

Final decision on proposed revisions to the Dampier to Bunbury Natural Gas Pipeline access arrangement 2021 to 2025

Submitted by DBNGP (WA) Transmission Pty Ltd

1 April 2021

Economic Regulation Authority

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Summary of required amendments

Required Amendment 1

Clause 14 of the revised proposed access arrangement must be amended to:

- Delete the amendments proposed by DBP in its revised proposal.
- Specify the commencement date of the Current Access Arrangement Period as 1 July 2021.
- Insert a new clause 14.2 to clarify that, unless the context requires otherwise, references to “Current Access Arrangement Period” include the interval of delay (that is, the period between 1 January 2021 and 30 June 2021).

The required amended drafting is set out at paragraph 93 of this final decision.

Required Amendment 2

Clause 3.1(b) of the revised proposed access arrangement must be amended to list the Seasonal Service, Metering and Temperature Service and Odourisation Service as non-reference ancillary services and, consistent with clause 3.2 of the revised access arrangement, descriptions of each of these services must be included in a new clause 3.8.

The required amendments to clause 3.1(b) and required drafting for new clause 3.8 is set out at paragraph 264 of this final decision.

Required Amendment 3

Clause 3.1(b) of the revised proposed access arrangement must be amended to specify and describe the Pilbara Service as a non-reference service (and not a rebateable non-reference service).

Consequential amendments must be made to:

- Clause 3.7 to delete and move clause 3.7(a), which provides a description of the service, to clause 3.6 so that the Pilbara Service is listed and described as a non-reference service.
- Clause 18.19 to delete the reference to the “Pilbara Service” being a rebateable non-reference service.

Required Amendment 4

Clause 3.1(b) of the revised proposed access arrangement must be amended to specify and describe the Spot Capacity Service as a rebateable non-reference service (and not a non-reference service).

Consequential amendments must be made to:

- Clause 3.6 to delete and move clauses 3.6(a) and 3.6(b), which provide a description of the service, to clause 3.7 so that the Spot Capacity Service is listed and described as a rebateable non-reference service.
- Clause 18.19 to add a reference to the “Spot Capacity Service” being a rebateable non-reference service.

Required Amendment 5

The access arrangement information must be updated to include information on the use of the pipeline over the previous access arrangement period (AA4) as shown in Table 19, Table 20, Table 21 and Table 22.

The demand forecasts for non-reference services that use the capacity of the pipeline must be amended as shown in Table 23 of this final decision.

The demand forecasts for reference services must be amended as shown in Table 27 of this final decision.

Required Amendment 6

The values for total revenue (nominal) must reflect the values set out in Table 31 of this Final Decision.

Required Amendment 7

The operating expenditure for AA5 must be amended to \$426.62 million (real as at 31 December 2019). The calculation of operating expenditure is set out in Table 45 of this Final Decision

Required Amendment 8

The opening capital base as at 1 January 2021 must be amended to \$3,331.50 million (real as at 31 December 2019). The calculation of the opening capital base is set out in Table 84 of this final decision.

Required Amendment 9

DBP must amend the projected capital base to reflect the values set out in Table 161 of this final decision so that the closing capital base as at 31 December 2025 will be \$3,050.34 million (nominal).

Required Amendment 10

The return on the capital base must reflect the weighted average cost of capital parameters in Table 165 of this final decision.

Required Amendment 11

The forecast depreciation of the capital base for AA5 must be amended to \$642.57 million (real as at 31 December 2019). The yearly values for each year of the access arrangement period are set out in Table 174 of this final decision.

Required Amendment 12

The estimated cost of corporate income tax must reflect the values in Table 186 of this final decision.

Required Amendment 13

Clause 15.11(c) must be deleted from the revised proposed access arrangement (and subsequent sub-clauses must be re-numbered accordingly).

Required Amendment 14

DBP must amend clause 15.11(e) of the revised proposed access agreement to read: "(e) any other operating expenditure amount that the ERA agrees or requires the Operator to exclude from the E Factor benchmark."

Required Amendment 15

Clause 15 of the proposed revised access arrangement must be amended to include the E Factor benchmarks for AA5 shown in Table 189 of the final decision.

Required Amendment 16

The allocation of total revenue between reference and non-reference services must reflect the values set out in Table 191 of this final decision.

Required Amendment 17

Clause 3.3, 3.4 and 3.5 of the revised proposed access arrangement must be amended to reflect the final decision tariffs for the full haul, part haul and back haul reference services in Table 201 of this final decision.

Required Amendment 18

The CPI formula in clause 18.8 of the proposed revised access arrangement must be amended as per the formula set out at paragraph 1916 of this final decision.

Required Amendment 19

Clause 11.2 of the revised proposed access arrangement must be amended to:

- Delete the words “save that where the model is inconsistent with part A5 of Annexure A that part prevails”.
- Reference the model developed by the ERA as the “Tariff Model” by adding the words “(***Tariff Model***)” after the words “... the model developed by the ERA, ...” (as set out in paragraph 1947 of this final decision).

Required Amendment 20

The following amendments must be made to the revised proposed access arrangement:

- The term “Rebateable Non-Reference Service” in clause 16 must be amended to refer to “Annexure A5” (instead of “Annexure A”).
- Clause 18.5 in Annexure A must be amended to refer to the rebateable non-reference services in clause 3.1, and capitalise the words “reference tariff”.

The required amended drafting is set out at paragraph 1952 of this final decision.

Required Amendment 21

The rebate mechanism, to rebate a portion of the revenue generated from the sale of rebateable services to reduce the reference tariff, in Annexure A5 of the proposed revised access arrangement must be amended as per the amendments set out at paragraph 1981 of this final decision.

Required Amendment 22

Clause 11.3 of the proposed revised access arrangement must be amended as per the amendments set out in paragraph 1988 of this final decision to clarify the administrative process to be followed for the annual scheduled variation of reference tariffs.

Required Amendment 23

Clause 13 of the revised proposed access arrangement must be amended as follows:

- Clause 13.1(c) must be amended to clarify that the rebate mechanism can apply across access arrangement periods to allow the rebateable non-reference service revenue earned in one access arrangement period to be fully rebated.
- A new clause 13.3 must be inserted to specify the fixed period for the fixed principle in clause 13.1(c), which is to be the earlier of 31 December 2027 and the date when the rebateable non-reference service revenue earned during AA5 has been fully rebated in accordance with the fixed principle.

The required amended drafting is set out at paragraph 2018 of this final decision.

Required Amendment 24

Clause 3.2(a) of the terms and conditions for the T1 Service, P1 Service and B1 Service must be amended to retain subclause (i), amended as follows:

“(i) can only be Curtailed in the circumstances ~~specified in clause 17.2~~ set out in this Contract;”

Required Amendment 25

Clause 3.5 of the terms and conditions for the B1 Service must be amended to further clarify the intent of the clause.

The required amended drafting is set out at paragraph 2507 of this final decision.

Required Amendment 26

Clause 4 of the terms and conditions for the T1 Service, P1 Service and B1 Service must be amended to provide for options to extend that are more than six months and less than one year.

The required amended drafting is set out at paragraph 2643 of this final decision.

Required Amendment 27

The queuing requirements in clauses 5.3(e)(iii) and 5.4(f) of the revised proposed access arrangement must be amended to clarify the link between the two clauses.

The required amended drafting is set out at paragraph 2770 of this final decision.

Required Amendment 28

The queuing requirements in clause 5.4(f) of the revised proposed access arrangement must be amended to:

- In clause 5.4(f)(i): delete the reference to “clause 5.3(e)(iii)” and replace it with a reference to “clause 5.3(e)(ii)(B)”.
- In clause 5.4(f)(ii): delete the two references to “clause 5.3(f)(iv)” and replace them with references to “clause 5.3(f)”.

Required Amendment 29

Clause 7.4(d) must be deleted from the extension and expansion requirements in the revised proposed access arrangement.

Final decision

Background

1. On 2 January 2020, DBNGP (WA) Transmission Pty Ltd (DBP) submitted proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline (DBNGP). DBP is the operator of the DBNGP and submitted the proposed revisions on its own behalf and on behalf of DBNGP (WA) Nominees Pty Ltd (the Pipeline Trustee) as the complying service provider.
2. DBP's proposal comprised a proposed revised access arrangement, access arrangement information and other supporting information.^{1,2} The proposal covers the five-year period from 1 January 2021 to 31 December 2025 (otherwise known as the fifth access arrangement period or AA5). DBP's current access arrangement covering the fourth access arrangement period (AA4), 1 January 2016 to 31 December 2020, applies until a revised access arrangement is approved.³
3. The purpose of an access arrangement is to provide the terms and conditions, including price, upon which an independent third party user can gain access to a regulated pipeline to transport gas.
4. The role of ERA is to consider DBP's proposed revisions to the access arrangement for the DBNGP. The National Gas Law (NGL) and National Gas Rules (NGR) set out the requirements for what should be included in the access arrangement, as well as the processes the ERA must follow when considering whether to approve DBP's proposal.
5. The ERA invited submissions from interested parties on DBP's proposal by publishing an initiating notice on 23 January 2020.
6. On 17 March 2020, the ERA published an issues paper to assist interested parties to prepare submissions and understand some of the issues the ERA would address when determining whether to approve DBP's proposal.⁴ Interested parties were invited to make their submissions by 31 March 2020.⁵ Submissions were received from seven parties:
 - Australian Gas Infrastructure Group (AGIG)
 - CITIC Pacific Mining Management Pty Ltd (CPM)
 - Gas Trading Australia Pty Ltd (gasTrading)

¹ DBP, *DBNGP Access Arrangement 2021-25*.

² DBP, *2021-2025 Final Plan*, January 2020. This document is DBP's access arrangement information and is otherwise referred to as DBP's Final Plan.

³ In this decision document the fifth access arrangement period (AA5) refers to the five year period – 1 January 2021 to 31 December 2025 – that is used to determine elements of the access arrangement (for example, the total revenue requirement and reference tariffs). This period is different to the period that the revised access arrangement is in effect. The ERA has determined that the revised access arrangement for AA5 will take effect on 1 July 2021 (see paragraph 35) and will apply until new revisions are approved for the next access arrangement period (that is, the sixth access arrangement period or AA6).

⁴ ERA, *Proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline for 2021 to 2025, Issues Paper*, 17 March 2020.

⁵ The ERA extended the original closing date for submissions from 24 March 2020 to 31 March 2020. The ERA also subsequently decided to accept submissions that were received after the closing date.

- NewGen Power Kwinana Pty Ltd (NewGen)
 - Perth Energy Pty Ltd
 - Synergy
 - Wesfarmers Chemicals, Energy & Fertilisers Ltd (WesCEF).
7. The ERA appointed Energy Market Consulting Associates (EMCa) to provide independent technical advice on DBP's proposed operating and capital expenditure proposals. EMCa also provided advice on matters raised in submissions where required.
8. The ERA published its draft decision on 14 August 2020.⁶ The decision did not approve DBP's proposal and detailed 53 required amendments. DBP was allowed until 7 October 2020 to submit a revised access arrangement proposal that addressed the draft decision requirements.⁷
9. DBP's revised proposal was received on 7 October 2020, consisting of a proposed revised access arrangement, revised access arrangement information and other supporting information. The revised proposal was published on the ERA's website on 8 October 2020.
10. Interested parties had until 4 November 2020 to make submissions on the ERA's draft decision and DBP's revised proposal.⁸ Submissions were received from seven parties:
- Alinta Energy
 - Beach Energy Ltd
 - CITIC Pacific Mining Management Pty Ltd (CPM).
 - Gas Trading Australia Pty Ltd (gasTrading)
 - Mitsui E&P Australia Pty Ltd (Mitsui)
 - NewGen Power Kwinana Pty Ltd (NewGen)
 - Wesfarmers Energy (Gas Sales) Ltd (WEGS).⁹
11. On 20 November 2020, the ERA published a position paper to inform interested parties of its views on pipeline and reference services, and to seek further comments prior to publishing its final decision.¹⁰ The position paper considered announcements concerning gas project developments in Western Australia, DBP's response to the draft decision and submissions from interested parties on the draft decision and/or DBP's revised proposal.

⁶ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020.

⁷ The original date for DBP to submit a revised proposal was 25 September 2020. This date was extended by the ERA to 7 October 2020.

⁸ The original date for interested parties to make submissions was 26 October 2020. This date was extended by the ERA to 4 November 2020.

⁹ Wesfarmers Energy (Gas Sales) Ltd (ABN 27 058 451 997) is a part of Wesfarmers Chemicals, Energy & Fertilisers.

¹⁰ ERA, *Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline access arrangement 2021 to 2025 – Position paper on pipeline and reference services*, 20 November 2020.

12. Interested parties had until 4 December 2020 to make submissions on the position paper. Submissions were received from:
- Australian Gas Infrastructure Group (AGIG)
 - Wesfarmers Energy (Gas Sales) Ltd (WEGS).

DBP's initial proposal

13. The DBNGP is a gas transmission pipeline that extends approximately 1,600 kilometres from Dampier to Bunbury. The pipeline connects the gas fields located in Western Australia's north-west to mining and industrial customers and to residential customers via gas distribution networks. DBP is the operator of the pipeline and is a part of the Australian Gas Infrastructure Group (AGIG).
14. In May 2020, DBP updated the demand forecasts submitted in its original (January 2020) proposal. The updated demand forecasts followed the completion of contract renegotiations with some shippers and affected other forecasts. For example, DBP revised its system use gas forecasts based on the updated demand forecasts and this affected the operating forecasts. Based on DBP's updated demand forecasts and other proposed revisions to the access arrangement:
- DBP's proposed reference tariffs for AA5 increased by approximately 9.9 per cent in real terms from the average tariff applying during AA4.
 - DBP's proposed expenditure for AA5 included:¹¹
 - \$453.89 million of forecast operating expenditure.
 - \$158.58 million of forecast conforming capital expenditure.
15. DBP's proposed rate of return was 4.31 per cent (nominal after tax), based on the methods and values detailed in the ERA's rate of return guidelines and market data for 20 trading days to 29 October 2019.
16. DBP also proposed to:
- Introduce an operating expenditure carryover incentive mechanism in AA5, called the *E Factor* scheme.
 - Amend the terms and conditions for reference services (that is, reference contracts) following a wholesale review to:
 - Correct errors and omissions.
 - Remove redundant drafting.
 - Reflect changes in the ownership structure of DBP.
 - Align the reference contracts with negotiated contracts in place with shippers.
 - Amend other access arrangement provisions, such as the procedures for making access requests, to reflect amendments that were made to the NGR in March 2019.

¹¹ Real dollars as of 31 December 2019. The ERA has converted dollar figures supplied by DBP in real dollars as of 31 December 2020 to real dollars as of 31 December 2019 using the inflation figures supplied by DBP in its tariff model.

ERA's draft decision

17. The ERA's draft decision was to not approve DBP's proposed revisions to the DBNGP access arrangement for 2021 to 2025. The reasons for not approving DBP's proposal were set out in the draft decision document.
18. DBP was required to make 53 amendments to the access arrangement before the ERA would approve it.
19. Under rule 59(3) of the NGR, the ERA was required to fix a period (revision period) within which DBP may, under rule 60, submit additions or other amendments to its proposal to address the matters raised in the draft decision. The ERA fixed a revision period of 30 business days from the date of the draft decision. DBP could submit revisions to its proposal by 4.00 pm (WST) Friday, 25 September 2020. This deadline was subsequently extended by the ERA to 7 October 2020, following a request from DBP.
20. Consistent with rule 59(5)(iii), the ERA invited submissions on its draft decision and DBP's revised proposal for a period of 20 business days following the revision period fixed for DBP. Submissions were due by Monday, 26 October 2020. This deadline was subsequently extended by the ERA to 4 November 2020, following the extension to DBP's revision period.

DBP's response to the draft decision

21. DBP submitted a revised proposal within the revision period on 7 October 2020. The revised proposal contained revised access arrangement information and other supporting information, and a proposed revised access arrangement.^{12, 13}
22. DBP accepted 26 of the ERA's 53 draft decision required amendments.¹⁴ The other required amendments were either:
 - Rejected by DBP.
 - Supported in principle by DBP, with additional revised amendments proposed (for example, revised proposed drafting for specific clauses in the terms and conditions for reference services).

or

 - Dependent on DBP's other proposed amendments (for example, the total revenue requirement for AA5 being dependent on DBP's revised amendments to operating and capital expenditures).
23. DBP submitted:

Our revised Final Plan modifies the ERA's Draft Decision in several important areas. In other areas we have largely accepted the Draft Decision. A brief summary of key areas is outlined below...

- On **capacity and throughput forecasts** ... Our revised Final Plan provides our actual contracted capacity, which is based on the firm commitments of our

¹² DBP, *2021-2025 Revised Final Plan*, October 2020. This document is DBP's revised access arrangement information and is otherwise referred to as DBP's Revised Final Plan.

¹³ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25*.

¹⁴ DBP, *2021-2025 Revised Final Plan, Attachment 1.5: Required amendments*, October 2020.

customers. It also describes electricity market developments and how the use of our services is changing as a result. Finally, we provide further information to demonstrate that our capacity and throughput forecasts are in line with those in the Australian Energy Market Operator's (AEMO's) Gas Statement of Opportunities (GSOO).

...

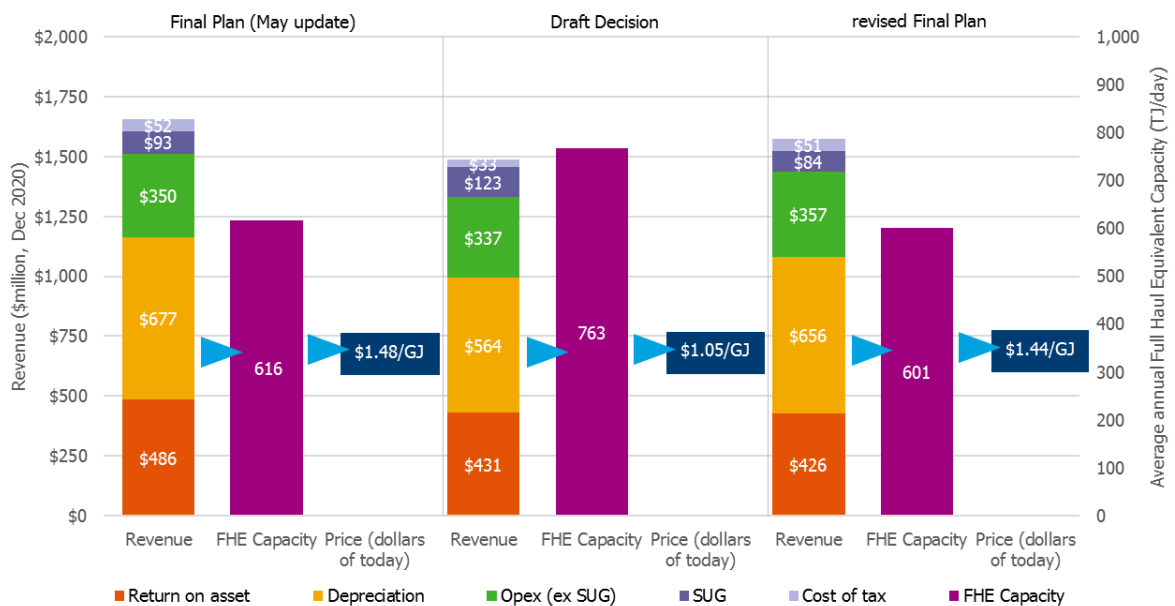
- In considering **gas market developments in Western Australia** that might result in a change in direction of the flow of the DBNGP, we have not accepted the ERA's proposed trigger mechanism. We outline proposed alternatives in discussing the access arrangement document and rebateable non-reference services.
- In considering the ERA's approach to **total revenue allocation**, we replace the ERA's proposal to use the ratio of reference to non-reference service revenue as a basis for total cost allocation. In place of this methodology we propose four non-reference services that utilise the DBNGP be specified as rebateable services (Peaker Service as per the Draft Decision, Pilbara Service, Other Reserved Service and the proposed Ullage Service)...
- For the **capital base**, we have reconsidered our approach based on the ERA's Draft Decision. This results in the economic life of the DBNGP extending until 2063...

In respect of our asset categorisation, our Final Plan and the Draft Decision differ in how to treat existing assets. The approach in the Draft Decision would have resulted in a very slow return of these assets, and inconsistencies whereby older assets otherwise identical to ones invested in post 2021 would be in the RAB decades longer than their newer equivalents. We therefore propose an approach to address this inconsistency which differs both from our Final Plan and from the ERA's approach.

- Our **opex** forecast modifies the Draft Decision, with opex of \$441 million over the period, \$20 million less than in the Draft Decision....
- Our **capex** forecast for AA5 modifies the ERA's Draft Decision, with capex at \$159 million over the period, \$31 million less than in the Draft Decision....
- For **financing costs**, consistent with the Final Plan submitted in January, we have applied the ERA's Rate of Return guideline when determining the weighted average cost of capital (WACC).
- We welcome the ERA's Draft Decision which largely accepts our proposed opex efficiency **incentive scheme** - the E Factor. Our revised Final Plan proposes some modifications to the Draft Decision on this matter to exclude specific fees and levies over which we have no control.
- Finally, on **pipeline access**, we have accepted the majority of the ERA's proposed amendments to the terms and conditions, and the Access Arrangement document. In some instances however we have either modified or rejected the ERA's proposed amendments.¹⁵

24. DBP's revised final plan results in a proposed tariff of \$1.44/GJ (on a full haul equivalent basis) as shown in Figure 1.

¹⁵ DBP, 2021-2025 Revised Final Plan, October 2020, pp. 11-12.

Figure 1 DBP's revised final plan building blocks

Source: DBP, 2021-2025 Revised Final Plan, October 2020, p. 13.

ERA's position paper

25. The ERA published a position paper on 20 November 2020 to inform interested parties of its views on pipeline and reference services, and to seek further comment prior to publishing its final decision. The decision to publish the paper was in response to developments and submissions following the publication of the ERA's draft decision 14 August 2020:

- On 17 August 2020, the Western Australian Government announced changes to the State's Domestic Gas Policy, preventing the export of local gas. The Waitsia Stage 2 gas project was given an exemption to this policy. Under this exemption, the Waitsia project is expected to fill available capacity at the Karratha Gas Plant and export some of its gas as Liquefied Natural Gas (LNG) for a short period of time.¹⁶
- In response to the ERA's draft decision, DBP proposed a new pipeline service (the Ullage Service) and a revised treatment of additional non-reference services as rebateable non-reference services. DBP submitted that its revised proposal for pipeline and reference services made the ERA's requirement for a trigger event (as set out in draft decision required amendment 3) unnecessary.
- The ERA received submissions from interested parties on its draft decision and/or DBP's revised proposal for pipeline and reference services. Several submissions indicated support for DBP's revised proposal for the new Ullage Service.

26. Having considered the above developments and submissions, the ERA's position paper set out the following provisional views:

- The Seasonal Service, Metering and Temperature Service and Odourisation Service should be included in the access arrangement and the ERA's draft decision required amendment 2 withdrawn. Each of these services should be

¹⁶ Government of Western Australia media statement, 17 August 2020, 'Revised policy to secure domestic gas supply and create jobs' ([online](#)) (accessed October 2020).

specified as non-reference ancillary services in the access arrangement for AA5.

- The proposed new Ullage Service should be specified as a non-reference rebateable service for AA5, making the ERA's draft decision requirement for a trigger event unnecessary.
- The Other Reserved Service, which is currently specified as a non-reference service in the access arrangement, should be further specified as a non-reference rebateable service for AA5. However, the Pilbara Service should continue to be specified as a non-reference service (and not a non-reference rebateable service) for AA5.
- The Peaker Service (or Peaking Service) should be specified as a non-reference rebateable service for AA5.

ERA's final decision

27. The ERA's final decision is to not approve DBP's revised proposed revisions to the DBNGP access arrangement for 2021 to 2025. The reasons for not approving DBP's revised proposal are set out in this final decision.
28. The ERA has identified 29 required amendments to DBP's proposed revised access arrangement that are needed before it can be approved. The required amendments, listed on pages (iii) to (vi) of this final decision, are also stated in the reasons for this final decision at the point where each part of the access arrangement is considered. The ERA's final decision complies with the NGL and NGR. In particular, the ERA has considered the national gas objective and revenue and pricing principles in making its final decision.

ERA's approved access arrangement

29. Rule 64 of the NGR outlines provisions for the ERA to make or revise an access arrangement proposal when the ERA's final decision is to refuse to approve a service provider's access arrangement proposal:

64 [ERA'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.
 - (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.
30. The ERA has not approved DBP's proposed revised access arrangement. Pursuant to rule 64(1) and 64(4) of the NGR, the ERA must now itself propose revisions to the access arrangement for the DBNGP and make a decision to give effect to its proposal within two months of this final decision.
31. In accordance with rule 64(2) of the NGR, the ERA has formed its proposed revisions to the access arrangement having regard to the requirements of the NGL, DBP's revised proposal and the ERA's reasons for not approving it. The ERA has made the necessary revisions to DBP's proposed revised access arrangement, consistent with the required amendments in this final decision.
32. As provided for under rule 64(3) of the NGR, the ERA has decided not to consult on its proposed revised access arrangement. Interested parties were given opportunities to provide submissions on the ERA's draft decision and DBP's revised proposal in response to the ERA's draft decision. The ERA considered and addressed the matters raised in submissions. The ERA's final decision does not raise any new matters for consideration. Given this, the ERA considers that there is no reason to consult on its proposed revised access arrangement, which implements the outstanding required amendments from the draft decision as set out in this final decision.
33. The ERA considers that for the purpose of rule 64(4), this final decision constitutes the decision that gives effect to its proposed revised access arrangement for the DBNGP.
34. Consistent with the requirements of rule 64(5) of the NGR, the ERA has published its decision and approved access arrangement on its website and has provided DBP with a copy of each. The ERA has also drafted its own access arrangement information, which contains the information that is required to understand the background to, and the basis and derivation of the various elements of, the approved access arrangement. The access arrangement information is also available on the ERA's website.
35. In accordance with rule 64(6) of the NGR, the ERA has decided that its approved access arrangement, covering the fifth access arrangement period (1 January 2021 to 31 December 2025), for the DBNGP will take effect on 1 July 2021. The ERA considers this date will provide DBP and its customers sufficient time to prepare for the commencement of the revised access arrangement and the corresponding reference tariffs that will take effect.

Reasons

Decision making framework

Regulatory framework

36. The requirements for an access arrangement are established by the National Gas Law (NGL) and National Gas Rules (NGR) as enacted by the *National Gas (South Australia) Act 2008* and implemented in Western Australia by the *National Gas Access (WA) Act 2009*.

37. Under rule 100 of the NGR, all provisions of an access arrangement must be consistent with the national gas objective, which is specified in section 23 of the NGL:

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.

38. Sections 28(1) and (2) of the NGL specify the manner in which the ERA must perform or exercise its 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—
- (a) 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; and
 - (b) if the [ERA] is making a designated reviewable regulatory decision —
 - (i) ensure that —
 - (A) the covered pipeline service provider that provides the pipeline services to which the applicable access arrangement decision will apply; and
 - (B) users or prospective users of the pipeline services that the [ERA] considers have an interest in the matter; and
 - (C) any user or consumer associations or user or consumer interest groups that the [ERA] considers have an interest in the matter,
 are, in accordance with the Rules —
 - (D) informed of the material issues under consideration by the [ERA]; and
 - (E) given a reasonable opportunity to make submissions in respect of the decision before it is made; and
 - (ii) specify —
 - (A) the manner in which the constituent components of the decision relate to each other; and
 - (B) the manner in which that interrelationship has been taken into account in the making of the decision; and

- (iii) if there are 2 or more possible designated reviewable regulatory decisions that will or are likely to contribute to the achievement of the national gas objective —
 - (A) make the decision that the [ERA] is satisfied will or is likely to contribute to the achievement of the national gas objective to the greatest degree (the preferable designated reviewable regulatory decision); and
 - (B) specify reasons as to the basis on which the [ERA] is satisfied that the decision is the preferable designated reviewable regulatory decision.
 - (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.
 - (3) For the purposes of subsection (2)(a)(ii), a reference to a “reference service” in the revenue and pricing principles must be read as a reference to a “pipeline service”.
39. As specified in section 28(2), the ERA must consider the revenue and pricing principles. These principles are set out in section 24 of the NGL:

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 a 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) Regard should be had to the capital base with respect to a pipeline adopted—
 - (a) in any previous—
 - (i) full access arrangement decision; or
 - (ii) decision of a relevant Regulator under section 2 of the Gas Code;
 - (b) in the Rules.

- (5) 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.
- (6) 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.
- (7) 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.

Changes to the regulatory framework

40. In March 2019, the Australian Energy Market Commission made a final determination to make changes to the regulatory framework for covered transmission and distribution natural gas pipelines in Australia.¹⁷ The specific changes to the NGR are set out in *National Gas Amendment (Regulation of covered pipelines) Rule 2019 No.1*.¹⁸
41. The amended rules:
 - Set out a new process for determining which services will have reference tariffs set by the regulator. Reference tariffs are the prices that pipeline operators can charge their customers.
 - Clarify how regulators calculate efficient costs so reference tariffs can be set at more efficient levels.
 - Strengthen reporting obligations to support more balanced negotiations. Pipeline owners will be required to provide more relevant, timely and accessible information for pipeline users through the Natural Gas Bulletin Board or on the pipeline owners' websites.
 - Give stakeholders, including pipeline users, more input into regulators' decisions.
 - Set a clear trigger for pipeline users to start arbitration if negotiations fail.¹⁹
42. Most of the amended rules commenced on 21 March 2019, including new transitional provisions. Transitional rule 62 (in schedule 1) of the NGR applies to the DBNGP, which provides for exemptions from new rules 46, 47A and 48. These new rules introduced provisions for the submission of a "reference service proposal" to the ERA prior to the submission of an access arrangement proposal.²⁰ Transitional rule 62 is reproduced as follows:

62 Application of Amending Rule to transitional pipelines

- (1) The application of the Amending Rule to the transitional pipelines is modified under this rule 62.

¹⁷ Australian Energy Market Commission, *Regulation of covered pipelines, Rule determination, 14 March 2019* ([online](#)) (accessed April 2020).

¹⁸ Australian Energy Market Commission, *National Gas Amendment (Regulation of covered pipelines) Rule 2019 No.1* ([online](#)) (accessed April 2020).

¹⁹ Australian Energy Market Commission, 'Regulation of covered pipelines' ([online](#)) (accessed April 2020).

²⁰ In the NGR a "reference service proposal" means, in respect of a service provided for a full regulation pipeline, the proposal submitted under rule 47A. The proposal allows for the separate assessment of reference services prior to the assessment of an access arrangement or revisions to an access arrangement. In the case of revisions, the proposal must be submitted no later than 12 months prior to the review submission date for the access arrangement.

- (2) New rule 46, 47A and 48 do not apply to the transitional pipelines in respect of the access arrangement for the next access arrangement period.
- (3) Old rule 46 applies to the transitional pipelines in respect of the access arrangement for the next access arrangement period.
- (4) Modified rule 48 applies to the transitional pipelines in respect of the access arrangement for the next access arrangement period.
- (5) Modified rule 48 is:

“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 all of the pipeline services that the service provider can reasonably provide on the pipeline, which must be described having regard to the characteristics of different pipeline services, including those listed in subrule 47A(2) of the Amending Rule;²¹ and
 - (c) from the pipeline services identified under subrule (b), specify the services the service provider proposes to specify as reference services having regard to the reference service factors including any supporting information required by the [ERA]; and
 - (d) if the pipeline service provider has engaged with pipeline users and end users in identifying the reference services under subrule (c), describe any feedback received from those users about which pipeline services should be specified as reference services; and
 - (e) specify for each reference service:
 - (i) the reference tariff; and
 - (ii) the other terms and conditions on which each reference service will be provided; and
 - (f) if the access arrangement is to contain queuing requirements – set out the queuing requirements; and
 - (g) set out the capacity trading requirements; and
 - (h) set out the extension and expansion requirements; and
 - (i) state the terms and conditions for changing receipt and delivery points; and
 - (j) if there is to be a review submission date – state the review submission date and the revision commencement date; and
 - (k) 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.”

43. Transitional rule 62(2) removed the need for DBP to submit a reference service proposal and for the ERA to make a decision on this proposal prior to DBP submitting proposed revisions to the access arrangement. Instead of submitting a reference

²¹ Subrule 47A(2) of the Amending Rule states: “A pipeline service is to be treated as distinct from another pipeline service having regard to the characteristics of different pipeline services, including: (a) the service type (for example, forward haul, backhaul, connection, park and loan); (b) the priority of the service relative to other pipeline services of the same type; and (c) the receipt and delivery points.”

service proposal, DBP’s proposed reference services for AA5 formed part of its access arrangement proposal under the modified rules.

44. Transitional rule 62(4) provides for a modified version of rule 48 of the NGR, which details the modified requirements for a full access arrangement proposal. Modified rules 48(b), (c) and (d) established a modified process to identify the pipeline and reference services to be offered under the revised access arrangement for AA5. The modified process is to be conducted as part of the access arrangement review process.
45. For the next access arrangement review, where DBP proposes revisions to the access arrangement for the sixth access arrangement period (AA6) for the ERA’s assessment, modified rule 48 will not apply. For AA6, reference services will be proposed and assessed under rule 47A of the NGR, which requires DBP to submit a reference service proposal to the ERA at least 12 months before the review submission date for the access arrangement.

Content of an access arrangement

46. DBP is required to submit a “full access arrangement” for the DBNGP. Section 2 of the NGL provides that a full access arrangement is an access arrangement that:
- provides for price or revenue regulation as required by the Rules; and
 - deals with all other matters for which the Rules require provision to be made in an access arrangement.
47. The required content of a full access arrangement proposal is specified in rule 48 of the NGR. However, as stated at paragraph 42, a modified version of rule 48 applies to the DBNGP for this access arrangement review.²² Table 1 details the required content pursuant to modified rule 48 and indicates where the ERA has considered it in this decision.

Table 1: Required content of a full access arrangement pursuant to modified rule 48 of the NGR²³

National Gas Rule	Requirement	Final decision reference
48(1)(a)	Identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected.	Paragraphs 62 to 93
48(1)(b)	Describe all of the pipeline services that the service provider can reasonably provide on the pipeline, which must be described having regard to the characteristics of different pipeline services, including those listed in subrule 47A(2) of the Amending Rule.	Paragraphs 94 to 296
48(1)(c)	From the pipeline services identified under subrule (b), specify the services the service provider proposes to specify as reference services having regard to the reference service factors including any supporting information required by the [ERA].	Paragraphs 94 to 296

²² Modified rule 48 as set out in schedule 1 (rule 62) of the NGR.

²³ As set out in transitional rule 62 (in schedule 1) of the NGR.

National Gas Rule	Requirement	Final decision reference
48(1)(d)	If the pipeline service provider has engaged with pipeline users and end users in identifying the reference services under subrule (c), describe any feedback received from those users about which pipeline services should be specified as reference services.	Paragraphs 50 to 61 and 94 to 296
48(1)(e)(i)	Specify for each reference service, the reference tariff.	Paragraphs 1864 to 1902
48(1)(e)(ii)	Specify for each reference service, the other terms and conditions on which each reference service will be provided.	Paragraphs 2020 to 2730
48(1)(f)	If the access arrangement is to contain queuing requirements, set out the queuing requirements.	Paragraphs 2731 to 2773
48(1)(g)	Set out the capacity trading requirements.	Paragraphs 2774 to 2784
48(1)(h)	Set out the extension and expansion requirements.	Paragraphs 2785 to 2813
48(1)(i)	State the terms and conditions for changing receipt and delivery points.	Paragraphs 2814 to 2826
48(1)(j)	If there is to be a review submission date, state the review submission date and the revision commencement date.	Paragraphs 62 to 93
48(1)(k)	If there is to be an expiry date, state the expiry date.	There is no expiry date

48. Further to a full access arrangement proposal, rule 43(1) of the NGR requires DBP to submit access arrangement information with its proposal. Rule 42(1) of the NGR defines access arrangement information as information that is reasonably necessary for users and prospective users to understand the background to the access arrangement and the basis and derivation of various elements of the access arrangement:

42 General requirements for access arrangement information

- (1) Access arrangement information for an access arrangement or an access arrangement proposal is information that is reasonably necessary for users and prospective users:
- (a) to understand the background to the access arrangement or the access arrangement proposal; and
 - (b) to understand the basis and derivation of the various elements of the access arrangement or the access arrangement proposal.
- (2) Access arrangement information must include the information specifically required by the Law.

