline and the funding of these expansions, including the granting of [Capacity Expansion Options] (CEOs), has:
 - facilitated all of the expansions of the DBNGP's capacity since 2005;
 - enabled DBP to make timely decisions to fund all of these expansion projects; and
 - never resulted in a shipper not being able to contract for additional capacity that required an expansion of the DBNGP's capacity.
2. The Proposed Amendments are likely to lead to the mechanism in clause 16 of the negotiated SSCs not being applied efficiently, therefore leading to delays in decisions about whether an expansion should proceed and who should fund the expansion (or at least one of these types of decisions). This is inconsistent with the NGL.
3. Even if the reasons outlined in items 1 and 2 above are not accepted by the ERA as reasons to not make the Proposed Amendments, the ERA has failed to recognise the need to also make consequential changes to the total revenue calculation (whether through changes to the rate of return or other building blocks) to compensate DBP for the additional risk DBP will be exposed to by progressing an expansion through a CEO. This is inconsistent with the revenue and pricing principles in the NGL.
4. The Proposed Amendments are unnecessary given that there is no expansion of the DBNGP's capacity forecast during AA4 and none likely in the few years following the end of AA4.

Before addressing each of these points in more detail, DBP makes an initial comment on the timing of the ERA's consultation process.

DBP is disappointed that the ERA has commenced a public consultation process so late in the access arrangement review approvals process. The ERA has not explained why it was not possible for the ERA to have considered this matter earlier in the process. Furthermore, it is noted that:

- this public consultation process has been commenced 17 months after DBP filed the revised access arrangement proposal for AA4 and 6 months after AA4 was intended to commence. The National Gas Rules prescribe an absolute time limit of 13 months to the ERA's assessment process;
- the ERA is considering a change to the arrangements that have been in place since 2006 and approved by the ERA in successive access arrangements;
- no concerns appear to have been raised by any third party with the drafting of section 7 in either the current access arrangement or the AA proposal filed by DBP. Moreover, at least two shippers made submissions to the ERA on DBP's extension and expansion requirements and one of them – BHPB – submitted that the ERA should adopt the current extension and expansion requirements without change.

⁵⁰⁹ DBNGP (WA) Transmission Pty Ltd, *Submission re: ERA's Public Consultation on the Capacity Expansions Option Matter*, 9 June 2016.

Authority's Considerations

1886. The Authority has given consideration to the submissions of BHP Billiton and DBP on its proposed (new) amendments to clauses 7.2 and 7.3 of the amended access arrangement. These considerations are outlined below and are made subject to the other required amendments to clause 7 discussed previously in this Final Decision.
1887. Having regard to the submissions made by DBP, the Authority is of the understanding that DBP's key concern is that without the ability to use the capacity expansion options mechanism to by-pass the need for coverage:
- the resulting delays and uncertainty surrounding whether the capital outlay on an expansion would be recovered via reference tariffs would prejudice efficient investment in the DBNGP; and
 - if expansions are delayed (or prevented), this would prejudice efficient operation of the DBNGP.
1888. The Authority considers that it would be a question of fact as to whether these such "delays and uncertainty" would actually happen, or if they did happen, whether they would actually cause an impact that is inconsistent with the NGO. With regards to the NGO, the Authority notes the following.
- The (new) proposed amendments would not entirely prevent the ability for an expansion to be uncovered and a threshold test for an expansion to be uncovered would itself be an NGO-based test. That is, for an expansion to be uncovered, DBP would have to demonstrate to the regulator's reasonable satisfaction that application of the access arrangement to the expansion would be inconsistent with the NGO. While DBP may claim that the necessity to obtain such a clearance from the regulator would reduce its flexibility and create uncertainty and delays that could adversely impact the NGO, the Authority is of the view that the interests in ensuring that expansions being part of the covered pipeline are not inconsistent with the NGO (prior to them being uncovered) outweighs this uncertainty.
 - BHP Billiton's submission highlights the potential benefits for shippers of knowing (sufficiently in advance) that expansions will be covered, so that they are able to obtain a regulated (rather than negotiated) price. BHP Billiton also notes the *"market power that DBP retains over expansions to capacity"* provides DBP with *"substantial leverage"* to require users to agree to Capacity Expansion Options before expansions proceed and to require users to agree for the Capacity Expansion Options to state that the capacity would not be covered.
 - While DBP may claim the existing system works well to deliver expansions on time that meet shippers' needs for additional capacity, and while DBP may in fact (for its own commercial reasons) have elected for coverage of *"each expansion undertaken during 2005 to 2011"*, that does not necessarily mean that in the future all expansions will consistently be delivered at a price to shippers that would be acceptable in a working competitive market.
1889. With regard to DBP's claim that no shipper has requested the proposed (new) amendments and that in fact, at least one shipper made submissions to not change the existing (AA3) extension and expansion arrangements in clause 7, the Authority notes the following. While it is true that BHP Billiton did originally submit (in its

submission of 21 May 2015)⁵¹⁰ that *"DBP's proposed amendments to the extensions and expansions policy should be rejected by the Authority, and the current extensions and expansions policy continue to apply unamended"*, this was in the context where BHP Billiton was primarily objecting to DBP's (original) proposed changes to the access arrangement. At that time, no change to the capacity expansions options mechanism (at clauses 7.2 and 7.3 of the access arrangement) had been proposed by DBP or anyone else. However, when the capacity expansions options mechanism was subsequently raised by the Authority in its public consultation notice of 1 June 2016 for specific consideration, BHP Billiton's submission in response was emphatic in its support for the Authority's proposed (new) amendments.

1890. [DN: new drafting since considered by GB 35/2016] DBP's submission claims that *"[u]nder clause 16.2 of the SSC, DBP must undertake an expansion so as to provide Requested T1 Capacity to the shipper at the times and to the extent required. This is fundamentally different to the approach taken under the regulatory framework where no service provider can be required to fund either part or all of an expansion."* DBP further claims that:⁵¹¹

The ERA's proposal would fundamentally change the process associated with clause 16 expansion. As DBP is obligated to deliver requested expansions under clause 16 the existing approved extensions and expansion requirements of the current Access Arrangement strikes an appropriate balance between the need for a service provider and shipper to manage risk and allowing for infrastructure investment.

If this risk profile is to be changed, there needs to be an allowance made in the reference tariff calculation – either in the rate of return or some other building block – to compensate DBP for this additional risk. DBP notes that this is not proposed as part of the Proposed Amendments.

In light of this, DBP questions how implementing the Proposed Amendments would be consistent with the revenue and pricing principles in the NGL.

1891. The Authority has considered DBP's above claims and notes the following.

- DBP's claim that the SSC requires DBP to undertake expansions, whereas the regulatory framework does not, is correct to the extent that clause 16.2 of the SSC provides as follows:⁵¹²

16.2 The Operator must issue Capacity Expansion Option

- (a) Where the Operator is not able to provide Requested T1 Capacity from Capacity available to it by virtue of relinquishments (or otherwise from available Capacity), the Operator must undertake an Expansion so as to be able to provide the Requested T1 Capacity to the Shipper at the times and to the extent required in accordance with this clause 16.
- (b) Where clause 16.2(a) applies and the Operator is required to make the Operator's Expansion Offer in accordance with clause 16.4:
 - (i) the Operator's Expansion Offer constitutes a Capacity Expansion Option for the purposes of the Access Arrangement in respect of the Requested T1 Capacity for

⁵¹⁰ In response to DBP's original proposal.