43 Requirement to provide access arrangement information

- (1) A service provider, when submitting an access arrangement proposal for the AER's approval, must submit, together with the proposal, access arrangement information for the access arrangement proposal.

49. The specific requirements for access arrangement information relevant to price and revenue regulation are set out in rule 72 of the NGR:

- 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:
 - (i) capital expenditure (by asset class) over the earlier access arrangement period; and
 - (ii) operating expenditure (by category) over the earlier access arrangement period; and
 - (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;
 - (b) how the capital base is arrived at and, if the access arrangement period commences at the end of an earlier access arrangement period, a demonstration of how the capital base increased or diminished over the previous access arrangement period;
 - (c) the projected capital base over the access arrangement period, including:
 - (i) a forecast of conforming capital expenditure for the period and the basis for the forecast; and
 - (ii) a forecast of depreciation for the period including a demonstration of how the forecast is derived on the basis of the proposed depreciation method;
 - (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;
 - (e) a forecast of operating expenditure over the access arrangement period and the basis on which the forecast has been derived;
 - (f) [Deleted];
 - (g) the allowed rate of return for each regulatory year of the access arrangement period;
 - (h) the estimated cost of corporate income tax calculated in accordance with rule 87A, including the allowed imputation credits referred to in that rule;
 - (i) if an incentive mechanism operated for the previous access arrangement period—the proposed carry-over of increments for efficiency gains or decrements for efficiency losses in the previous access arrangement period and a demonstration of how allowance is to be made for any such increments or decrements;

- (j) the proposed approach to the setting of tariffs including:
 - (i) the suggested basis of reference tariffs, including the method used to allocate costs and a demonstration of the relationship between costs and tariffs; and
 - (ii) a description of any pricing principles employed but not otherwise disclosed under this rule;
 - (k) the service provider's rationale for any proposed reference tariff variation mechanism;
 - (l) the service provider's rationale for any proposed incentive mechanism;
 - (m) the total revenue to be derived from pipeline services for each regulatory year of the access arrangement period.
- (2) The access arrangement information for an access arrangement variation proposal related to a full access arrangement must include so much of the above information as is relevant to the proposal.
- (3) Where the [ERA] has published financial models under rule 75A, the access arrangement information for a full access arrangement proposal must be provided using the financial models.

DBP's consultation process

DBP's initial proposal

50. DBP provided details of the consultation process it undertook throughout the development of its access arrangement submission.²⁴ The consultation process consisted of a four-stage engagement program involving its customers and stakeholders:²⁵
- Stage one was a research stage to better understand customer and stakeholder needs and expectations.
 - Stage two included targeted engagement to guide the development of the plan. This included shipper roundtable meetings to consult on principal topics.
 - In stage three, DBP consulted on its draft plan, engaging with customers and stakeholders through one-on-one meetings in addition to further shipper roundtables.
 - Stage four involved consultation feedback from the Draft Plan as well as feedback gained from further shipper roundtable meetings to inform the Final Plan.
51. DBP's main method of consultation was the shipper roundtable meetings. In the first phase of its consultation process, DBP received support for the establishment of these shipper roundtables. The shipper roundtables were designed to act as a forum for DBP to actively consult with its customers and to discuss major topics and subjects of interest that were relevant to its access arrangement submission.
52. Prior to its proposal, DBP held nine shipper roundtable meetings. In addition to the roundtables, one-on-one meetings with customers and stakeholders were held. DBP kept all stakeholders apprised of developments via regular digital updates and fact sheets published online.²⁶
53. DBP documented feedback received from stakeholders and customers throughout the consultation process and used this feedback to shape and inform its draft and final plans. DBP's Final Plan became its proposal to the ERA. The proposal included a summary of the feedback it received at each stage of its consultation process for each topic presented and its response to the feedback.
54. DBP indicated that almost all the proposed changes in its access arrangement proposal were supported by its stakeholders and customers. DBP submitted that it did not have full support for its proposed amendment of the overall asset life, as some customers wanted to reserve their position on the matter until the Final Plan had been submitted to the ERA.²⁷

Draft decision

55. The submissions received from stakeholders about DBP's consultation process were largely positive and supportive of DBP's approach. The ERA further considered DBP's consultation process, including specific stakeholder comments on DBP's

²⁴ DBP, *2021-2025 Final Plan*, January 2020, pp. 28-49.

²⁵ DBP, *2021-2025 Final Plan*, January 2020, pp. 30-31.

²⁶ DBP, *2021-2025 Final Plan*, January 2020, p. 34.

²⁷ DBP, *2021-2025 Final Plan*, January 2020, pp. 39-49.

consultation process, in the respective sections of the draft decision assessing DBP's proposal.

DBP's response to the draft decision

56. While DBP's revised proposal does not provide a specific update on the consultation undertaken by DBP in preparing its response to the ERA's draft decision, DBP stated the following:

We will continue to engage with stakeholders on an ongoing basis, including during the remaining review process leading into the ERA's Final Decision. The ERA will also seek stakeholder feedback during its own review process, including following submission of our revised Final Plan. The key dates for the review of our Revised Final Plan are below:

- 4 November 2020 – the ERA seeks stakeholder feedback on the ERA Draft Decision and our Revised Final Plan; and
- End 2020 / early 2021 – the ERA releases its Final Decision.

We would also welcome receiving any additional feedback on our revised Final Plan directly from our stakeholders at any point in the future. You can provide your feedback online at gasmatters.agig.com.au/.²⁸

Submissions to the ERA

57. Four submissions received in response to the ERA's issues paper provided comments on DBP's consultation process:

- Submissions from CPM and WesCEF commended DBP on the approach it took with its consultation process.^{29, 30}
- NewGen was supportive of DBP's consultation process. NewGen submitted that DBP's submission aligned with the expectation set through the consultation process and that the process was a useful way for stakeholders to be actively involved in developing the Final Plan.³¹
- GasTrading stated that it found DBP's consultation process informative and helpful. However, after a more detailed review of DBP's access arrangement submissions to the ERA, gasTrading considered that DBP may not have considered all stakeholder feedback.³²

58. While no submissions in response to the ERA's draft decision raised any concerns with DBP's consultation process, several submissions made positive statements about the process.

- CPM acknowledged the work done by DBP in preparing their revised proposal and the opportunity for stakeholders to be involved in the process.³³

²⁸ DBP, *2021-2025 Revised Final Plan, October 2020*, p. 15.

²⁹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 1.

³⁰ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission in response to issues paper, 30 March 2020, p. 12.

³¹ NewGen Power Kwinana Pty Ltd submission in response to issues paper, 31 March 2020, p. 1.

³² Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 7.

³³ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, p. 3.

- GasTrading thanked DBP for engaging with shippers about its response to the ERA's draft decision.³⁴
- NewGen was appreciative of DBP's consultation with stakeholders, and in particular, the consultations outlining the regulatory building blocks to determine the allowable total revenue.³⁵

Final decision

59. While DBP's revised proposal did not outline any specific consultation undertaken by DBP in developing its response to the draft decision, the ERA is aware that DBP has continued to engage with stakeholders through shipper roundtable meetings.
60. In the absence of any submissions in response to the draft decision raising any concerns about DBP's consultation process, the ERA considers that DBP has provided stakeholders with opportunities to provide feedback on the proposed revisions to the access arrangement. In any case, stakeholders have had further opportunities to provide feedback on DBP's initial and revised proposals through the ERA's public consultation periods.
61. The ERA has considered the submissions received from stakeholders in the following sections of this decision.

³⁴ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

³⁵ NewGen Power Kwinana Pty Ltd submission in response to draft decision, 3 November 2020.

Identifying the pipeline and primary dates

62. Modified rule 48(1)(a) of the NGR requires the DBNGP access arrangement to “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”.³⁶
63. Further to identifying the pipeline to which the access arrangement relates, rule 49(1)(a) of the NGR requires the access arrangement to contain a review submission date and a revision commencement date. Rule 3 of the NGR defines these dates to mean:

review submission date means a date on or before which an access arrangement revision proposal is required to be submitted.

revision commencement date for an applicable access arrangement means the date fixed in the access arrangement as the date on which revisions resulting from a review of an access arrangement are intended to take effect.

64. Rule 50 sets out specific provisions for the review submission and revision commencement dates:

50 Review of access arrangements

- (1) A service provider, as part of an access arrangement proposal for a full access arrangement (other than a voluntary access arrangement), must propose a review submission date and a revision commencement date. The proposed revision commencement date must be not less than 12 months after the proposed review submission date.
- (2) The [ERA] must approve the dates proposed by the service provider under subrule (1) if it is satisfied that those dates are consistent with the national gas objective and the revenue and pricing principles and if the proposed revision commencement date is not less than 12 months after the proposed review submission date.
- (3) If the [ERA] does not approve the dates proposed by the service provider for the review submission date or the revision commencement date (as the case may be), because it considers those dates are not consistent with the national gas objective and the revenue and pricing principles, the [ERA] must fix an alternative review submission date or revision commencement date (as the case may be).

DBP’s initial proposal

65. Clause 2 of the proposed revised access arrangement identifies the pipeline to which the access arrangement relates as the DBNGP and states that a description of the pipeline can be inspected on the DBP website.³⁷
66. The DBNGP is made up of the assets that are described in the pipeline licences issued under the *Petroleum Pipelines Act 1969 (WA)*, as listed in clause 2.1(a) of the revised access arrangement. DBP amended this list of pipeline licences to add Pipeline Licence 123 (new clause 2.1(a)(x)).
67. A detailed description of the DBNGP, including a schematic of the pipeline, is provided as Attachment 1 to the revised access arrangement.

³⁶ As set out in schedule 1 (rule 62) of the NGR.

³⁷ <http://www.dbp.net.au>

68. DBP proposed a five-year period from 1 January 2021 to 31 December 2025 for AA5, with a review submission date of 1 January 2025 and a revision commencement date of 1 January 2026.³⁸

Draft decision

69. Modified rule 48(1)(a) of the NGR requires DBP to identify the pipeline to which the access arrangement relates and to reference a website where a description of the pipeline can be inspected.
70. DBP identified the pipeline to which the access arrangement relates as the DBNGP, which is made up of the assets that are described in the pipeline licences listed in clause 2.1(a) of the revised access arrangement. A detailed description of the DBNGP was provided as Attachment 1 to the access arrangement, with the attachment also available for inspection on DBP's website.
71. Clause 17 (Attachments) of the revised access arrangement stated that a description of the DBNGP as at 1 January 2016 was provided as Attachment 1. However, the attachment submitted to the ERA was a description of the DBNGP as at 15 September 2019.³⁹ Subject to amending clause 17 of the access arrangement to reflect the document submitted by DBP, the ERA considered that DBP's proposal met the requirements of the NGR.
72. GasTrading addressed the identification of the pipeline and submitted that it had concerns over the location of Inlet Point I1-02 on the DBNGP.⁴⁰ However, as stated by gasTrading, the location of Inlet Point I1-02 has remained the same in each of the access arrangement pipeline description documents covering the period from 2010 to 2015 (being AA2 and AA3). As further noted by gasTrading, AGIG (owner of DBP) addressed this matter at the shipper roundtable meeting held on 30 March 2020.
73. AGIG's submission in response to the ERA's issues paper included a copy of the responses to questions raised at the March shipper roundtable, which included questions concerning gas flow direction and the effects on tariffs.⁴¹ AGIG's responses reiterated that pipeline works did not change the transfer point for the Varanus Island inlet and that no change to the pipeline description map was needed. Consistent with this statement, all pipeline description documents submitted for each access arrangement period (AA1 to AA5) showed that the location of Inlet Point I1-02 had not changed. That is, Inlet Point I1-02 is upstream (north) of Compressor Station 1 (CS1) in all pipeline description documents.
74. Notwithstanding DBP's incorrect reference to the pipeline description document in clause 17 of the revised access arrangement, the ERA considered that DBP's description of the pipeline met the requirements of rule 48(1) of the NGR. The ERA required DBP to amend the incorrect reference.
75. The draft decision set out the following required amendment:

³⁸ DBP, *DBNGP Access Arrangement 2021-25*, clause 14.

³⁹ The document submitted by DBP was titled: *Description of the Dampier to Bunbury Natural Gas Pipeline System as at 15 September 2019*.

⁴⁰ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 5-6.

⁴¹ Australian Gas Infrastructure Group submission in response to ERA issues paper, 31 March 2020 – Attachment C: Shipper Roundtable #10 Issues Response Paper, March 2020, p. 2.

Draft Decision Required Amendment 1

DBP must amend the list of Attachments in clause 17 of the proposed revised access arrangement to reflect the pipeline description document submitted by DBP, which is a description of the DBNGP as at 15 September 2019.

76. DBP proposed a review submission date of 1 January 2025 and a revision commencement date of 1 January 2026 (clause 14 of the revised access arrangement).
77. Pursuant to rule 50(2) of the NGR, the ERA must approve the dates proposed by DBP if it is satisfied that the dates are consistent with the national gas objective and the revenue and pricing principles, and if the proposed revision commencement date is at least 12 months after the proposed review submission date.
78. DBP's proposed revision commencement date of 1 January 2026 is 12 months after the proposed review submission date of 1 January 2025. The proposed dates met the requirement of rule 50(2) of the NGR.
79. The proposed five-year access arrangement period (1 January 2021 to 31 December 2025) also provided a balance between the need to review provisions of the access arrangement for the DBNGP and the cost of regulation. The ERA considered that maintaining the convention of a five-year access arrangement was consistent with the national gas objective and revenue and pricing principles.
80. The ERA's draft decision required the inclusion of a trigger event in the access arrangement for AA5 (see draft decision required amendment 3 at paragraph 120). Consistent with this required amendment, if the trigger event occurs the review submission date of 1 January 2025 will accelerate to an earlier date. Consequently, the revision commencement date for the next access arrangement period (AA6) may change.

DBP's response to the draft decision

81. DBP accepted the ERA's draft decision required amendment 1 to amend the pipeline description document reference in clause 17 of the revised access arrangement – the pipeline description document is now a description of the DBNGP as at 15 September 2019 (rather than 1 January 2016).⁴²
82. While DBP did not amend the proposed review submission and revision commencement dates in clause 14 of the revised access arrangement, DBP amended clause 14 to make the dates subject to new proposed clauses 7.4(d) and 14.4 as follows:
 14. REVISION AND COMMENCEMENT DATE
 - 14.1 The Current Access Arrangement Period commences on 1 January 2021.
 - 14.2 Subject to clause 7.4(d), the~~The~~ review submission date for the Current Access Arrangement is 1 January 2025.
 - 14.3 Subject to clause 14.4, the~~The~~ revision commencement date for the Next Access Arrangement is 1 January 2026.
 - 14.4 If the review submission date determined under clause 14.2 is accelerated and brought forward pursuant to clause 7.4(d), then the revision commencement date for the Next Access Arrangement is accelerated and

⁴² DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, p. 2.

brought forward to a date which is 12 months after the accelerated and brought forward review submission date.

14.5 For the avoidance of doubt, in no case can clause 7.4(d) result in the review submission date being delayed to a date later than the pre-existing review submission date.

83. DBP's proposed new clause 7.4(d) states:
- (d) prior to 1 May 2023, the review submission date set out in clause 14.2 may be accelerated and brought forward by Operator pursuant to NGR 51 to a date nominated by the Operator (being a date that is at least 6 months prior to the review submission date set out in clause 14.2).

Submissions to the ERA

84. In response to the ERA's issues paper, gasTrading addressed the identification of the pipeline and submitted that it had concerns over the location of Inlet Point I1-02 on the DBNGP.⁴³ GasTrading's comments were considered as part of the ERA's draft decision.
85. There were no submissions in response to the ERA's draft decision that addressed the primary dates for the access arrangement.

Final decision

86. DBP accepted draft decision required amendment 1 to amend the list of attachments in clause 17 of the access arrangement so that Attachment 1 refers to the "Description of the Dampier to Bunbury Natural Gas Pipeline System (as at 15 September 2019)". This reference is consistent with the pipeline description document submitted by DBP with its initial proposal.
87. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 1. The ERA maintains its draft decision position that DBP's description of the pipeline meets the requirements of rule 48(1)(a) of the NGR and that the reference to DBP's pipeline description document, as at 15 September 2019, in clause 17 of the access arrangement is accurate.
88. DBP did not amend its proposal for a review submission date of 1 January 2025 and a revision commencement date of 1 January 2026. There were no submissions from interested parties on these proposed dates. For these reasons, the ERA maintains its draft decision position that DBP's proposed review submission and revision commencement dates comply with the requirements of the NGR.
89. While DBP did not amend the review submission and revision commencement dates, it did propose revised amendments to the drafting of clause 14 (as set out in paragraph 82 above). The amended drafting is associated with DBP's revised proposal for extension and expansion requirements in clause 7 of the access arrangement. The ERA has considered DBP's revised proposal for extension and expansion requirements at paragraph 2785 of this decision.
90. Consistent with the ERA's considerations of DBP's proposed extension and expansion requirements, and Required Amendment 29 (see paragraph 2811), DBP's revised amendments to clause 14 of the access arrangement must be deleted.

⁴³ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 5-6.

91. Consistent with the ERA’s final decision to not approve DBP’s revised proposal and approve its own access arrangement, which takes effect on 1 July 2021 (see paragraph 35), clause 14.1 of the access arrangement must be amended to update the commencement date of the revised access arrangement period (that is, the “Current Access Arrangement Period” from 1 January 2021 to 1 July 2021).
92. Rule 92 of the NGR sets out provisions for revenue equalisation and provides for an “interval of delay”, being the “interval between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence”. Rule 92(4) confirms that the access arrangement period to which the revised access arrangement applies includes the interval of delay.⁴⁴ Given rule 92(4), the ERA considers it necessary for clause 14 of the revised access arrangement to clarify the use of the term “Current Arrangement Period”. That is, this term is used throughout the access arrangement and subject to the context in which it is used may include the interval of delay (the period from 1 January 2021 to 30 June 2021).
93. Given the above considerations, clause 14 of the access arrangement must be amended to read as follows:
14. REVISION AND COMMENCEMENT DATE
 - 14.1 The Current Access Arrangement Period commences on 1 July 2021.
 - 14.2 Notwithstanding clause 14.1, as a result of the operation of NGR 92(4), unless the context otherwise requires, a reference to the Current Access Arrangement Period includes the period from 1 January 2021 to 30 June 2021.
 - 14.3 The review submission date for the Current Access Arrangement is 1 January 2025.
 - 14.4 The revision commencement date for the Next Access Arrangement is 1 January 2026.

Required Amendment 1

Clause 14 of the revised proposed access arrangement must be amended to:

- Delete the amendments proposed by DBP in its revised proposal.
- Specify the commencement date of the Current Access Arrangement Period as 1 July 2021.
- Insert a new clause 14.2 to clarify that, unless the context requires otherwise, references to “Current Access Arrangement Period” include the interval of delay (that is, the period between 1 January 2021 and 30 June 2021).

The required amended drafting is set out at paragraph 93 of this final decision.

⁴⁴ Rule 92(4) states: “For the avoidance of doubt, once the revisions to an access arrangement actually commence the access arrangement period to which the revised access arrangement applies includes the interval of delay.”

Pipeline and reference services

94. “Pipeline service” is defined in section 2 of the NGL as follows:

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 provided 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.

95. Modified rules 48(1)(b), (c) and (d) of the NGR detail the requirements for identifying pipeline and reference services in the access arrangement.⁴⁵ The modified rules state:

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

- (1) A full access arrangement must:
 - ...
 - (b) describe all of the pipeline services that the service provider can reasonably provide on the pipeline, which must be described having regard to the characteristics of different pipeline services, including those listed in subrule 47A(2) of the Amending Rule; and
 - (c) from the pipeline services identified under subrule (b), specify the services the service provider proposes to specify as reference services having regard to the reference service factors including any supporting information required by the [ERA]; and
 - (d) if the service provider has engaged with pipeline users and end users in identifying the reference services under subrule (c), describe any feedback received from those users about which pipeline services should be specified as reference services; and ...

96. Subrule 47A(2) of the Amending Rule of the NGR states:

A pipeline service is to be treated as distinct from another pipeline service having regard to the characteristics of different pipeline services, including:

- (a) the service type (for example, forward haul, backhaul, connection, park and loan);
- (b) the priority of the service relative to other pipeline services of the same type; and
- (c) the receipt and delivery points.

97. The reference service factors are specified in rule 47A(15) of the NGR:

47A(15) The reference service factors are:

- (a) actual and forecast demand for the pipeline service and the number of prospective users of the service;

⁴⁵ As set out in schedule 1 (rule 62) of the NGR.

- (b) the extent to which the pipeline service is substitutable with another pipeline service to be specified as a reference service;
- (c) the feasibility of allocating costs to the pipeline service;
- (d) the usefulness of specifying the pipeline service as a reference service in supporting access negotiations and dispute resolution for other pipeline services, such that:
 - (i) reference services serve as a point of reference from which pipeline services that are not reference services can be assessed by a user or prospective user for the purpose of negotiating access to those other pipeline services;
 - (ii) a reference tariff serves as a benchmark for the price of pipeline services that are not reference services; and
 - (iii) reference service terms and conditions serve as a benchmark for the terms and conditions of pipeline services that are not reference services;
- (e) the likely regulatory cost for all parties (including the [ERA], users, prospective users and the service provider) in specifying the pipeline service as a reference service.

DBP's initial proposal

98. For AA5, DBP proposed to continue providing the three reference services offered under the current (AA4) access arrangement. As set out in clause 3.1(a) of the proposed revised access arrangement, these reference services are the full haul T1 Service, part haul P1 Service and back haul B1 Service.
99. Descriptions of the proposed reference services are set out in clauses 3.3, 3.4 and 3.5 of the revised access arrangement for the T1 Service, P1 Service and B1 Service, respectively. DBP amended the drafting of these clauses to align the clauses with:
- The proposed amendments to the terms and conditions for each of the reference services.
 - The proposed reference tariff for each of the reference services.
 - The pipeline description document provided as Attachment 1 of the proposed revised access arrangement.
100. For non-reference services that are subject to the availability of capacity, DBP proposed to delete the Seasonal Service and add the following pipeline services: Other Reserved Service; Pipeline Impact Agreement Service; Data Services; and Inlet Sales Service (clause 3.1(b)(i) of the revised access arrangement).
101. DBP further deleted all pipeline services that were subject to operational availability (that is, DBP deleted existing clause 3.1(b)(ii) from the revised access arrangement). Under amended clause 3.1(b) of the revised access arrangement:
- Non-reference services that are subject to availability of capacity include the following pipeline services: Spot Capacity Service; Park and Loan Service; Other Reserved Service; Pipeline Impact Agreement Service; Data Services; and Inlet Sales Service (clause 3.1(b)(i)).

- Non-reference services will continue to include pipeline services that are not reference services under contracts entered into prior to AA5 (clause 3.1(b)(ii)).⁴⁶
 - DBP will continue to negotiate with prospective shippers to provide any other non-reference pipeline service (clause 3.1(b)(iii)).⁴⁷
102. To prepare its submission to the ERA, DBP sought feedback from its customers and stakeholders. DBP provided a summary of the customer and stakeholder feedback it received on pipeline and reference services and how it responded to the feedback.⁴⁸
- Stage 1 and 2 engagement – developing the plan:
 - DBP held two shipper roundtable meetings where information on available pipeline services was provided and later published on DBP’s website.
 - Based on agreement at the meetings, DBP proposed to offer full haul, part haul and back haul reference services consistent with the current (AA4) reference services, noting that it would continue to negotiate bespoke services with customers.
 - Stage 3 engagement – consultation on the draft plan:
 - DBP provided more information on the proposed reference services at another shipper roundtable meeting, including information on the importance of reference and non-reference services to DBP’s revenues.
 - DBP identified proposed changes to the reference service terms and conditions and advised customers of the changes.
 - Stage 4 engagement – refining the draft plan:
 - DBP provided a summary of proposed changes to the reference service terms and conditions, including marked-up copies of the terms and conditions, to customers for comment.
 - DBP noted that the consultation period for customer feedback was “tight” and offered to continue to engage with customers (shippers) after submitting its access arrangement proposal to the ERA.

Draft decision

Proposed pipeline and reference services

103. Table 2 reproduces Table 6.2 of DBP’s initial proposal, which details the pipeline services provided by means of the DBNGP.

⁴⁶ Existing clause 3.1(b)(iii) in the current access arrangement.

⁴⁷ Existing clause 3.1(b)(iv) in the current access arrangement.

⁴⁸ DBP, *2021-2025 Final Plan*, January 2020, p. 52, Table 6.1.

Table 2: DBP's proposed pipeline services for AA5

Pipeline service name	Service type	Category of service
Full haul T1 Service	Forward Full Haul (subject to available capacity) with outlet point south of CS9, regardless of the location of inlet point	Reference
Part haul P1 Service	Forward Part Haul (subject to available capacity) with outlet point upstream of CS9, regardless of the location of inlet point. ⁴⁹	Reference
Back haul B1 Service	Back Haul (subject to available capacity) service where the inlet point is downstream of the outlet point.	Reference
Seasonal Service	A gas transportation service where the profile of reserved capacity can be customised to suit the monthly requirement of the Shipper (subject to available capacity)	NA – not a stand-alone service
Metering and Temperature Service	A pipeline service where particular metering and temperature specifications can be set (subject to available capacity)	NA – not a stand-alone service
Odourisation Service	A pipeline service where particular odorant requirement can be specified (subject to available capacity)	NA – not a stand-alone service
Pilbara Service	The Pilbara Service is an interruptible transportation service on the DBNGP where deliveries are within the Pilbara Zone (subject to available capacity)	Non-reference
Spot Capacity Service	Allows access to gas transmission capacity on a day ahead basis where available via auction (subject to available capacity)	Non-reference
Peaking Service	A pipeline service where a shipper can obtain additional peaking limits to those set in standard terms (subject to operational availability)	Non-reference
Pipeline Impact Agreement (PIA)	An agreement specified under the Gas Supply (Gas Quality Specifications) Act 2009 developed to compensate PIA Pipelines (including AGIG) for costs incurred when producers wish to bring broader quality gas into the relevant pipeline	Non-reference
Inlet Sales Agreement	A pipeline service that facilitates the trading of gas between shippers at a single inlet point on the DBNGP (subject to operational availability)	Non-reference
Data Services	A service developed to assist gas marketers providing gas allocations on Shippers' behalf on the DBNGP (subject to operational availability)	Non-reference
Storage Service	A service designed to allow shippers to store gas in the pipeline. Forecast to decline substantially due to rise of competitive storage market (Tubridgi and Mondarra)	Non-reference

⁴⁹ As noted in a submission to the ERA (see paragraph 272 of this decision), Table 6.2 of DBP's initial proposal contains an incorrect description of the part haul P1 Service.

Pipeline service name	Service type	Category of service
Other Reserved Service	A suite of interruptible services offered on a bespoke basis to shippers with new projects and/or uncertain demand, often ahead of a firm service	Non-reference

Source: DBP, 2021-2025 Final Plan, January 2020, p. 53, Table 6.2.

104. DBP categorised three pipeline services as *reference services* for AA5, being the same three reference services offered under the current (AA4) access arrangement. Descriptions of the reference services are set out in clauses 3.3, 3.4 and 3.5 of the proposed revised access arrangement for the T1 Service, P1 Service and B1 Service, respectively.
105. To determine the reference services, DBP assessed each of the identified pipeline services against the reference service factors as required by modified rule 48(1)(c) of the NGR. DBP's assessment was provided as an attachment to its Final Plan.⁵⁰ The assessment determined that the T1, P1 and B1 Services:
- are in high demand;
 - are non-substitutable with other services (meaning there is no other way shippers can obtain the service);
 - form the foundation of [DBP's] demand forecasts and cost allocation;
 - provide prospective users with an aid for use in access negotiations; and
 - minimise the cost and regulatory burden.⁵¹

Non stand-alone services

106. The ERA clarified the classification of "NA – not a stand-alone service" with DBP, which applies to the Seasonal Service, Metering and Temperature Service and Odourisation Service. DBP confirmed the following:

Three services have been identified as non stand-alone services in the Final Plan. These services are largely legacy ancillary services that have been offered since the original 2000 to 2004 AA period. These services were referred to as 'non stand-alone' services because they form part of the existing reference services.

That is, full haul, part haul or back haul services contain metering, odourisation and an ability to include a seasonal profile. The services can therefore only be offered in conjunction with a reference/transportation service. The three services are:

- Metering and temperature services – this service provides the shipper with the ability to obtain non-standard metering or gas temperature arrangements.
- Odourisation services – as noted in clause 7.12 of the reference service terms and conditions, odourisation is currently provided as part of the reference service at outlet points that required odourisation as at 24 October 2004 in compliance with the specifications set out in the Gas Standards (Gas Supply and System Safety) Regulations 2000 (WA).
- Seasonal services – this service provides the shipper with the ability to obtain additional capacity (i.e. over and above the capacity provided for in its full haul, part haul or back haul service) from the incremental capacity that may be available

⁵⁰ DBP, 2021-2025 Final Plan, Attachment 6.1: Pipeline Service and Reference Services Supporting Information, January 2020.

⁵¹ DBP, 2021-2025 Final Plan, January 2020, p. 54.

when ambient temperatures are lower (e.g. in winter). The provision of this service is subject to operational availability and DBP meeting its obligations under other contracts entered into prior to the AA period.⁵²

107. DBP further confirmed that no revenue was earned from these services in AA4 and that no revenue was forecast for AA5. The inclusion of these services was for completeness and consistency with previous access arrangements. However, given that the services exist within the existing contractual rights of reference services, DBP suggested that the services be removed from the list of services provided.⁵³
108. As submitted by DBP, the ERA considered that the Seasonal Service, Metering and Temperature Service and Odourisation Service should not be specified as individual pipeline services to be offered in AA5, if they are, and can only be, provided with other pipeline services. Removing references to these services in the access arrangement information (that is, DBP's Final Plan) would clarify the stand-alone pipeline services that are available to all prospective users.⁵⁴
109. The draft decision set out the following required amendment:

Draft Decision Required Amendment 2

DBP must amend the access arrangement information to clarify the pipeline services that are available to prospective users by deleting references to the Seasonal Service, Metering and Temperature Service and Odourisation Service, which are services that exist within the contractual rights of reference services and cannot be provided as individual (stand-alone) pipeline services.

The term "Seasonal Service" in clause 16 (Definitions) of the proposed revised access arrangement must also be deleted.

Changes to existing pipeline services

110. Submissions in response to the ERA's issues paper suggested that existing reference services may be affected by future gas projects and that additional pipeline services could be offered as reference services, and/or were focused on the proposed terms and conditions for the proposed reference services. In particular:
- GasTrading suggested that the development of gas projects in the north-west of Western Australia would affect the provision of the proposed reference services, including the application of the terms and conditions for those reference services. GasTrading submitted that one such project was the "much-rumoured export of onshore gas to the North West Shelf Project for 'back fill' or export as LNG [liquified natural gas]."⁵⁵
 - While CPM did not specifically mention the North West Shelf, it did refer to the increasing possibility of bi-directional gas flows on the DBNGP to accommodate gas projects taking place in the north-west of Western Australia.⁵⁶ Such gas projects may include the project specifically identified by gasTrading.
111. DBP noted that the regulated tariffs were the same for full haul, part haul and back haul customers on a per kilometre basis and that these tariffs were not related to physical gas flows. Given this, DBP did not consider that there would be any reason

⁵² DBP, *Response to information request ERA13*, 5 June 2020.

⁵³ DBP, *Response to information request ERA13*, 5 June 2020.

⁵⁴ The Seasonal Service is also defined in clause 16 (Definitions) of the proposed revised access arrangement.

⁵⁵ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 4.

⁵⁶ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 3.

to change tariffs due to a re-direction of gas flow. However, the ERA noted that tariffs were calculated on a full haul equivalent basis and that any change to the kilometre distance of full haul would affect the calculation of reference tariffs as the share of capacity and throughput would change.

112. The ERA considered the information provided in gasTrading’s submission and concluded that the gas flow scenarios presented could occur in the future and affect the provision of pipeline services offered by the DBNGP. However, the ERA decided not to take into consideration any scenarios based on projects with uncertain timing. While there was information that confirmed proponents were considering a Waitsia Stage 2 project, which would further develop the Waitsia gas field with additional production wells and a new 250 TJ/day processing plant, there was no confirmation of expected timing other than a statement advising that: “Waitsia Stage 2 is in design stage and subject to a joint venture Financial Investment Decision”.⁵⁷ Additionally, while the media reported on negotiations between Waitsia and the North West Shelf that would see Waitsia supply gas from the Perth Basin to the North West Shelf to be shipped overseas as LNG, these negotiations were still ongoing.⁵⁸ In the absence of more certain information on timing and contractual arrangements, the ERA considered that this matter should not be addressed as part of the access arrangement review.
113. In any case, rule 51 of the NGR provides for the acceleration of the review submission date, with rule 51(2) providing three examples of trigger events:

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.
- Examples:**
- 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.
 - 3 A significant extension, expansion or interconnection occurs.
- (3) The [ERA] may require the inclusion in an access arrangement of trigger events and may specify the nature of the trigger events to be included.

114. The matters raised in submissions concerning gas projects in the north-west of Western Australia would be covered by the trigger event in the first example. That is, should the gas project identified by gasTrading proceed and/or additional gas projects emerge that cause a re-direction of the flow of gas through the DBNGP, and provided that the access arrangement specified the necessary trigger event, the review submission date would advance to an earlier date. However, if there was no

⁵⁷ Mitsui E&P Australia, ‘Waitsia Stage 2’, ([online](#)) [accessed July 2020].

⁵⁸ Thompson S, Macdonald A and Boyd T, 20 January 2020, ‘M&A dominoes from potential Waitsia, North West Shelf gas deal’, Financial Review, ([online](#)) [accessed July 2020].

- re-direction of the flow of gas through the DBNGP the trigger event would not activate, and the access arrangement would be reviewed at the (original) review submission date.
115. The ERA considered that, given the uncertainty concerning the timing of and contractual arrangements for gas projects in the north-west of Western Australia, the inclusion of a trigger event in the access arrangement for the DBNGP for AA5 would be beneficial. Should circumstances change during AA5 that affect the operations of the DBNGP, the review submission date for the access arrangement would accelerate at this point in light of this operational change.
 116. Pursuant to rule 47A of the NGR, which will apply for the next access arrangement period (AA6), DBP must submit a reference service proposal to the ERA at least 12 months before the review submission date. That is, the submission of DBP's *reference service proposal* must precede the submission of DBP's *access arrangement revision proposal* for the next access arrangement period. Pursuant to rule 52(1) of the NGR, DBP's access arrangement revision proposal must be submitted on or before the review submission date.
 117. Given the regulatory costs involved for all parties, the ERA considered that the review submission date of an access arrangement should only be accelerated by a trigger event if the period of the acceleration caused a meaningfully earlier review submission date – for example, if the review submission date was accelerated by at least six months. The new (accelerated) review submission date must also allow DBP to comply with rule 47A of the NGR, which requires the submission of a reference service proposal at least 12 months before the review submission date. Consequently, the accelerated review submission date must be more than 12 months after the trigger event.
 118. Under normal circumstances (that is, no trigger event occurring) a service provider would commence preparing its reference service proposal some time before the required submission date, with the actual length of preparation time dependent on the individual service provider and its planning approach. Given the variations in preparation time and purpose of establishing a trigger event, the ERA considered it was reasonable to allow the service provider at least two months from the trigger event to prepare its reference service proposal.⁵⁹ Allowing the service provider two months to prepare its reference service proposal means that the accelerated review submission date should be 14 months after the trigger event.⁶⁰
 119. As indicated above, the period by which the review submission date is accelerated should be meaningful. The ERA considered such a period to be at least six months, and based on this, a trigger event should accelerate the review submission date only if it occurs more than 20 months before the review submission date (if the accelerated review submission date is 14 months after the trigger event).
 120. Based on the considerations outlined above, the ERA required DBP to include a trigger event for a re-direction of the flow of natural gas through the DBNGP in the proposed revised access arrangement.

⁵⁹ Two months is the period by which the ERA may extend the review submission date under rule 52(3) of the NGR.

⁶⁰ An accelerated review submission date that is *14 months* after a trigger event allows *2 months* for the service provider to prepare its reference service proposal, which must be submitted 12 months before the accelerated review submission date.

121. The draft decision set out the following required amendment:

Draft Decision Required Amendment 3

DBP must amend the proposed revised access arrangement to include the following trigger event (new clause 14A) to accelerate the review submission date specified in clause 14.2 of the access arrangement if the trigger event occurs.

14A TRIGGER EVENT

14A.1 Subject to clause 14A.2, the review submission date specified in clause 14 accelerates on the occurrence of the Trigger Event to the date that is 14 months after the Trigger Event.

14A.2 The Trigger Event accelerates the review submission date if the Trigger Event occurs prior to 1 May 2023.

14A.3 Trigger Event means the execution by Operator of a binding agreement (whether conditional or unconditional) for the transport of gas through the DBNGP, the performance of which requires a re-direction of the flow of gas through the DBNGP.

Reference and non-reference services

Non-reference services

122. In its initial proposal, DBP classified the following pipeline services as non-reference services based on its assessment of the services against the reference service factors:⁶¹

- Pilbara Service
- Spot Capacity Service
- Peaking Service
- Pipeline Impact Agreement
- Inlet Sales Agreement
- Data Services
- Storage Service
- Other Reserved Service.

123. DBP's assessment identified the following reasons to support the continuation of these services as non-reference services for AA5:

- varying degrees of demand and revenue forecastability;
- high substitutability with reference services where the pricing applied to reference services provides an appropriate basis on which to consider the reasonableness of prices for non-reference services (e.g. using the Part Haul reference service to understand the Pilbara service);
- costs which are in general separable from the costs of providing reference services and thus not included in the cost base which makes up [DBP's] regulatory services;
- minimal usefulness as an aid to negotiations for other services because the service is unique and does not provide a useful benchmark in considering the reasonableness of other services; and

⁶¹ DBP, 2021-2025 Final Plan, January 2020, p. 53, Table 6.2.

- impose a high regulatory cost-burden relative to the share of the service in [DBP's] revenue, specifically where revenues generated are small relative to the likely regulatory costs.⁶²

124. Subject to DBP describing the non-reference services to be offered for AA5 in the revised access arrangement as required by the ERA (see draft decision required amendment 4 at paragraph 129), the ERA considered that DBP's assessment of these pipeline services against the reference service factors supported the continuing provision of these services as non-reference services for AA5.

Reference services

125. DBP retained the current (AA4) reference service classifications for the T1 Service, P1 Service and B1 Service for AA5. The ERA considered that DBP's proposal to retain the current reference services for AA5 met the requirements of the NGR. As submitted by DBP, an assessment of the reference services against the reference service factors supported the continuing provision of the T1, P1 and B1 Services as reference services.

- Actual and forecast demand for the pipeline services:
 - Actual and forecast demand for reference services form part of the ERA's considerations of DBP's demand forecast (see paragraph 297). While demand for reference services over AA5 is forecast to reduce, demand for these services relative to other pipeline services remains high.
- Extent to which the pipeline services are substitutable:
 - The reference services, being full haul, part haul and back haul pipeline services, are not substitutable with each other or any other pipeline service.
- Feasibility of allocating costs to the pipeline services:
 - The allocation of costs for the reference services are feasible and form part of the ERA's considerations of revenue and tariffs (see paragraph 400).
- Usefulness as a reference service:
 - The reference services and their respective tariffs and terms and conditions can form the basis for negotiations for other pipeline services.
- Likely regulatory cost for all parties:
 - Being established, the reference services minimise the regulatory cost for parties (that is, the services have an established tariff setting process and terms and conditions in respect of which revisions can be proposed and considered).

126. Additionally, there were no submissions from interested parties objecting to DBP's initial proposal to continue to provide the T1, P1 and B1 Services as reference services.

Descriptions of services

127. The proposed revised access arrangement lists the reference and non-reference services in clause 3.1(a) and 3.1(b), respectively. Clause 3.2 states that a description of each of the pipeline services follows. However, there was no description of the

⁶² DBP, 2021-2025 Final Plan, January 2020, p. 54.

following non-reference services in the revised access arrangement initially proposed by DBP:

- Other Reserved Service
- Data Services
- Inlet Sales Service.

128. Consistent with the statement made at clause 3.2 of the proposed revised access arrangement, the ERA considered that DBP should include descriptions of each of the non-reference services in the access arrangement for completeness. Some of the required descriptions were included in Table 6.2 of DBP’s Final Plan (reproduced as Table 2 in this decision). However, this information was inconsistent with the information in the revised access arrangement. For example:

- The Final Plan described Data Services as being a service that was “subject to operational availability”. The description for Inlet Sales Service (which the ERA assumed to be the same as the “Inlet Sales Agreement”) was also described as “subject to operational availability”. However, DBP’s proposed amendments to clause 3 of the access arrangement included amendments to delete all pipeline services that were subject to operational availability. In any case, the revised access arrangement described Data Services and Inlet Sales Service as being “subject to availability of capacity”.
- The Pilbara Service, Storage Service and Peaking Service were listed as non-reference services in the Final Plan but were not listed, or described, in the revised access arrangement.
- The Park and Loan Service was not listed in the Final Plan but was listed and described in the revised access arrangement (at clause 6.3(c)) as a non-reference service.

129. The ERA considered that the information on reference and non-reference services in both the access arrangement and access arrangement information (that is, DBP’s Final Plan) should be accurate and consistent. The ERA noted that, in addressing this requirement, DBP may need to make corrections to the access arrangement and/or access arrangement information.

130. The draft decision set out the following required amendment:

Draft Decision Required Amendment 4

DBP must amend the pipeline services information in clause 3 of the access arrangement to include descriptions of the reference and non-reference services that are listed in clause 3.1 (as per the statement in clause 3.2 of the proposed revised access arrangement).

The list of non-reference services in clause 3.1(b) must include the Pilbara Service, Storage Service and Peaking Service (in addition to the non-reference services already listed in the proposed revised access arrangement).

Additional reference services

131. In its initial proposal, DBP identified the Spot Capacity Service and Pilbara Service as pipeline services that are provided by means of the DBNGP. Based on its assessment of these services against the reference service factors, DBP proposed to classify both services as non-reference services for AA5, which was consistent with the current (AA4) access arrangement. As noted at paragraph 128, the Pilbara Service was not listed in clause 3.1 of the revised access arrangement as a pipeline

service being offered as a non-reference service, despite the information in Table 6.2 of DBP's Final Plan.

132. In response to the ERA's issues paper, WesCEF and gasTrading submitted that the Spot Capacity Service and Pilbara Service, respectively, should be reclassified and offered as reference services under the access arrangement for AA5.^{63, 64} The ERA considered these submissions in turn.

Spot Capacity Service

133. Clause 3.6(a) of the revised access arrangement describes the Spot Capacity Service as follows:

Spot Capacity Service: a Spot Capacity Service is a pipeline service available on an interruptible basis (and at varying levels of interruptibility), subject to availability of Capacity in accordance with the following principles.

134. The principles applying to spot capacity and spot transactions are detailed in clauses 3.6(b)(i) to (viii) of the revised access arrangement and form the basis of the spot market rules. Clause 16 (Definitions) of the revised access arrangement sets out the following definitions for the terms "Spot Capacity", "Spot Transactions" and "Spot Market Rules":

Spot Capacity means any capacity on the DBNGP on a Gas Day (being the capacity available after all Nominations for Reserved Capacity for that Gas Day have been allocated by the Operator for that Gas Day), which capacity, is, according to the Operator (acting in good faith) available for purchase.

Spot Transaction means a transaction for a Spot Capacity Service between the Operator and Shipper in accordance with the Spot Transaction Terms and Conditions.

Spot Market Rules means the rules published by the Operator from time to time to apply to Spot Capacity Service and the market for Spot Capacity, which the Operator will make available on its website.

135. DBP assessed the Spot Capacity Service against the reference service factors and determined that the service should not be offered as a reference service (instead it should be offered as a non-reference service). DBP's assessment is reproduced in Table 3 (below).
136. In its submission, WesCEF acknowledged DBP's assessment of the Spot Capacity Service against the reference service factors. WesCEF was of the opinion that DBP's assessment that the service was: (1) in low demand in the current period; and (2) substitutable to the extent that capacity swaps may be entered into between shippers, would be likely to change based on the forecast presented by DBP in its Final Plan. WesCEF submitted that the Spot Capacity Service would satisfy more criteria of the reference service factors going forward. Also, converting the service into a reference service would improve the transparency of the floor price determination as well as the daily availability of the service.⁶⁵

⁶³ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission in response to issues paper, 30 March 2020, pp. 8-9.

⁶⁴ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 12-14.

⁶⁵ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission in response to issues paper, 30 March 2020, p. 8.

Table 3: DBP's assessment of the Spot Capacity Service against the reference service factors

Reference service factor (NGR 47A)	DBP assessment
Actual and forecast demand and number of prospective customers (rule 47A(15)(a))	Can be forecast but has high variability Low demand and revenue in the current period
Substitutability (rule 47A(15)(b))	No reference service substitutes, but capacity swaps between shippers are a direct substitute
Feasibility of allocating costs (rule 47A(15)(c))	Difficult to allocate costs due to variability
Usefulness in supporting negotiations and dispute resolution for other pipeline services (rule 47A(15)(d))	An adjunct to other services, so limited use in its own right to support negotiations
Likely regulatory cost (rule 47(A)(15)(e))	High regulatory cost to specify a regulatory version of service which is consistent with what shippers want and other regulatory services

Source: 2021-2025 Final Plan, Attachment 6.1: Pipeline Service and Reference Services Supporting Information, January 2020, p. 3.

137. The ERA requested additional information from DBP about the Spot Capacity Service. DBP confirmed that the Spot Capacity Service “is made available through a day-ahead auction of spare capacity as part of the T1 Standard Shipper Contract (T1 SCC) negotiated with shippers in 2004, with the price payable for this service determined by the market (subject to the floor price) rather than through negotiation.”⁶⁶ The governing rules for the DBNGP spot capacity market are published on DBP’s website.⁶⁷

138. DBP further confirmed that:

The Spot Capacity service is not available in its own right, but rather as an adjunct to the T1 SSC transportation service. Shippers with firm SSC transportation services, for example, who find they have an unplanned need for more capacity on a given day, will sometimes enter the spot market to purchase that capacity.

It is important to note that shippers do not need to obtain a Spot Capacity service in order to gain access to more capacity on a given day (or to have additional gas supplied to a location on a day). Rather, there are substitutes for this service that provide shippers a firmer (i.e. a better quality) product than the Spot Capacity service provides. A shipper may, for example:

- procure firm capacity from other shippers that are not using their capacity on a day through a bilateral capacity trade (secondary capacity), where the contractual rights are outlined in clause 27 of the [Standard Shipper Contract];
- enter into an agreement with a shipper (or other market intermediaries) that have spare capacity to transport gas on its behalf to the location it requires the gas; or
- enter into a transportation service on the DBNGP.

Consistent with rule 105(2) of the NGR and the terms of existing services on the DBNGP, shippers can enter into bilateral capacity trades without obtaining our consent. We are aware that this is a fairly well used feature of existing contracts.

⁶⁶ DBP, *Response to information request ERA14*, 5 June 2020.

⁶⁷ DBP, *Governing Rules for the market for the Spot Capacity*, ([online](#)) [accessed June 2020].

The ability of our shippers to use these substitute services places a constraint on the floor price that we can set for the day-ahead auction and the price that shippers are willing to pay for the Spot Capacity service through the day-ahead auction.⁶⁸

139. Actual and forecast demand and revenue for the Spot Capacity Service for AA4 and AA5, respectively, are shown in Table 4.

Table 4: Spot Capacity Service demand and revenue for AA4 and AA5

AA4	2016 (actual)	2017 (actual)	2018 (actual)	2019 (actual)	2020 (forecast)
Demand (avg TJ/day)	█	█	█	█	█
Revenue (\$ million)	█	█	█	█	█
% of reference service equivalent revenue	█	█	█	█	█ (estimate)
AA5	2021 (forecast)	2022 (forecast)	2023 (forecast)	2024 (forecast)	2025 (forecast)
Demand (avg TJ/day)	█	█	█	█	█
Revenue (\$ million)	█	█	█	█	█

Source: DBP, Response to information request ERA14, 5 June 2020.

140. DBP noted the difficulty in developing forecasts given the nature of the service which catered for unplanned changes in demand. For this reason, the forecasts for AA5 are based on a simple average of the most recent years. DBP submitted the following explanation for the increase in demand that occurred in 2019:

█
█
█
█
█⁶⁹

141. DBP considered it to be inappropriate to assess the Spot Capacity Service against the reference services factors, given the service was only offered as an adjunct to the full haul T1 Service. Nevertheless, DBP provided further information on its assessment of the Spot Capacity Service against the reference service factors and concluded that the assessment supported the continuing provision of the service as a non-reference service.⁷⁰

142. The ERA considered DBP's additional information and, having regard to the reference service factors set out in rule 47A(15) of the NGR, did not consider that the Spot Capacity Service could be offered as a reference service for the following reasons.

Actual and forecast demand for the pipeline service

143. Average demand for the Spot Capacity Service is low when compared with average demand for full haul, part haul and back haul services. DBP submitted that demand

⁶⁸ DBP, Response to information request ERA14, 5 June 2020.

⁶⁹ DBP, Response to information request ERA14, 5 June 2020.

⁷⁰ DBP, Response to information request ERA14, 5 June 2020.

for the Spot Capacity Service was unplanned and variable, making it difficult to forecast. DBP expected demand for the Spot Capacity Service to decrease over AA5, as some shippers made use of the Peaking Service under recently renegotiated contracts.⁷¹

144. WesCEF submitted that it had observed a significant increase in bidding activity in the past 12 months and reduced availability of the service. It suggested that DBP analyse expected daily and hourly usage to determine if there had been sufficient growth in demand to warrant including the service as a reference service.⁷² Given the nature of the service, the modelling of such usage would not necessarily provide any certainty as to whether there will be sustained demand for the service over a longer period of time. In any case, even if there was a demonstrated increase in demand for the Spot Capacity Service, the market determined price for spot capacity is not a sufficiently certain method for determining the reference tariff, which must be specified if the service becomes a reference service.

Extent to which the pipeline service is substitutable

145. The Spot Capacity Service has competitive substitutes and shippers do not need a Spot Capacity Service to gain access to more capacity on a given day or to have additional gas supplied to a location. Consistent with rule 105(2) and the terms of existing contracts, shippers can enter into bilateral capacity trades without obtaining consent from DBP.⁷³ The Peaking Service is also a substitute for the Spot Capacity Service, with DBP expecting demand for the Peaking Service to increase following contract renegotiations with shippers.

Feasibility of allocating costs to the pipeline service

146. The primary purpose of allocating costs to a pipeline service is to determine the tariff that should be paid for that service. While costs may be allocated to the Spot Capacity Service, it is not possible to determine a reference tariff using a market bidding (auction) process. The NGR require a reference tariff to be specified for each reference service, with the overarching requirement being that when reference tariffs are determined and reviewed, the tariffs should be based on the efficient cost (or anticipated efficient cost) of providing the associated reference services.⁷⁴ The auction process that results in a “market price on a day” for spot capacity is not a sufficiently certain method to determine the reference tariff for the Spot Capacity Service.
147. Additionally, the established bidding process for available spot capacity and the prices that are subsequently paid by shippers reflect the willingness of shippers to obtain additional capacity to meet their operational needs on any given day.⁷⁵ A set reference tariff would distort this willingness to pay.

⁷¹ The Peaking Service is described in DBP’s Final Plan as “a pipeline service where a shipper can obtain additional peaking limits to those set in standard terms (subject to operational availability)” (Table 6.2, which is reproduced at paragraph 103 of this decision).

⁷² Wesfarmers Chemicals, Energy & Fertilisers Ltd submission in response to issues paper, 30 March 2020, p. 8.

⁷³ See clause 6.2 of the proposed revised access arrangement.

⁷⁴ See Division 8 (Tariffs) of the National Gas Rules.

⁷⁵ The prices payable for spot capacity are determined, subject to a floor price, by the market via a bidding (auction) process. The floor price (“Minimum Bid Price”) is set in accordance with clause 3.5(f) of the Standard Shipper Contract. Clause 3.6(b)(iv) of the proposed revised access arrangement is the equivalent clause for shippers accessing spot capacity with a reference service.

Usefulness as a reference service for access negotiations and dispute resolution

148. The Spot Capacity Service is made available to shippers that have an existing transportation service (for example, a full haul T1 Service) through a day-ahead auction and is subject to competition from bilateral capacity trades. The price paid by shippers for spot capacity is determined by the market and not through negotiations with DBP. Given this, the usefulness of specifying the Spot Capacity Service as a reference service, with a reference tariff and reference service terms and conditions, to support access negotiations and dispute resolution for other services would be limited.

Likely regulatory cost for all parties

149. The likely regulatory costs in specifying the Spot Capacity Service as a reference service would exceed any benefits. The likely benefits would be minimal given the availability of other competitive substitutes and the small amount of revenue derived from the service (less than ██████████ of reference service equivalent revenue). The likely regulatory costs that would be incurred, however, could be significant given the complexities that would be involved in establishing and reviewing the required reference tariff.
150. While the ERA did not require any amendments to the Spot Capacity Service, the ERA required DBP to amend clause 3.6 of the proposed revised access arrangement to correct a cross-referencing error. The principles applying to spot capacity and spot transactions, set out in clauses 3.6(b)(i) to (viii) of the revised access arrangement, are substantively consistent with the principles set out in clause 3.5 of the Standard Shipper Contracts published on DBP's website.⁷⁶ This confirms that the words "(subject to clause 5.3(g)(i))" in clause 3.6(b)(ii) are in error and should read "(subject to clause 3.6(b)(iv))".
151. The draft decision set out the following required amendment:

Draft Decision Required Amendment 5

DBP must amend the information for the Spot Capacity Service in clause 3.6(b)(ii) of the proposed revised access arrangement to correct a referencing error by deleting the reference to "clause 5.3(g)(i)" and replacing it with a reference to "clause 3.6(b)(iv)".

Pilbara Service

152. As noted at paragraph 128, the Pilbara Service was not listed or described in the revised access arrangement initially proposed by DBP. However, in DBP's Final Plan the Pilbara Service was described as follows:

The Pilbara Service is an interruptible transportation service on the DBNGP where deliveries are within the Pilbara Zone (subject to available capacity).⁷⁷

153. On DBP's website, the "Pilbara Zone" is identified as the zone between and inclusive of inlet point "I1-01" and main line valve "MLV31" as follows:

The Pilbara Service is an interruptible transportation service on the DBNGP where deliveries are within the Pilbara Zone (between I1-01 and MLV31 includes I1-01 and MLV31)).⁷⁸

⁷⁶ DBP, *Standard Shipper Contracts*, ([online](#)) [accessed June 2020].

⁷⁷ DBP, *2021-2025 Final Plan*, January 2020, p. 53, Table 6.2.

⁷⁸ DBP, 'Customer Access' ([online](#)) (accessed May 2020).

154. DBP assessed the Pilbara Service against the reference service factors and determined that the service should not be offered as a reference service (instead it should be offered as a non-reference service). DBP's assessment is reproduced in Table 5.

Table 5: DBP's assessment of the Pilbara Service against the reference service factors

Reference service factor (NGR 47A)	DBP assessment
Actual and forecast demand and number of prospective customers (rule 47A(15)(a))	Can be forecast Low customer numbers (8 in the current period)
Substitutability (rule 47A(15)(b))	Part Haul / Back Haul Reference Service is a suitable and close substitute
Feasibility of allocating costs (rule 47A(15)(c))	Difficult to allocate costs because it can be Part Haul one day and Back Haul the next
Usefulness in supporting negotiations and dispute resolution for other pipeline services (rule 47A(15)(d))	Limited use in its own right to support negotiations due to readily available substitutes (part haul and back haul)
Likely regulatory cost (rule 47(A)(15)(e))	High regulatory cost to specify a regulatory version of service which is substitutable with other reference services

Source: 2021-2025 Final Plan, Attachment 6.1: Pipeline Service and Reference Services Supporting Information, January 2020, p. 2.

155. In its submission, gasTrading submitted that it had noticed “an increasing preference for the Pilbara Service” despite DBP's assessment “that the service has low revenues and customer numbers and is easily substituted with an alternate reference service (being Part or Back haul)”.⁷⁹ GasTrading further submitted that:

The Pilbara Service provides a valuable option for gas shippers to purchase gas from sellers with diverse supply portfolios and leverage the supply security offered by gas sellers who have access to multiple production locations whilst avoiding being locked into a long-term arrangement. With the move to equity marketing shippers are being pushed to consider the use of the Pilbara Service.

The Pilbara Service also provides flexibility to participate more actively in short term or spot opportunities, a necessary precursor for the growth in a liquid spot and/or secondary market. With the continued development of spot gas markets, gas transport arrangements that are flexible, increase the ability of shippers to trade gas at different Inlet Points, knowing they have in place gas transport...

Finally, the Pilbara Service includes gas supply from the Perth Basin. With increasing production from the Perth Basin, and much of the growth in gas demand being in the Pilbara region, it is likely that customers will be seeking gas supply from the Perth Basin and gas producers in the Perth Basin, such as Mitsui, may like to provide gas from their portfolio of gas projects.

In gasTrading's view it is likely we will see increased demand for this service. Indeed, this service could become more common than point to point Part Haul or Back Haul services over the Access Period.⁸⁰

156. As stated in DBP's assessment of the Pilbara Service against the reference service factors, there are eight customers with a Pilbara Service in the current (AA4) period.

⁷⁹ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 12.

⁸⁰ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 13-14.

GasTrading considered this number of customers, which represents 27 per cent of customers (based on an estimate of 30 unique shippers), was a reasonable basis for considering coverage of the service.⁸¹

157. The ERA requested additional information from DBP about the Pilbara Service. DBP confirmed the following:

The Pilbara Service provides shippers with the ability to ship gas from any inlet point to any outlet point within a prescribed zone (the Pilbara, between and including I1-01 and MLV31)) for [REDACTED]. The service is priced at [REDACTED] (escalated from the 1 January price set out in the terms and conditions). When first established, the negotiated price was based on [REDACTED]. [REDACTED] The Pilbara Service has the same position in the curtailment plan as “other reserved services”, making it less firm than reference services.

The Pilbara Service emerged to meet the needs of shippers responding to changing market dynamics in the Pilbara. With the entry of new gas producers in the Pilbara, shippers in the region could secure gas from different sources, which would require both part haul services and back haul services. In response to these market developments, the Pilbara Service was developed to reduce administrative complexity (one contract to replace a combination of part haul and back haul contracts) and provide the flexibility of a service that is less firm but with a lower associated fixed cost. Importantly, shippers in the Pilbara remain able to, and continue to, make use of part haul and back haul services where there is a requirement for firm services. The part haul and back haul reference services can therefore be viewed as substitutes for this service.⁸²

158. Actual and forecast demand and revenue for the Pilbara Service for AA4 and AA5, respectively, are shown in Table 6.

Table 6: Pilbara Service demand and revenue for AA4 and AA5

AA4	2016 (actual)	2017 (actual)	2018 (actual)	2019 (actual)	2020 (forecast)
Demand (avg TJ/day)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Revenue (\$ million)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of reference service equivalent revenue	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] (estimate)
AA5	2021 (forecast)	2022 (forecast)	2023 (forecast)	2024 (forecast)	2025 (forecast)
Demand (avg TJ/day)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Revenue (\$ million)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: DBP, Response to information request ERA15, 5 June 2020.

⁸¹ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 13.

⁸² DBP, Response to information request ERA15, 5 June 2020.

159. In the additional information provided to substantiate its assessment against the reference service factors, DBP noted that demand for the Pilbara Service had grown, but the quantum of revenue remained low relative to existing reference services. The growth in demand during 2018 to 2019 resulted from shippers moving from the firm part haul service and other reserved services to the Pilbara Service. With the transition between these services completed, demand for 2020 and beyond was forecast to remain stable at an average [REDACTED].⁸³
160. The ERA considered DBP's additional information and, having regard to the reference service factors set out in rule 47A(15) of the NGR, did not consider that the Pilbara Service should be offered as a reference service for AA5 for the following reasons.

Actual and forecast demand for the pipeline service

161. Average demand for the Pilbara Service is low when compared with the average demand for full haul, part haul and back haul services. As set out above, DBP forecasts average demand for the service during AA5 to be [REDACTED], with forecast revenue from the provision of the service being less than [REDACTED] per year.

Extent to which the pipeline service is substitutable

162. The Pilbara Service was designed as a substitute for part haul and back haul reference services in the Pilbara region of Western Australia (that is, the "Pilbara Zone"). DBP submitted that the service was therefore substitutable with part haul and back haul reference services. The ERA considered that while shippers could substitute the Pilbara Service with separate part haul and back haul services, they were unlikely to do so, unless a firm transportation service was required.
163. As submitted by DBP, the Pilbara Service was introduced to meet the specific needs of shippers in the Pilbara region. Given this, the service is not necessarily substitutable as it provides unique benefits to these shippers. In particular, the Pilbara Service enables shippers to secure gas from different sources in the Pilbara Zone using flexible (less firm) part haul and back haul transportation services with a lower fixed cost under a single contract. Without the Pilbara Service, shippers would need to contract for separate part haul *and* back haul services, respectively, and pay the associated tariffs for each of these services. Based on these considerations the ERA considered that the extent to which the Pilbara Service is substitutable was somewhat limited.

Feasibility of allocating costs to the pipeline service

164. The Pilbara Service provides a flexible (less firm) alternative to the existing part haul and back haul reference services and is not charged on a distance basis. Unlike the part haul and back haul reference services, which are charged on a distance basis, the Pilbara Service is charged [REDACTED] (adjusted yearly in line with the Pilbara Service terms and conditions). DBP submitted that given this pricing structure it was not clear how pipeline costs could be allocated to the Pilbara Service.
165. The ERA considered that it was feasible for the costs for the Pilbara Service to be allocated given that the demand and costs for providing the service can be reasonably forecast. The Pilbara Service is essentially a hybrid of the existing part haul and back haul reference services, which as reference services, must have reference tariffs that are determined in accordance with the requirements of the NGR.

⁸³ DBP, *Response to information request ERA14*, 5 June 2020.

The overarching requirement of the NGR is that when reference tariffs are determined and reviewed, the tariffs should be based on the efficient cost (or anticipated efficient cost) of providing the associated reference services.⁸⁴ The base costs for providing part haul and back haul services are therefore known, which can be used as a basis to determine and allocate costs for the Pilbara Service. Once allocated, the costs can be used to determine an associated reference tariff for the service.

Usefulness as a reference service for access negotiations and dispute resolution

166. The Pilbara Service is derived from the part haul and back haul reference services. As such the terms and conditions for the service have been derived from the terms and conditions for the part haul and back haul reference services and are limited in their usefulness for access negotiations and dispute resolution.

Likely regulatory costs for all parties

167. Given the relatively low demand for, and revenue received from, the Pilbara Service, the likely regulatory costs as a result of specifying the service as a reference service would exceed any benefits. As firm substitutes for the Pilbara Service, the part haul and back haul reference services place a constraint on the price that can be paid for Pilbara services. For AA4, the Pilbara Service accounted for less than [REDACTED] of reference service equivalent revenue. For AA5, DBP forecast an average of [REDACTED] of revenue per year from the Pilbara Service, which accounts for [REDACTED] of forecast reference service equivalent revenue for AA5.⁸⁵

Rebateable services

168. In May 2020, DBP advised the ERA that it had completed contract renegotiations with shippers. The renegotiations affected the demand and pipeline services information previously provided by DBP in its Final Plan. Concerning changes to pipeline services, DBP advised that some shippers would now use the Peaking Service during AA5 and that this service should be specified as a *rebateable service*. DBP submitted:

In our Final Plan, we did not propose any services as rebateable services. However, as set out above, since the submission of our Final Plan we have finalised a renegotiation of contractual arrangements with [REDACTED] shippers. [REDACTED] will also utilise the peaking service. We have therefore re-assessed this service in light of the renegotiation ...

We believe it is appropriate that a portion of the revenue recovered from the peaking service be rebated to our reference service customers.⁸⁶

169. Rule 93 of the NGR sets out the requirements for the allocation of total revenue and costs between reference services and other services, including rebateable services. Rule 93(4) states that 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.

⁸⁴ See Division 8 (Tariffs) of the National Gas Rules.

⁸⁵ Based on DBP's updated forecast of reference service revenue. DBP, 'Information Requests – ERA17 to ERA20', [email] 29 May 2020.

⁸⁶ DBP, 'Demand and Services Update', [email] 22 May 2020.

170. After reassessing the Peaking Service in light of the renegotiations, DBP maintained the position in its Final Plan that the Peaking Service should remain as a non-reference service. DBP submitted:

Forecast and actual demand and revenue: The peaking service tariff includes both capacity and commodity components, the proportions of which depend on the negotiated terms and conditions. However, [REDACTED]

This reflects the uncertainty over the ongoing use of the service and means that a significant portion of revenue is unpredictable ...

Uncertainty also makes assessing the extent of demand and revenue difficult with potentially wide variations from year to year – this uncertainty may reduce if and when the service is used to a greater extent.

Based on the lack of actual data upon which to base a forecast, the uncertainty over the use of the peaking service and the related unpredictability of revenue [REDACTED]

[REDACTED] the peaking service remains classified as a non-reference service.

Substitutability: The peaking service provides shippers with a higher degree of flexibility than is available for reference services in order to allow shippers to have a flexible allocation they can use at any time, reflecting the above-mentioned uncertainty over demand. While not a true substitute, it is clear that up to this point reference services have been used as a substitute for the peaking service, which currently has had no demand. The recontracting outcome does not in and of itself change this.

Feasibility of allocating costs: Apart from direct incremental costs, such as fuel gas, it is very difficult to allocate costs for the pipeline system as a whole to this service. In particular, this is because it makes use of spare capacity (the peaking service is lower on the curtailment order than firm services) and our fixed costs would not change in the absence of this service. Thus, any allocation of the fixed costs of the pipeline system as a whole to these services would be arbitrary.

Usefulness in supporting negotiations and dispute resolution: Given its limited use to date, the peaking service provides a very limited basis for broader negotiation in respect of other services or in dispute resolution, reflecting the bespoke nature of the service provided to this particular customer type.

Regulatory costs: Because of the flexibility and uncertainty over the use of the peaking service, the regulatory costs are likely to be high relative the benefits. In particular, it would be difficult to accurately allocate costs to the peaking service in a manner which is consistent with the way they are allocated for other reference services.⁸⁷

171. The ERA considered that, on balance, DBP's assessment of the Peaking Service against the reference service factors supported the continuation of the service as a non-reference service for AA5. The ERA also considered that DBP's proposal to specify the Peaking Service as a rebateable service was consistent with the requirements of rule 93(4) of the NGR for rebateable services.
172. Consistent with DBP's proposal and the ERA's decision to include the Peaking Service as a rebateable service for AA5, the ERA required DBP to include the Peaking Service as a non-reference service and to include a description of the service in clause 3 of the revised access arrangement (similar to the description provided for the Spot Capacity Service at clauses 3.6(a) and (b)).

⁸⁷ DBP, 'Demand and Services Update', [email] 22 May 2020, Attachment: Further information on our demand and services, p. 7.

173. The draft decision set out the following required amendment:

Draft Decision Required Amendment 6

Consistent with [Draft Decision] Required Amendment 4, DBP must amend clause 3 of the proposed revised access arrangement to include a reference to, and a description of, the Peaking Service, which is a non-reference service that is to be specified as a rebateable service for AA5 pursuant to rule 93(4) of the NGR.

174. The ERA further considered the allocation of costs for the Peaking Service as a rebateable service as part of its considerations of the allocation of total revenue (see paragraph 1832). The rebate mechanism for the Peaking Service, which will rebate a portion of the revenue generated from the service to reduce reference tariffs, was considered as part of the ERA's considerations of the reference tariff variation mechanism (see paragraph 1903).

DBP's response to the draft decision

175. DBP accepted the ERA's draft decision required amendments 2, 4, 5 and 6 (reproduced in Table 7 below) to amend the access arrangement to address the matters concerning the identification and description of pipeline services. DBP's revised proposed amendments included:

- Amendments to clause 3 (Pipeline Services) and 16 (Definitions) of the revised access arrangement to include only the pipeline services that can be provided as individual (stand-alone) services (that is, there are no references to the Seasonal Service, Metering and Temperature Service and Odourisation Service).
- Amendments to clause 3 (Pipeline Services) of the revised access arrangement to include descriptions of the reference and non-reference services that are listed in clause 3.1.
- An amendment to the information for the Spot Capacity Service in clause 3.6(b)(ii) of the revised access arrangement to correct a cross referencing error.
- An amendment to clause 3 (Pipeline Services) of the revised access arrangement to include a reference to, and description of, the Peaker Service (previously referred to as the "Peaking Service").⁸⁸

⁸⁸ DBP's Final Plan, and consequently ERA's draft decision, refer to the "Peaking Service". DBP has in its Revised Final Plan renamed the Peaking Service as the "**Peaker Service**" to align with the terminology used in negotiated contracts with shippers.

Table 7: ERA's draft decision required amendments 2, 4, 5 and 6**ERA draft decision required amendment****Draft Decision Required Amendment 2**

DBP must amend the access arrangement information to clarify the pipeline services that are available to prospective users by deleting references to the Seasonal Service, Metering and Temperature Service and Odourisation Service, which are services that exist within the contractual rights of reference services and cannot be provided as individual (stand-alone) pipeline services. The term "Seasonal Service" in clause 16 (Definitions) of the proposed revised access arrangement must also be deleted

Draft Decision Required Amendment 4

DBP must amend the pipeline services information in clause 3 of the access arrangement to include descriptions of the reference and non-reference services that are listed in clause 3.1 (as per the statement in clause 3.2 of the proposed revised access arrangement). The list of non-reference services in clause 3.1(b) must include the Pilbara Service, Storage Service and Peaking Service (in addition to the non-reference services already listed in the proposed revised access arrangement).

Draft Decision Required Amendment 5

DBP must amend the information for the Spot Capacity Service in clause 3.6(b)(ii) of the proposed revised access arrangement to correct a referencing error by deleting the reference to "clause 5.3(g)(i)" and replacing it with a reference to "clause 3.6(b)(iv)".

Draft Decision Required Amendment 6

Consistent with Required Amendment 4, DBP must amend clause 3 of the proposed revised access arrangement to include a reference to, and a description of, the Peaking Service, which is a non-reference service that is to be specified as a rebateable service for AA5 pursuant to rule 93(4) of the NGR.

Source: ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. iii.

176. DBP rejected the ERA's draft decision required amendment 3 to include a trigger event in the access arrangement to provide for the acceleration of the review submission date if a gas transportation agreement requires a re-direction of the flow of gas through the DBNGP. DBP submitted:⁸⁹

In considering gas market developments in Western Australia that might result in a change in direction of the flow of the DBNGP, we have not accepted the ERA's proposed trigger mechanism. We outline proposed alternatives in discussing the access arrangement document and rebateable non-reference services.

177. DBP's revised proposal to address the matters concerning gas development projects, as raised by interested parties in submissions and the ERA's draft decision, is to introduce a new rebateable non-reference service – the Ullage Service.⁹⁰ DBP submitted that this new service would avoid the need for a trigger event (as required by the ERA's draft decision required amendment 3) for the following reasons:

⁸⁹ DBP, *2021-2025 Revised Final Plan, Attachment 1.5: Required Amendments*, October 2020, amendment number 3.