⁵¹¹ DBNGP (WA) Transmission Pty Ltd, *Submission re: ERA's Public Consultation on the Capacity Expansions Option Matter*, 9 June 2016, p. 3.

⁵¹² *DBNGP Standard Shipper Contract – Full Haul T1 (February 2015)*. Available from www.dbp.net.au (accessed 20 June 2016).

- the Requested Supply Period at the Inlet Points and Outlet Points specified in the T1 Capacity Notice;
 - (ii) the consideration for the Capacity Expansion Option is the Shipper's undertaking to indemnify the Operator for all Costs incurred by the Operator in respect of the T1 Capacity Notice, and subject to the limit, contained in clause 16.6(b); and
 - (iii) the Capacity Expansion Option may be traded by the Shipper on the same basis, and subject to the same terms and conditions, as apply to the Transfer of Contracted Capacity under clause 27.
- When exercising a discretion in approving or making parts of an access arrangement relating to a reference tariff, the Authority must take the revenue and pricing principles into account (refer NGL(WA) s.28(2)(a)). NGR 104(2), which requires extensions and expansions to deal with the effect of the extension or expansion on tariffs, makes it clear that the extension and expansion requirements in the access arrangement do relate to reference tariffs, and so the obligation to consider the revenue and pricing principles is invoked. In order to properly consider the revenue and pricing principles, however, the Authority would need to clearly understand the impact (if any) of the proposed amendments on the "building blocks" of the tariff calculation. DBP suggests that the proposed amendments of the Authority do have an impact. However, the Authority is of the view that DBP has not adequately explained this impact (refer below).

1892. Having regard to DBP's submission, it appears that the existing capacity expansion option mechanism allows DBP to avoid having to charge reference tariffs for the expansions it is obligated to make under clause 16.2 of the SSC and that, if this is changed by the Authority's proposed (new) amendments, then that would change DBP's "risk profile" necessitating some adjustment to the reference tariff to compensate DBP for "this additional risk". The Authority considers that DBP has not adequately explained how its "risk profile" is changed and what "additional risk" it would need to be compensated for.

1893. In particular, DBP has not explained why having its expansion capex assessed for efficiency and prudence (as per NGR 79, if covered) would adversely affect its risk profile, requiring it to be compensated. If it relates to the existing arrangements allowing DBP to recover prices for expansions under clause 16.2 (of the SSC) that are not subject to any test for efficiency and prudence, then this would seem to support the submission by BHP Billiton⁵¹³ which, as noted above (refer paragraph 1884), claims DBP has "market power" over expansions to capacity which provides DBP with "substantial leverage" to require users to agree to capacity expansion options.

1894. Under the regulatory framework and in the event that an expansion is required, the Authority notes that all expenditure that meets the efficiency and prudence requirements of NGR 79, will be added to the regulatory capital base and DBP will earn a return consistent with its other regulated investment. Consequently, the Authority does not consider that requiring expansions of a covered pipeline to be covered, unless it can be demonstrated that doing so would be inconsistent with the

⁵¹³ Submission of 9 June 2016.

NGO, would prevent DBP from recovering its efficient costs or have any impact on DBP's risk profile.

1895. Having regard to the above considerations, the Authority is of the view that the proposed (new) amendments to clause 7.2 and 7.3 of the amended access arrangement should be approved as follows:

- 7.2. ~~Unless the Operator states otherwise in a Capacity Expansion Option~~ Subject to clause 7.3(b), an expansion of the DBNGP pursuant to the exercise of a Capacity Expansion Option by the holder is to be treated as part of the Covered Pipeline.
- 7.3. If the Operator proposes to extend, expand or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option that was originally entered into before 1 July 2016:
 - (a) ...
 - (b) ...

Required Amendment 40

Clauses 7.2 and 7.3 of the amended access arrangement, relating to the requirements for extensions and expansions, must be amended to read as specified in this Final Decision (refer paragraph 1895).

Trigger Events

Regulatory Requirements

1896. Rule 51 of the NGR contains provisions for “trigger events”, which allow the review submission date that is fixed in an approved access arrangement to be brought forward. The rule indicates that a trigger event may consist of any significant circumstance or conjunction of circumstances, such as, for example:⁵¹⁴

- a re-direction of the flow of natural gas through the pipeline;
- a competing source of natural gas becomes available to customers served by the pipeline; or
- a significant extension, expansion or interconnection occurs.

1897. The particular provisions of rule 51 are as follows.

51. Acceleration of review submission date
 - (1) The review submission date fixed in an access arrangement advances to an earlier date if:
 - (a) the access arrangement provides for acceleration of the review submission date on the occurrence of a trigger event; and
 - (b) the trigger event occurs; and
 - (c) the review submission date determined, in accordance with the access arrangement, by reference to the trigger event, is earlier than the fixed date.
 - (2) A trigger event may consist of any significant circumstance or conjunction of circumstances.
 - (3) The [ERA] may insist on the inclusion in an access arrangement of trigger events and may specify the nature of the trigger events to be included.

1898. The Authority has full discretion in relation to trigger events.⁵¹⁵

DBP’s Original Proposal

1899. Per the current access arrangement, DBP’s proposed revised access arrangement did not include any trigger events that are to apply during the fourth access arrangement period (AA4).⁵¹⁶

⁵¹⁴ Refer to rule 52(2) of the NGR.

⁵¹⁵ Refer to rule 40(3) of the NGR.

⁵¹⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement, Access Arrangement Proposal – Supporting Submission 1*, 31 December 2014, p. 5.

Submissions

1900. No submissions were made to the Authority addressing the provisions for trigger events.

Draft Decision

1901. Consistent with the current access arrangement, no trigger events were specified in DBP's proposed revisions.

1902. In approving this aspect of the current access arrangement (i.e. no trigger events to be contained in the access arrangement), the Authority gave consideration to DBP's forecast capital and operating expenditures and the contracted capacity of the pipeline.⁵¹⁷

The Authority has scrutinised the figures in the proposed revisions in relation to forecast capital and operating expenditure, and forecast demand, and is satisfied they are consistent with the NGR. As such, the forecasts should not vary substantially from actual expenditure. Therefore, a trigger mechanism to enable adjustment of the reference tariff in the next access arrangement should not be necessary.

Also, as the pipeline is currently fully contracted and is likely to remain so until the existing shipper contracts expire, the Authority is of the view that a trigger event is not necessary as the provisions of the access arrangement are unlikely to be utilised until sometime after 2016. However, if the Authority was to be presented with evidence that pipeline capacity will become available during 2011 - 2015 then it would consider imposing a trigger mechanism in the proposed revised access arrangement. The Authority is of the view that it is likely a trigger event will be necessary for the next access arrangement period.