⁹⁰ DBP's proposed description of the Ullage Service is set out in new clause 3.7(d) of the revised proposed access arrangement as: "A service for ullage to the Karratha gas plant from the Perth basin for variable contracted capacity and term, with specific conditions relating to reliability of service and behaviour charges (subject to available capacity)."

- (a) As a non-reference rebateable service, if the proposed Ullage Service is provided during AA5, there will be no requirement for consequential amendment to the Access Arrangement to account for the revenue received from, or to specify the terms of, the provision of such service and therefore no need to accelerate the review submission date.
 - (b) The rebate under NGR 93(3) will be automatically applied by the tariff variation mechanism (see Attachment 13.2 and Access Arrangement Document mark-ups).
 - (c) The proposed Ullage Service has now been identified and described in the revised Access Arrangement as a non-reference pipeline service that may be offered.⁹¹
178. DBP’s assessment of the proposed Ullage Service is detailed in Attachment 6.2 of DBP’s Revised Final Plan.⁹² Based on this assessment, DBP submitted that the Ullage Service should be specified as a *non-reference* service (as opposed to a reference service). Furthermore, based on its assessment of total revenue allocation and rebateable services, DBP submitted that the Ullage Service should be further specified as a non-reference rebateable service.⁹³
179. DBP’s preferred approach to address the ERA’s draft decision required amendment 3 is to remove the need for a trigger event. However, DBP submitted that if the ERA concludes that a trigger event is still required, the trigger event must be redrafted as follows:⁹⁴

[Definition of “Trigger Event” in clause 16 of the access arrangement]

Trigger Event means that all of the following have occurred (the date on which the Trigger Event occurs being the date on which the last of the following occur):

- (a) the Operator has executed a binding agreement for transport of gas from the Perth Basin through the DBNGP and that agreement has become unconditional;
- (b) the Operator determines (acting reasonably) that there is a real and not fanciful risk that performance of the agreement described in (a) will result in a re-direction of the flow of gas through the DBNGP in a manner that significantly changes the operation of the DBNGP, prior to 1 January 2026; and
- (c) gas transportation begins to occur under the agreement in (a).

[Clauses 14.2 to 14.7 of the access arrangement]

Revision and Commencement Date

...

- 14.2 Subject to clauses 7.4(d) and 14.4, the review submission date for the Current Access Arrangement is 1 January 2025.
- 14.3 Subject to clause 14.5, the revision commencement date for the Next Access Arrangement is 1 January 2026.

⁹¹ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, p. 12.

⁹² DBP, 2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential), October 2020.

⁹³ DBP, 2021-2025 Revised Final Plan, Attachment 13.2: Allocation of total revenue (Confidential), October 2020.

⁹⁴ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, pp. 13-16.

- 14.4 If the Trigger Event occurs prior to 1 May 2023, the review submission date determined under clause 14.2 shall be accelerated and brought forward to the date which is 14 months after the Trigger Event.
- 14.5 If the review submission date determined under clause 14.2 is accelerated and brought forward pursuant to either of clauses 7.4(d) or 14.4, then the revision commencement date for the Next Access Arrangement is accelerated and brought forward to a date which is 12 months after the accelerated and brought forward review submission date.
- 14.6 For the avoidance of doubt, in no case can clause 7.4(d) or clause 14.4 result in the review submission date being delayed to a date later than the pre-existing review submission date.
- 14.7 The Operator must notify the Regulator of the occurrence of each of (a), (b) and (c) of the definition of Trigger Event (in clause 16).
180. Further to accepting draft decision required amendments 2, 4, 5 and 6, and addressing drafting decision required amendment 3, DBP proposed to specify the Pilbara Service and Other Reserved Service as additional non-reference rebateable services in the access arrangement for AA5.

Submissions to the ERA

181. Several submissions in response to the ERA's issues paper addressed the matter of pipeline and reference services and were considered as part of the ERA's draft decision.⁹⁵ In particular, WesCEF and gasTrading both suggested that the access arrangement should include additional reference services.
- WesCEF submitted that the Spot Capacity Service should become a reference service under the access arrangement.⁹⁶
 - GasTrading submitted that it had noticed an increase in demand for the Pilbara Service and was of the view that demand would continue to increase, which could make the Pilbara Service more common than point-to-point part haul or back haul services over the access arrangement period.⁹⁷
182. GasTrading further submitted that the development of gas projects in Western Australia, for example, the proposal to export gas via the North West Shelf Joint Venture (NWS JV), could raise concerns for the DBNGP access arrangement. In support of its submissions concerning the NWS JV, gasTrading provided additional information, including three gas flow scenarios covering: (1) existing gas arrangements; (2) a situation where the NWS JV ceases producing domestic gas; and (3) a situation where the NWS JV ceases production and becomes a gas consumer of domestic gas for conversion to LNG for export.⁹⁸
183. While CPM was primarily concerned with the proposed terms and conditions for reference services rather than the proposed reference services themselves, CPM (like gasTrading) referred to the increasing possibility of bi-directional gas flows on the DBNGP to accommodate gas projects taking place in the north-west of Western Australia.⁹⁹

⁹⁵ Submissions in response to the issues paper from WesCEF, gasTrading, CPM and AGIG.

⁹⁶ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission in response to issues paper, 30 March 2020, p. 8.

⁹⁷ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 13-14.

⁹⁸ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, pp. 20-31 (Attachment 2).

⁹⁹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 3.

184. AGIG's submission in response to the ERA's issues paper advised of DBP's ongoing engagement with customers and stakeholders, including the continuation of shipper roundtable meetings. The most recent roundtable meeting presentation and responses to questions raised by shippers at the meeting were provided as Attachments B and C to AGIG's submission, respectively.¹⁰⁰ These documents:

- Reiterated DBP's proposal to continue with the reference services that are currently offered, being the T1, P1 and B1 Services.
- Confirmed the direction of gas flows on the DBNGP and the effect on tariffs. In particular:

[AGIG's] demand forecasts and assumed pipeline use for 2021 to 2025 period are based on actual information provided by our Shippers, with a focus on current contractual arrangements in place.

The DBNGP already has bi-directional capabilities, in sections of the pipeline, which are used to manage flows from upstream producers in ad hoc instances when operationally required to meet our obligations to deliver each Shipper's contracted capacity. AGIG has not proposed any forecast capex in AA5 specifically related to bi-directional flow of the pipeline.

...

In terms of the tariff impact of bi-directional flows, the regulated tariffs are the same for full haul, part haul and back haul on a per km basis. In other words, they do not relate to physical flows but instead are a fair and equitable way of dividing up the regulated revenues by Shipper. Therefore, there would be no reason to change the tariff principles just because physical flows change.¹⁰¹

185. In response to the ERA's draft decision and DBP's revised proposal, submissions from Mitsui, Beach Energy, CPM, gasTrading and WEGS addressed matters relating to pipeline and reference services.

186. Mitsui and Beach Energy, as equal participants in the Waitsia Joint Venture (WJV) both supported DBP's revised proposal to include the new Ullage Service as a non-reference rebateable service for AA5.^{102, 103} These parties submitted the following reasons why the proposed service should not be specified as a reference service:

- the opportunity for WJV to backfill the Karratha Gas Plant is limited to a specified, government approved period and volume;
- the proposed Ullage Service contains elements that are unique to the WJV and reflects the specific requirements of the WJV (as the Shipper) and the Karratha Gas Plant (as the end user);
- the WJV has been requested to fund certain capital works (as shipper-funded works) to enable the Ullage Service to be performed and those works are specific to the unique nature of the Ullage Service; and
- [Mitsui / Beach] believes it is in the interests of all shippers on the DBNGP that the proposed Ullage Service proceeds as it promotes the efficient operation and use of

¹⁰⁰ Australian Gas Infrastructure Group submission in response to ERA issues paper, 31 March 2020 – Attachment B: Shipper Roundtable #10, 25 March 2020, slide 9 and Attachment C: Shipper Roundtable #10 Issues Response Paper, March 2020, p. 2.

¹⁰¹ Australian Gas Infrastructure Group submission in response to ERA issues paper, 31 March 2020, Attachment B: Shipper Roundtable #10, 25 March 2020, slide 9; and Attachment C: Shipper Roundtable #10 Issues Response Paper, March 2020, p. 2.

¹⁰² Mitsui E&P Australia Pty Ltd submission in response to draft decision, 2 November 2020.

¹⁰³ Beach Energy Ltd submission in response to draft decision, 2 November 2020.

the DBNGP, increases the security of supply of natural gas and will benefit Shippers by lowering the Reference Tariffs.

187. Noting the ERA's draft decision considerations concerning gas development projects in the north west, CPM submitted that:

... there is now evidence to confirm a change in the direction of gas flows is occurring and northern flows are 'expected' to grow in the future. That evidence is the recent announcement by the Beach AWE (Mitsui) JV on their plans to toll Waitisia gas through the North West Shelf (NWS) LNG production facilities, in addition; actual flow directions in the north part of the DBNGP (loop and main lines) are currently being impacted by reduced volumes being delivered into the DBNGP by the NWS with gas now believed to be flowing north rather than south. For clarity, this submission is not seeking to change the positions taken in the Draft Decision or to amend any further T&Cs to address gas flow directions, as CPM is comfortable with the P1 and B1 structures and how they operate, CPM is simply pointing out that there appear to have been a number of decisions made by the Authority that were based on not having evidence to support a change in flow direction and that such may or may not now be relevant when developing the Authorities Final Decision and will most likely have been known by AGIG on them providing their Revised Final Plan.¹⁰⁴

188. While gasTrading was supportive of the ERA's draft decision required amendment 3 (requiring the inclusion of a trigger event), it submitted that:

DBP's proposal to include the "Ullage Service" as a non-reference rebateable service is a superior outcome as it provides Shippers with certainty for the Access Arrangement Period that significant non-reference revenue received by DBP will be considered through the rebate mechanism.¹⁰⁵

189. However, gasTrading recommended further amendments to DBP's proposed Ullage Service to make it less prescriptive, and amendments to other shipper contracts to clarify the use of the word 'downstream', which is ambiguous with a bidirectional pipeline. GasTrading submitted:

Whilst gasTrading recognises that currently only Waitisia has approval to export onshore gas as LNG, it is not incomprehensible that a similar service be used for other onshore gas reserves or for other LNG export projects. The service is also not a "ullage service" for ullage related to DBNGP. In the interest of robustness and of market clarity, gasTrading would propose to define the service as such:

"LNG Export Service: A service for transport of gas to an LNG export project with specific conditions related to the export of pipeline gas as LNG."

gasTrading agrees the "ullage service" is most likely a non-reference service... Given the Western Australian Premier's comments regarding the Waitisia Stage 2 Project and the State's Domestic Gas Policy, we are further convinced.¹⁰⁶

...

The inclusion of the "ullage service" proposed by DBP needs to carefully consider the impact on contractual clauses in other Shipper contracts as gas flow from CS1 to KGP will be predominantly north in one or both of the DBP pipelines based on the announcements by Beach Energy and known gas flows north of CS1.

The current definition of Back Haul is:

"Back Haul means a pipeline service where the inlet point for acceptance of gas into the DBNGP from the customer is downstream of the outlet point for delivery of gas to the customer."

¹⁰⁴ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

¹⁰⁵ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

¹⁰⁶ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, pp. 7-8.

In the above definition downstream is not defined, but it could be interpreted to be a point that is “south of the inlet”. However, in the case that the “Ullage Service” proceeds, as per gasTrading’s previous submission, “downstream” may well be north of the inlet.¹⁰⁷

190. GasTrading also commented on the availability of pipeline service contracts and that DBP should be required to make available on its website sample contracts for all commonly used services.¹⁰⁸
191. WEGS considered that the Peaking Service (now referred to as the Peaker Service – see footnote 88) may be considered as a reference service when the contribution of the service to pipeline costs was considered. WEGS submitted:
- ... while the Peaking Service may not necessarily be classified yet as a Reference Service, the estimated contracted capacity under this service should be counted as if it were equivalent to the capacity and throughput for each relevant reference service on the pipeline so that the users of the Peaking Service equally share the costs of providing services on the pipeline with Reference Service users. This would ensure consistency with Rule 93 of the NGR. WEGS would however agree to AGIG’s point that, should this service be included in the forecasted demand, AGIG should not be required to rebate the revenues derived from this service to its Reference Service customers.¹⁰⁹
192. WEGS further considered that a similar argument applied to the proposed Pilbara Service.

Position paper

193. The ERA provisionally considered DBP’s revised proposal, and the matters raised in submissions in response to the draft decision and/or DBP’s revised proposal, as part of a position paper on pipeline and reference services that was published on 20 November 2020 (see paragraph 11).¹¹⁰
194. DBP’s revised proposal accepted draft decision required amendments 2, 4, 5 and 6.
- Draft decision required amendment 2
 - DBP has removed references to the Seasonal Service, Metering and Temperature Service and Odourisation Service in the access arrangement so that only pipeline services that can be provided as individual pipeline services are listed in clause 3.1 of the access arrangement.
 - Draft decision required amendment 4
 - DBP has included descriptions of each of the pipeline services listed in clause 3.1 in clauses 3.3 to 3.7 of the access arrangement.
 - Draft decision required amendment 5
 - DBP has amended clause 3.6(b)(ii) of the access arrangement to delete and replace the cross reference to “clause 5.3(g)(i)” with a cross reference to “clause 3.6(b)(iv)”.

¹⁰⁷ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 8.

¹⁰⁸ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

¹⁰⁹ Wesfarmers Energy (Gas Sales) Limited submission in response to draft decision, 4 November 2020, p. 9.

¹¹⁰ ERA, *Proposed revisions to the Dampier to Bunbury Natural Gas Pipeline access arrangement 2021 to 2025 – Position paper on pipeline and reference services*, 20 November 2020.

- Draft decision required amendment 6
 - Consistent with draft decision required amendment 4, DBP has amended clause 3 of the access arrangement to include a reference to, and description of, the Peaker Service, which is to be specified as a non-reference service rebateable service for AA5.
195. There were no submissions from interested parties on DBP’s revised proposal to accept draft decision required amendments 4 and 5. Given this, the position paper indicated that the ERA maintained the positions in its draft decision concerning the matters that needed to be addressed. The ERA considered that DBP’s revised proposal implemented the required amendments as intended, and that the amendments were consistent with the requirements of the NGR for pipeline and reference services.¹¹¹
196. There were no submissions from interested parties on DBP’s revised proposal to accept draft decision required amendment 2. However, the ERA further considered the required amendment to remove references to the Seasonal Service, Metering and Temperature Service and Odourisation Service from the access arrangement and noted that this would be inconsistent with the requirements for DBP to specify all pipeline services in the access arrangement.¹¹² As noted at paragraph 94, pipeline services are defined in the NGL to include a service ancillary to the provision of haulage services. In response to an information request, DBP submitted that the Seasonal Service, Metering and Temperature Service and Odourisation Service were ancillary services.¹¹³ There is no requirement that pipeline services must be stand-alone or that they cannot be ancillary to other pipeline services. As a result, the ERA considered in its position paper that draft decision required amendment 2 should be withdrawn and that these services should be included in the revised access arrangement as ancillary pipeline services.
197. Given the ERA’s position that the Seasonal Service, Metering and Temperature Service and Odourisation Service are pipeline services, an assessment against the reference service factors is required.¹¹⁴ The ERA reviewed these services against the reference service factors and considered that each of the services should be specified as non-reference ancillary services in the revised access arrangement given that there was no actual or forecast demand for the services and the likely regulatory costs, to specify the services as reference services, would be disproportionate to any benefit.
198. In response to the ERA’s draft decision and DBP’s revised proposal, gasTrading submitted that:
- In the interest of an efficient market, and transparency, DBP should be required to make available on its website example contracts for all “common” services. Currently DBP only makes available the Standard Shipper Contract (not the Reference Service Contracts). DBP does not make available the Pilbara Service, Peaking Service, Pipeline Impact Agreement, Inlet Sales Agreement, Data Services, Storage Service or Operational Balancing Agreement.
- Whilst we recognise some of these will be bespoke, a standard/template contract should be made available, especially for services like the Reference Service Contracts,

¹¹¹ Rules 48(1)(b), (c) and (d) of the NGR.

¹¹² Rule 48(1)(b) of the NGR.

¹¹³ DBP, *Response to information request ERA13*, 5 June 2020.

¹¹⁴ Rule 48(1)(c) of the NGR.

the Pilbara Service and Inlet Sales Agreement which are widely used and almost standard amongst shippers.¹¹⁵

199. While the ERA considered that the availability of standard and/or template contracts for all pipeline services would be beneficial for prospective and existing shippers, the ERA cannot require DBP to make such contracts publicly available as part of the access arrangement. The provisions of the NGR only require DBP to specify for each reference service the terms and conditions on which each reference service will be provided (rule 48). The reference services for AA5 are the T1, P1 and B1 Services, with the terms and conditions for these services provided as attachments to the access arrangement.
200. The ERA has considered gasTrading's submission concerning the new Ullage Service and its effect on the word 'downstream' in existing contracts as part of its considerations of the terms and conditions for reference services at paragraph 2722.
201. DBP rejected draft decision required amendment 3, which required the inclusion of a trigger event to provide for the acceleration of the review submission date if a gas transportation agreement requires a re-direction of the flow of gas through the DBNGP. DBP has instead proposed revised amendments to the access arrangement to address the matters raised in the draft decision. The ERA's consideration of DBP's revised amendments to address the requirement for a trigger event is set out at paragraphs 204 to 241.
202. Further to DBP's revised amendments to address the requirement for a trigger event, DBP proposed to specify the Pilbara Service and Other Reserved Service, both of which were classified as non-reference services in DBP's initial proposal, as non-reference rebateable services for AA5. The ERA's consideration of DBP's revised proposal for additional rebateable services is set out at paragraphs 242 to 249.
203. In response to the ERA's draft decision and DBP's revised proposal, WEGS addressed the proposed Peaker Service, which is specified as a non-reference rebateable service for AA5. The ERA's consideration of the submissions made by WEGS is set out at paragraphs 250 to 255.

Requirement for a trigger event

204. DBP submitted that its revised proposed amendments to the access arrangement to establish a new non-reference rebateable service – the "Ullage Service" – makes the ERA's draft decision requirement for a trigger event unnecessary.

Proposed Ullage Service

205. The proposed Ullage Service is described in revised new clause 3.7 of the access arrangement as: "A service for ullage to the Karratha gas plant from the Perth basin for variable contracted capacity and term, with specific conditions relating to reliability of service and behaviour charges (subject to available capacity)".
206. DBP submitted that an ullage service was not included in its Final Plan because, as was identified by the ERA in the draft decision, the scenarios leading to such a service were based on projects with uncertain timing. However, since the publication of the draft decision the Western Australian Government has made a public statement

¹¹⁵ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

concerning gas projects.¹¹⁶ Given this statement, which provides support for the Waitsia Stage 2 project to proceed, and that the matter was raised in submissions to the ERA and subsequently addressed in the ERA’s draft decision, DBP considered it now appropriate to address the issue in its revised proposal.

207. Based on its assessments, DBP submitted that the proposed Ullage Service should be included in the access arrangement as a *non-reference* service (instead of a reference service). DBP further submitted that, as a non-reference service, the Ullage Service should be specified as a *rebateable* service for AA5.¹¹⁷
208. Several submissions in response to the draft decision and/or DBP’s revised proposal addressed the proposed Ullage Service (as set out at paragraph 185 and following):
- Submissions from Mitsui and Beach Energy (as equal participants in the Waitsia Joint Venture) supported DBP’s assessment of the Ullage Service as a non-reference rebateable service.
 - GasTrading supported the proposed Ullage Service, noting that it was a “superior outcome” to the ERA’s proposed trigger event. However, gasTrading recommended further amendments to the way the service was defined.
 - CPM acknowledged the recent announcements concerning the Waitsia Stage 2 project, which it submitted was evidence that confirmed changes to the direction of gas flow on the DBNGP.

Background to the Ullage Service

209. In its revised proposal, DBP confirmed that it had been in discussion with a prospective shipper about a gas development project that requires a pipeline service on the DBNGP to deliver gas from the Perth Basin to the Karratha Gas Plant. DBP refers to the required service as the “proposed Ullage Service” (or “Ullage Service”).
210. The proposed Ullage Service will be a specific pipeline service designed to meet the requirements of the end user. DBP submitted:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁶ Government of Western Australia media statement, 17 August 2020, ‘Revised policy to secure domestic gas supply and create jobs’ ([online](#)) (accessed October 2020).

¹¹⁷ DBP, *2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential)*, October 2020, p. 1.

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁸

211. DBP further submitted that the Ullage Service takes into account the State Government's *Domestic Gas Policy*, which states that "the Western Australian Government will not agree to export of gas via the WA pipeline network other than in exceptional circumstances".¹¹⁹ However, recent announcements have confirmed "in-principle support to allow the Waitsia project in the Mid-West to fill available capacity at the Karratha Gas Plant and export some of its gas as LNG for a short period of time".¹²⁰

Assessment against reference service factors

212. DBP assessed the proposed Ullage Service against the reference service factors detailed in rule 47A(15) of the NGR (and reproduced at paragraph 97 of this decision). Based on its assessment, DBP submitted that the service should *not* be specified as a reference service for AA5. Rather, the Ullage Service should be specified as a non-reference service.
213. The ERA has considered DBP's assessment of the proposed Ullage Service against each of the reference service factors at paragraphs 216 to 227. Based on these considerations, the ERA considered that, on balance, DBP's assessment of the Ullage Service against the reference service factors supported the specification of the service as a non-reference service for AA5.
214. Further to considering DBP's assessment against the reference service factors, the ERA considered gasTrading's recommendation for the definition of the Ullage Service to be less prescriptive and redefined as:

LNG Export Service: A service for transport of gas to an LNG export project with specific conditions related to the export of pipeline gas as LNG.¹²¹

215. GasTrading submitted that while it "recognises that currently only Waitsia has approval to export onshore gas as LNG, it is not incomprehensible that a similar service be used for other onshore gas reserves or for other LNG export projects". The ERA considered that while this may be the case, it is unlikely that there will be other LNG export projects during the access arrangement period (AA5) given the State Government's revised *Domestic Gas Policy*, and that the approval for the Waitsia Stage 2 project was announced as "in-principle support ... to export some of its gas as LNG for a short period of time".¹²² For these reasons, the ERA considered in its position paper that there was no real benefit to redefining DBP's proposed Ullage Service, even though (as highlighted by gasTrading) 'ullage' in this instance is actually referring to ullage at the Karratha Gas Plant.

¹¹⁸ DBP, *2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential)*, October 2020, pp. 1-2.

¹¹⁹ Government of Western Australia, Department of Jobs, Tourism, Science and Innovation, 'WA Domestic Gas Policy' ([online](#)) (accessed October 2020).

¹²⁰ Government of Western Australia media statement, 17 August 2020, 'Revised policy to secure domestic gas supply and create jobs' ([online](#)) (accessed October 2020).

¹²¹ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 8.

¹²² Government of Western Australia media statement, 17 August 2020, 'Revised policy to secure domestic gas supply and create jobs' ([online](#)) (accessed October 2020).

Actual and forecast demand for the Ullage Service

216. DBP submitted that the Ullage Service was likely to be a service that was limited to a single shipper for the following reasons:

- the ullage opportunity that exists is limited in terms of volume and term;
- the service is bespoke and has been tailored to the requirements of the particular producer and end-user which are specific to their circumstance; and
- the Western Australian Government's revised Domestic Gas Policy has all but ruled out any other potential export of gas from Western Australia via the state's pipeline network.¹²³

217. DBP further submitted that demand for the service was difficult to quantify because of factors that cannot be controlled by the prospective shipper and/or DBP. Specifically:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²⁴

218. In its position paper, the ERA considered that the announcements concerning Western Australia's Domestic Gas Policy confirmed that the number of prospective users of the Ullage Service will be limited. As submitted by DBP, the limited availability of the service and uncertainty in demand for the service supports the specification of the service as a non-reference service in the access arrangement.

Extent to which the Ullage Service is substitutable

219. DBP submitted that the Ullage Service was notionally like a back haul service. However, because of the following factors the Ullage Service has no direct substitute:

- The Ullage Service will from time to time require the actual physical flow of natural gas north of [REDACTED].
- The Ullage Service is expected to require capital works, which will be requested to be funded by the prospective shipper.
- The Ullage Service will include specific features to allow the service to be responsive to the temporary opportunity to export gas under Western Australia's Domestic Gas Policy.

220. While there is no direct substitute, DBP submitted that the prospective shipper may be able to negotiate bilateral gas swaps with other upstream producers and/or shippers. Given this, a market substitute for the Ullage Service is available.¹²⁵

221. In its position paper, the ERA considered that, as submitted by DBP, bilateral gas swaps could be negotiated by the prospective shipper to meet its operational needs

¹²³ DBP, 2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential), October 2020, p. 3.

¹²⁴ DBP, 2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential), October 2020, p. 3.

¹²⁵ DBP, 2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential), October 2020, p. 3.

on any given day. However, while this market substitute is available, it is unlikely to be a sufficient substitute to sustain the prospective shipper's ongoing operational needs.

Feasibility of allocating costs to the Ullage Service

222. DBP submitted that capital works to the DBNGP were required to provide the Ullage Service and that these capital works would be treated as a shipper-funded project, with the associated capital costs paid for directly by the prospective shipper. DBP further submitted that "there will be shared costs with other services which cannot be allocated directly to the proposed Ullage Service".¹²⁶ DBP considered how to address the allocation of these shared costs as part of its proposal to specify the Ullage Service as a rebateable service (see paragraph 230).
223. In its position paper, the ERA considered that it may be feasible to allocate some costs for shared infrastructure to the Ullage Service given that the service will use existing pipeline infrastructure that is used to provide other pipeline services. As submitted by DBP, the Ullage Service is notionally like a back haul service. The base costs for providing back haul services are known and could therefore be used as a basis to determine and allocate costs for the Ullage Service.

Usefulness in supporting negotiations and dispute resolution

224. While the Ullage Service is like a back haul service, DBP submitted that the service included specific and unique features that were required by the end user. The terms and conditions for the Ullage Service are therefore limited in their usefulness for access negotiations and dispute resolution.¹²⁷
225. The submissions from Mitsui and Beach Energy, in response to the draft decision, confirmed that the Ullage Service contained elements that were unique to the Waitsia Joint Venture. In its position paper, the ERA considered that, given the specific requirements of the shipper (Waitsia Joint Venture) and end-user (Karratha Gas Plant), any terms and conditions for the service would be limited in their usefulness in supporting access negotiations and dispute resolution for other pipeline services.

Likely regulatory costs

226. DBP submitted that the likely regulatory costs in specifying the Ullage Service as a reference service would exceed any benefits for the following reasons:
- There are substitutable services available (for example, back haul services and bilateral gas swaps) so there is no incremental benefit in having regulatory oversight of the Ullage Service.
 - The end use market is temporary because the ullage opportunity at the Karratha Gas Plant exists only for a limited period.
 - Given the Western Australian Domestic Gas Policy, there are unlikely to be any additional shippers seeking to use the Ullage Service.

¹²⁶ DBP, *2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential)*, October 2020, pp. 3-4.

¹²⁷ DBP, *2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential)*, October 2020, p. 4.

227. DBP further submitted that the costs of regulation were likely to be high because of the specific and unique service features of the Ullage Service, which were materially different to the reference service contracts.¹²⁸
228. As a reference service, the Ullage Service would need to have reference terms and conditions and a reference tariff. As submitted by DBP, the Ullage Service has specific and unique service features, which would need to be incorporated into the terms and conditions, and tariff.
229. In its position paper, the ERA considered that the likely regulatory costs for all parties to develop the required components would exceed the likely benefit in having the Ullage Service as a reference service, given that the service is currently restricted in its use to a single shipper and is forecast to operate for a limited period of time.

Specification as a rebateable service

230. DBP submitted that further to the proposed Ullage Service being specified as a non-reference service in the access arrangement, the service should be specified as a non-reference *rebateable* service.
231. Rule 93 of the NGR sets out the requirements for the allocation of total revenue and costs between reference services and other services, including rebateable services. Rule 93(4) states that 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.
232. DBP submitted that the Ullage Service met the criteria to be a rebateable service given the following circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²⁹

233. In its position paper, the ERA considered that, given the nature of the proposed Ullage Service and unique circumstances surrounding the availability and usage of the service, there is substantial uncertainty concerning the extent of demand for the service and/or the revenue to be generated from the service. DBP's proposal to specify the Ullage Service as a non-reference rebateable service was therefore consistent with the requirements of the NGR for rebateable services.
234. As submitted by DBP, rule 93(3) of the NGR permits the allocation of the costs of providing rebateable services to reference services if there is a mechanism, to apply an appropriate portion of the revenue generated from the sale of rebateable services, to reduce the reference tariff. The ERA has considered the allocation of costs for the Ullage Service, as a non-reference rebateable service, as part of its considerations of the allocation of total revenue (see paragraph 1832). The rebate mechanism for

¹²⁸ DBP, 2021-2025 Revised Final Plan, Attachment 6.2: Pipeline and Reference Services (Confidential), October 2020, p. 4.

¹²⁹ DBP, 2021-2025 Revised Final Plan, Attachment 13.2: Allocation of total revenue (Confidential), October 2020, p. 7.

the Ullage Service, which will rebate a portion of the revenue generated from the service to reduce reference tariffs, has been assessed as part of the ERA's consideration of the reference tariff variation mechanism (see paragraph 1903).

Alternative trigger event


235. While DBP's preference is to remove the need for a trigger event in the access arrangement with the introduction of the Ullage Service, DBP submitted that if the ERA "does not accept this position and concludes that a relevant Trigger Event is required [to provide for the acceleration of the review submission date if a gas transportation agreement requires a re-direction of the flow of gas through the DBNGP] ... different drafting [for the trigger event] is required".¹³⁰
236. DBP's alternative revised proposed definition for "trigger event" is reproduced below (shown in mark-up against the ERA's required definition).

~~14A.3 **Trigger Event** means the execution by Operator of a binding agreement (whether conditional or unconditional) for the transport of gas through the DBNGP, the performance of which requires a re-direction of the flow of gas through the DBNGP.~~

Trigger Event means that all of the following have occurred (the date on which the Trigger Event occurs being the date on which the last of the following occur):

- (a) the Operator has executed a binding agreement for transport of gas from the Perth Basin through the DBNGP and that agreement has become unconditional;
- (b) the Operator determines (acting reasonably) that there is a real and not fanciful risk that performance of the agreement described in (a) will result in a re-direction of the flow of gas through the DBNGP in a manner that significantly changes the operation of the DBNGP, prior to 1 January 2026;
and
- (c) gas transportation begins to occur under the agreement in (a).

237. DBP submitted the following reasons for its alternative revised drafting:¹³¹

- The binding agreement must be "unconditional" (rather than "conditional or unconditional") and the transportation of gas under that agreement must begin.
- Conditional contracts are often executed early to lower projects risks. Periods of more than 12 months are generally allowed from execution to the start date for services under the contract.
- It is common for conditional contracts to terminate without the services ever commencing because the conditions precedent are never satisfied. Further to the uncertainty surrounding conditions precedent, there are other 'unknowns' (for example, unknown timings and quantities) when such contracts are executed.
- 

¹³⁰ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, p. 13.

¹³¹ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, pp. 13-15.

- The ERA acknowledged in the draft decision that the matter of potential gas projects (including the Waitsia Stage 2 project) should not be addressed in the access arrangement review process without more certain information on timing and arrangements. The ERA further acknowledged that a trigger event to accelerate the review submission date should be linked to an actual change in operations.
 - It is not practicable or economically efficient, or consistent with the ERA's draft decision considerations, to accelerate the review submission date for a trigger event that is based on the execution of a conditional contract with an unknown date for the start of gas transportation services. Issues related to timing and uncertainty, together with regulatory costs, would remain if the trigger event was triggered on the execution of a conditional contract.
 - A redirection of the flow of gas through the DBNGP must be a "real and not fanciful risk" and must significantly change the operation of the pipeline.
238. Further to the alternative revised amendments to the definition of "trigger event", DBP submitted that amendments to clause 14 (Revision and Commencement Date) of the access arrangement were needed, to facilitate and explain how the trigger event interacts with the review submission and revision commencement dates. DBP's revised amendments incorporate the ERA's proposed clauses 14A.1 and 14A.2 that were set out in draft decision required amendment 3.
239. DBP's alternative revised proposed amendments to clause 14 are reproduced below (shown in mark-up against DBP's initial proposal). The amendments shown include revised proposed amendments related to the extension and expansion requirements, which are considered elsewhere in this decision (see paragraph 2785).
- 14 Revision and Commencement Date**
- 14.1 The Current Access Arrangement Period commences on 1 January 2021.
- 14.2 Subject to clauses 7.4(d) and 14.4, the~~The~~ review submission date for the Current Access Arrangement is 1 January 2025.
- 14.3 Subject to clause 14.5, the~~The~~ revision commencement date for the Next Access Arrangement is 1 January 2026.
- 14.4 If the Trigger Event occurs prior to 1 May 2023, the review submission date determined under clause 14.2 shall be accelerated and brought forward to the date which is 14 months after the Trigger Event.
- 14.5 If the review submission date determined under clause 14.2 is accelerated and brought forward pursuant to either of clauses 7.4(d) or 14.4, then the revision commencement date for the Next Access Arrangement is accelerated and brought forward to a date which is 12 months after the accelerated and brought forward review submission date.
- 14.6 For the avoidance of doubt, in no case can clause 7.4(d) or clause 14.4 result in the review submission date being delayed to a date later than the pre-existing review submission date.
- 14.7 The Operator must notify the Regulator of the occurrence of each of (a), (b) and (c) of the definition of Trigger Event (in clause 16).
240. In its position paper, the ERA considered that DBP's alternative proposed amendments to include a redrafted trigger event in the access arrangement would address draft decision required amendment 3. However, as submitted by DBP, the alternative proposed amendments are only relevant if the ERA considers that a trigger event is still required after considering DBP's revised proposed amendments for the new Ullage Service.

241. The ERA considered DBP's revised proposal to include the Ullage Service in the access arrangement for AA5, as noted in this final decision at paragraphs 205 to 234. Based on these considerations, including the temporary nature of the end use market because the ullage opportunity at the Karratha Gas Plant exists only for a limited period and the unlikely prospect of any additional shippers seeking to use the Ullage Service during AA5 given the Western Australian Domestic Gas Policy, the ERA concluded that the Ullage Service should be specified as a non-reference rebateable service in the access arrangement for AA5, and that the inclusion of a trigger event is not required. On this basis, the ERA considered that DBP's alternative proposed amendments for a trigger event are not necessary at this time, although this position may be re-considered in AA6 should circumstances change.

Additional rebateable non-reference services

242. In the draft decision, the ERA considered that the Pilbara Service and Other Reserved Service should remain as non-reference services for AA5.¹³² In its revised proposal, DBP submitted that these services should be further specified as non-reference *rebateable* services.
243. Rule 93 of the NGR sets out the requirements for the allocation of total revenue and costs between reference services and other services, including rebateable services. Rule 93(4) states that 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.
244. DBP submitted that the Pilbara Service and Other Reserved Service met the requirements for specification as a rebateable service for the following reasons.¹³³
- Both services are non-reference services.
 - As noted in the ERA's draft decision, average demand for the Pilbara Service and Other Reserved Service is low when compared with average demand for full haul, part haul and back haul services (see Table 12 of this decision). While revenue from these services has increased in recent years, a long term trend cannot be determined. The demand for these services therefore remains substantially uncertain.
 - The Other Reserved Service is inherently uncertain given the nature of the service – the service represents a suite of interruptible services that are offered on a bespoke basis and is used by shippers with new projects and/or uncertain demand. When demand certainty increases, these shippers move their Other Reserved Service to a firm service.
245. As part of its draft decision considerations of whether the Pilbara Service should be specified as a reference or non-reference service, the ERA considered actual and forecast demand and revenue for the Pilbara Service for AA4 and AA5, respectively (see Table 6 of this decision). As submitted by DBP in its revised proposal, the ERA's draft decision considered that average demand for the Pilbara Service was low when compared with the average demand for full haul, part haul and back haul services (see paragraph 161 of this decision). However, the requirement for a pipeline service to be a rebateable service is that "substantial uncertainty exists concerning the extent

¹³² ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, pp. 30-32, paragraphs 101-108.