1903. The Authority was of the understanding that some spare (uncontracted) pipeline capacity became available subsequent to the last access arrangement review, following the renegotiation of existing Standard Shipper Contracts (**SSCs**) in August 2014, with the renegotiated contracts having contract terms until 2025 and beyond. The Authority was therefore of the view that a trigger event was unnecessary for the forthcoming (fourth) access arrangement period for the following reasons:

- The Authority gave detailed consideration to DBP's forecast capital and operating expenditures for the fourth access arrangement (AA4) period elsewhere in the Draft Decision.⁵¹⁸ Similarly, detailed consideration of DBP's demand forecasts for the AA4 period were discussed elsewhere in the Draft Decision.⁵¹⁹ Consistent with the Authority's determination on these matters, the Authority was satisfied that the respective forecasts were reasonable. A trigger mechanism to adjust the reference tariff during the fourth access arrangement should therefore not be necessary.
- The Authority was not aware of any current access arrangements applying to gas transmission pipelines within Australia that have specified trigger events. The Authority noted that the only open access arrangement, under review by

⁵¹⁷ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 14 March 2011 (reprinted 5 May 2011), paragraph 1655 and 1656, p. 379.

⁵¹⁸ Refer paragraph 316 and following.

⁵¹⁹ Refer paragraph 233 and following.

the AER at the time, applying to the Amadeus Gas Pipeline (**AGP**) in the Northern Territory could be required to specify a trigger event in relation to the interconnection of another pipeline (i.e. the North Eastern Gas Interconnector) with the AGP.⁵²⁰ Consistent with the example provided in rule 51(2) of the NGR,⁵²¹ the Authority considered that the interconnection of another pipeline would constitute a trigger event and in such circumstances the Authority would require a trigger event to be included in an access arrangement. Given that the interconnection of another pipeline with the DBNGP is unlikely (and the other examples specified in rule 51(2) are unlikely to occur) the Authority was of the view that trigger events should not be necessary for the access arrangement applying to the DBNGP.

1904. Taking the above matters into consideration, the Authority accepted DBP's proposal to not include any trigger events in the access arrangement for the fourth access arrangement (AA4) period.

DBP's Amended Proposal

1905. Consistent with DBP's original proposal, DBP's amended proposal does not include any trigger events that are to apply during the fourth access arrangement period (AA4).

Further Submissions

1906. No further submissions were made to the Authority that address trigger events.

Considerations of the Authority

1907. The Authority maintains the determination made in its Draft Decision accepting DBP's proposal not to include any trigger events in the access arrangement for the fourth access arrangement (AA4) period.

⁵²⁰ Australian Energy Regulator, *Draft Decision Amadeus Gas Pipeline Access Arrangement 2016 to 2021 Attachment 12 – "Non-tariff components"*, November 2015, p. 27.

⁵²¹ The examples provided in rule 51(2) include: (1) A re-direction of the flow of natural gas through the pipeline, (2) A competing source of natural gas becomes available to customers served by the pipeline, and (3) A significant extension, expansion or interconnection occurs.

Review, Commencement and Expiry Dates

Regulatory Requirements

1908. Rules 49 and 50 of the NGR detail the requirements relating to the submission, commencement and expiry dates of an access arrangement.

49. Review submission, revision commencement and expiry dates
 - (1) A full access arrangement (other than a voluntary access arrangement):
 - (a) must contain a review submission date and a revision commencement date; and
 - (b) must not contain an expiry date.
 - (2) An access arrangement to which this subrule applies:
 - (a) may contain a review submission date or both a review submission date and an expiry date; and
 - (b) must, if it contains a review submission date, contain a revision commencement date; and
 - (c) must, if it contains no review submission date, contain an expiry date.
 - (3) Subrule (2) applies to:
 - (a) a full access arrangement that is a voluntary access arrangement; and
 - (b) a limited access arrangement for a light regulation pipeline.

50. Review of access arrangements
 - (1) As a general rule:
 - (a) a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and
 - (b) a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.
 - (2) If a service provider, as part of an access arrangement proposal, proposes to fix a review submission date and a revision commencement date in accordance with the general rule, the [ERA] must accept that part of the proposal.
 - (3) The [ERA] has no discretion under subrule (2).
 - (4) The [ERA] may, however, approve dates that do not conform with the general rule if satisfied that they are consistent with the national gas objective and the revenue and pricing principles.

DBP's Original Proposal

1909. Clause 14 of the proposed revised access arrangement specifies the review (submission) and commencement dates that are to apply to the access arrangement. DBP proposed the following:

- the revised access arrangement is to commence on the later of 1 January 2016, or the date specified by the Authority when making its Final Decision on the proposed revised access arrangement;
- the review submission date is four years after commencement of the revised access arrangement; and
- the revision commencement date for the next access arrangement is the later of five years after the commencement of the revised access arrangement, or the date the Authority specifies when making its Final Decision on the proposed revised access arrangement.

Submissions

1910. WESCEF noted DBP's proposal to increase the period of time between access arrangement proposal reviews from three to four years, and considered the change to be unjustified. WESCEF submitted that the increased period (of four years) between access arrangement proposal reviews would not allow interested parties sufficient time to review and evaluate the proposal.⁵²² WESCEF also indicated that based on past experience, the review process could take considerably longer than 12 months to complete.

Draft Decision

1911. The Authority noted the comments provided by WESCEF on DBP's proposal to increase the review submission date, from three to four years after the commencement of the revised access arrangement. Whilst the Authority acknowledged that the timing and duration of an access arrangement review could extend beyond a 12 month period, the Authority considered that there were adequate consultation provisions within the NGR to allow for interested parties to review, evaluate and make submissions during an access arrangement review.

1912. Authority also noted that it has no discretion in relation to the review submission date, if the service provider proposes to fix the date in accordance with rule 50(1) of the NGR.⁵²³

1913. The Authority acknowledged that in this case, setting a review submission date of four years after the commencement of the revised access arrangement for the fourth access arrangement period (AA4) would likely result in a submission date less than 12 months prior to the date the next access arrangement period (i.e. AA5) would normally be expected to start. The Authority also noted the potential for the next access arrangement review to be undertaken by the AER.⁵²⁴

1914. Although DBP's proposed clause 14 is consistent with the requirements of rule 49 and rule 50 of the NGR, the Authority considered that DBP should revise clause 14 to ensure that there is sufficient time for the next (fifth) access arrangement review. The Authority required the following amendment:

⁵²² Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 2 June 2015, p. 5.

⁵²³ Refer to rule 50(3) of the NGR.

⁵²⁴ Following the transfer of regulatory functions from the Economic Regulation Authority to the Australian Energy Regulator.

Required Amendment 74

Clause 14 of the proposed revised access arrangement, relating to revision and commencement dates for the access arrangement, should be revised to ensure there is sufficient time for the next (fifth) access arrangement review.

DBP's Amended Proposal

1915. In response to the Authority's Draft Decision, DBP advised that it accepted (Draft Decision) Required Amendment 74.⁵²⁵ Subsequent to this response, and in reply to a request from the Authority to clarify this position, DBP advised that the acceptance was in error and should have been a rejection of the required amendment. DBP provided the following information in support of its position.⁵²⁶

- 2.5 Clause 14 of the proposed revised access arrangement provides that:
- (a) The commencement date for the Current Access Arrangement Period (AA4) is the later of 1 January 2016 and the date that the ERA stipulates after either approving AA4 as submitted by DBP or providing a Final Decision (effectively restating NGR 62 and 64);
 - (b) The review submission date for the Current Access Arrangement is 4 years after the commencement date for AA4;
 - (c) The revision commencement date for AA5 is the later of 5 years after the commencement of AA4 and the date the ERA stipulates after either approving the revision or making a Final Decision to approve an AA revision proposal (again in accordance with NGR 62 and 64).
- 2.6 At page 239 of the Draft Decision for AA4, the ERA acknowledges that the timing proposed by DBP complies with the requirements of the NGL however noted that it is now likely that setting a review submission date of four years after the commencement of the revised access arrangement for AA4 will result in a date less than 12 months prior to when AA5 would normally be expected to start. Accordingly the ERA considered that DBP should revise clause 14 to ensure that there is sufficient time for the fifth access arrangement review.
- 2.7 DBP submits that its proposed timing allows ample time for the regulator to assess the proposed revisions for AA5 for the following reasons:
- (a) DBP hasn't increased the review submission date from 3 to 4 years after the commencement of the revised AA. The changes have been made simply to reflect the time it took the ERA to complete its assessment of AA3.
 - (b) WA pipelines are moving to being regulated by the AER. The AER sets (and from DBP's observation, generally adheres to) a timetable in the NGL and NGR for assessing an AA proposal. The timetable proposed by DBP for the revision submission date and revision commencement date accommodates the timetable set by the AER for other pipelines (for example the Amadeus Pipeline);
 - (c) It is not the case that clause 14 as drafted will result in the revision submission date being less than 12 months prior to the date that

⁵²⁵ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50*, 22 February 2016, Table 3, p. 9.

⁵²⁶ DBNGP (WA) Transmission Pty Ltd, *Proposed Revisions DBNGP Access Arrangement – Response to ERA12-FD to ERA17-FD – Supporting Submission 63*, 22 March 2016, pp. 4-5, paragraphs 2.2 to 2.8.

AA5 is expected to start. The way clause 14 is drafted provides that there will be at least 12 months for review of proposed AA5.

- (d) It is in the interests of all parties for the approvals process to stick as closely as possible to the 12 month period and the rules set out in the NGR. The law envisages that the process should only take 6 months – DBP has allowed 12 months to take into account the time frames experienced over the past access arrangement processes.
- (e) The responsibility for assessing the AA5 is likely to transfer to the AER. Under the access arrangements of transmission pipelines regulated by the AER, 12 months is allowed for an assessment of the access arrangement before the revision commencement date. DBP has allowed the same period; and
- (f) Requiring a longer period risks DBP having to submit information for AA5 which is not a “best estimate arrived at on a reasonable basis”. This is particularly the case when DBP relies upon information from a business plan that is set two years before the proposed AA commencement date.

2.8 For these reasons, DBP elected not to revise clause 14 of the proposed access arrangement as suggested by Required Amendment #74.

Further Submissions

1916. In its submission on the Authority’s Draft Decision, WESCEF submits the following.⁵²⁷

WesCEF notes that DBP has left the date for submission of a revised Access Arrangement at 4 years rather than 3 years (as per the current position) after the commencement of the current Access Arrangement. This is likely to mean that the tariff payable on 1 January 2021 will be the tariff under this 2016 to 2021 Access Arrangement, rather than under the 2021 to 2026 Access Arrangement, which WesCEF is concerned may adversely impact a number of existing shippers. The fact that even with the process commencing 3 years after the commencement of the current Access Arrangement, the 2016 to 2021 Access Arrangement is still not finalised by the end of March 2016 provides support for an earlier, rather than later, date for submission of a revised Access Arrangement. If the date is changed, WesCEF submits that it should be brought forward to provide a real prospect of a final Access Arrangement being in place by the commencement of the relevant Access Arrangement Period.

1917. In its submission on the Authority’s Draft Decision, BHP Billiton submits the following.⁵²⁸

DBP’s proposed use of a “later of” mechanism for determining the revision commencement date for the next access arrangement is not consistent with the NGR.

The AER has previously rejected the use of the “later of” mechanism when determining the revision commencement date, instead proposing that the revision commencement date be a fixed and specified date. In addition, in the Envestra (Victoria) Final Decision, the AER relevantly observed:

The NGR ... refers to a date. It doesn't refer to processes or mechanisms to determine dates. A revision commencement date must be a specific time, that is, a fixed, singular date.

⁵²⁷ Wesfarmers Chemicals, Energy & Fertilisers, *Further submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2016-2020)*, 22 March 2016, p. 4, paragraph 14.

⁵²⁸ BHP Billiton, *Public Submission in Response to the revised access arrangement submitted by DBNGP (WA) Transmission Pty Ltd*, 18 April 2016, pp. 6-7.

The definition of "revision commencement date" in the NGR refers to a "date fixed" as "the date" on which revisions to an access arrangement are intended to take effect. BHP Billiton submits that this language requires the revision commencement date to be a fixed and specified date. Furthermore, if a "later of" mechanism is approved it will have the effect of rendering rule 92(3) potentially inoperable.

While the Authority appears to have interpreted the revision commencement date in the current access arrangement to be 1 January 2016 for the purposes of Rule 92(3) (which BHPB supports), BHP Billiton submits that this should be hard-coded to avoid ambiguity in the next access arrangement review process.

In light of the above, BHP Billiton submits that the revision commencement date for the next access arrangement in the Revised Proposed Access Arrangement should be a fixed and specified date (i.e. 1 January 2021).

Considerations of the Authority

1918. The Authority has given consideration to DBP's amended proposal (which is to maintain its original proposal for its access arrangement revision and commencement dates) and to the further submissions from WESCEF and BHP Billiton.

1919. In light of this new material, the Authority has reviewed and reconsidered its position with respect to proposed clause 14, and considers that the proper construction of rule 50(1) of the NGR requires a fixed date to be specified for the revision commencement date and the review submission date.

1920. The phrase "revision commencement date" is not itself defined in the NGR.⁵²⁹ However, "revision commencement date for an applicable access arrangement" is defined as *"the date **fixed** in the access arrangement as the date on which revisions resulting from a review of the access arrangement are **intended** to take effect"* (**emphasis** added).⁵³⁰ The Authority is of the view that rule 50(2) of the NGR supports this interpretation. Rule 50(2) provides – *"[i]f a service provider, as a part of an access arrangement proposal, proposes to **fix** a review submission date and a revision commencement date in accordance with the general rule..."* (**emphasis** added). The reference to "fix" indicates that the date (revision submission or revision commencement) is to be specified.