¹³³ DBP, *2021-2025 Revised Final Plan, Attachment 13.2: Allocation of total revenue*, October 2020, p. 7.

of demand for the service or of the revenue to be generated from the service” (rule 93(4)(b) of the NGR), not whether demand and/or revenue is low relative to other services.

246. In its position paper, the ERA considered that, while there was some uncertainty concerning the extent of demand for and the revenue to be generated from the Pilbara Service, the uncertainty was not *substantial* for the following reasons:
- DBP has actual (AA4) demand and revenue data for the Pilbara Service and can explain anomalies for this data. That is, in response to the ERA’s information request as part of the draft decision process, DBP submitted that the growth in demand from 2018 to 2019 resulted from shippers moving from the firm part haul service and other reserved services to the Pilbara Service, and with the transition between these services completed, demand for 2020 and beyond was forecast to remain consistent at an average [REDACTED].¹³⁴
 - Based on DBP’s understanding of actual data for the Pilbara Service, DBP can (and has) forecast demand and revenue data for AA5. DBP considered that the forecasts would remain at a consistent average over the access arrangement period.
247. Unlike the Pilbara Service, the ERA considered in its position paper that there was substantially more uncertainty concerning the extent of demand for, and the revenue to be generated from, the Other Reserved Service. As submitted by DBP, the Other Reserved Service enables shippers with new projects and/or uncertain demand to obtain an interruptible service ahead of obtaining a firm service.¹³⁵ For this reason, the ERA considered that the use of actual (AA4) demand and revenue data for the Other Reserved Service would be limited in its use to forecast demand and revenue for AA5. That is, the demand for the Other Reserved Service, and consequently the revenue generated from the service, is dependent on new projects with uncertain gas demand profiles, rather than established projects with more certain gas demand profiles.
248. Given the above considerations, the ERA considered in its position paper that only the Other Reserved Service should be further specified as a rebateable service in the access arrangement for AA5. The Pilbara Service should be specified as a non-reference service (and not a non-reference rebateable service) for AA5.
249. As submitted by DBP, the provisions for rebateable services in the NGR allow for the cost of non-reference rebateable services to be allocated to reference services provided there is a rebate mechanism to adjust reference tariffs. The ERA has considered the allocation of costs for the Other Reserved Service, as a non-reference rebateable service, as part of its considerations of the allocation of total revenue (see paragraph 1832). The rebate mechanism for the Other Reserved Service, which will rebate a portion of the revenue generated from the service to reduce reference tariffs, is considered as part of the ERA’s consideration of the reference tariff variation mechanism (see paragraph 1903).

¹³⁴ DBP, *Response to information request ERA14*, 5 June 2020.

¹³⁵ The “Other Reserved Service” is described in the revised proposed access arrangement as: “A suite of interruptible services offered on a bespoke basis to shippers with new projects and/or uncertain demand, often ahead of a firm service.”

Peaker Service

250. Consistent with the ERA's draft decision required amendment 6, in its revised proposal, DBP amended clause 3 of the access arrangement to include a reference to, and description of, the Peaker Service. The Peaker Service is:
- Specified in clause 3.1(b)(i)(h) of the access arrangement as a non-reference rebateable service.
 - Described in clause 3.7(c) of the access arrangement as "a pipeline service where a shipper can obtain additional peaking limits to those set in the standard terms (subject to available capacity)".
251. In response to the ERA's draft decision and DBP's revised proposal, WEGS addressed the Peaker Service based on its understanding that:¹³⁶
- The tariff for the service would be set at a premium to the T1 reference tariff (at around 115 per cent) and would be largely based on throughput (and based on this, it is assumed that the reservation component would be 20 per cent of the tariff and the commodity (throughput) component would be 80 per cent of the tariff).
 - The service would rank the same level as "Other Reserved Services" in priority and curtailment.
 - While primarily requested by gas fired power generators, the service may be available on a stand-alone basis to any shipper that requests the service.
252. WEGS submitted that the Peaker Service may be considered as a reference service when the contribution of the service to pipeline costs is considered. WEGS set out the following reasoning for its submission:

[DBP] proposes to distinguish this service from the reference services on the basis that it does not meet the [Reference] Service Factors. More specifically, it becomes apparent that the distinction of this service from the T1 service is on the basis that this service is not offered on the same firmness.

However, WEGS submits that at times where [DBP] has been able to demonstrate that forecast demand for Full Haul Services during AA5 is highly unlikely to reach anywhere near the pipeline's rated capacity and given the obligations of [DBP] under section 133 of the NGL to not prevent or hinder access to a pipeline service by means of a covered pipeline, consideration of firmness of a service, at least for the duration of AA5, becomes a theoretical distinction rather than an operational one. Further to this point (and to WEGS's concern), WEGS notes in [DBP's] Final Plan that under the queuing requirements, [DBP] proposes to "maintain a single queue for access to Reference Services and Non-Reference Services that are Haulage Services (Queue)". On this basis, WEGS believes that the Peaking Service may reasonably be considered a firm service for the purpose of AA5 determination.

...

Under its rebate proposal, [DBP] suggests that the "costs associated with providing this service [are] likely incremental costs only because the service [does] not require new capital expenditure".... WEGS strongly disagrees and believes instead that this service may only be delivered by [DBP] to its customers by operating and maintaining the required capacity of the pipeline.

... WEGS believes that, should the pipeline be rightly sized to the average throughput of its shippers as presented by [DBP], it would become apparent that users which are now forecasted to request access to the Peaking Service from [DBP] would instead

¹³⁶ Wesfarmers Energy (Gas Sales) Limited submission in response to draft decision, 4 November 2020, p. 8.

secure the corresponding reference service and thereby contribute to the full costs (capital and operating expenses) of the pipeline. In WEGs's view, this supports the argument that, while the Peaking Service may not necessarily be classified yet as a Reference Service, the estimated contracted capacity under this service should be counted as if it were equivalent to the capacity and throughput for each relevant reference service on the pipeline so that the users of the Peaking Service equally share the costs of providing services on the pipeline with Reference Service users. This would ensure consistency with Rule 93 of the NGR. WEGs would however agree to [DBP's] point that, should this service be included in the forecast demand, [DBP] should not be required to rebate the revenues derived from this service to its Reference Service customers.

Finally, WEGs believes that a similar argument applies to the Pilbara Service proposed by [DBP].¹³⁷

253. In the draft decision, the ERA considered that, on balance, DBP's assessment of the Peaker Service against the reference service factors supported the continuation of the service as a *non-reference* service for AA5. The ERA further considered that DBP's proposal to specify the Peaker Service as a *rebateable* service was consistent with the requirements for rebateable services, as set out in rule 93(4) of the NGR:

- (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.

254. In its position paper, the ERA indicated that it maintained the position in the draft decision that the Peaker Service should be specified as a non-reference rebateable service for AA5. The Peaker Service (or Peaking Service) has been offered as a non-reference service in the access arrangement since the first access arrangement period (AA1). As advised by DBP, utilisation of the Peaker Service is expected to occur and increase during AA5, following contract renegotiations with shippers in May 2020. While DBP has forecast demand for, and revenue from, the service for AA5 there is substantial uncertainty concerning these forecasts. The ERA considered that this uncertainty should reduce over the course of the access arrangement period as shippers continue to operate under their renegotiated contracts and refine their operational needs. As the pipeline operator, DBP will be able to record and use actual demand and revenue data to refine its forecasts for the Peaker Service going forward (that is, for the next (AA6) and subsequent access arrangement periods). As such, the Peaker Service may not satisfy the criteria for being specified as a non-reference rebateable service when the access arrangement is next reviewed, noting that the review and assessment of pipeline and reference services will follow the process set out in rule 47A of the NGR (see paragraph 293).

255. The ERA has considered the allocation of pipeline costs for the Peaker Service, including the rebate mechanism, to rebate a portion of the revenue generated from rebateable services to reduce reference tariffs, as part of its considerations of:

- The allocation of total revenue at paragraph 1832 of this decision.
- The reference tariff variation mechanism at paragraph 1903 of this decision.

¹³⁷ Wesfarmers Energy (Gas Sales) Limited submission in response to draft decision, 4 November 2020, pp. 8-10.

Submissions on position paper

256. The ERA received submissions from AGIG and WEGS in response to its position paper on pipeline and reference services.^{138, 139}
257. AGIG was supportive of the views detailed in the ERA's position paper and noted the following:
- ... there is strong alignment between the ERA's Position Paper and [DBP's] revised Final Plan submitted in October 2020. In particular we:
- Agree with the ERA's position that the Ullage Service should be classified as a non-reference, rebateable service.
 - Agree that there is no need for a trigger mechanism in respect of the Ullage Service. Understand and agree with the ERA's revised position that Seasonal, Metering and Temperature and Odorant Services be re-inserted into the AA document and classified as non-reference ancillary services.
 - Agree with the ERA that our pipeline services will be re-assessed as either reference or non-reference services at the outset of the 2026 to 2030 Access Arrangement period consistent with the requirements of the National Gas Rules (NGR).¹⁴⁰
258. AGIG further noted that, while the position paper did not discuss the rebateable amounts for rebateable services (that is, the rebate mechanism), it still considered, consistent with its previous submissions, that a 70:30 sharing ratio was appropriate for the Peaker Service and other non-reference rebateable services.¹⁴¹
259. In response to the ERA's views on the classification of pipeline services as either reference or non-reference services, WEGS submitted that it:
- Supported the ERA's classification of the Ullage Service as a non-reference rebateable service for AA5 and noted that the service would need to be reviewed in AA6 and that its classification may change.
 - Supported the ERA's classification of the Pilbara Service as a non-reference service (instead of DBP's proposed classification as a non-reference rebateable service), provided that the ERA allocated some costs to the provision of the Pilbara Service so that both capital and operating costs are allocated between reference services and the Pilbara Service proportionately.
 - Noted the ERA's views on the Spot Service (or Spot Capacity Service), which is to remain a non-reference service based on an assessment of the service against the reference service factors. However, WEGS considered that the service could be classified as a rebateable service because there is substantial uncertainty concerning the extent of demand for the Spot Capacity Service for the following reasons:
 - i) the service cannot be reserved by shippers,
 - ii) the price of this service (being the higher of \$1.20/GJ and the price cleared as a result of the daily auction) ranks this service as least preferred option – ahead of the shipper's over-run tolerance, and

¹³⁸ Australian Gas Infrastructure Group submission in response to ERA position paper, 4 December 2020.

¹³⁹ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020.

¹⁴⁰ Australian Gas Infrastructure Group submission in response to ERA position paper, 4 December 2020.

¹⁴¹ Under a 70:30 sharing ratio, 70 per cent of the benefit from the sale of rebateable services (revenue) would be rebated back to customers.

- iii) the availability of the Spot Service is determined by the operator's daily configuration of the pipeline (not the pipeline's capacity).¹⁴²
 - Noted the ERA's views on the Peaker Service, which is to be classified as a non-reference rebateable service. However, WEGS considered that:
 - i) the demand for and revenue from this service is more predictable than claimed by [DBP],
 - ii) according to the National Gas Rules, the National Gas Objectives and the Revenue and Pricing Principles, this service cannot be considered as a rebateable service; and
 - iii) an appropriate allocation of total revenue and costs should be made to this service (and other non-reference non-rebateable services) in the process of setting tariffs for reference services.¹⁴³
260. To substantiate its submissions on the Peaker Service, WEGS provided further information on the predictability of, and cost allocation to, the Peaker Service. Additionally, WEGS submitted that there were significant issues with the efficiency of DBP's proposed rebate mechanism for the Peaker Service.¹⁴⁴ The ERA has separately considered the information provided by WEGS as part of its final decision considerations of pipeline and reference services (at paragraph 264) and the allocation of total revenue (at paragraph 1854), respectively. The proposed rebate mechanism for the Peaker Service (and other rebateable services) has been considered as part of the ERA's final decision considerations of the reference tariff variation mechanism (at paragraph 1933).
261. WEGS further noted that the ERA's position paper had reproduced Table 6.2 from DBP's initial proposal (that is, DBP's Final Plan) and that this table contained an incorrect description of the part haul P1 Service. However, the ERA's position paper subsequently referred to the correct description of this reference service. While WEGS assumed that there would be no change to the description of the P1 Service, it submitted that if the ERA's intention was to change the description of the service, further consultation should be done before a final decision is made.¹⁴⁵

Final decision

262. While the ERA's final decision is to broadly maintain the views that were set out in the position paper, the ERA has determined that the Spot Capacity Service should be further specified as a non-reference rebateable service. The reasoning for this decision is set out at paragraphs 275 to 283.
263. The ERA's final decision on pipeline and reference services is set out below.

Pipeline and reference services for AA5

264. Consistent with the view set out in its position paper, the ERA has determined that it is necessary to include a reference to the Seasonal Service, Metering and Temperature Service and Odourisation Service in the access arrangement to comply with the requirements of the NGR to specify all pipeline services.¹⁴⁶ As defined in the section 2 of the NGL, pipeline services include a service that is ancillary to the

¹⁴² Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 2.

¹⁴³ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 3.

¹⁴⁴ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, pp. 4-8.

¹⁴⁵ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 8.

¹⁴⁶ Modified rule 48(1)(b), as set out in schedule 1 (rule 62) of the NGR.

provision of haulage services, and as noted by DBP, the Seasonal Service, Metering and Temperature Service and Odourisation Service are ancillary services.¹⁴⁷ Accordingly, clause 3.1(b)(i) of the revised access arrangement must be amended as follows, with descriptions of each of the services set out in new clause 3.8.

- 3.1 Operator, on its behalf and on behalf of Nominees, proposes to offer the following pipeline services on the DBNGP:
- ...
- (b) Non-Reference Services
- (i) Operator proposes, subject to availability of Capacity (as determined by Operator as a reasonable and prudent service provider), to offer to Prospective Shippers the following pipeline services:
- ...
- (H) Peaker Service (Rebateable Non-Reference Service); ~~and~~
- (I) Ullage Service (Rebateable Non-Reference Service); ~~;~~
- (J) [Seasonal Service \(Ancillary Non-Reference Service\)](#);
- (K) [Metering and Temperature Service \(Ancillary Non-Reference Service\)](#); and
- (L) [Odourisation Service \(Ancillary Non-Reference Service\)](#).

...

3.8 Ancillary non-reference services

- (a) [Seasonal Service: A gas transportation service where the profile of reserved capacity can be customised to suit the monthly requirement of the Shipper \(subject to available capacity\).](#)
- (b) [Metering and Temperature Service: A pipeline service where particular metering and temperature specifications can be set \(subject to available capacity\).](#)
- (c) [Odourisation Service: A pipeline service where particular odorant requirements can be specified \(subject to available capacity\).](#)

265. Given that the Seasonal Service, Metering and Temperature Service and Odourisation Service are pipeline services, an assessment against the reference service factors is required to determine whether these services should be offered as reference or non-reference services. Consistent with the view set out in its position paper, the ERA has determined that these services must be specified as non-reference ancillary services because:

- There was no actual or forecast demand for any of the services.
- The likely regulatory costs to specify any of the services as reference services would be disproportionate to any benefit.

266. In its submission in response to the position paper, AGIG (owner of DBP) submitted that it understood and agreed with the ERA's position that the Seasonal Service,

¹⁴⁷ DBP, *Response to information request ERA13*, 5 June 2020.

Metering and Temperature Service, and Odourisation Service needed to be included in the access arrangement and classified as non-reference ancillary services.

Required Amendment 2

Clause 3.1(b) of the revised proposed access arrangement must be amended to list the Seasonal Service, Metering and Temperature Service and Odourisation Service as non-reference ancillary services and, consistent with clause 3.2 of the revised access arrangement, descriptions of each of these services must be included in a new clause 3.8.

The required amendments to clause 3.1(b) and required drafting for new clause 3.8 is set out at paragraph 264 of this final decision.

267. Consistent with the view set out in its position paper, the ERA has determined that the Pilbara Service must be specified as a non-reference service only (and not, as proposed by DBP, a non-reference rebateable service). The requirement for a pipeline service to be a rebateable service is that “substantial uncertainty exists concerning the extent of demand for the service or of the revenue to be generated from the service” (rule 93(4)(b) of the NGR). While there is some uncertainty concerning the extent of demand for, and the revenue to be generated from, the Pilbara Service, the ERA considers that this uncertainty is not substantial because:
- DBP has actual (AA4) demand and revenue data for the Pilbara Service and can explain anomalies for this data.
 - Based on DBP’s understanding of actual data for the Pilbara Service, DBP can (and has) forecast demand and revenue data for AA5, with the forecasts being a consistent average over the access arrangement period.
268. Accordingly, clause 3.1(b)(i)(G) of the revised access arrangement must be amended to delete the word “Rebateable”. Consequential amendments to clauses 3.6, 3.7, 18.19 of the access arrangement, to update references to the Pilbara Service being a non-reference service only (and not a rebateable non-reference service), are also required.

Required Amendment 3

Clause 3.1(b) of the revised proposed access arrangement must be amended to specify and describe the Pilbara Service as a non-reference service (and not a rebateable non-reference service).

Consequential amendments must be made to:

- Clause 3.7 to delete and move clause 3.7(a), which provides a description of the service, to clause 3.6 so that the Pilbara Service is listed and described as a non-reference service.
- Clause 18.19 to delete the reference to the “Pilbara Service” being a rebateable non-reference service.

269. In its submission in response to the position paper, WEGS submitted that it supported the ERA’s position on the classification of the Pilbara Service provided that the ERA allocated some costs to the provision of the service, with the allocation including both

capital and operating costs, and not just the incremental costs.¹⁴⁸ The allocation of costs between reference, non-reference and rebateable services is discussed at paragraph 292.

270. WEGS also noted the ERA's position on the classification of the Spot Capacity Service (being a non-reference service) and submitted that the service should be further specified as a non-reference *rebateable* service. The ERA has separately considered the submissions made by WEGS on the Spot Capacity Service at paragraph 275, and consistent with these considerations the ERA has determined that the Spot Capacity Service should be further specified as a rebateable service for AA5.
271. Table 8 sets out the pipeline services and their classifications for AA5 as determined by the ERA in this final decision. Descriptions of each of the services are provided in the access arrangement as referenced.¹⁴⁹

Table 8: Final decision classification and description of pipeline services for AA5

Pipeline service	Classification	Description (ERA approved access arrangement reference)
Reference services		
T1 Service	Reference service	Clauses 3.1(a) and 3.3
P1 Service	Reference service	Clauses 3.1(a) and 3.4
B1 Service	Reference service	Clauses 3.1(a) and 3.5
Non-reference services		
Spot Capacity Service	Non-reference rebateable service	Clauses 3.1(b), 3.7 (as amended by this final decision ¹⁵⁰)
Park and Loan Service (or Storage Service)	Non-reference service	Clauses 3.1(b) and 3.6
Pipeline Impact Agreement Service	Non-reference service	Clauses 3.1(b) and 3.6
Data Services	Non-reference service	Clauses 3.1(b) and 3.6
Inlet Sales Service	Non-reference service	Clauses 3.1(b) and 3.6
Pilbara Service	Non-reference service	Clauses 3.1(b) and 3.6 (as amended by this final decision ¹⁵¹)
Other Reserved Service	Non-reference rebateable service	Clauses 3.1(b) and 3.7

¹⁴⁸ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 2.

¹⁴⁹ The ERA has made an additional minor amendment to the description of the Park and Loan Service to include the words "(or Storage Service)" in the name of the service in clause 3.1(b)(i)(B), and the descriptions of the Pipeline Impact Agreement, Data and Other Reserved Services to capitalise the service names in clause 3.6.

¹⁵⁰ Final Decision Required Amendment 4.

¹⁵¹ Final Decision Required Amendment 3.

Pipeline service	Classification	Description (ERA approved access arrangement reference)
Peaker Service	Non-reference rebateable service	Clauses 3.1(b) and 3.7
Ullage Service	Non-reference rebateable service	Clauses 3.1(b) and 3.7
Seasonal Service	Non-reference ancillary service	Clauses 3.1(b) and 3.8 (as amended by this final decision ¹⁵²)
Metering and Temperature Service	Non-reference ancillary service	Clauses 3.1(b) and 3.8 (as amended by this final decision ¹⁵³)
Odourisation Service	Non-reference ancillary service	Clauses 3.1(b) and 3.8 (as amended by this final decision ¹⁵⁴)

272. As noted by WEGS in its submission in response to the position paper, the ERA reproduced information submitted by DBP that contained an incorrect description of the part haul P1 Service. That is, in Table 6.2 of DBP's Final Plan (reproduced as Table 2 in this decision) the part haul P1 Service is described as the following type of service:

Forward Part Haul (subject to available capacity) with outlet point upstream of CS9, regardless of the location of inlet point.

273. However, in the proposed revised access arrangement (clause 16), "part haul service" is defined as follows, with the definition unchanged from the current (AA4) access arrangement:

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.¹⁵⁵

274. The ERA confirms that there is no change to the classification and description of the P1 Service. That is, the P1 Service continues to be classified as a reference service, with the description of the service set out in the access arrangement.

Spot Capacity Service

275. In its response to the ERA's position paper, WEGS noted the ERA's position that the Spot Capacity Service should remain a non-reference service. However, WEGS submitted that the Spot Capacity Service could be considered a rebateable service

¹⁵² Final Decision Required Amendment 2.

¹⁵³ Final Decision Required Amendment 2.

¹⁵⁴ Final Decision Required Amendment 2.

¹⁵⁵ DBP, *DBNGP Access Arrangement 2021-25*, p. 34.

and that rule 93(3) of the NGR, which permits the allocation of rebateable services costs (in whole or in part) to reference services could apply. WEGS submitted:

WEGS understands under Rule 93(3) that where there is substantial uncertainty for the demand of a service, the cost of delivering this service may be allocated to reference services but the revenues derived from this service shall be rebateable. WEGS believes there may be substantial uncertainty in the demand for the Spot Service for the following reasons:

- i) the service cannot be reserved by shippers,
- ii) the price of this service (being the higher of \$1.20/GJ and the price cleared as a result of the daily auction) ranks this service as least preferred option – ahead of the shipper’s over-run tolerance, and
- iii) the availability of the Spot Service is determined by the operator’s daily configuration of the pipeline (not the pipeline’s capacity).

WEGS believes that Rule 93(3) applies to the Spot Service offered by [DBP].¹⁵⁶

276. “Spot capacity” is defined in clause 16 (Definitions) of the access arrangement as:

Spot Capacity means any capacity on the DBNGP on a Gas Day (being the capacity available after all Nominations for Reserved Capacity for that Gas Day have been allocated by the Operator for that Gas Day), which capacity, is, according to the Operator (acting in good faith) available for purchase.

277. The Spot Capacity Service can only be offered on gas days where there is spare (spot) capacity available for purchase. The availability of spot capacity on any given gas day is dependent on shippers’ individual nominations for that gas day, with nominations made as per the terms and conditions for the respective pipeline service.¹⁵⁷ Given the nominations process, there is always a degree of uncertainty surrounding the amount of spot capacity that will be available. That is, there is no guarantee that spot capacity will be available on a particular gas day.

278. In its response to the ERA’s information request seeking actual (AA4) and forecast (AA5) demand and revenue data for the Spot Capacity Service (see Table 4), DBP noted the difficulty in developing forecasts given the nature of the service which catered for unplanned changes in demand.

It is important to note that developing a forecast of revenue and demand for this service is inherently uncertain given the nature of the service (in catering for unplanned changes in demand). The forecast of revenue and demand are therefore based on a simple average of the three most recent years.¹⁵⁸

279. Based on the above considerations, the Spot Capacity Service meets the criteria for a rebateable service as set out in rule 93(4) of the NGR (that is the demand for, and/or revenue generated from, the service is substantially uncertain). Given this, the ERA considers that it would be preferable and consistent with the national gas objective to specify the Spot Capacity Service as a rebateable service for AA5.

280. The ERA sought confirmation from DBP as to whether it would make any further submissions concerning the classification of the Spot Capacity Service as a rebateable service.¹⁵⁹ DBP advised that the following matters would need to be considered if the classification of the Spot Capacity Service were to change.

¹⁵⁶ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 2.

¹⁵⁷ See clause 8 (Nominations) of the terms and conditions for reference services (T1, P1 and B1 Services).

¹⁵⁸ DBP, *Response to information request ERA14*, 5 June 2020.

¹⁵⁹ DBP, ‘Rebating of spot services’, [email] 5 March 2021.

- The allocation of efficient costs between reference and non-reference services for the purpose of determining reference tariffs can no longer be based on a ratio of actual reference and non-reference service revenue (that is, the ERA’s draft decision ratio of 97:3 to allocate total revenue between reference and other non-reference services cannot be used).
 - The demand for the Spot Capacity Service must be removed from the capacity forecasts that are used to determine reference tariffs.
281. The ERA has separately considered the effect of its decision to specify the Spot Capacity Service as a rebateable service on the allocation of costs as part of its considerations of the allocation of total revenue at paragraph 1854.
282. In specifying the Spot Capacity Service as a rebateable service, the ERA must be satisfied that DBP will apply an appropriate proportion of the revenue generated from the service to reduce the reference tariff. The ERA has considered the matter of rebating back a proportion of the revenue generated from the sale of rebateable services as part of its considerations of the reference tariff variation mechanism (see paragraph 1954). Consistent with these considerations, the ERA is satisfied that DBP will rebate an appropriate proportion of the revenue generated from the Spot Capacity Service to reduce reference tariffs.
283. For the reasons set out above, the ERA requires the Spot Capacity Service to be specified as a rebateable non-reference service in clause 3.1(b) of the revised access arrangement. Consequential amendments to clauses 3.6, 3.7, 18.19 of the access arrangement, to update references to the Spot Capacity Service being a rebateable non-reference service (and not just a non-reference service), are also required.

Required Amendment 4

Clause 3.1(b) of the revised proposed access arrangement must be amended to specify and describe the Spot Capacity Service as a rebateable non-reference service (and not a non-reference service).

Consequential amendments must be made to:

- Clause 3.6 to delete and move clauses 3.6(a) and 3.6(b), which provide a description of the service, to clause 3.7 so that the Spot Capacity Service is listed and described as a rebateable non-reference service.
- Clause 18.19 to add a reference to the “Spot Capacity Service” being a rebateable non-reference service.

Peaker Service

284. In its response to the ERA’s position paper, WEGS reiterated its previous submission (made in response to the draft decision) that the classification of the Peaker Service as a non-reference rebateable service, together with its assumed pricing for the service, caused an unfair disparity in tariffs for access to pipeline capacity between Peaker Service and reference service (T1 Service) customers. WEGS submitted that the Peaker Service should not be classified as a rebateable service for the following reasons:¹⁶⁰

¹⁶⁰ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, pp. 3-8.

- **Predictability of the Peaker Service:** WEGS suggested that a distinction be made between the predictability of the demand for and usage of the Peaker Service. It considered that the demand for the service, and revenue generated from the service, is likely to be known or not significantly uncertain. WEGS submitted:

WEGS believes that the demand for this service is likely to be well known by [DBP] (or not substantially uncertain). The fact that it is a new service for [DBP] does not of itself mean that demand is substantially uncertain. It is clear that [DBP] has held negotiations with shippers that have resulted in the parties agreeing to or agreeing to move from a T1 Service and progress towards a Peaker Service contract as a replacement for the shippers' currently subscribed T1 capacity. In this sense, the demand for Peaker Service is most probably well understood.

However, due to the likely high commodity portion of this tariff (circa 80%), the estimation of the usage strongly influences the estimation of the revenues derived by [DBP] on this service. WEGS believes there is adequate information available ... to conclude that there is not substantial uncertainty concerning the revenue to be earned from this service The following sources of information demonstrate this point:

- Whole of System Plan ...
 - Shippers' obligations to forecast demand ...
 - Information provided by shippers for negotiation purposes ...
 - Other sources of information ... Electricity Statement of Opportunities and forecasts from ACIL Allen, obtained by [DBP] to support their forecast of natural gas demand.¹⁶¹
- **Cost allocation to the Peaker Service:** WEGS submitted that, except for curtailment priority, the Peaker Service is similar to the full haul reference service (T1 Service) and, given the spare capacity available for AA5, the difference in curtailment priority is not material. Considering this, WEGS submitted that it disagreed with DBP's assessment that the allocation of costs to the Peaker Service is difficult. That is, given that the Peaker Service and T1 Service are similar in nature, the allocation of costs to these services should also be similar.
 - **Inefficiency of the rebate mechanism:** WEGS reiterated its previous submission that DBP's proposed rebate sharing mechanism does not properly reflect the cost of providing rebateable services.

285. As submitted by WEGS, a distinction between the forecast demand for, and usage of, the Peaker Service can be made. However, the ERA considers that such a distinction does not provide sufficient certainty to cause a reclassification of the Peaker Service from a non-reference *rebateable* service to a non-reference service. While DBP would have a good understanding of the initial demand for and expected usage of the Peaker Service based on its contract renegotiations with shippers, this information would still be subject to, and dependent on, the actual operations of individual shippers (users) and other external factors that cannot be foreseen or controlled. For example, the operational decision of electricity producers to use a particular type of generating plant and fuel would be, among other things, dependent on the availability of renewables (wind and solar) on any given day, with the availability of renewables being dependent on the weather – an external factor that can vary considerably and cannot be controlled.

¹⁶¹ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, pp. 4-5.

286. While there is information that can be used to reduce the uncertainty surrounding the demand for, and usage of, the Peaker Service, such as the information identified by WEGS, the ERA considers that without any actual (historical) data for the Peaker Service the ability to forecast is problematic. In the absence of any actual (historical) data for the Peaker Service to support the identification of trends and/or anomalies, the ERA considers that the ability to forecast demand for, and/or usage of, the service is limited and that any forecast would not overcome the substantial uncertainty associated with the service.
287. The ERA further notes that, as submitted by WEGS and confirmed by DBP in its May 2020 submission (see paragraph 170 of this decision), the tariff for the Peaker Service will include both capacity and commodity (throughput) components. However, unlike the reference tariffs, the split of the tariff components is dependent on the shipper's negotiated terms and conditions for the service. That is, the capacity and commodity tariff components for the Peaker Service will differ between shippers who contract for the service. DBP has indicated that it expects the capacity component for the Peaker Service to be between [REDACTED] and [REDACTED], meaning that the commodity component will vary between [REDACTED] and [REDACTED]. Given the variable structure of the tariff components, together with the uncertainty surrounding actual demand/usage, the extent of the revenue to be generated from the Peaker Service also remains uncertain.
288. Rule 93(4)(b) of the NGR requires that there is substantial uncertainty concerning the extent of the demand for, or revenue to be generated from, the service. The rules do not provide any further guidance as to what 'substantial' means. Legal authority interprets the word 'substantial' as being 'considerable, of substance or significance and not... insubstantial, insignificant or minimal'.¹⁶² The ERA considers that, in the context of the Peaker Service, the determination of whether there is substantial uncertainty involves a consideration of the degree of uncertainty (that is, whether the uncertainty is 'of substance' or 'significant') relative to the factual context.
289. The ERA has considered the degree to which there is information about the actual demand for and/or revenue generated from the Peaker Service. As set out at paragraph 284, WEGS submitted that there was information currently available regarding anticipated demand/revenue of the Peaker Service, based on information obtained through the DBP's contract renegotiations with shippers. Whilst the ERA acknowledges that some information on anticipated demand/revenue is available, it reiterates that as a new service there is no actual (historic) data on the demand for, and/or revenue generated from, the Peaker Service. Further, while DBP may have some understanding of the intentions of shippers, in a context where the actual operations of individual shippers and other external factors cannot be foreseen or controlled (as set out at paragraph 285), there remains substantial uncertainty on actual demand/revenue. Consequently, the ERA maintains the view set out in its position paper that there is substantial uncertainty concerning the extent of demand for, and the revenue to be generated from, the Peaker Service. For this reason, the Peaker Service should be classified as a rebateable service for AA5.
290. As indicated in its position paper, the ERA considers that the uncertainty concerning the Peaker Service should reduce over the course of the access arrangement period as shippers operate under their renegotiated contracts and refine their operational needs. Additionally, DBP will record and monitor the actual demand for, and revenue generated from the Peaker Service, to refine its forecasts for the service going forward (that is, for the next (AA6) and subsequent access arrangement periods).

¹⁶² *ASX Operations Pty Ltd v Pont Data Australia Pty Ltd (No 1)* (1990) 27 FCR 460 at 478.

As such, the Peaker Service may not satisfy the criteria for being specified as a non-reference rebateable service when the access arrangement is next reviewed, noting that the review and assessment of pipeline and reference services will follow the process set out in rule 47A of the NGR (see paragraph 293).

291. The ERA has considered the information submitted by WEGS on the allocation of costs to the Peaker Service as part of its considerations of the allocation of total revenue (at paragraph 1832). The proposed rebate mechanism for the Peaker Service (and other rebateable services) has been considered as part of the ERA's considerations of the reference tariff variation mechanism (at paragraph 1903).

Allocation of costs between reference, non-reference and rebateable services

292. The allocation of costs between reference and non-reference services is considered at paragraphs 1832 to 1863 of this decision, where the ERA has determined that:

- There is no need to allocate costs to rebateable non-reference services. The NGR require DBP to rebate a portion of the revenue earned from the sale of rebateable services. The rebate compensates reference service customers (via a reduced reference tariff) for costs that are attributable to rebateable services, but which have not been directly allocated to customers using the services. As such, no allowance for demand for rebateable non-reference services needs to be made in the building blocks used to determine the total revenue requirement, and hence the reference tariffs, for AA5.
- The allocation of efficient costs between reference and non-reference services for the purpose of determining reference tariffs should be based on a revised allocation ratio of 99:1. That is, 99 per cent of revenue is expected to be derived from reference services and rebateable non-reference services, with the remaining one per cent derived from the provision of other non-reference services (that are not rebateable).

Reference services for next access arrangement period

293. As set out at paragraph 40, the Australian Energy Market Commission made a final determination in March 2019 to change the regulatory framework for covered transmission and distribution natural gas pipelines in Australia. One of the changes introduced new rule 47A, which created a new assessment process for reference services. However, transitional provisions were also introduced that provided for exemptions. Under transitional rule 62(2) in schedule 1 of the NGR, DBP is exempt from having to comply with new rule 47A for AA5. Instead, modified rules 48(b), (c) and (d) of the NGR apply.
294. For AA6, reference services must be proposed and assessed under rule 47A of the NGR, which requires DBP to submit a "reference service proposal" to the ERA at least 12 months before the review submission date for the access arrangement. The required content of the reference service proposal is set out in rule 47A(1):

47A Reference services

- (1) A service provider in respect of a full regulation pipeline must, whenever required to do so under subrule (3), submit to the [ERA] a reference service proposal in respect of a forthcoming full access arrangement proposal that:
- (a) identifies the pipeline and includes a reference to a website at which a description of the pipeline can be inspected;

- (b) sets out a list of all the pipeline services that the service provider can reasonably provide on the pipeline and a description of those pipeline services having regard to the characteristics in subrule (2);
- (c) from the list referred to in subrule (1)(b), identifies at least one of those pipeline services that the service provider proposes to specify as reference services having regard to the reference service factors including any supporting information required by the [ERA]; and
- (d) if the service provider has engaged with pipeline users and end users in developing its reference service proposal, describes any feedback received from those users about which pipeline services should be specified as reference services.
295. The ERA considers that the amended process for reference services in the NGR has the potential to better support the national gas objective. Rule 47A of the NGR essentially creates a separate process for identifying, proposing and assessing pipeline and reference services. A process that is focused on one specific aspect of an access arrangement is potentially more manageable for interested parties, including the service provider, and may result in better access arrangement outcomes, such as, for example, the identification of further reference services that had not been considered in the past. Rule 47A provides for:
- The submission of a reference service proposal, by the service provider to the ERA, 12 months before the review submission date for the access arrangement. In developing the proposal, rule 47A(1)(d) contemplates the service provider engaging with pipeline and end users.
 - An initial assessment of the service provider's reference service proposal to ensure compliance with the rules. For example, rule 47A(1), sets out the required content of a reference service proposal.
 - Public consultation on the reference service proposal submitted to the ERA (for a period of at least 15 business days) and, at the discretion of the ERA, opportunities for further consultation.
 - A decision by the ERA on the reference service proposal that is made no later than six months before the review submission date for the access arrangement.
296. Based on a review submission date of 1 January 2025 for the access arrangement for AA5, DBP would be required to submit a reference service proposal (for AA6) on or before 1 January 2024.

Demand forecast

297. Rule 72 of the NGR contains requirements for access arrangement information relevant to demand forecasts:

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 transmission pipeline, minimum, maximum and average demand for each receipt or delivery point; and
 - (B) 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; ...

298. 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.

DBP's proposal

299. Rule 72(1)(a)(iii) of the NGR requires DBP to provide information on the use of the pipeline over the previous access arrangement period (AA4). DBP provided information on the maximum, minimum and daily average demand for the three reference services, as well as the number of shippers by inlet and outlet point.

300. Table 9, Table 10 and Table 11 show the actual demand for reference services for AA4. DBP could not forecast maximum and minimum demand for 2020.

Table 9: Daily demand – Full haul (T1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020 (forecast)
Maximum	703.2	703.4	688.2	687.5	N/A
Average	584.5	569.1	574.0	589.6	589.3
Minimum	479.6	509.5	511.6	544.2	N/A

Source: DBP Response ERA 28, July 2020

Table 10: Daily demand – Part haul (P1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020 (forecast)
Maximum	168.1	182.7	175.8	166.3	N/A
Average	88.9	129.6	120.7	140.9	136.9
Average full haul equivalent basis	7.7	11.0	11.4	13.2	15.1
Minimum	67.2	72.9	84.1	70.0	N/A

Source: DBP Response ERA 28, July 2020; DBP Response ERA06, February 2020

Table 11: Daily demand – Back haul (B1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020 (forecast)
Maximum	209.6	215.8	233.8	300.3	N/A
Average	168.0	165.3	206.7	208.9	225.0
Average full haul equivalent basis	13.1	13.2	17.1	17.2	17.6
Minimum	91.9	115.3	101.9	101.6	N/A

Source: DBP Response ERA 28, July 2020; DBP Response ERA06, February 2020

301. DBP also provided information on demand for non-reference services (Table 12) that use the capacity of the pipeline. DBP noted that it was difficult to provide demand quantities for non-reference services in the same format as the reference services in the tables above. DBP also noted that if the ERA wanted to understand the use of the pipeline for reference and non-reference services combined, then the non-reference services would need to be aggregated to a full haul equivalent basis. While part haul and back haul reference services can be converted to a full haul equivalent basis, it was difficult for DBP to do this for non-reference services as it would need to discount differences such as “firmness [of gas supply], position on the curtailment order and a myriad of other rights.”¹⁶³

¹⁶³ DBP, Response to information request ERA, 16 July 2020.

Table 12: Demand for non-reference services (average TJ/day)

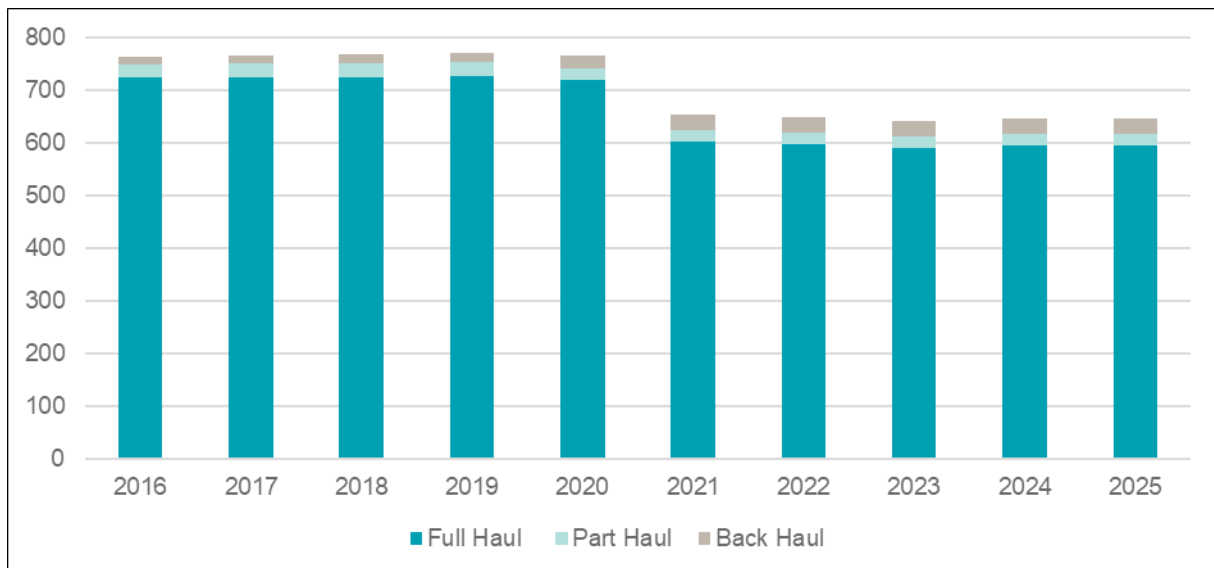
Service	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Spot capacity services	0.27	2.34	36.59	65.94	35.00	35.00	35.00	35.00	35.00	35.00
Pilbara service	0.00	9.40	14.93	24.15	24.00	30.00	30.00	30.00	30.00	30.00
Other reserved services	87.92	88.79	46.09	42.64	38.98	39.00	39.00	39.00	39.00	39.00

Source: DBP response ERA28

302. DBP is required to include a forecast of contracted capacity and throughput over the AA5 period for each of the three reference services. This forecast must:

- be arrived at on a reasonable basis
- represent the best forecast or estimate possible in the circumstances.

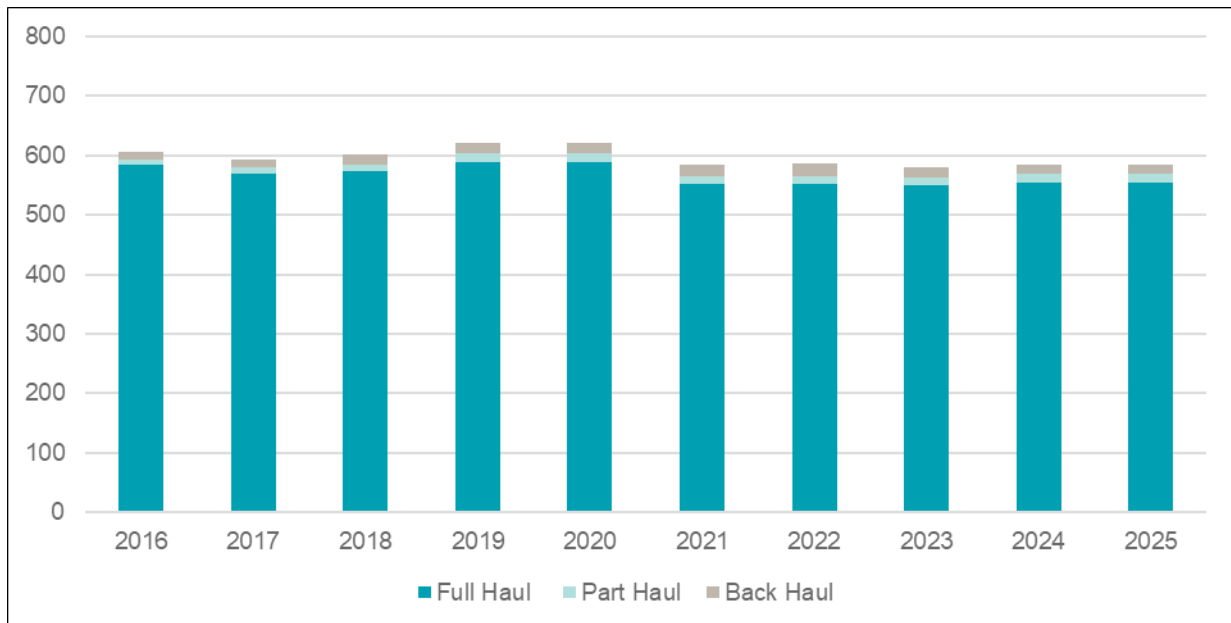
303. DBP forecast average daily contracted capacity for reference services in AA5 of 647 TJ/day on a full haul equivalent basis, which was 16 per cent lower than the contracted capacity in AA4. This decrease in reference service contracted capacity is comprised of decreases in both full haul and part haul contracted capacity, partially offset by an increase to back haul. Figure 2 shows the comparison of contracted capacity on a full haul equivalent (TJ/d) basis.

Figure 2: Contracted capacity (full haul equivalent TJ/d) – Actual 2016 to 2019, forecast 2020 to 2025

Source: DBNGP FP_11.1.3_30 Aug 2019 Demand Template for Commercial (KPMG Audit) v4, ERA06 Demand Template for Commercial (Actuals) incl 2016-2020 update.

304. Figure 3 shows the throughput on a full haul equivalent (TJ/d) basis for AA4 and AA5.

Figure 3: Throughput (full haul equivalent TJ/d) – Actual 2016 to 2019, forecast 2020 to 2025



Source: DBNGP FP_11.1.3_30 Aug 2019 Demand Template for Commercial (KPMG Audit) v4, ERA06 Demand Template for Commercial (Actuals) incl 2016-2020 update.

305. DBP considered that the lower forecast throughput and contracted demand compared to AA4 reflected the significant change occurring in the Western Australian energy market. Renewable electricity penetration grew rapidly over AA4 and is forecast to continue over AA5, displacing electricity generated from other sources including natural gas. Further, with new developments in gas producing basins, pipelines other than the DBNGP may be used to bring gas to Perth.
306. In its proposal, DBP submitted that it expected full haul throughput to increase from October 2022 with the staged retirement of two coal-fired units at Muja C power station. DBP expected these retirements to increase demand for natural gas to meet the need for additional sources of dispatchable electricity.
307. DBP expected part and back haul contracted capacity to be relatively stable throughout AA5.
308. DBP submitted that its forecast was informed by two external reviews and feedback from its customers. DBP considered that its demand forecast was arrived at on a reasonable basis and represented the best forecast possible in the circumstances.

DBP's forecasts for reference services

309. DBP's AA5 forecasts for capacity and throughput are shown in Table 13, in comparison to DBP's forecast demand for 2020 (the final year of AA4). The forecasts are based on a bottom-up model of demand and are provided for full haul, back haul, and part haul services on a full haul equivalent basis.

Table 13: DBP's initial proposed demand forecasts for AA5 compared to forecast demand for 2020 (full haul equivalent TJ/d)

	2020 AA4	2021 AA5	2022 AA5	2023 AA5	2024 AA5	2025 AA5
Full haul						
Throughput	589.35	551.81	551.31	549.71	554.71	554.70
Contracted capacity	718.08	601.50	596.50	590.70	595.70	595.70
Part haul						
Throughput	15.09	14.05	14.01	13.97	13.94	13.93
Contracted capacity	22.61	21.78	21.49	21.22	20.94	20.33
Back haul						
Throughput	17.57	19.53	20.60	16.43	15.99	15.46
Contracted capacity	24.95	29.31	29.31	29.31	29.69	30.07
Total system						
Throughput	622.01	585.39	585.92	580.10	584.64	584.09
Contracted capacity	765.64	652.58	647.30	641.22	646.33	646.10

Source: DBP's spreadsheet DBNGP FP_11.1.3 Aug 2019 Demand Template for Commercial (KPMG Audit) v4, ERA06 Demand Template for Commercial (Actuals) incl 2016-2019 throughput.

310. DBP submitted that its demand forecasts for reference services were the best estimate because:
- The forecasts were consistent with the Australian Energy Market Operator's (AEMO) Gas Statement of Opportunities. DBP provided a confidential report by ACIL Allen Consulting comparing AEMO's forecasts with DBP's forecasts.
 - DBP undertook stakeholder consultation to inform customer contracted capacity and throughput forecasts.
 - ACIL Allen Consulting developed an economic model to determine the optimal contracted capacity of DBP's customers.
 - KPMG provided a quality assurance report of DBP's forecasts.

Draft decision

AA4 demand

311. Rule 72(1)(a) of the NGR requires DBP to submit information on the use of the pipeline for the previous access arrangement period (AA4). DBP provided information on the actual use of the pipeline for providing reference services for AA4 (TJ/d), as shown in Table 9, Table 10 and Table 11.

AA5 demand forecast

312. Rule 72(1)(d) of the NGR requires DBP to submit information on the forecast pipeline capacity and use of pipeline capacity over the access arrangement period (that is, AA5).
313. DBP provided AA5 forecast throughput and contracted capacity for its reference services (see Table 13). DBP submitted that its demand forecasts for reference services were the best estimate for the reasons stated at paragraph 310.
314. In May 2020, DBP provided the ERA with new demand forecasts for reference services reflecting the completion of major contract renegotiations. Table 14 shows these revised forecasts. Table 15 shows the percentage difference between DBP's revised demand forecast and DBP's initial proposal forecast.

Table 14: DBP's revised May 2020 demand forecasts for AA5 (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full haul					
Revised forecast throughput	536.28	526.80	520.22	514.45	508.15
Revised forecast contracted capacity	592.25	582.25	574.15	557.45	549.35
Part haul					
Revised forecast throughput	17.74	17.86	19.57	21.27	23.60
Revised forecast contracted capacity	25.97	25.39	26.87	28.34	30.36
Back haul					
Revised forecast throughput	13.89	13.27	13.27	13.27	13.27
Revised forecast contracted capacity	18.09	17.29	17.29	17.89	17.89
Total system					
Revised forecast throughput	567.91	557.93	553.06	548.99	545.03
Revised forecast contracted capacity	636.31	624.93	618.31	603.69	597.60

Source: DBP Tariff model May 2020.

Table 15: Variance of revised May 2020 demand forecasts from initial proposal forecasts (%)

	2021	2022	2023	2024	2025
Full haul					
Full haul throughput	(2.81)	(4.44)	(5.36)	(7.26)	(8.39)
Full haul contracted capacity	(1.54)	(2.39)	(2.80)	(6.42)	(7.78)
Part haul					
Part haul throughput	26.23	27.48	40.04	52.62	69.45
Part haul contracted capacity	19.22	18.11	26.63	35.35	49.32
Back haul					
Back haul throughput	(28.86)	(32.55)	(15.41)	(13.11)	(10.11)
Back haul contracted capacity	(38.28)	(41.00)	(41.00)	(39.73)	(40.49)
Total system					
Total system throughput	(2.99)	(4.67)	(4.56)	(5.99)	(6.58)
Total system contracted capacity	(2.49)	(3.46)	(3.57)	(6.60)	(7.51)

Source: ERA analysis

315. The ERA considered the information provided by DBP and sought and received further information from DBP on individual customer demand to assist with this review. The ERA also compared AEMO's gas demand forecast for Western Australia with DBP's demand forecast.
316. The ERA's consideration of DBP's revised demand forecasts in the draft decision was structured around the following issues:
- The transparency of DBP's process to derive demand forecasts.
 - A comparison of DBP's throughput forecasts with AEMO's demand forecasts for Western Australia.
 - Substitution between reference services and the peaking service.
 - Economic conditions and DBP's demand forecast.

Transparency of DBP's process

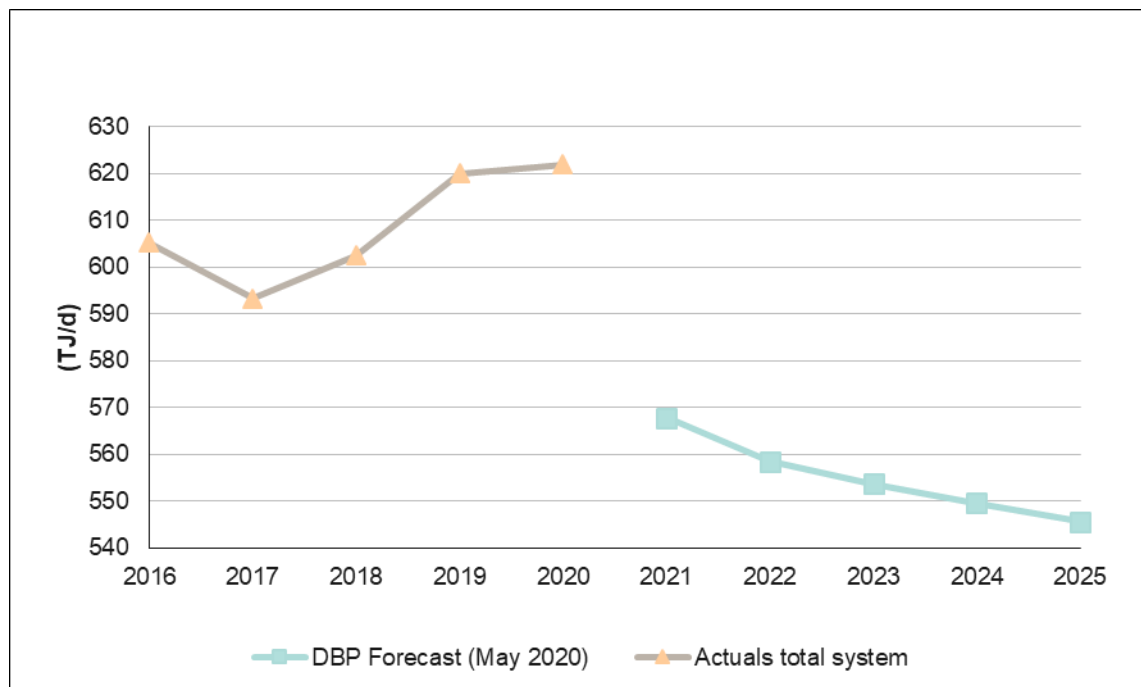
317. DBP consulted shippers using stakeholder roundtable meetings to derive its initial bottom-up forecast.
318. In submissions received by the ERA on its issues paper, stakeholders noted concerns with the transparency of DBP's process to determine the demand forecast. Wesfarmers Chemicals Energy and Fertilisers Limited (WesCEF) submitted that DBP did not provide enough information in its initial proposal for WesCEF to assess the demand forecasts.

319. The ERA considered that DBP undertook significant consultation to derive its demand forecasts for AA5. The ERA noted that there was a need to balance the commercial-in-confidence nature of the contracts with transparency. As noted above, the ERA sought and received further information from DBP on individual customer demand to assist with its review. DBP also commissioned a quality assurance review from KPMG which was provided to shippers and to the ERA as part of this review process.
320. DBP revised its original forecast in May 2020 to factor in new renegotiated contracted capacity. DBP provided shipper-by-shipper changes to the demand forecast and evidence of contracted demand. The ERA has not published shipper-by-shipper information due to commercial-in-confidence concerns but the aggregate revised demand information is provided in Table 14.

Comparison of gas forecasts

321. DBP forecast a significant step decrease in contracted capacity and throughput from 2020 to 2021. Figure 4 below shows DBP's forecast step decline in total system throughput from 2020 to 2021 and the declining trend in throughput over AA5 (2021 to 2025).

Figure 4: Total system throughput – Actual 2016 to 2020 and DBP's May 2020 forecast 2021 to 2025 (full haul equivalent TJ/d)



Source: DBP's tariff model and DBP's demand model

322. DBP submitted that its forecast throughput was in line with past actual throughput and AEMO's forecast for gas demand in Western Australia, when excluding the step decline for electricity generation. The step decline was due to the increasing proportion of renewable energy used in electricity generation. While DBP submitted that the closure of Muja C would increase gas throughput from October 2022, DBP's forecast throughput continued to decline, implying that DBP's forecast of a displacement of gas generation to renewable sources would more than offset the effect of the Muja C closure. DBP also considered that there would be a reduction in demand due to customers using alternative pipelines to the DBNGP.

323. The ERA assessed DBP's throughput forecasts and supporting information and considered that the step decline in full haul throughput from 2020 to 2021 was inconsistent with AEMO's gas demand forecasts.¹⁶⁴ AEMO forecast a 1.9 per cent increase in gas demand each year between 2020 to 2024 in Western Australia. In aggregate, AEMO forecast a 15 per cent increase in gas demand from 2019 to 2029, supported by the closure of Muja C to maintain electricity system stability and to provide support to base load power over the period. In the 2019 Gas Statement of Opportunities report, AEMO noted that the deviation between its historic forecasts and actual demand was small.¹⁶⁵ AEMO noted that "improvements to [its] forecasting method, access to formal information request (FIR) data and improvement of gas use (GBB) data have contributed to improving the accuracy of the forecasts over time."¹⁶⁶
324. The ERA's technical consultant EMCa found significant inconsistencies in the comparison of AEMO's forecasts and the gas demand forecasts of DBP. EMCa stated that:
- Given the considerable and largely unexplained differences between the AEMO forecasts and the DBP forecasts, we cannot accept that the AEMO forecasts support the DBP forecasts.
325. Submissions from CITIC Pacific Mining Management Pty Ltd (CPM) and WesCEF raised concerns with DBP's demand forecasts, particularly the forecast step change in contracted capacity and throughput. CPM submitted that it expected gas volumes in Western Australia to increase over AA5 from the Gorgon and Wheatstone joint ventures, and that it expected a transition from diesel to gas (or hybrid gas) for many industries.
326. WesCEF considered that DBP's forecasts should reflect increased gas consumption due to the closure of the coal-fired Muja C power generator. WesCEF's submission contradicted DBP's position that use of alternative pipelines would reduce demand for the DBNGP. WesCEF noted that, despite suggestions of possible competition from the Parmelia Gas Pipeline to supply gas from the Perth Basin to Perth, the Xyris processing plant was being connected away from the Parmelia Gas Pipeline and into the DBNGP instead from July 2020 onwards.

Substitution between reference services and peaking service

327. When DBP revised its demand forecast in May 2020, it noted that it expected customers to use the peaking service more and there would be substitution between firm reference services and the peaking service. The peaking service can be used by DBP's customers to meet demand at peak times, lessening the requirement for higher contracted reference service capacity. DBP indicated that the peaking service was not currently being used and hence there was no information about the level of substitution.
328. The step decline in contracted capacity is largely due to recent renegotiation of contracts by [REDACTED] of DBP's customers. The customers substantially revised down their contracted capacity and DBP indicated that these customers would use the peaking service.

¹⁶⁴ DBP supporting information, ACIL Allen 'Gas Forecast Review' January 2020

¹⁶⁵ AEMO, *2019 Gas Statement of Opportunities*, December 2019, p. 26. AEMO notes that for 2019 (to 14 August 2019), actual gas demand was 9 TJ/day (0.8 per cent) higher than forecast in the 2018 WA Gas Statement of Opportunities.

¹⁶⁶ AEMO, *2019 Gas Statement of Opportunities*, December 2019, p. 26.

329. The ERA considered that there would be some substitution between the peaking service and the reference service. While the substitution between the reference service and peaking service could be quantified by economic modelling, DBP did not provide the ERA with a demand forecast for the peaking service. As a result, the ERA could not quantify the substitution effect.
330. The ERA assessed the ACIL Allen economic model that DBP used to determine the optimal contracted capacity of its customers, but this model became out-of-date following the submission of DBP's revised forecasts in May 2020. The ERA noted that this type of assessment, if updated by DBP, may be useful following the draft decision to explain the step change in reference service throughput and the potential substitution to the peaking service.

Economic conditions

331. As noted in CPM's submission, general global economic conditions started to deteriorate in March 2020 and any sustained downward pressure on the oil price from the levels prior to March 2020 could affect domestic gas prices in WA.
332. The ERA considered that there was uncertainty about the effects, if any, of a local or global economic downturn on gas supply using the DBNGP during AA5. The ERA noted that DBP has already re-contracted with most of its customers and that typically gas supply agreements were for a fixed capacity over a longer period. As a result, the capacity forecasts were unlikely to be materially affected. The throughput forecasts may be affected, but there was much uncertainty and throughput only accounted for 6 per cent of forecast tariff revenue.

Conclusion on demand forecasts

333. The submissions from CPM and WesCEF raised concerns with DBP's proposed step decline in demand from 2020 to 2021 and suggested that gas demand would continue to grow over the period. This was supported by AEMO's forecast which, for the region of Western Australia where full haul services are located, noted that growth in both mining and new projects would be only partially offset by the forecast reduction in demand from South West Interconnected System gas-powered generation due to the entry of renewable generation.¹⁶⁷
334. As required under rule 74 of the NGR, a forecast of demand must be arrived at on a reasonable basis and must represent the best forecast possible in the circumstances. The ERA considered that DBP's forecast was not the best forecast considering the concerns raised above (at paragraphs 321 to 330), including that it did not reflect the stable to small growth that AEMO was forecasting for Western Australia. AEMO forecast an annual growth rate of 0.6 per cent per year for gas services in the metro and South-West region, which would include DBP's full haul customers. As noted at paragraph 323, the percentage deviation of AEMO's forecast demand to actual demand was small and was improving over time.
335. While DBP provided a bottom-up forecast and information on renegotiated contracts in May 2020, the ERA considered that aggregate demand for gas on the DBNGP would not fall.
336. The DBNGP throughput does not just consist of reference service demand, as DBP can and does offer other services (non-reference services) on the pipeline (see Table 12). When DBP provided its revised forecast of demand in May 2020 following contract renegotiations, it noted that some customers who had relinquished capacity

¹⁶⁷ AEMO, *2019 Gas Statement of Opportunities*, December 2019, p. 24.

would be using the peaking service, which is a non-reference service. While the ERA expected that some demand for full haul reference services would move to the peaking service, DBP did not provide any demand information for the peaking service. Given the uncertainties of this demand, the ERA considered that a flat demand for reference services, instead of AEMO's forecast increase in demand, was reasonable to account for substitution with the peaking service.¹⁶⁸ In these circumstances, the ERA considered that it was reasonable to forecast constant contracted capacity and throughput from the forecast levels in 2020.

337. Despite the concerns raised above for DBP's full haul reference service demand, the ERA considered that DBP's forecast for part haul and back haul reference services were reasonable. DBP's forecasts for these services were relatively constant over AA5 from current levels, reflecting the ERA's consideration that gas demand should be stable over AA5.
338. The ERA required DBP to amend its demand forecasts for reference services as set out in Table 16.

Table 16: ERA's draft decision demand forecasts for reference services for AA5 (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full haul					
Throughput	589.35	589.35	589.35	589.35	589.35
Contracted capacity	718.08	718.08	718.08	718.08	718.08
Part haul					
Throughput	17.74	17.86	19.57	21.27	23.60
Contracted capacity	25.97	25.39	26.87	28.34	30.36
Back haul					
Throughput	13.89	13.27	13.27	13.27	13.27
Contracted capacity	18.09	17.29	17.29	17.89	17.89
Total system					
Throughput	620.98	620.48	622.18	623.89	626.22
Contracted capacity	762.14	760.76	762.24	764.32	766.34

Source: DBP Tariff model May 2020.

339. The draft decision set out the following required amendment:

Draft Decision Required Amendment 7

DBP must amend its demand forecast for full haul reference services to maintain throughput and contracted capacity at 2020 forecast amounts as shown in Table 14 of [the] draft decision [Table 16 of this final decision].

¹⁶⁸ DBP anticipates forecast peaking service revenue to be a small percentage of its overall revenue for pipeline services. See paragraph 1841 of this decision.

DBP's response to the draft decision

340. DBP's AA5 revised proposal forecasts for capacity and throughput, alongside its 2020 forecast demand, are shown in Table 17. The forecasts are based on a bottom-up model of demand and are provided for full haul, back haul, and part haul services on a full haul equivalent basis.
341. DBP rejected the ERA's Draft Decision Required Amendment 7 to amend its forecast for full haul reference services to maintain throughput and contracted capacity at 2020 forecast amounts.

Table 17: DBP's revised proposal demand forecasts for reference services for AA5 compared to 2020 (AA4) forecast demand (full haul equivalent TJ/d)

	2020 (AA4)	2021	2022	2023	2024	2025
Full Haul						
Throughput	589.35	536.28	526.80	520.22	464.45	458.15
Contracted capacity	718.08	592.25	582.25	574.15	507.45	499.35
Part Haul						
Throughput	15.09	17.74	17.86	19.57	34.00	36.33
Contracted capacity	22.61	25.97	25.39	26.87	41.07	43.08
Back Haul						
Throughput	17.57	13.89	13.27	13.27	13.27	13.27
Contracted capacity	24.95	18.09	17.29	17.29	17.89	17.89
Total System						
Throughput	622.01	567.91	557.93	553.06	511.72	507.75
Contracted capacity	765.64	636.31	624.93	618.31	566.41	560.33

Source: DBP revised Final Plan, Attachment 13.1A Tariff Model, October 2020.

342. DBP also updated its demand forecasts for full haul and part haul reference services based on new information on contracted capacity. The only difference between the revised proposal forecasts and DBP's May 2020 forecasts was a switch of 50TJ/d from full haul capacity to part haul in 2024 and 2025 (12.7TJ/d full haul equivalent).

Table 18: Difference between DBP's revised proposal demand forecasts and DBP's May 2020 demand forecasts for reference services for AA5 (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full Haul					
Throughput	-	-	-	(50.00)	(50.00)
Contracted capacity	-	-	-	(50.00)	(50.00)
Part Haul					
Throughput	-	-	-	12.72	12.72
Contracted capacity	-	-	-	12.72	12.72
Back Haul					
Throughput	-	-	-	-	-
Contracted capacity	-	-	-	-	-
Total System					
Throughput	-	-	-	(37.28)	(37.28)
Contracted capacity	-	-	-	(37.28)	(37.28)

Source: ERA analysis; DBP revised Final Plan, Attachment 13.1A Tariff Model, October 2020; DBP Tariff model May 2020.

343. DBP provided the following supporting information in response to the ERA's draft decision:
- Updated report from ACIL Allen Consulting, which reviewed DBP's demand forecasts compared with the AEMO Gas Statement of Opportunities report and the incentives for substituting contracted capacity for peaker services for some energy generation.
 - Report from Mr Paul Keay from energyXL on the history of the DBNGP and the changing use of the pipeline over time.
 - Statement from Jon Cleary, General Manager of Commercial of DBP's parent company Australian Gas Infrastructure Group (AGIG), on the drivers for the significant reduction in capacity expected for the AA5 period.
 - Questionnaire responses from [REDACTED] major shippers that have significantly reduced contracted reference service capacity and their changing requirements for gas demand.
344. The ERA considers DBP's revised proposal and the supporting information in the final decision section below.

Submissions to the ERA

345. The ERA received four submissions on DBP's initial proposed demand forecasts in response to the issues paper, from WesCEF, CPM, AGIG and Gas Trading Australia Pty Ltd (gasTrading).

346. WesCEF submitted that DBP did not provide enough information in its proposal for WesCEF to assess the demand forecasts. However, WesCEF expected that DBP's forecasts should reflect increased gas consumption due to the closure of the coal-fired Muja C power generator in 2022.¹⁶⁹

WesCEF cannot observe the impact of a shutdown of Muja C from October 2022 on AGIG's estimated throughput. It is WesCEF's expectation that the closure of a coal-fired power generator would lead to an increased consumption of gas from replacement gas-fired generation.

347. WesCEF also did not agree with DBP's position that use of alternative pipelines would reduce demand for the DBNGP.¹⁷⁰

AGIG justifies the reduction in capacity subscription from the competition from another pipeline which can bring gas to Perth, namely, the Parmelia Gas Pipeline (PGP).

WesCEF does note that, from latest information publicly available, this pipeline will have reduced throughput of gas from the Perth Basin to Perth as the Xyris processing plant is being connected away from the PGP into the DBNGP from July 2020 onwards.

348. GasTrading raised concerns with the transparency of DBP's forecasts:¹⁷¹

gasTrading is of the view that getting transparency on the forecast is very difficult given the confidential nature of information received by DBP. However, gasTrading would like to see more clear comparisons to rolled up data, for example comparing AEMO's GSOO [Gas Statement of Opportunities] and ESOO [Electricity Statement of Opportunities] with DBP's forecasts. gasTrading also notes DBP often makes data confidential which is available from public sources (such as historical gas demand) which can frustrate the process. Forecasts could be aggregated in categories aligning with existing GBB data and transitions from actual to forecast could demonstrate these trends without breaching confidentiality (where forecasts are not available for loads included in historical data they could be identified and held constant).

349. CPM raised concerns with DBP's demand forecasts, in particular the forecast step change in contracted capacity and throughput:¹⁷²

AGIG's forecast throughput does not reflect the current actual throughput of the DBNGP. The graph on page 107 of AGIG's submission shows an unrealistic step change from 2020 to 2021 which continues throughout AA5. With domestic gas daily production capacity in WA over double daily consumption, low gas prices compared to the east coast, ample available land in WA for east coast business to relocate to get access to lower priced energy, TOGETHER with new gas fields being discovered and major LNG projects to come on stream and deliver more gas to the WA domestic gas market AND a number of new mining and existing mining projects that anticipate constructing new gas fired power stations or replacing existing diesel burning power stations with gas fired generation – all are relevant for the AA5 period and so reflect a more likely increase in throughputs compared to current; CPM ask the Authority to consider whether the demand numbers used by AGIG are realistic.

¹⁶⁹ Wesfarmers Chemical Energy and Fertilisers, *Submission to the ERA issues paper*, 30 March 2020, p. 12.

¹⁷⁰ Wesfarmers Chemical Energy and Fertilisers, *Submission to the ERA issues paper*, 30 March 2020, p. 12.

¹⁷¹ Gas Trading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Issues Paper*, 30 March 2020, p. 12.

¹⁷² 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 2021 – 2025*, 31 March 2020, p. 2.

350. CPM also submitted that gas volumes in Western Australia would increase over the AA5 period from the Gorgon and Wheatstone joint ventures, and that it expected a transition from diesel to gas (or hybrid gas) for many industries.¹⁷³

CPM submits that domestic gas supply volumes are likely to be further assisted by the reduction in global LNG spot prices making sale of domestic gas in WA as profitable as sale of international LNG spot cargoes and therefore encouraging producers to divert natural gas to their domestic gas facilities as opposed to their LNG production facilities.

...

Despite iron ore operations being scaled back, oil price reductions and the state's economy slowing; the steady throughput in gas volumes appears to have been driven partly by a fall in the spot price of gas. Moreover, demand throughput is therefore even more likely to increase as new projects come on line over the next 2 to 5 years.

351. AGIG submitted that the stakeholder engagement process for developing the demand forecasts was adequate.¹⁷⁴

More specifically, the demand forecast replicates agreed contractual terms, historical utilisation and engagement with shippers on an individual working level.

352. In response to the ERA's draft decision, Alinta Energy supported the actual contracted capacity in DBP's revised proposal as the best forecast of demand because:

1. The draft decision's flat contracted capacity forecast does not reflect shippers' significantly reduced contract positions, nor the reasons for the reductions. Shippers like Alinta Energy have not reduced their contracted positions due to increased demand for peaker services, they have reduced their contract positions due to:

- being over-contracted,
- their procurement of supply from the North Perth Basin, and
- the impacts of increasing renewable energy and increased gas prices on gas-fired generation.

Holding contracted capacity flat would ignore these significant underlying drivers and materially overstate contracted capacity.

2. Peaker services will only be used by shippers with gas peaker generation and rarely because their cost structure, combined with current gas prices can only be recovered during periods when prices are relatively high.

3. Peaker services are rebateable, reducing the risks posed by forecast uncertainty. Holding contracted capacity flat to also manage this uncertainty is duplicative, and not fit for purpose.

4. Throughput forecasts in the GSOO are not a valid basis for forecasting contracted capacity. The GSOO cannot accurately incorporate the impacts of legacy contractual positions and the internal commercial drivers influencing shippers' contractual decisions like actual contracted capacity data.

5. The discrepancy between the GSOO and DBP's throughput forecasts was overstated. Once adjustments are made to account for:

- the impact of increasing renewables and increased gas prices on the level of dispatch of gas-fired generation; and

¹⁷³ 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 2021 – 2025*, 31 March 2020, pp. 4-5.

¹⁷⁴ Australian Gas Infrastructure Group (DBP), *Submission ERA Issues Paper*, p. 3.