1921. That the (review submission or revision commencement) date may change does not, in the Authority's view, change this interpretation. In the Authority's view, the word "intended" in the definition of "revision commencement date" suggests that the fixed (or specified) date can change – it is the date that the revisions are intended to take place, but not necessarily the date on which the revisions *will* take place. Rules 62(6) and 64(6) of the NGR are directed to this. In particular, the note to rule 62(6) of the NGR (which sets out the date when an approved access arrangement takes place) states that *"[i]n the case of an access arrangement revision proposal, **this date may, but will not necessarily be the revision commencement date fixed in the access arrangement"*** (**emphasis** added). Furthermore, the note to the definition of "access arrangement period" provides (**emphasis** added):

⁵²⁹ See also *Application by APA GasNet Australia (Operations) Pty Limited (No 2)* [2013] ACompT 8, [82].

⁵³⁰ NGR, rule 3.

Note:

One should bear in mind that the actual date on which a revision takes effect may differ from a revision commencement date stated in the access arrangement (which is a date ***fixed some time in advance as the intended date for the revision to take effect***). The revision commencement date is relevant to the definition of the access arrangement period ***only until*** the revision actually takes effect and the date thus crystallises.

1922. Finally, the Authority observes that this construction is supported by the following.

- The comments of the Australian Competition Tribunal in *Application by APA GasNet Australia (Operations) Pty Limited (No 2)* [2013] ACompT 8, that:
 assuming that "revision commencement date" is a fixed future date would be consistent with the general purpose of rule 92(2) and would give appropriate scope for rule 92(3) to operate. It would facilitate the regulatory task of the regulator if the previous access arrangement period does not have an uncertain duration; and⁵³¹
 there is not an insignificant difference between the definition of "revision commencement date for an applicable access arrangement" and the definition of "revisions commencement date" in clause 3.17 of the former Gas Code, where there was no use of the words "date fixed", but the more general expression of "a date upon which".⁵³²
- Recent AER Final Decisions⁵³³ which adopt the reasoning noted by BHP Billiton in its submissions on the proper construction of the phrase "revision commencement date".
- Recent AER Draft Decisions⁵³⁴ in which the AER determined that the revision commencement date (and the review submission date) should be a specified date.

1923. As to WESCEF's submission that the date should be brought forward to provide a real prospect of a final access arrangement being in place by the commencement of the relevant access arrangement period, the Authority considers that the four year period proposed by DBP is compliant with rule 50(1) of the NGR because, by the definition of "review submission date", it is a date on or before which an access arrangement revision proposal is required to be submitted – the revision proposal can be submitted before the four year period.

1924. As to WESCEF's submission that the change of the review submissions date from three years to four years is *"likely to mean that the tariff payable on 1 January 2021 will be the tariff under this 2016 to 2021 Access Arrangement, rather than under the 2021 to 2026 Access Arrangement, which WESCEF is concerned may adversely*

⁵³¹ APA *GasNet Australia (Operations) Pty Limited (No 2)* [2013] ACompT 8, [82].

⁵³² APA *GasNet Australia (Operations) Pty Limited (No 2)* [2013] ACompT 8, [83].

⁵³³ See, for example: AER, *Access arrangement Final Decision APA GasNet Australia (Operations) Pty Ltd 2013-17*, March 2013; AER, *Access arrangement Final Decision Envestra Ltd 2013-17*, March 2013.

In the AER's Final Decision on the Jemena Gas Networks (NSW) Ltd Access Arrangement 2015-2020, the AER noted that Jemena had accepted the AER's Draft Decision required amendment to the revision submission date (to remove the expression "or such later date as provided for by the AER pursuant to the NGR") because it did not fall within what the AER was permitted to approve under rule 50 of the NGR.

⁵³⁴ See, for example: AER, *Draft Decision Amadeus Gas Pipeline Access Arrangement 2016 to 2021*, November 2015; AER, *Draft Decision Australian Gas Networks Access Arrangement 2016 to 2021*, November 2015; AER, *Draft Decision ActewAGL Distribution Access Arrangement 2016 to 2021*, November 2015.

impact a number of existing shippers", the Authority considers that this situation is contemplated and accommodated by rule 92(3) of the NGR – the "interval of delay" provision.⁵³⁵

1925. For the reasons set out above, the Authority requires clause 14 of the amended access arrangement to be changed to specify the "commencement date" for the current access arrangement period, the "review submission date" for the current access arrangement and the "revision commencement date" for the next access arrangement as follows:

- 14.1 The Current Access Arrangement Period commences on 1 July 2016, the later of:
- (a) ~~1 January 2016;~~
 - (b) ~~the date the ERA stipulates in a Final Decision to approve an Access Arrangement Revision Proposal as to which the dates have effect or if no date is so fixed, 10 Business Days after the Final Decision as under NGR 62; and~~
 - (c) ~~if the ERA decides, under NGR 64, to refuse approval of an Access Arrangement Revision Proposal, the date on which the ERA makes a Final Decision under NGR 64 that stipulates the date the revisions are to have effect or if no date is fixed, 10 Business Days.~~
- 14.2 The review submission date for the Current Access Arrangement is 1 January 2020, ~~4 years after the commencement of the Current Access Arrangement under clause 14.1.~~
- 14.3 The revision commencement date for the Next Access Arrangement is 1 January 2021, the later of:
- (a) ~~the date that is 5 years after the commencement of the Current Access Arrangement Period;~~
 - (b) ~~the date the ERA stipulates in a Final Decision to approve an Access Arrangement Revision Proposal as to which the dates have effect or if no date is so fixed, 10 Business Days after the Final Decision as under NGR 62 ; and~~
 - (c) ~~if the ERA decides, under NGR 64, to refuse approval of an Access Arrangement Revision Proposal, the date on which the ERA makes a Final Decision under NGR 64 that stipulates the date the revisions are to have effect or if no date is fixed, 10 Business Days.~~

1926. The Authority considers that its requirements (above) for the review submission date for the current access arrangement and revision commencement date for the next access arrangement to be specified as 1 January 2020 and 1 January 2021, respectively, are consistent with the general rule (NGR 50(1)) in that:

- the review submission date (i.e. 1 January 2020) will fall four years after the last revision commencement date; and
- the revision commencement date (i.e. 1 January 2021) will fall five years after the last revision commencement date,

based on 1 January 2016 being the (fixed) date for the last revision commencement date in the access arrangement for the third access arrangement (AA3) period.

⁵³⁵ Rule 92(3) of the NGR provides that reference tariffs as in force at the end of the previous access arrangement period continue without variation for the interval of delay, but the operation of rule 92(3) may be taken into account in fixing reference tariffs for the new access arrangement period.

Required Amendment 41

Clause 14 of the amended access arrangement must be amended to specify the “commencement date” for the current access arrangement period, the “review submission date” for the current access arrangement and the “revision commencement date” for the next access arrangement as specified in this Final Decision (at paragraph 1925).

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Appendix 1 Summary of Required Amendments

Required Amendment 1

The reference to “I1-01” in clause 3.4(d) of the amended access arrangement must be deleted and replaced with the words “*the inlet point*”.

The value of the T1 Tariff, P1 Tariff and B1 Tariff specified in clauses 3.3(c), 3.4(c) and 3.5(c) of the amended access arrangement must be changed to reflect the values set out in Table 86 in this Final Decision.

Required Amendment 2

The term “Full Haul service” as specified in clause 1 (Definitions) of the amended access arrangement (and associated terms and conditions) must be amended to read:

Full Haul service means a Forward Haul pipeline service on the DBNGP where the Inlet Point is upstream of mainline valve 31 (MLV31) on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP.