- Alinta Energy's and other gas shippers' recent shifts to supply from the North Perth basin;

The discrepancy is within a reasonable error range and therefore not a valid basis to revise DBP's throughput and contracted capacity forecasts.¹⁷⁵

353. In response to the draft decision, CPM noted that further to the revised plan, DBP addressed stakeholder questions relating to contracted capacity in AA5, including providing high level details on contracts expiring in AA5. CPM considered that DBP's challenges to forecast contracted capacity and throughput in the draft decision may be justified based on the actual contracted capacity data presented by DBP. CPM noted that shippers were looking at cost optimisation and relinquishing long-term over-contracted capacity that was no longer used every day because there were other transport products.¹⁷⁶
354. While having trouble reconciling the demand data due to claims of confidentiality, gasTrading agreed with DBP's revised proposal for full haul equivalent contracted capacity based on engagement with DBP following the draft decision. gasTrading considered that contracted capacity needed to be based on (in priority order):
1. Contract commitments in place, plus;
 2. Reasonable forecasts of new projects likely to come to market in 2021-2025 that will use gas, less;
 3. Reasonable forecasts of relinquishments consistent with existing contractual rights and;
 4. Reasonable forecasts of conversion of full haul to part haul contracts consistent with existing contractual rights given the Perth Basin production.¹⁷⁷
355. GasTrading noted that DBP's forecast part haul contracted capacity was flat and required further investigation given the Waitsia, Beharra and West Erregulla fields were due to begin production in AA5. Similarly, gasTrading expected demand for back haul capacity to grow during AA5 given announcements from Alinta and Fortescue Metals Group for large gas power station investments and significant mining activity on the Goldfields Gas Pipeline. GasTrading noted that Pilbara shippers may favour the Pilbara Services instead of back haul.¹⁷⁸
356. In response to the draft decision, NewGen Power Kwinana considered that the contracted capacity specified in contracts should be used to arrive at a forecast that was determined on a reasonable basis and represented the best possible forecast in the circumstances. NewGen considered that adopting 2020 levels of contracted capacity was not reasonable or appropriate where DBP provided evidence of shippers that had reduced levels of contracted capacity. NewGen noted that it would be impossible to recover the revenue determined by the ERA's draft decision based on 2020 capacity levels and that such an outcome may have detrimental effects to the continued safe and reliable operation of the DBNGP.¹⁷⁹
357. In response to the draft decision, Wesfarmers Energy (Gas Sales) Ltd (WEGS) - a part of Wesfarmers Chemicals, Energy and Fertilisers (WesCEF) - remained concerned about DBP's revised contracted capacity and throughput forecasts.

¹⁷⁵ Alinta Energy submission in response to draft decision, 4 November 2020, pp. 7-8.

¹⁷⁶ CITIC Pacific Mining submission in response to draft decision, 4 November 2020, pp. 4-5.

¹⁷⁷ gasTrading submission in response to draft decision, 4 November 2020, pp 3-4.

¹⁷⁸ gasTrading submission in response to draft decision, 4 November 2020, pp 4.

¹⁷⁹ NewGen Power submission in response to draft decision, 3 November 2020, p. 2.

WEGS noted that a relinquishment in contracted capacity by some major shippers would likely result in the demand for new services as some contracted capacity in AA4 held by major shippers was actually used by third parties. WEGS requested the ERA to review all gas transportation contracts that included a right of the shipper to relinquish contracted capacity. WEGS considered that DBP's forecasts omitted an increase in gas usage from the closure of Muja C and that the subsequent reduction in coal-fired generation would increase demand for full haul capacity.

358. WEGS expressed caution about using contracted demand to assume that part haul capacity would substitute for full haul capacity given uncertainty around the exploration and future development of the Perth Basin.

Final decision

AA4 demand

359. Rule 72(1)(a)(iii) of the NGR requires the access arrangement information to include information on the use of the pipeline over the previous access arrangement period (AA4). DBP provided information on the maximum, minimum and daily average demand for the three reference services, as well as the number of shippers by inlet and outlet point in its initial proposal but not its revised proposal.
360. The ERA requested DBP to provide an update of the information previously provided to include actual information for 2020. When providing the information, DBP noted that it had omitted some shipper throughput in the information previously provided for full haul throughput, which was shown in Table 9.

Table 19: Daily demand – Full haul (T1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020
Maximum	703.2	703.4	688.2	687.5	704.3
Average	601.5	596.6	604.5	622.3	627.6
Minimum	479.6	509.5	511.6	544.2	493.5

Source: DBP Response ERA48, March 2021

Table 20: Daily demand – Part haul (P1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020
Maximum	168.1	182.7	175.8	166.3	287.7
Average	88.9	129.6	120.7	141.0	156.5
Average full haul equivalent basis	7.7	11.0	11.4	13.2	18.8
Minimum	67.2	72.9	84.1	70.0	86.7

Source: DBP Response ERA48, March 2021

Table 21: Daily demand – Back haul (B1 Service) 2016 to 2020 (TJ)

	2016	2017	2018	2019	2020
Maximum	209.6	215.8	233.8	300.3	263.7
Average	168.0	165.3	206.7	208.9	217.3
Average full haul equivalent basis	13.1	13.2	17.1	17.2	14.6
Minimum	91.9	115.3	101.9	101.6	91.5

Source: DBP Response ERA48, March 2021

361. In response to DBP’s initial proposal, the ERA requested DBP to provide information for non-reference services that used the capacity of the pipeline (Table 12). DBP’s response noted that it was difficult to provide demand quantities for non-reference services in the same format as the reference services. DBP also noted that if the ERA wanted to understand the use of the pipeline for reference and non-reference services combined, then the non-reference services would need to be aggregated to a full haul equivalent basis. While part haul and back haul reference services can be converted to a full haul equivalent basis, it was difficult for DBP to do this for non-references services as DBP would need to discount differences such as “firmness [of gas supply], position on the curtailment order and a myriad of other rights.”¹⁸⁰
362. The ERA requested DBP to provide an update of the information previously provided to include actual information for 2020, which is shown in Table 22. DBP noted that the demand for the spot capacity services provided in response to a question from the ERA on DBP’s initial proposal inadvertently included overruns for full haul, part haul and back haul services. As a result, the demand for spot capacity was now lower than that reviewed by the ERA in its draft decision.

Table 22: Demand for non-reference services (average TJ/day)

Service	2016	2017	2018	2019	2020
Spot capacity services	0.1	0.2	1.7	1.7	4.2
Pilbara service	0.00	9.4	14.9	24.2	33.6
Other reserved services	87.9	88.8	46.1	42.6	60.2
Storage services	0.80	0.80	4.62	1.50	0.24

Source: DBP Response ERA48, March 2021

363. The ERA requires the access arrangement information to include the information in Table 19, Table 20, Table 21 and Table 22, consistent with rule 72(1)(a)(iii) of the NGR.

¹⁸⁰ DBP, Response to information request ERA, 16 July 2020.

AA5 demand forecast

364. Rule 72(1)(d) of the NGR requires DBP to submit information on the forecast pipeline capacity and use of pipeline capacity over the access arrangement period (that is, AA5).
365. Pipeline capacity and use includes information for non-reference services and reference services.

Non-reference service demand forecast

366. DBP provided a forecast of demand for non-reference services (average TJ/day) that use capacity of the pipeline over AA5 (Table 23). Not all non-reference services use capacity of the pipeline.

Table 23: Forecast demand for non-reference services (average TJ/day) over AA5 compared to actual 2020 (AA4) demand

Service	2020 (AA4)	2021	2022	2023	2024	2025
Spot capacity services	4.2	4.2	4.2	4.2	4.2	4.2
Pilbara service	33.6	30.00	30.00	30.00	30.00	30.00
Other reserved services	60.2	39.00	39.00	39.00	39.00	39.00
Storage services	0.24	1.37	0.68	0.0	0.0	0.0

Source: DBP Response ERA48, March 2021, DBP response ERA28.

367. The ERA considers that DBP's forecast demand (average TJ/day) for non-reference services that use the capacity of the pipeline over AA5 are the best forecasts available as this information is based on the most recent demand for these services (2020). The ERA has decided that both the spot capacity and other reserved services are non-reference rebateable services and the actual revenue from these services (based on demand) will be rebated against reference tariffs (see paragraph 271). Inherent in being classified as a rebateable service, the forecast demand for these services is uncertain. DBP has not amended its forecast demand for the Pilbara service of 30TJ/d for each year of the AA5 period. This forecast is close to its current level of 33.6TJ/d in 2020. In response to an information request, DBP noted that its forecast was based on recent experience and it has not seen an increase in contracted demand for this service from 2020. DBP expected the storage service to decline substantially due to the rise of competitive storage markets at Tubridgi and Mondarra. The Pilbara service and storage service demand forecasts are also important for the ERA's consideration of the allocation of shared costs to those services (see paragraph 1861).¹⁸¹
368. As a result, the ERA requires that the access arrangement information is amended to include Table 23 to comply with the non-reference service demand for the capacity and use of the pipeline over AA5 to comply with rule 72(1)(d) of the NGR. The reference service demand forecast for the capacity and use of the pipeline over AA5 is considered below.

¹⁸¹ The direct costs for this service must be directly allocated to that service and not based on demand.

Reference service demand forecast

369. DBP's revised proposal forecast demand over AA5 is significantly lower than the current (2020) levels for full haul reference services. Table 24 shows the change in throughput and contracted capacity from its forecast 2020 levels. The full haul throughput and contracted capacity for full haul reference services drops significantly in 2021 and then continues to fall slightly in 2022 and 2023 before lowering again in 2024 due to load moving from full haul services to part haul services. Without that transfer of services to part haul services, part haul service demand is relatively flat, from 2020 levels. Similarly, back haul service demand is relatively flat from 2020 levels. These significant changes in forecast demand are discussed and considered below.

Table 24: DBP revised proposal demand forecast change from 2020 forecast demand (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full Haul					
Throughput	(85.33)	(94.80)	(101.39)	(157.16)	(163.46)
Contracted capacity	(130.11)	(140.11)	(148.21)	(214.91)	(223.01)
Part Haul					
Throughput	3.41	3.53	5.23	19.67	22.00
Contracted capacity	3.36	2.78	4.26	18.46	20.47
Back Haul					
Throughput	(0.99)	(1.61)	(1.61)	(1.61)	(1.61)
Contracted capacity	(0.32)	(1.12)	(1.12)	(0.51)	(0.51)
Total System					
Throughput	(82.91)	(92.88)	(97.76)	(139.10)	(143.07)
Contracted capacity	(127.07)	(138.45)	(145.07)	(196.97)	(203.05)

Source: DBP, DBNGP revised final plan, Attachment 13.1A: Tariff Model, October 2021.

Assessment of revised proposal forecast – capacity forecast

370. The pipeline capacity forecast for AA5 is used in the determination of total revenue. It affects the forecast capital expenditure required to supply the pipeline capacity required and the determination of reference tariffs. Approximately 94 per cent of the total revenue allocated to reference services is charged on a capacity basis.
371. As noted at paragraph 341, DBP rejected the ERA's Draft Decision Required Amendment 7 to amend the full haul reference service capacity forecast. DBP adjusted the capacity forecasts it provided in May 2020 to reflect a change in part haul and full haul contracted demand in 2024 and 2025.

372. In response to the Draft Decision, DBP considered that the best estimate of capacity was the actual contracted amounts and that this was consistent with the ERA's approach for previous access arrangement decisions.¹⁸²
373. DBP provided further supporting information for its forecast capacity including a statement from the General Manager of Commercial (AGIG), on the reasons for the change in contracted capacity from 2020 to the forecast in AA5.¹⁸³ This statement was supported by extracts of contracted capacity for each of its full haul shippers. DBP also provided responses, from [REDACTED] major shippers that have significantly reduced contracted capacity for reference services, to a questionnaire on contracted capacity changes. These responses supported AGIG's statement and helped to explain the reduction of contracted capacity from 2020 to 2021 from the shipper's perspective.
374. DBP also provided an updated report from ACIL Allen Consulting reviewing DBP's demand forecasts with AEMO's Gas Statement of Opportunities report and the incentives for substituting contracted capacity with peaker services for some electricity generation. DBP also provided a report from energyXL on the history of the DBNGP and the changing use of the pipeline over time.¹⁸⁴
375. In the draft decision, the ERA could not reconcile DBP's forecasts of a significant fall in contracted capacity from 2020 to 2021 and the continuing decline during AA5 with submissions from Shippers and the AEMO's Gas Statement of Opportunities forecast. The shippers who provided submissions to the ERA's issues paper held concerns about the significant reduction in demand. While DBP expected the peaker non-reference service to be used more in AA5, there was no reasonable forecast use of these services provided. In the draft decision the ERA determined that it would hold full haul reference service demand at 2020 levels rather than increase the forecasts based on AEMO's 2019 Gas Statement of Opportunities forecast of increasing gas throughput to recognise some substitution with the peaker service. DBP has now provided additional information in response to the draft decision.
376. In its submission on the draft decision, Alinta noted that during AA4 it was over-contracted, and procuring supply from the North Perth Basin, and that increased renewable energy and gas prices were having an effect on demand for gas-fired generation. [REDACTED] also noted in a confidential questionnaire that it was over-contracted during AA4.
377. The major shippers that relinquished contracted capacity in 2021 did so because they had a contractual right that allowed them to do so in 2021 and provided reasonable explanations for the size of the relinquishments.
378. In determining the forecast for capacity for AA5, the ERA considers that the best forecast would take into account all available information and not simply be based on actual contracted capacity, although this is a reasonable starting position. As noted below, where contracted capacity is likely to be relinquished or additional capacity sought, this should be taken into account despite it not being the actual contracted position. The ERA notes that in DBP's revised proposal it had maintained the capacity of one shipper despite it not being contracted past 2021.

¹⁸² DBP, *2021-2025 Revised Final Plan*, October 2020, p. 3.

¹⁸³ DBP, *2021-2025 Revised Final Plan, confidential Attachment 11.6: Statement from General Manager of Commercial AGIG*, October 2020.

¹⁸⁴ DBP, *2021-2025 Revised Final Plan, confidential Attachment 11.5: energyXL report*, October 2020.

379. The ERA has reviewed the information provided and now understands the reasons for the total reduction in full haul capacity requirements for the [REDACTED] major shippers who recontracted for significantly lower capacity. The main reason was that the shippers were over-contracted for full haul gas during AA4 and had to wait until 2021 to relinquish the gas in excess of requirements. Other reasons included a shipper changing its gas supply to now be sourced from the Perth Basin and using the Parmelia Gas Pipeline, and that shippers could use alternative transportation services for mid-merit and peaking gas fired generators. As noted by CPM and the ACIL Allen report, shippers would look for cost optimisation and use services such as the spot or peaker services. The peaker service allows these electricity generators to obtain capacity, nearly as certain as the firm reference services, but not pay the same high fixed capacity costs of these services. The peaker service charges are higher for throughput but there is an optimisation point between firm and peaker services based on expected use of the generator. DBP has provided contracts for peaker services which has helped to further explain the relinquishments of the [REDACTED] major shippers.
380. The ERA also understands that the change in full haul and part haul capacity in 2024 and 2025 reflects an expected (but not yet contracted) change by a shipper for gas on a part haul rather than full haul basis. The ERA requested further information from DBP on the adjustment of the capacity from full haul to part haul and is satisfied that the forecast adjustment is reasonable based on the information provided. Shippers are signing agreements with Perth Basin suppliers, such as Alcoa, which has signed a binding agreement with Warrego Energy for supply of gas from the Perth Basin from 1 January 2024.¹⁸⁵
381. This further reduces forecast contracted capacity on a full haul equivalent basis. While GasTrading noted that there was potential for increased use of part haul with gas supplied from the Perth Basin, WesCEF cautioned about using contracted demand to assume that part haul capacity would replace full haul capacity given the uncertainty of the exploration and future development of the Perth Basin. There is also some uncertainty on part haul usage with APA's proposed new northern goldfields interconnect pipeline that has not yet commenced construction but is aiming to be complete in mid-2022. In relation to future developments in the Perth Basin and APA's proposed new northern goldfields interconnect pipeline, the ERA considers that the best forecast in these circumstances is to adopt DBP's current forecast demand for part haul, which assumes that those customers that have contracted with the Perth Basin suppliers will receive that contracted gas. While more shippers may contract for part haul gas if available from the Perth Basin, including substitution of full haul supply, there is too much uncertainty about when and what quantities of gas will be contracted without an agreement from a Perth Basin producer.
382. GasTrading noted that it expected demand for back haul capacity to grow during AA5 given large gas power station investments from Alinta and Fortescue Metals Group and significant mining activity near the Goldfields Gas Pipeline. GasTrading noted that Pilbara shippers may well favour the Pilbara Services instead of back haul. The ERA considers that the best forecast in these circumstances is to use DBP's approach of using the current contracted demand for back haul given that it is unclear that these new projects will utilise the back haul services.

¹⁸⁵ <http://asx.warregoenergy.com/site/PDF/842f238a-4ee7-4ce6-95bc-dbb6ffdd25a/UpdatedWarregoandAlcoaSignLargeScaleLongTermGSA>

Assessment of revised proposal forecast – throughput forecast

383. The throughput forecast for AA5 is used in the determination of total revenue, such as the forecast operating expenditure required to operate the compressors on the pipeline (system use gas), and for the determination of reference tariffs. Approximately 6 per cent of the total revenue allocated to reference services is charged on a throughput basis.
384. In the draft decision, the ERA could not reconcile DBP's forecasts of a significant fall in full haul throughput from 2020 to 2021 and continuing decline during AA5 with submissions from shippers and AEMO's Gas Statement of Opportunities forecast. As discussed above for contracted capacity, the ERA has now been provided with information which explains the significant step change in 2021 contracted capacity. The fall in throughput in 2021 is not as large as that for contracted capacity (85TJ/d less compared to 130TJ/d less in contracted capacity).
385. Some shippers, such as Alinta, had historical contract capacity that was greater than their needs.¹⁸⁶ Shippers that could relinquish capacity and had been using much less gas than contracted have optimised their contracted capacity positions in AA5. This is a plausible explanation why throughput forecasts have not fallen by the same amount as contracted capacity.
386. DBP's forecast of 85TJ/d of lower throughput for 2021 is due to factors including contracted gas supply from the Perth Basin, use of the Parmelia Gas Pipeline instead of the DBNGP and increases in renewable generation displacing the use of gas fired electricity generation. Shippers using gas for peak electricity could also optimise their use of contracted full haul reference services knowing that they could use the Peaker service for their variable use.
387. In its submission in response to the draft decision, Alinta noted that it had entered an agreement with Mitsui and Beach Energy for gas from the Waitsia gas field on 1 January 2021 and had arranged for transport of this gas down the Parmelia Gas Pipeline. Other shippers have also entered into agreements for the supply of Perth Basin gas, such as CSBP in 2022 and Alcoa in 2024, which explains some of the further decreases in capacity and usage in those years.
388. During the last six months of 2020, several large-scale renewable projects were commissioned, including the Yandin and Warradarge wind farm and the Merredin solar farm and Greenough River solar farm expansion. Alinta expected that these projects would add more than 2TWh of renewable energy each year (compared to 2019) and displace around 50TJ/d of gas fired generation, including output from Alinta's Pinjarra and Wagerup units.¹⁸⁷
389. Alinta also noted that the competitiveness of gas for electricity generation has changed. When Gorgon and Wheatstone came online in 2017 and 2019 and before legacy North West Shelf contracts expired in June 2020, Western Australia was oversupplied with short-term gas. With a variable transport cost on the DBNGP, the short-run marginal cost of a gas-fired power station was at times cheaper than coal-fired generation. This resulted in increased gas peak generation at lower prices. However, the end of legacy North West Shelf contracts has tightened the gas market and Alinta expected that the short-run marginal cost of gas generators would increase and coal generation would become relatively cheaper, further decreasing the requirement for DBNGP transport. As shippers can relinquish capacity, the DBNGP

¹⁸⁶ Alinta Energy, *Submission ERA Draft Decision*, p. 2.

¹⁸⁷ Alinta Energy, *Submission ERA Draft Decision*, p. 4.

transport component of the short-run marginal cost becomes the full transportation tariff rather than the 6 per cent that is charged for throughput.

390. The ERA now better understands the drivers of lower throughput in 2021 and the declining trend and further step changes in full haul throughput during AA5 as a result of further supply from the Perth Basin. The ERA reviewed AEMO's Gas Statement of Opportunities for 2020, which forecast gas demand in the Metro and South West region to continue to grow by 0.7 per cent per year for the next five years. While the AEMO report suggests that demand for the Metro and South West region could be relevant to overall trends in demand on the full haul reference services, it did not take account of the change in supply that was moving to the Perth Basin and the use of other pipelines to transport this gas. As the peaker service will be used for some mid-merit and peaker gas fired generators during AA5, the associated gas use and throughput for these generators will be transported using the peaker service rather than the firm reference services.
391. The ERA considers that part haul and back haul throughput forecasts for AA5 are reasonable. Both forecasts are relatively stable from current (2020) levels apart from the increase in part haul capacity in 2024, which is explained by the switch of full haul capacity to part haul with the use of Perth Basin gas.

Assessment of January 2021 updated demand forecasts

392. On 29 January 2021, DBP provided an update to its capacity and throughput forecast for full haul shippers. DBP provided supporting information for [REDACTED] full haul shippers in the form of requests from these shippers to relinquish and add contracted capacity. The remaining changes to the capacity forecasts were due to DBP's expectations that parties who use gas to supply energy to BP's Kwinana refinery will no longer do so after quarter one of 2021 and will seek to relinquish capacity to the extent allowed under their contract entitlements. DBP provided a press release from BP announcing the closure of the refinery as supporting information. DBP has also made corresponding amendments to the throughput forecasts.
393. The difference between DBP's revised January 2021 demand forecasts and its revised proposal is shown in Table 25. DBP's revised January 2021 demand forecasts for reference services for AA5 is shown in Table 26 and 2020 actual demand is shown for comparison purposes.

Table 25: Difference between DBP's revised January 2021 demand forecasts and revised proposal (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full Haul					
Throughput	19.01	(4.99)	(17.60)	(17.60)	(17.60)
Contracted capacity	13.80	(10.00)	(22.66)	(22.66)	(22.66)

Source: ERA analysis; DBP revised Final Plan, Attachment 13.1A Tariff Model, October 2020; DBP Tariff model amendments, January 2021.

Table 26: DBP's revised January 2021 demand forecasts for reference services for AA5 compared to 2020 (AA4) actual demand (full haul equivalent TJ/d)

	2020 (AA4)	2021	2022	2023	2024	2025
Full Haul						
Throughput	589.35	555.28	521.82	502.61	446.85	440.55
Contracted capacity	718.08	606.05	572.25	551.49	484.79	476.69
Part Haul						
Throughput	15.09	17.74	17.86	19.57	34.00	36.33
Contracted capacity	22.61	25.97	25.39	26.87	41.07	43.08
Back Haul						
Throughput	17.57	13.89	13.27	13.27	13.27	13.27
Contracted capacity	24.95	18.09	17.29	17.29	17.89	17.89
Total System						
Throughput	622.01	586.92	552.95	535.45	494.11	490.15
Contracted capacity	765.64	650.11	614.93	595.65	543.75	537.67

Source: DBP Tariff model amendments, January 2021.

394. The ERA considers that it would be reasonable to update DBP's capacity and throughput forecasts to reflect recent changes to agreements with shippers and reasonable expectations of future changes to shipper requirements of capacity and throughput, such as the effect on the closure of the BP refinery. As noted at paragraph 378, and to reiterate, it is not just committed contracts that are relevant to the demand forecasts but also future expectations of demand. As the ERA considers that the expected relinquishments associated with the announced BP refinery closure should be reflected in the demand forecasts, so should any expected increase in capacity and throughput requirements. When confirming the advice from DBP, the ERA became aware that [REDACTED] that previously used spot and third-party contracts for transportation services has now had to contract for services. While [REDACTED] [REDACTED] has only contracted for 2021, the ERA understands through discussion with [REDACTED] that the underlying demand for the gas would continue for the foreseeable future. As a result, the ERA has maintained the 2021 contracted capacity forecast for [REDACTED] for the remainder of the AA5 period. This approach is consistent with DBP's revised proposal where it had used current capacity and throughput for the [REDACTED] when it had not contracted beyond 2021. In the ERA's discussions with [REDACTED] [REDACTED]
395. The ERA informed DBP of its intention to take this information into account in its final decision and provided an opportunity for DBP to respond. The ERA considered the response from DBP in making this final decision to maintain the contracted capacity forecast for the shipper for the full access arrangement period. DBP provided previously unsubmitted information on retail supply contracts, which the ERA considered was immaterial and not current. DBP also provided further information on the underlying customer of the shipper which was not conclusive as there were

many possibilities for this customer's capacity requirements and if only the negative effects on capacity were to occur, DBP did not provide the significance of this to the gas capacity that would be required by the customer. On the basis of the information before it the ERA considers the 2021 contracted supply for the shipper is likely to be maintained.

396. WesCEF was concerned about the third parties that were using capacity of shippers during AA4 (purchased via secondary trading) and, with those shippers now relinquishing capacity, that this third-party gas would not be reflected in the demand forecasts. While the delay in this final decision is unavoidable, it has allowed the ERA to view actual committed contracts for the start of AA5 and so this concern arising from the WesCEF submission has dissipated. DBP provided January and February 2021 data on Peaker service use to the ERA. This showed the flexible use of this service and reduced need for full haul reference service demand. Also, as explained above, the lower capacity and throughput for full haul reference services is not just being transferred to the Peaker service, it is caused by other factors including historical over-contracting of demand, movement to part haul services with supply from the Perth Basin and the changing mix of electricity demand with increased renewable generation.
397. As a result, the ERA considers that the best forecast of full haul demand for AA5, consistent with rule 74 of the NGR, is to use DBP's January 2021 revised capacity and throughput forecasts adjusted to maintain the increased capacity requirements from [REDACTED] of 18.8TJ/d in 2021 across the remaining four years of AA5. The ERA has therefore maintained the throughput forecasts for that shipper in 2021 across the remaining four years of AA5.
398. The ERA considers that the part haul and back haul demand forecasts from DBP's revised proposal are the best forecasts for AA5, consistent with rule 74 of the NGR. There were no further changes to the contracted capacity and throughput forecasts for part haul and back haul from DBP following its revised proposal and as noted at paragraphs 380 and 382 these forecasts reflected the shipper contracts and likely expectations of future demand.
399. The demand forecasts for reference services for AA5 must be amended as shown in Table 27.

Table 27: ERA's final decision demand forecasts for reference services for AA5 (full haul equivalent TJ/d)

	2021	2022	2023	2024	2025
Full Haul					
Throughput	555.28	540.82	521.62	465.85	459.55
Contracted capacity	606.05	591.05	570.29	503.59	495.49
Part Haul					
Throughput	17.74	17.86	19.57	34.00	36.33
Contracted capacity	25.97	25.39	26.87	41.07	43.08
Back Haul					
Throughput	13.89	13.27	13.27	13.27	13.27
Contracted capacity	18.09	17.29	17.29	17.89	17.89
Total System					
Throughput	586.92	571.95	554.46	513.12	509.15
Contracted capacity	650.11	633.73	614.45	562.55	556.47

Required Amendment 5

The access arrangement information must be updated to include information on the use of the pipeline over the previous access arrangement period (AA4) as shown in Table 19, Table 20, Table 21 and Table 22.

The demand forecasts for non-reference services that use the capacity of the pipeline must be amended as shown in Table 23 of this final decision.

The demand forecasts for reference services must be amended as shown in Table 27 of this final decision.

Revenue and tariffs

Total revenue

400. Rule 76 of the NGR requires total revenue to be determined for each year of the access arrangement period using the 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 (See Divisions 4 and 5); and
- (b) depreciation on the projected capital base for the year (See Division 6); and
- (c) the estimated cost of corporate income tax for the year (See Division 5A); and
- (d) increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in efficiency (See Division 9); and
- (e) a forecast of operating expenditure for the year (See Division 7).

DBP's initial proposal

401. In its initial proposal DBP proposed a total revenue requirement for AA5 of \$1,717.94 million. This total revenue requirement reflected the forecasts for system use gas (SUG) costs which DBP provided in May 2020. The SUG costs were included in the operating expenditure building block component in DBP's initial plan and discussed in the operating expenditure section of the draft decision. Table 28 shows the proposed building block components in DBP's initial plan.

Table 28: DBP's initial proposed revenue requirement for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Return on capital base	144.57	142.04	139.60	136.30	133.20	695.72
Regulatory depreciation						
<i>Depreciation</i>	140.50	132.88	138.32	142.24	147.37	701.32
<i>Inflationary gain</i>	(39.96)	(39.26)	(38.58)	(37.67)	(36.81)	(192.28)
Operating expenditure	92.95	92.09	93.49	91.27	89.56	459.37
Regulatory corporate income tax						
<i>Corporate income tax</i>	25.00	22.35	20.46	20.04	19.77	107.62
<i>Imputation credits</i>	(12.50)	(11.18)	(10.23)	(10.02)	(9.88)	(53.81)
Total revenue	350.57	338.92	343.07	342.17	343.21	1,717.94

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 13.1: Tariff Model, 28 May 2020.

Draft decision

402. The ERA separately considered the forecast value of each of the building blocks that make up the total revenue requirement in other sections of the draft decision. The total revenue requirement resulting from the ERA's considerations in the draft decision is set out in Table 29.
403. The draft decision set out the following required amendment:

Draft Decision Required Amendment 8

DBP must amend the total revenue requirement for AA5 to \$1,553.08 million. The yearly values for each year of the access arrangement period are set out in Table 16 of [the] draft decision Table 29 of this final decision].

Table 29: ERA's draft decision total revenue requirement for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Return on capital base	135.98	134.18	132.56	130.44	128.33	661.49
Regulatory depreciation						
<i>Depreciation</i>	127.16	112.41	114.56	115.89	118.20	588.22
<i>Inflationary gain</i>	(43.48)	(42.90)	(42.38)	(41.71)	(41.03)	(211.50)
Operating expenditure	96.07	95.98	97.70	96.02	94.56	480.34
Regulatory corporate income tax						
<i>Corporate income tax</i>	20.84	12.60	11.84	11.83	11.92	69.04
<i>Imputation credits</i>	(10.42)	(6.30)	(5.92)	(5.92)	(5.96)	(34.52)
Total revenue	326.16	305.96	308.36	306.56	306.03	1,553.08

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 14 August 2020.

DBP's response to the draft decision

404. In its revised proposal DBP proposed a total revenue requirement for AA5 of \$1,613.16 million. This total revenue requirement reflected the forecasts for SUG costs based on DBP's revised full haul throughput provided in January 2021. The SUG costs were included in the operating expenditure building block component in DBP's revised proposal and discussed in the operating expenditure section of the final decision. Table 30 shows DBP's proposed building block components in its revised proposal.

Table 30: DBP's revised proposed revenue requirement for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Return on capital base	123.47	119.89	118.07	115.56	113.37	590.36
Regulatory depreciation						
<i>Depreciation</i>	184.07	118.45	121.75	123.09	126.13	673.49
<i>Inflationary gain</i>	(31.80)	(30.88)	(30.41)	(29.76)	(29.20)	(152.06)
Operating expenditure	95.57	92.48	92.58	85.46	83.42	449.51
Regulatory corporate income tax						
<i>Corporate income tax</i>	43.42	15.08	14.86	15.16	15.20	103.72
<i>Imputation credits</i>	(21.71)	(7.54)	(7.43)	(7.58)	(7.60)	(51.86)
Total revenue	393.01	307.48	309.42	301.92	301.32	1,613.16

Source: DBP, DBNGP revised final plan, Attachment 13.1A: Tariff Model, October 2020. DBP Tariff model January 2021.

Final decision

405. The ERA separately considered the forecast value of each of the building blocks that make up the total revenue requirement in other sections of this final decision. Table 31 sets out the ERA's calculated total revenue requirement for this final decision.
406. To derive the nominal regulatory depreciation used for total revenue, the amount by which the asset base had been escalated (that is, by inflation) was removed from the calculated nominal depreciation to avoid double-counting inflation. The double-counting of inflation occurs when a nominal rate of return is applied to a nominal asset base. The double-counting must be removed from depreciation. The higher the inflation rate, the higher the inflationary gain and therefore the adjusted regulatory depreciation is lower. The higher inflationary gain in the ERA's final decision compared to DBP's revised proposal was because the ERA's inflation forecast of 1.15 per cent was higher than DBP's inflation forecast of 0.94 per cent.

Table 31: ERA's final decision total revenue requirement for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Return on capital base	119.39	116.07	114.51	112.33	110.47	572.76
Regulatory depreciation						
<i>Depreciation</i>	183.24	118.02	121.28	122.97	125.78	671.29
<i>Inflationary gain</i>	(38.75)	(37.67)	(37.17)	(36.46)	(35.86)	(185.91)
Operating expenditure	94.35	92.62	92.82	82.64	83.75	446.18
Regulatory corporate income tax						
<i>Corporate income tax</i>	36.14	9.52	9.75	10.34	10.59	76.34
<i>Imputation credits</i>	(18.07)	(4.76)	(4.88)	(5.17)	(5.30)	(38.17)
Total revenue	376.29	293.79	296.32	286.65	289.43	1,542.48

Source: ERA, Final decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 1 April 2021.

Required Amendment 6

The values for total revenue (nominal) must reflect the values set out in Table 31 of this Final Decision.

Operating expenditure

407. Rule 91 of the NGR details the criteria that the ERA must consider when approving DBP's proposed 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 forecast of required operating expenditure of a pipeline service provider that is included in the full access arrangement must be for expenditure that is allocated between:
 - (a) reference services;
 - (b) other services provided by means of the covered pipeline; and
 - (c) other services provided by means of uncovered parts (if any) of the pipeline,

in accordance with rule 93.

408. Rule 93 of the NGR sets out the method for allocating 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].
409. Rule 71 of the NGR details the considerations that the ERA may and must consider when evaluating forecast operating expenditure. Rule 74 of the NGR states the specific requirements for forecasts and estimates.

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.

...

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.
410. All dollar amounts in this section are expressed in real dollars as at 31 December 2019 unless otherwise stated. The ERA has converted amounts supplied by DBP in real dollars as at 31 December 2020 using the inflation figures supplied by DBP. Where DBP has provided amounts in real dollars as at 30 June 2019, the ERA has used the eight capital city weighted average Consumer Price Index published by the Australian Bureau of Statistics to convert to real dollars as at 31 December 2019.

DBP's initial proposal

411. DBP initially forecast operating expenditure of \$453.89 million for AA5. That was a decrease of \$19.77 million on its estimated AA4 operating expenditure of \$473.66 million.
412. DBP used the base-step-trend method to forecast its recurrent operating expenditure as well as specific bottom-up forecasts of some expenditure items where it considered this reflected a more reasonable estimate of its efficient costs for AA5. Bottom-up forecasts were used for 'System use gas' (SUG) and for two sub-categories of expenditure in the 'Field expenses' expenditure category, being Gas Engine Alternators (GEA) and turbine overhauls, and change in capitalisation expenditure.

413. DBP used the 2019 calendar year as its base year for forecasting operating expenditure for AA5 because 2019 was the penultimate year of the current access arrangement period. At the time of its initial submission, DBP provided nine months of actual expenditure and three months of forecasts for the base year.
414. DBP adjusted its base year in cases where it considered that it was not reflective of recurrent costs likely to be incurred in a typical year.
415. DBP used a five-year average of its consulting and reactive maintenance costs due to the volatility that can be experienced in these cost categories year-to-year. DBP also used a rolling six-year average of its insurance costs due to the cyclical nature of insurance markets. DBP noted this was consistent with the approach approved by the ERA in AA4.
416. DBP did not propose any step changes to its base year.
417. DBP applied a real cost escalation of 0.69 per cent per annum to its labour costs. This was based on the latest Western Australian Treasury data available at the time DBP prepared its submission, October 2019.
418. DBP did not include any real cost escalation to its materials costs, which it noted was consistent with recent regulatory decisions for gas and electricity service providers in Australia.
419. Expenditure variances between AA4 and AA5 for the six main operating expenditure categories were as follows:
- wages and salaries, down by \$4.32 million
 - non-field expenses, down by \$10.31 million
 - field expenses, up by \$19.59 million
 - government charges, up by \$10.63 million
 - reactive maintenance, up by \$0.51 million
 - SUG, down by \$35.86 million.
420. DBP's proposed operating expenditure for the AA5 period is set out by year for the six main cost categories in Table 32.