Back Haul service means a pipeline service to provide Back Haul on the DBNGP.

Part Haul service means a pipeline service to provide Forward Haul on the DBNGP which...

Required Amendment 3

The term “Part Haul service” as specified in clause 1 (Definitions) of the amended access arrangement (and associated terms and conditions) must be amended to read:

- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

Required Amendment 4

The Authority has determined the values for total revenue to be the values in Table 7 and Table 8 of this Final Decision.

The Access Arrangement must also be amended to remove the proposed revisions in relation to over depreciation to be consistent with this Final Decision.

Required Amendment 5

The Authority has determined the actual and forecast inflation assumptions to be the values in Table 15 (Authority Actual Inflation for AA3) and Table 16 (Authority Forecast Inflation for AA4) of this Final Decision.

Required Amendment 6

The Authority has determined:

- The capacity forecast must include capacity related to the SPAC consistent with the volumes used in the throughput forecast.
- The distance factors for Alcoa and Alinta’s full haul capacity and throughput volumes must be based on the full length of the pipeline.

Required Amendment 7

The Authority has determined that Figure 1 of the Access Arrangement Information document must be updated to include AA3 actuals and AA4 forecasts for the KPI.

Required Amendment 8

The Authority has determined operating expenditure for the fourth access arrangement period to be the values set out in Table 44 of this Final Decision.

Required Amendment 9

The Authority has determined the opening capital base for 1 January 2016 to be the values set out in Table 52 of this Final Decision.

Required Amendment 10

The Authority has determined the conforming capital expenditure for the 2016 to 2020 access arrangement period to be the values set out in Table 60 of this Final Decision.

Required Amendment 11

The Authority has determined the projected capital base in the fourth access arrangement period to be the values set out in Table 61 of this Final Decision.

Required Amendment 12

The Authority has determined forecast depreciation for the AA4 period to be the values set out in Table 69 and Table 70 of this Final Decision.

Required Amendment 13

The Authority determines that the rate of return be consistent with the estimates set out in Table 71 of this Final Decision. The nominal post tax rate of return for 2016 is 5.83 per cent.

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

DBP must nominate the averaging period for each annual update applying in 2017, 2018, 2019 and 2020 within 10 business days of the release of this Final Decision. The nominated 20 Sydney trading day averaging period for each of the four years do not need to be identical periods, only that they occur in the period 1 June to 31 October in each relevant year, and are nominated prior. The nominated averaging periods will remain confidential.

For each annual update for 2017, 2018 and 2019, the Authority will estimate the updated rate of return following the relevant annual averaging period and then notify DBP of the outcomes as soon as practicable, within 10 days. Following that notice, DBP is required to respond on any issues as soon as practicable, within 10 days, in order to allow the updated estimate to be finalised prior to submission by DBP of its proposed annual tariff variation within the required timeframe.

Required Amendment 14

The Authority has determined a gamma of 0.4.

Required Amendment 15

The Authority has determined taxation costs to be the values set out in Table 81 of this Final Decision.

Required Amendment 16

The Authority has determined the reference tariffs (in \$2015 prices) to be as set out in Table 85 of this Final Decision. The nominal tariffs which will apply on 1 July 2016 are as set out in Table 86 of this Final Decision.

Required Amendment 17

The Authority has determined that CPI Formula Variation must be amended to reflect retaining a price cap.

Required Amendment 18

Clauses 11.4 (tax change variation mechanism) and 11.5 (new cost pass-through variation mechanism) of the amended access arrangement must be amended as previously specified in Draft Decision Required Amendments 21 and 22 respectively.

Draft Decision Required Amendments 21 and 22 must be further amended to include DBP's proposed additional amendments put forward in its amended proposal that, unless otherwise specified, are accepted.

Required Amendment 19

The Authority has determined that the existing (AA3) price cap price control mechanism is to be retained in the amended access arrangement for the next (AA4) access arrangement period.

Required Amendment 20

The Authority has determined that the annual update of the trailing average debt risk premium must be calculated in a manner consistent with the automatic formulas set out in Appendix 4 (*"Automatic updating formulas for return on debt"*) of this Final Decision and that the process for varying the tariffs each year must be as set out in paragraph 1319 of this Final Decision.

Required Amendment 21

The Authority requires DBP to delete clauses 13.1(c), 13.1(d) and the term "Hybrid Approach" in clause 15 (Definitions) from the amended access arrangement.

Required Amendment 22

The term "part haul", under clause 1 of the amended terms and conditions, must retain the same meaning as specified in clause 1 of the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period. That is:

Part Haul service means a pipeline service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation:

- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

Required Amendment 23

Clause 4.8 of the amended terms and conditions, relating to put and call options, must be amended to read as specified in this Final Decision (refer paragraph 1446).

Required Amendment 24

Clause 5.3(g) of the amended terms and conditions, relating to the circumstances where the operator may refuse to receive gas, must be amended to read as specified in paragraph 1470 of this Final Decision.

Additionally, the term “MHQ” in clause 1 of the amended terms and conditions must also be amended to read as specified in paragraph 1470 of this Final Decision.

Required Amendment 25

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

Required Amendment 26

Clause 6.5(d)(ii) of the amended terms and conditions, relating to the allocation of gas at outlet points, must be amended to read as follows:

(ii) second, Gas available for any available Capacity Services (other than T1 Service) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a); and

Required Amendment 27

Clause 9.5 of the amended terms and conditions, relating to the accumulated imbalance limit, must be amended to read as specified in paragraph 1594 of this Final Decision.

Required Amendment 28

Clause 10.3 of the amended terms and conditions, relating to the consequences of exceeding an hourly peaking limit, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 29

Clause 11.2(a) of the amended terms and conditions, relating to the issuing of an unavailability notice, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 30

Clause 17.4 of the amended terms and conditions, relating to the refund of the capacity reservation charge, must remain as currently drafted in the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period.

Required Amendment 31

Clause 26 of the current terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to the general right of relinquishment, must not be deleted from the amended terms and conditions.

Required Amendment 32

Clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to non-discrimination, must not be deleted from the amended terms and conditions.

Required Amendment 33

Clause 22.3(b) of the amended terms and conditions for the P1 Service, relating to the number of working days in which a fault is to be remedied, must be amended to read as specified in paragraph 1742 of this Final Decision.

Required Amendment 34

Clause 22.3(b) of the amended terms and conditions for the T1 Service and B1 Service, relating to the number of working days in which a fault is to be remedied, must be

amended to be consistent with clause 22.3(b) of the amended terms and conditions applying to the P1 Service.

Required Amendment 35

Clause 14.7(c) of the amended terms and conditions for the P1 Service, relating to charges for relocation, must be amended to read as specified in paragraph 1749 of this Final Decision.

Required Amendment 36

Clause 17.7(b)(i) of the existing terms and conditions applying to the access arrangement for the third access arrangement (AA3) period, relating to the content of an initial notice, must not be deleted from the amended terms and conditions.

Required Amendment 37

The term “Pre-existing Contractual Right” at clause 15 (Definitions) of the amended access arrangement must be amended to read as follows:

Pre-existing Contractual Right means a “relevant protected contractual right” as referred to and defined in section 321 of the NGL.

Required Amendment 38

Clause 27.10 of the amended terms and conditions, relating to administrative expenses from the trading or transferring of contracted capacity, must be amended as follows:

The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably determined) by reason of the Request for Approval and any Resumption, provided that the Operator can demonstrate that the costs have been reasonably and properly incurred.

Required Amendment 39

Clause 7.3 of the amended access arrangement, relating to the requirements for extensions and expansions, must be amended to read as specified in this Final Decision (refer paragraph 1877).

Consistent with the required amendment to the drafting of clause 7.3, all references to the term “enhancement” must be removed from clauses 7.4, 7.5 and 7.10 of the amended access arrangement, as specified in this Final Decision (refer paragraph 1877).

Required Amendment 40

Clauses 7.2 and 7.3 of the amended access arrangement, relating to the requirements for extensions and expansions, must be amended to read as specified in this Final Decision (refer paragraph 1895).

Required Amendment 41

Clause 14 of the amended access arrangement must be amended to specify the “commencement date” for the current access arrangement period, the “review submission date” for the current access arrangement and the “revision commencement date” for the next access arrangement as specified in this Final Decision (at paragraph 1925).

Appendix 2 Abbreviations

AA3	third access arrangement period (2011 to 2015)
AA4	fourth access arrangement period (2016 to 2020)
AAI	Access Arrangement Information
ABS	Australian Bureau of Statistics
ACQ	Annual Contract Quantity
AER	Australian Energy Regulator
ALARP	As low as reasonably possible
AR	Annual revenue
ATO	Australian Tax Office
AWE	Average Weekly Earnings
BEP	Burrup Extension Pipeline
CCA	Current Cost Accounting
CPI	Consumer Price Index
CS9	Compressor station 9
CT	Capacity Tariff
DBNGP	Dampier to Bunbury Natural Gas Pipeline
DBP	DBNGP (WA) Transmission Pty Ltd
EGWWS	Electricity, Gas, Water and Waste Sector
EMCA	Energy Market Consulting associates
ERA	Economic Regulation Authority
FEED	Front End Engineering Design
GEA	Gas Engine Alternator
GSOO	Gas Statement of Opportunities
HHV	Higher Heating Value
HSE	Health, safety and environment
IMO	Independent Market Operator
ICT	Information Communication Technology
IRS	Interest rate swaps
ITR	Initial Total revenue
IT	Information Technology
KPI	Key Performance Indicator
MAOP	Maximum allowable operating pressure
MLV31	Main line valve 31
MGSF	Mondarra Gas Storage Facility
MHQ	Maximum Hourly Quantity
MRP	Market Risk Premium
MSA	Multi-shipper agreement

NGA	National Gas Access (WA) Act 2009
NGL	National Gas Law
NGL(WA)	Western Australian National Gas Law
NGR	National Gas Rules
NGO	National Gas Objective
OEM	Original equipment manufacturer
PPE	Personal Protective Equipment
PTRM	Post-tax revenue model
RAB	Regulatory Asset Base
RER	Regulated earned revenues
RPP	Revenue and Pricing Principles
SECWA	State Energy Commission of Western Australia
SSC	Standard Shipper Contract
SUG	System Use Gas
SWIS	South West Interconnected System
T1 SERVICE	Full haul service
T2 SERVICE	Part haul service
T3 SERVICE	Back haul service
TAB	Tax Asset Base
TJ	Terra Joule
TT	Throughput Tariff
PL	Pipeline License
WACC	Weighted Average Cost of Capital
WPI	Wage Price Index

Appendix 3 DBP Submissions

DBP's Amended Proposal Submissions

The following submissions were made by DBNGP (WA) Transmission Pty Ltd (**DBP**) as part of its amended revised access arrangement proposal (DBP's "amended proposal"). These submissions are available on the Authority's website.

DBNGP (WA) Transmission Pty Ltd, <i>DBNGP Access Arrangement – Amended Access Arrangement Revision Proposal</i> , 22 February 2016.
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50</i> , 22 February 2016
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Access Arrangement Document</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 1 “Description of the DBNGP System as at 1 January 2016”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 2 “T1 Reference Service Terms and Conditions”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 3 “P1 Reference Service Terms and Conditions”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix A – Attachment 4 “B1 Reference Service Terms and Conditions”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix B – Access Arrangement Information</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix C – Access Arrangement Document (mark-up against original AA proposal)</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix D – Access Arrangement Information (mark-up against original AAI proposal)</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix E – Access Arrangement Document (mark-up against current AAI)</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix F – Access Arrangement Information (mark-up against current AAI)</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix G – Access Arrangement Tariff Model (Public)</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Amended Access Arrangement Proposal – Supporting Submission 50, Appendix H – Confidentiality Table</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51</i> , 22 February 2016.

DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51, Appendix A “Gas Statement of Opportunities”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Pipeline Services – Supporting Submission 51, Appendix B “Confidentiality Table”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, 22 February 2016</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix A2 “Proposed T1 Service Terms and Conditions (marked-up against AA3 Terms and Conditions)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix A3 “Proposed T1 Service Terms and Conditions (marked-up against DBP AA4 Revised Access Arrangement)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix B2 “Proposed P1 Service Terms and Conditions (marked-up against AA3 Terms and Conditions)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix B3 “Proposed P1 Service Terms and Conditions (marked-up against DBP AA4 Revised Access Arrangement)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix C2 “Proposed B1 Service Terms and Conditions (marked-up against AA3 Terms and Conditions)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix C3 “Proposed B1 Service Terms and Conditions (marked-up against DBP AA4 Revised Access Arrangement)”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Proposed Terms and Conditions – Supporting Submission 52, Appendix D “Confidentiality Table”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Opening Capital Base – Supporting Submission 53, 2 March 2016</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Projected Capital Base – Supporting Submission 54, 18 March 2016</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Projected Capital Base – Supporting Submission 54, Appendix E “Confidentiality Table”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Supporting Submission 55 [Response to Forecast Operating Expenditure Amendments], 22 February 2016</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Forecast Operating Expenditure Amendments] – Supporting Submission 55, Appendix B “Confidentiality Table”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, 24 February 2016</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix B “Frontier Economics: Response to the ERA on estimation of the risk free rate”</i> .
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix C “Frontier Economics: Consistency between the return on equity and the return on debt”</i> .

DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix D “Frontier Economics: An appropriate regulatory estimate of gamma”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix E “DBP CAPEX weighting model”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix F “Competition Economists Group: Estimating beta to be used on the Sharpe-Linter CAPM”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix G “HoustonKemp: Evaluating Forecasts”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix H “HoustonKemp: The Black CAPM”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix I “ESQUANT Statistical Consulting: Review of ERA Cross-Validation Approach”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix J “ESQUANT Statistical Consulting: drpr package”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – [Response to Rate of Return Amendments] – Supporting Submission 56, Appendix K “Data Analysis Australia: Review of Statistical Aspects of Capital Asset Pricing Model.”</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57, 22 February 2016.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Draft Decision Other Tariff Amendments – Supporting Submission 57, Appendix H “Confidentiality Table”.</i>
DBNGP (WA) Transmission Pty Ltd, Proposed Revisions <i>DBNGP Access Arrangement – Response to Draft Decision Non-Tariff Amendments – Supporting Submission 58, 22 February 2016.</i>

DBP’s Original Proposal Submissions

The following submissions were made by DBNGP (WA) Transmission Pty Ltd (**DBP**) as part of its revised access arrangement proposal (DBP’s “original proposal”). These submissions are available on the Authority’s website.

DBNGP Access Arrangement – Access Arrangement Revision Proposal, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement, Access Arrangement Proposal – Supporting Submission 1, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 1 – Description of the Dampier to Bunbury Natural Gas Pipeline System as at 1 January 2013 (interim update August 2014).

Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 2 – T1 Reference Service Terms and Conditions “Full Haul T1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 3 – P1 Reference Service Terms and Conditions “Part Haul P1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document, Attachment 4 – B1 Reference Service Terms and Conditions “Back Haul B1 Contract Terms and Conditions”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Document – marked-up version, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Access Arrangement Information – marked-up version, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix A “FinMap-06-060 Budgeting”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix B “Stay in Business – Business Process, Project Priority Scoring, 21 July 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix C “DBNGP Asset Management System Framework TEB-001-002-01, 1 July 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix D “DBNGP Safety Case, Chapter 1: Introduction”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix H “Environment Plan Revision 5.2 Summary Document, November 2013”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Governance and cost controls – Supporting Submission 2, Appendix J “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3, 31 December 2014, pp. 6-8.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Reference Service – Supporting Submission 3, Appendix A “Submission 73: DBP Response to the ERA Final Decision on Proposed Revisions to the Access Arrangement for the DBNGP, 13 December 2011”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix A “T1 Reference Service Terms and Conditions – marked-up version”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix B “P1 Reference Service Terms and Conditions – marked-up version”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix C “B1 Reference Service Terms and Conditions – marked-up version”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Proposed Terms and Conditions – Supporting Submission 4, Appendix B “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016 –2020, Non-tariff related issues – Supporting Submission 5, 31December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, Appendix D “Ernst &Young Report on factual findings, 26 November 2014”.
Proposed Revisions DBNGP Access Arrangement 2016 –2020 Access, Cost allocation & verification of costs – Supporting Submission 6, Appendix D “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix B “Submission 52: Opening Capital Base, 20 May 2011”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix C1 “Financial Assistance Agreement – Part 1”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix C2 “Financial Assistance Agreement – Part 2”.
Proposed Revisions DBNGP Access Arrangement 2016 – 2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 3 “Kimber Consultants, Review of Gas Specification for the DBNGP & Determination of an Appropriate Gas Composition for Design of Stage 5 Expansion, 22 February 2006”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 4 “Capex proposal comparison”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 22 “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix A – Attachment 26 “Submission 9: Justification of Expansion Related Capital Expenditure, 14 April 2010”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Expansion) – Supporting Submission 7, Appendix D “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8 (Part 1), 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8 (Part 2), 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix A “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix B “Project Management Methodology (PMM) Overview”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 1 “Dampier-Perth Gas Pipeline Communications System Microwave System Upgrade Design Document, November 2006”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 2 “SCADA Functional Design Document – DBNGP SCADA Upgrade”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 3 “GAS Suite Functional Design Document – DBNGP SCADA Upgrade”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 4 “CS2, CS4 & CS7 Gas Turbine Air Inlet Filtration System FEED study and cost estimate report, 29 February 2008”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 5 “Business Case for GTW Works Management Project, 27 February 2007”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Actual capital expenditure 2011-15 (Stay in business) – Supporting Submission 8, Appendix D – Attachment 6 “DBP Non Expansion Capital Expenditure Approval Form – TX2 Office Fit Out”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, Appendix A “Project Management Methodology (PMM) Overview”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast capital expenditure – Supporting Submission 9, Appendix B “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Forecast Operating Expenditure – Supporting Submission 10, Appendix A “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, Appendix B “DBNGP Forecast Review, 20 October 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Throughput and Capacity Forecast – Supporting Submission 11, Appendix C “Confidentiality Table”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix A “Departures from and additions to Guidelines”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix B “The term of the allowed return Report for DBNGP Pty Ltd, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix C “CEG report ERA treatment of asset pricing models, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix D “Model Adequacy Test Background”.

Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix E “ESQUANT Statistical Consulting Report Estimating the Market Risk Premium, 24 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix F “NERA Economic Consulting report Robust Regression Techniques, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix G “CEG report Debt staggering of Australian Businesses, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix H “CEG report on new issue premium, 17 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix I “Report on The Concept of The Impact of a Policy on Economic Efficiency”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix J “Annual update model for return on debt”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix J “Annual update model for return on debt (excel workbook)”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix K “Debt instruments used”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix L “SFG Consulting Report The relationship between the required return on debt and equity, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix M “Impact of interest rates on product prices”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix N “Diebold Mariano tests”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Rate of Return – Supporting Submission 12, Appendix O “SFG Consulting Report Estimating gamma: Response to ATCO Gas Draft Decision Report for DBP NGP Pty Ltd, 23 December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Total Revenue – Supporting Submission 13, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, 31 December 2014.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix B “Regulated Tax Depreciation Calculation 1 January 2000 to 31 December 2020”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix C “KPMG Report Establishing opening tax inputs for a Post-tax WACC methodology, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix E “DBNGP AA Proposal Tariff Model”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix F “KPMG Report Peer review of the reference tariff model, December 2014”.
Proposed Revisions DBNGP Access Arrangement 2016-2020, Tariff model and tariff calculation – Supporting Submission 14, Appendix G “Confidentiality Table”.

Appendix 4 Rate of Return

This Appendix is published as a separate publication on the ERA's website.

Appendix 5 Gamma

This Appendix is published as a separate publication on the ERA's website.

Appendix 6 Tariff Model (Public)

This Appendix is published as a separate publication on the ERA's website.

Appendix 7 ERA Approved Access Arrangement

This Appendix is published as a separate publication on the ERA's website.

This Appendix contains the following documents:

- Appendix 7 *ERA Approved Access Arrangement (2016 – 2020)*
- Appendix 7a *ERA Approved Access Arrangement (2016 – 2020) – Attachment 1
“Description of the DBNGP System (as at 1 January 2016)”*
- Appendix 7b *ERA Approved Access Arrangement (2016 – 2020) – Attachment 2
“Terms and Conditions for the T1 Service”*
- Appendix 7c *ERA Approved Access Arrangement (2016 – 2020) – Attachment 3
“Terms and Conditions for the P1 Service”*
- Appendix 7d *ERA Approved Access Arrangement (2016 – 2020) – Attachment 4
“Terms and Conditions for the B1 Service”*

Appendix 8 ERA Approved Access Arrangement Information

This Appendix is published as a separate publication on the ERA's website.