Table 32: DBP's proposed forecast operating expenditure for AA5 (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Wages and salaries	27.44	27.63	27.82	28.02	28.21	139.13
Non-field expenses	11.76	11.78	11.81	11.83	11.85	59.03
Field expenses	22.25	20.57	20.88	17.60	15.06	96.37
Government charges	8.69	8.69	8.69	8.69	8.69	43.47
Reactive maintenance	1.89	1.89	1.89	1.89	1.89	9.43
System use gas	20.40	20.76	21.02	21.97	22.32	106.47
Total	92.43	91.33	92.11	90.00	88.03	453.89

Source: DBNGP, DBNPG FP_7.1_Opex_Forecast_Model_PUBLIC, 1 January 2020

Draft decision

421. On 28 May 2020, DBP provided the ERA with new demand forecasts for reference services, reflecting the completion of major contract renegotiations. As a result of the renegotiations, forecast throughput declined further than DBP had proposed in its initial submission for AA5. As SUG expenditure is dependent on forecast throughput, DBP's proposed SUG expenditure for AA5 was also reduced.
422. Table 33 shows DBP's initial proposal with the revised SUG values. The ERA assessed operating expenditure in the draft decision based on the values in Table 33.

Table 33: DBP proposed operating expenditure for AA5 with revised system use gas values (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
Efficient base year	60.48	60.48	60.48	60.48	60.48	302.38
Step changes	0.00	0.00	0.00	0.00	0.00	0.00
System use gas	19.05	18.61	18.39	18.29	18.00	92.34
GEA/turbine overhauls	8.85	7.55	7.57	4.31	2.06	30.34
Capital to operating expenditure	2.29	1.90	2.18	2.17	1.88	10.42
Labour cost escalation	0.42	0.64	0.85	1.07	1.29	4.27
Total forecast operating expenditure	91.08	89.18	89.47	86.32	83.71	439.76

Source: DBNGP, DBNPG FP_7.1_Opex_Forecast_Model_PUBLIC, 1 January 2020 and DBNGP-DBP-AA5-Tariff Model, 28 May 2020 (Confidential)

423. After reviewing DBP's initial proposal and public submissions, the ERA determined that the forecast operating expenditure for AA5, satisfying rules 74 and 91 of the NGR was \$456.44 million.
424. Table 34 sets out the ERA's draft decision operating expenditure forecast for AA5.

Table 34: ERA Draft Decision determined AA5 operating expenditure (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Base year operating expenditure	60.48	60.48	60.48	60.48	60.48	302.38
<i>Add: bottom up forecasts</i>						
System use gas	23.71	24.15	24.60	24.83	24.77	122.07
GEA/turbine overhauls	7.66	6.52	6.53	3.71	1.77	26.20
Capital expenditure to operating expenditure	2.22	1.83	2.05	2.09	1.80	9.98
Equals: Baseline forecast operating expenditure	94.06	92.99	93.66	91.10	88.81	460.62
<i>Add: Real labour cost escalation</i>						
Labour Cost	0.19	0.28	0.37	0.47	0.56	1.86
Equals: Baseline forecast operating expenditure including labour cost escalation	94.25	93.26	94.03	91.57	89.37	462.48
<i>Minus: Productivity growth factor</i>						
Productivity factor	(0.61)	(0.91)	(1.21)	(1.51)	(1.81)	(6.04)
Equals: Total operating expenditure	93.64	92.36	92.82	90.06	87.56	456.44

Source: ERA, DBP AA5 Operating Expenditure Model – Draft Decision, August 2020

425. The draft decision set out the following required amendment:

Draft Decision Required Amendment 9

DBP must amend forecast operating expenditure for AA5 to \$456.44 million (real as at 31 December 2019). The yearly values for each year of the access arrangement period are set out in Table 23 of [the] draft decision [Table 34 of this final decision].

DBP's response to the draft decision

426. DBP did not accept the ERA's draft decision required amendment 9, to amend its operating expenditure for the AA5 period to the values determined by the ERA in the draft decision.
427. DBP submitted a revised forecast operating expenditure of \$433.07 million for AA5.¹⁸⁸ This was \$23.37 million less than the ERA's draft decision determined value.
428. In its revised proposal, DBP noted the differences between the ERA's draft decision value and DBP's revised forecast. As a result of recalculating both DBP's initial proposal and the ERA's draft decision values, the differences between the ERA's draft decision and DBP's revised proposal were:

¹⁸⁸ Converted to 31 December 2019 dollars

- Increase of \$3.89 million – updating the 2019 operating expenditure base year for actual 2019 operating expenditure.
- Increase of \$1.74 million – using an updated real labour cost escalation of 0.57 per cent (up from 0.3 per cent), reflecting actual information from the Australian Bureau of Statistics available post the ERA’s draft decision.
- Increase of \$6.04 million – reducing the productivity factor from 0.5 per cent to zero.
- Increase of \$3.72 million – reducing the savings factor the ERA applied to GEA/turbine overhauls to zero.
- Decrease of \$39.04 million – SUG costs based on a lower forecast of throughput related to reference services in AA5.

429. Table 35 shows DBP’s revised proposed operating expenditure for the AA5 period.

Table 35 DBP revised proposed operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
Efficient base year	61.25	61.25	61.25	61.25	61.25	306.26
Step changes	0.00	0.00	0.00	0.00	0.00	0.00
System use gas	18.83	18.47	18.34	13.86	13.54	83.03
GEA/turbine overhauls	8.74	7.45	7.46	4.25	2.03	29.92
Capital to operating expenditure	2.26	1.87	2.14	2.13	1.84	10.25
Labour cost escalation	0.36	0.54	0.72	0.90	1.08	3.60
Productivity	0.00	0.00	0.00	0.00	0.00	0.00
Total forecast operating expenditure	91.44	89.59	89.92	82.39	79.74	433.07

Source: DBP, 2021-2025 Revised Final Plan, Attachment 7.1A Opex Forecast Model (Public), October 2020,

430. Details of DBP’s revised proposal are set out in the operating expenditure final decision section at paragraphs 431 to 713.

Submissions to the ERA

431. The ERA received three submissions in response to the issues paper addressing DBP’s initially proposed operating expenditure for AA5. CPM expressed concern that DBP’s initially forecast operating expenditure represented a significant increase from its AA4 operating expenditure and that the forecast did not reflect current (relatively) low gas prices and labour costs.¹⁸⁹
432. CPM, Wesfarmers Chemicals, Energy and Fertilisers (WesCEF) and gasTrading Australia all expressed concerns about DBP’s forecast expenditure for SUG, particularly that the price for SUG did not reflect the current and expected gas prices in AA5.

433. The submissions in response to the ERA's issues paper were addressed in the ERA's draft decision.
434. In response to the draft decision, gasTrading noted that, should the "ullage service" proceed, a further reduction in SUG would occur as 250TJ/d would be injected at Waitsia and not be transported from Pilbara-based producers all the way to CS8, therefore significantly reducing SUG consumption in the compressor stations upstream of CS8.¹⁹⁰
435. GasTrading noted this saving in the SUG consumption should be reflected in the forecasts or, where the uncertainty was such that a forecast cannot be made, then a mechanism for ensuring that the cost savings of this occurring were passed to Shippers.¹⁹¹

Final decision

Assessment of operating expenditure

436. The ERA appointed EMCa to provide technical advice on DBP's initial and revised proposed operating and capital expenditure. EMCa conducted a detailed assessment of DBP's initial and revised operating expenditure proposals, considering information provided by DBP in its proposal and in response to additional information requests. This included reviewing DBP's planning documents and business cases, its operating expenditure forecasting method and the relevant input assumptions.
437. DBP's revised proposal continued use of the base-step-trend method to forecast its recurrent operating expenditure as well as specific bottom-up forecasts of some expenditure items where it considered this reflected a more reasonable estimate of its efficient costs for AA5. DBP's bottom-up forecasts were for the following categories:
- System Use Gas (SUG)
 - Gas Engine Alternator (GEA) and turbine overhauls
 - change in capitalisation (capital expenditure to operating expenditure).
438. Table 36 shows DBP's revised proposal for operating expenditure. The ERA assessed operating expenditure in the final decision based on the values in Table 36.

¹⁹⁰ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 10.

¹⁹¹ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 10

Table 36: DBP revised proposed operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
Efficient base year	61.25	61.25	61.25	61.25	61.25	306.26
Step changes	0.00	0.00	0.00	0.00	0.00	0.00
System use gas	18.83	18.47	18.34	13.86	13.54	83.03
GEA/turbine overhauls	8.74	7.45	7.46	4.25	2.03	29.92
Capital to operating expenditure	2.26	1.87	2.14	2.13	1.84	10.25
Labour cost escalation	0.36	0.54	0.72	0.90	1.08	3.60
Productivity	0.00	0.00	0.00	0.00	0.00	0.00
Total forecast operating expenditure	91.44	89.59	89.92	82.39	79.74	433.07

Source: DBP, 2021-2025 Revised Final Plan, Attachment 7.1A Opex Forecast Model (Public), October 2020,

Base year components

439. DBP calculated a revised proposal base year operating expenditure of \$61.25 million for 2019 that it used to forecast operating expenditure for AA5. Table 37 below sets out the line items making up the base year components.

Table 37: DBP base year components (\$ million real as at 31 December 2019)

Category	Sub-category	DBP adjusted base year
Wages and salaries	Salaries	25.74
Wages and salaries	Salaries - contractors	2.11
Non-field expenses	Employee expenses	0.52
Non-field expenses	Advertising	0.00
Non-field expenses	Consulting	3.42
Non-field expenses	Entertainment	0.17
Non-field expenses	IT	4.39
Non-field expenses	Insurance	2.88
Field expenses	Motor vehicle	1.09
Non-field expenses	Office and administration	0.18
Non-field expenses	Occupational health and safety	0.20
Field expenses	Repairs and maintenance	6.53
Field expenses	Training and development	1.33
Field expenses	Travel and accommodation	2.19
Government charges	Utilities, rates and taxes	8.75
Reactive operating expenditure	Reactive operating expenditure	1.74
Base year total		61.25

Source: DBP, 2021-2025 Revised Final Plan, Attachment 7.1A Opex Forecast Model (Public), October 2020,

440. In its initial proposal, DBP used a combination of actual operating expenditure from January 2019 to September 2019 (nine months) and forecast operating expenditure from October 2019 to December 2019 (the remaining three months) to determine its base year expenditure.
441. In its revised proposal, DBP used the full year of actual operating expenditure in 2019 to determine its base year expenditure. DBP's 2019 unadjusted base year costs were \$62.39 million.
442. As it did in its initial proposal, DBP then adjusted components of the 2019 forecast operating expenditure that it did not think were reflective of recurrent costs likely to be incurred in a typical year. DBP did this by replacing the 2019 operating expenditure for 'Consulting' and 'Reactive maintenance' with a five-year average value of costs, and 'Insurance' expenditure with a six-year average of costs.
443. DBP noted that this approach was consistent with the method accepted by the ERA in AA4, and that all three adjustments reduced its 2019 base year cost to reflect the typical expenditure to be incurred each year for each category.

444. These adjustments reduced the 2019 forecast operating expenditure (\$62.39 million) and resulted in a base year operating expenditure of \$61.25 million. This revised proposal base year value was \$0.77 million higher than the ERA's draft decision value of \$60.48 million.
445. The increase in the base year values between DBP's initial proposal and revised proposal were in three main areas of 'Salaries', 'Salaries – Contractors' and 'Permits, Licence Fees, Rates & Taxes'.
446. DBP noted the key drivers for the variance increase in these categories were:
- \$0.54 million for 'Salaries' – decrease in the allocation of labour costs to capital projects and higher leave payments than forecast.
 - \$0.24 million for 'Salaries – Contractors' – increase in temporary contractors and higher director fees than forecast.
 - \$0.39 million for 'Permits, Licence Fees, Rates & Taxes' – increase in permits and licence fees compared to forecast.
447. There was also a variance decrease of \$0.34 million in the 'Utilities, rates and taxes' section which DBP noted was a result of lower office accommodation costs than it had forecast.
448. In response to an information request on the increases in 'Salaries' and 'Salaries – Contractors', DBP noted that the largest driver for the increase in 'Salaries' was the decrease in the allocation of labour costs to capital projects (where labour costs are allocated to project work on the DBNGP and on other DBP assets through the employee time-sheeting process).
449. DBP noted this was a result of project work in 2019 being ahead of budget over the first nine months of the year, which flowed through to the forecast in DBP's initial proposal. DBP noted that the project work then slowed in the last three months of the year, with the end result being back in line with DBP's budgeted expectation for 2019 and with prior year actuals.
450. DBP also provided additional information that supported the increase in costs for these categories would continue over the AA5 period. This included a comparison of 2020 actual costs for the first nine months with 2019 costs which showed that total wages and salaries have remained stable and are forecast to continue at the same level in the AA5 period.
451. EMCa noted that it considered DBP's explanation of the difference between DBP's initial and revised salaries cost for 2019 to be reasonable.
452. The ERA reviewed the additional information provided by DBP for the increases in 'Salaries' and 'Salaries – Contractors', and noted that DBP's 2019 actual costs were consistent with its 2018 actual costs. In addition, DBP provided a comparison of wages and salaries expenditure for January to September in 2019 and 2020. This information showed that expenditure between the periods was almost equal and had remained stable and would continue at the same level for the AA5 period. Therefore, DBP's 2019 actual costs for 'Salaries' and 'Salaries – Contractors' would be a reasonable and best forecast of future expenditure for these cost categories.
453. As a result, the ERA considers the base year costs for 'Salaries' and 'Salaries – Contractors' in DBP's revised proposal to be consistent with rule 91(1) of the NGR and 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.
454. The ERA reviewed the 'Permits, Licence Fees, Rates & Taxes' base year category which increased by \$0.39 million between DBP's initial forecast and revised proposal and requested further information from DBP on the variance.
 455. DBP noted that the key driver for the variance was an increase in permits and licence fees compared to forecast.
 456. The ERA requested further information from DBP on the variances. From a review of this additional information, the ERA notes that there has been an increase in fees from the Department of Lands but also that DBP has used the 2019 actual ERA specific and standing charges for the year. The ERA gas access functions are industry funded and the ERA levies a standing charge for non-specific costs and a specific charge for those costs incurred directly related to a pipeline.
 457. The specific and standing charges incurred by DBP and all the regulated gas networks are cyclical in nature depending on when access arrangement reviews are undertaken. The ERA considers that the 2019 actual costs are not suitable to be used as the base year forecast as these costs are cyclical and reflect a high point during the regulatory cycle. The actual ERA levies for 2019 do not reflect a typical yearly amount likely to be incurred by DBP during AA5.
 458. The ERA considers that its 2019 standing and specific charges should be removed from the 'Permits, Licence Fees, Rates & Taxes' category and an average cost used to take account of the variability in the regulatory costs.
 459. The ERA has determined that an average of costs from 2016 to 2019 provides a better forecast of costs that would be incurred over the AA5 period as it better reflects a full cycle of the ERA's gas access work program. As a result, the ERA regulatory costs in the 2019 base year have decreased from \$1.38 million to \$1.02 million. The remaining costs in 'Permits, Licence Fees, Rates & Taxes' are considered reasonable and remain the same.
 460. As a result, the 'Permits, Licence Fees, Rates & Taxes' base year costs reduce by \$0.36 million from \$4.66 million to \$4.30 million.
 461. The ERA also reviewed the remaining base year components of DBP's AA5 operating expenditure proposal. DBP maintained its initial proposal approach of using the average cost, based on the previous five or six years, for costs that it considers are not reflective of recurrent costs that are likely to be incurred in a typical year. This approach is consistent with what the ERA accepted in DBP's AA4 proposal and was accepted by the ERA in the draft decision.
 462. DBP determined three cost categories ('Consulting', 'Reactive maintenance' and 'Insurance') using an average of costs and adjusted its 2019 value down to make it reflective of a typical year's expenditure.
 463. The ERA reviewed the remaining base year costs (excluding in 'Salaries', 'Salaries – Contractors', 'Permits, Licence Fees, Rates & Taxes', 'Consulting', 'Reactive Maintenance' and 'Insurance') and compared them to previous years in the AA4 period and notes that these costs have been stable over the period. As a result, and consistent with the draft decision, the ERA accepts the remaining base year costs proposed by DBP.

464. Based on the information provided, the ERA is satisfied that expenditure of \$60.90 million on base year components is consistent with rule 91(1) of the NGR and 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.

Cost escalation

465. In its initial proposal, DBP proposed no annual real cost escalation to its material costs, which it cited as being consistent with recent regulatory decisions for gas and electricity providers in Australia. DBP also proposed a real labour cost escalation of 0.69 per cent.¹⁹²
466. To determine the real labour cost escalation, DBP adopted the equation that the ERA used in the draft decisions from 2019 for the Goldfields Gas Pipeline and the Mid-West and South-West Gas Distribution Systems access arrangements. The equation subtracted the average growth in CPI from the average growth in the Wage Price Index (WPI). DBP used data published by the Western Australian Department of Treasury, which was consistent with what the ERA used in its 2019 draft decisions for the Goldfields Gas Pipeline and the Mid-West and South-West Gas Distribution Systems access arrangements.
467. Since the Goldfields Gas Pipeline and the Mid-West and South-West Gas Distribution Systems access arrangement draft decisions, the ERA implemented a revised equation to calculate real labour cost escalation. The revised equation was used in the final decisions for the Goldfields Gas Pipeline and Mid-West and South-West Gas Distribution Systems access arrangements.

$$\text{Real labour escalation growth rate \%} = \frac{1 + \text{Average growth in WPI}}{1 + \text{Average growth in CPI}} - 1$$

468. In addition, the methods DBP applied in its initial proposal to derive the average WPI and CPI growth used to calculate the real labour cost escalation were different to the methods applied by the ERA in the Goldfields Gas Pipeline and the Mid-West and South-West Gas Distribution Systems final decisions later in 2019. DBP arrived at an average WPI annual growth value by first averaging successive WA Treasury financial year forecasts to convert them to calendar year forecasts, then used the arithmetic average of those calendar year forecasts as its average WPI annual growth value. This was not consistent with the ERA's method of obtaining the average WPI growth, which is to take the average of actual and forecast WA Treasury WPI growth.
469. In its initial proposal, DBP arrived at an average CPI annual growth value by taking the geometric average of Treasury's CPI forecasts. This was also not consistent with the ERA's method of obtaining the average CPI growth to be used in calculating the labour cost escalation. In recent decisions, the ERA obtained its average CPI growth by taking the arithmetic average of Treasury's actual and forecast CPI growth.
470. In the draft decision, the ERA determined a labour cost escalation of 0.30 per cent. This value was calculated using the formula set out above in paragraph 467 and using the up-to-date WA Treasury data at the time for actual and forecast WPI and CPI as part of the 2019/20 mid-year financial projections statement.¹⁹³

¹⁹² DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, pp. 61-62.

¹⁹³ WA Department of Treasury, 2019, *Government Mid-year Financial Projections Statement*, p. 45.

471. Table 38 sets out the Treasury data for WPI growth and CPI growth used in the ERA's calculation.

Table 38: Western Australian Treasury – Wage Price Index and Consumer Price Index data included in calculating the real labour cost escalation for the draft decision (%)

	2018/19 actual	2019/20 mid-year revision estimate	2020/21 forward estimate	2021/22 forward estimate	2022/23 forward estimate	Annual average
Wage Price Index growth	1.60	2.00	2.25	2.50	2.75	2.22
Consumer Price Index growth	1.30	1.75	2.00	2.25	2.25	1.91

Source: WA Department of Treasury, 2019-20 Government Mid-Year Financial Projections Statement ([online](#)) [accessed 31 March 2020]

472. The labour cost escalation rate of 0.30 per cent was applied only to the portion of operating expenditure that contained labour. This resulted in an increase in operating costs due to labour escalation of \$1.86 million in total over the AA5 period.

473. In its revised proposal, DBP applied a real labour cost escalation of 0.57 per cent. DBP noted that this was 0.27 per cent higher than the ERA's draft decision and reflected DBP's acceptance of the draft decision but with 2019/20 updated for actual values.

474. DBP noted that it had:

- Applied the ERA's preferred calculation (consistent with the approach adopted in Goldfields Gas Pipeline and Mid-West and South-West Gas Distribution systems final decisions).
- Calculated the average using:
 - financial years rather than calendar year
 - the latest actual Australian Bureau of Statistics data for the forecast value of 2019/20
 - the arithmetic mean rather than the geometric mean.

475. DBP noted that it did not apply an industry premium to real wage price growth following the decisions made by the ERA in the Goldfields Gas Pipeline draft decision and the Mid-West and South-West Gas Distribution Systems final decisions in 2019.

476. DBP stated it did not apply an industry premium on the basis that the ERA would not make a productivity growth adjustment (that is, apply a zero productivity growth). DBP stated that if the ERA accepted its proposal for zero productivity growth, then DBP would maintain its position to not apply an industry premium.

477. DBP stated if the ERA did impose a productivity adjustment in the final decision, then the ERA should also apply an industry premium to real wage growth to appropriately capture the value of productivity gains in wages. DBP calculated an industry premium, should it be required, of 0.31 per cent.

478. The ERA has reviewed DBP's proposal and notes that DBP did not follow the ERA's method completely as it has used Australian Bureau of Statistics (ABS) data for 2019/20 instead of Western Australian Treasury data. The ABS data used by DBP

was for change in the CPI for the June 2020 quarter compared to the June 2019 quarter, while the WA Treasury data is calculated as an annual average for the financial year 2019-20.

479. To determine the real wage price growth, the ERA has used only Western Australian Treasury data to ensure consistency. The ERA has also used the up-to-date Treasury data from the 2020/21 Government Mid-year Financial Projections Statement.
480. The ERA has determined a real wage price growth of 0.18 per cent for the final decision.
481. Table 39 sets out the Treasury data for WPI growth and CPI growth used in the ERA's calculation.

Table 39: Western Australian Treasury – Wage Price Index and Consumer Price Index data included in calculating the real labour cost escalation for the final decision (%)

	2019/20 actual	2020/21 mid-year revision	2021/22 forward estimate	2022/23 forward estimate	2023/24 forward estimate	Annual average
Wage Price Index growth	1.70	1.50	1.75	2.00	2.25	1.84
Consumer Price Index growth	1.30	1.50	1.75	1.75	2.00	1.66

Source: WA Department of Treasury, 2020-21 Government Mid-year Financial Projections Statement ([online](#)), Table 2 [accessed 5 January 2021]

482. The labour cost escalation rate of 0.18 per cent has been applied only to the portion of operating expenditure that contained labour. This results in an increase in operating costs due to labour escalation of \$1.76 million in total over the AA5 period. This is the best forecast or estimate possible for the real labour escalation, as required by rule 74(2)(b) of the NGR.
483. As set out below at paragraphs 485 to 523, the ERA has determined that there should be no productivity growth factor in the final decision.
484. The inclusion of a productivity factor does not automatically guarantee the inclusion of an industry premium to real wage growth. In addition, with no productivity factor being applied to DBP's AA5 operating expenditure forecast, and no additional information provided to indicate wages growth for DBP will exceed average wage growth across the economy in the AA5 period, the ERA has not included an industry premium to real wage growth.

Productivity factor

485. In its initial submission, DBP noted that it did not apply a productivity factor to its operating expenditure and that this approach was consistent with the ERA's recent decisions for the Goldfields Gas Pipeline and the Mid-West and South-West Gas Distribution Systems access arrangements.
486. DBP also noted in its initial submission that, while it had not applied an explicit productivity growth adjustment to its operating expenditure for AA5, it proposed to absorb estimated IT operating expenditure step changes of around \$8.62 million,

- which DBP noted resulted in an implied annual productivity of around 0.6 per cent per year.¹⁹⁴
487. DBP took this approach because the higher IT operating costs may be offset by reduced operating expenditure in other areas of the business, driven specifically by its 'IT enabling' initiative. DBP noted that this provided a clear incentive to ensure that the benefits these programs could deliver were realised and passed through to customers.
488. DBP did not provide detailed information on the \$8.62 million of operating expenditure that it did not include in its submission as a step change.¹⁹⁵ Accordingly, the ERA was not able to assess if that expenditure was prudent and efficient. In addition, in the draft decision, the ERA did not accept DBP's proposed 'IT enabling' capital expenditure business case.
489. The ERA reviewed DBP's initial proposal to not include a productivity factor as part of its operating expenditure forecast for the AA5 period.
490. As part of its initial review for the ERA, EMCa undertook a simple log-log regression to test for productivity improvement within AA4. EMCa found that DBP would have achieved a productivity improvement averaging 0.5 per cent per year in AA4, on the basis that its 2019 operating expenditure was represented by the unadjusted base year expenditure estimated for the purpose of its base-step-trend forecast.
491. The Australian Energy Regulator (AER) undertook a study on forecasting productivity in 2019.¹⁹⁶ EMCa noted that, while the objective of the AER's study was to determine a reasonable allowance that could be applied to electricity distributors, it included studies on productivity improvements in the gas sector which showed average annual improvements of 0.5 per cent per year.
492. EMCa noted that the AER considered there to be reasonable comparability between the sectors and, though its study took account of considerable other information, its conclusion was to adopt a 0.5 per cent per year productivity growth target for future regulatory determinations.
493. EMCa considered that it would be reasonable to incorporate a forecast productivity growth factor of 0.5 per cent per year to determine a prudent and efficient forecast operating expenditure allowance. EMCa considered it reasonable to apply this productivity growth factor to those components of the forecast that DBP has forecast on a base-step-trend basis, excluding 'Government charges' as EMCa considered those costs to not be controllable by DBP.
494. Under the base-step-trend approach, any reductions in operating expenditure for the upcoming period as a result of capital expenditure projects in the period would be included as a step change. DBP's AA5 initial proposal did not include any step changes.
495. In order to ensure that these savings were considered and passed on to customers, the ERA included a productivity growth factor of 0.5 per cent per year on the base components of the operating expenditure forecast in the draft decision. This resulted in a decrease in forecast operating expenditure of \$6.04 million for the AA5 period.

¹⁹⁴ DBP, *2021-2025 Final Plan*, January 2020, p. 61

¹⁹⁵ DBP, *2021-2025 Final Plan*, January 2020, p. 61

¹⁹⁶ AER, *Final Decision Paper – Forecasting productivity growth for electricity distributors*, March 2019

496. In its revised proposal, DBP did not agree with the ERA's draft decision to apply a productivity factor of 0.5 per cent per year over AA5 and maintained its position that the appropriate productivity adjustment in AA5 should be zero.
497. DBP considered that:
- The ERA had already, in the draft decision, accepted DBP's proposal to absorb \$8.62 million in increased IT operating expenditure for AA5 resulting from the increased IT investment it is proposing, which equated to a 1.0 per cent per year productivity adjustment.¹⁹⁷
 - The ERA overstated potential operating expenditure savings related to capital expenditure.
 - The ERA had also applied an additional saving factor of 13 per cent (or \$4 million) to its GEA and turbine overhaul program.
 - The ERA did not provide compensation for achieving productivity gains in its labour escalation.
 - The ERA's reasoning was inconsistent with its reasoning in both the ATCO Mid-West and South-West Gas Distribution Systems and Goldfields Gas Pipeline access arrangement decisions made in late 2019.
 - EMCa's econometric modelling and analysis did not provide a measure of productivity.
 - Productivity analysis for gas distribution businesses was not necessarily reflective of productivity for gas pipelines, plus more recent data from the gas sector (which was not available for the AER's 2019 review relied on by the ERA) suggested that productivity cycles had turned, and 0.5 per cent productivity per year was no longer accurate.
498. The ERA has reviewed DBP's argument why no productivity factor should apply in AA5.
499. DBP considered that the ERA accepted DBP's proposal to absorb \$8.62 million in increased IT operating expenditure for AA5 resulting from the increased IT capital investment it proposed.¹⁹⁸ In the Draft Decision, the ERA noted that not all of the proposed IT capital expenditure for AA5 was accepted and as a result the associated IT operating expenditure which DBP proposed to absorb would be incurred.
500. As set out in paragraphs 1176 to 1188 below, the ERA in this Final Decision, has not accepted DBP's proposed IT enabling expenditure project which included \$1.57 million of IT operating expenditure that DBP had proposed to absorb.
501. Of the remaining IT capital expenditure the ERA has accepted in this Final Decision, DBP has forecast IT operating expenditure of \$7.04 million which it proposes to absorb in AA5 and not include in its operating expenditure forecast.

¹⁹⁷ In DBP's initial proposal, the proposed absorbed IT amount was quoted at \$8 million, in its revised proposal, DBP quotes the absorbed IT amount as being \$9 million.

¹⁹⁸ In assessing capital expenditure projects, the ERA assesses the total expenditure for efficiency and compliance with rule 79. If a capital project meets the requirements for approval, the associated operating expenditure is included as part of the operating expenditure forecast for the next period. For the IT capital expenditure proposed by DBP and partially accepted by the ERA, the associated operating costs would be included in the forecast operating expenditure for AA5. However, DBP has proposed to absorb these costs and not include them in its forecast AA5 operating expenditure.

502. DBP considered that the ERA had overstated potential operating savings related to capital expenditure in the Draft Decision. In its revised proposal, DBP has set out the net operating expenditure savings from its capital expenditure program in AA5 to be \$3.51 million. However, some of these savings are forecast to come from DBP's proposed IT enabling project which as set out below in paragraphs 1176 to 1188, the ERA has not accepted in this Final Decision.
503. Removing the IT enabling project forecast operating expenditure savings results in an overall net operating expenditure savings from capital expenditure projects in AA5 of \$0.55 million.
504. Offsetting these savings in operating expenditure from capital expenditure projects which have not been included in DBP's forecast for AA5 with DBP's IT operating expenditure it proposes to absorb over the same period (\$7.04 million, as noted in paragraph 501), results in DBP absorbing \$6.49 million in operating expenditure increases in AA5.
505. DBP considered the ERA had also applied an additional saving factor of 13 per cent (or \$4 million) to its GEA and turbine overhaul program.
506. In the Draft Decision, the ERA applied a savings factor to the GEA and turbine overhaul program directly. These program expenses were from bottom-up forecasts and not part of the 'top-down' base-step-trend components to which the productivity factor was applied. While the savings the ERA considered could be made in this program area were not specific to particular assets, the ERA determined that the 13 per cent savings factor was achievable within the GEA and turbine overhauls program and would not affect productivity savings in the base-step-trend components.
507. In this final decision, as set out below in paragraphs 524 to 573, the ERA has determined savings in the GEA and turbine overhauls program that relate to specific assets and are not an overall savings factor for the program. The productivity factor under consideration for the base-step-trend expenditure does not to apply to the GEA and turbine overhauls expenditure and DBP's argument of an additional savings factor on top of a productivity factor, is no longer relevant on this point.
508. DBP considered the ERA did not provide compensation for achieving productivity gains in its labour escalation as a result of including a productivity factor to the AA5 forecast operating expenditure.
509. As noted above at paragraph 484, the inclusion of a productivity factor does not automatically guarantee the inclusion of an industry premium to real wage growth. While the ERA considers that a business with no productivity growth is unlikely to sustain real wage growth at above average rates in the long term, a business with productivity growth would still be expected to demonstrate why it proposed its real wage growth would be above average rates and not just automatically include a premium as a result of a productivity factor being applied to expenditure.
510. DBP considered the ERA's reasoning was inconsistent with its reasoning in both the ATCO Mid-West and South-West Gas Distribution Systems (ATCO) and Goldfields Gas Pipeline (GGP) access arrangement decisions made in late 2019.
511. While the ERA's Draft Decision to include a productivity growth factor was different from both the ATCO and GGP access arrangement decisions, the ERA assesses each access arrangement separately with the objective of being consistent with rule 91(1) of the NGR and identifying the costs that 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.
512. Based on the information at the time, in the Draft Decision the ERA determined that to achieve the objectives of rule 91(1) of the NGR that a productivity growth factor was required.
513. DBP considered that EMCa's econometric modelling and analysis did not provide a measure of productivity as it was a regression of only operating expenditure and was conducted with only four data points.
514. EMCa noted that, while both points raised by DBP are correct on the facts, a partial productivity factor analysis involving only operating expenditure inputs is nevertheless a useful metric, particularly where (as is the case for DBP) capital expenditure is largely 'sustaining' and not 'growth' related and the productivity growth metric is being applied specifically in forecasting operating expenditure.
515. DBP considered that productivity analysis for gas distribution businesses was not necessarily reflective of productivity for gas pipelines, plus more recent data from the gas sector (which was not available for the AER's 2019 review relied on by the ERA) suggested that productivity cycles had turned, and 0.5 per cent productivity per year was no longer accurate.
516. EMCa re-estimated DBP's achieved operating expenditure "partial factor productivity" using the same method in its initial report to the ERA, using DBP's full actual 2019 operating expenditure costs. EMCa noted that, while the results from the analysis needed to take into account that it reflected only four years of data, it nevertheless indicated a slight productivity improvement over the period averaging 0.18 per cent per year, which was less than the 0.50 per cent that EMCa derived from the previous data.
517. DBP's revised proposal included a report from ACIL Allen which included an updated productivity improvement estimate average of 0.17 per cent per annum using data from 2004/05 to 2018/19. This was lower than the 0.5 per cent value the AER determined in its productivity growth report, which used data up to 2015/16 and similar to EMCa's simple productivity improvement calculation result of 0.18 per cent per year.
518. As set out above in paragraphs 499 to 504, after offsetting operating expenditure savings from proposed capital expenditure in AA5 that were not included in DBP's forecast operating expenditure proposal with operating expenditure costs associated with IT capital expenditure in AA5 that DBP proposes to absorb, the net result is \$6.49 million.
519. In the Draft Decision, the productivity factor applied to DBP's AA5 operating expenditure forecast equated to a reduction in operating expenditure of \$6.04 million. If the ERA maintained a productivity factor of 0.5 per cent in the Final Decision it would result in a reduction in operating expenditure of \$6.06 million, or if the ERA were to determine a productivity factor in line with the ACIL Allen report provided by DBP of 0.17 per cent, this would equate to a reduction in operating expenditure of \$2.07 million.
520. If DBP were to include the increased operating expenditure costs it proposes to absorb (\$6.49 million), the inclusion of a productivity factor either at the 0.5 per cent rate (\$6.06 million) or at a revised rate of 0.17 per cent (\$2.09 million), would still result in an increase in DBP's operating expenditure. Under either productivity rate,

DBP is proposing to absorb an amount greater than the reduction that would occur from the inclusion of a productivity growth factor.

521. Based on the business cases for the approved IT capital expenditure in the AA5 period, DBP will need to spend \$6.49 million in operating expenditure. This operating expenditure has been excluded from forecast operating expenditure by DBP and will be in lieu of a productivity adjustment.¹⁹⁹
522. Except for the IT Enabling project, the ERA has accepted all the IT capital expenditure DBP proposed for AA5. Based on the business cases for this approved IT capital expenditure in the AA5 period, DBP has excluded \$6.49 million in operating expenditure associated with the approved IT capital expenditure.
523. From the information provided in DBP's initial and revised proposals, the ERA has determined there is no justification for the application of a productivity improvement factor to DBP's AA5 operating expenditure forecast.

Gas engine alternators and turbine overhauls

524. In its initial proposal, DBP forecast expenditure for GEA and turbine overhauls of \$30.34 million in AA5. This was \$6.09 million more than DBP's actual and estimated spend at the time in AA4 of \$24.25 million.

Table 40: DBP forecast GEA and turbine overhaul operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
GEA overhauls	1.02	1.02	1.02	1.03	1.03	5.12
Turbine overhauls	7.83	6.53	6.55	3.28	1.03	25.22
Total	8.85	7.55	7.57	4.31	2.06	30.34

Source: DBNGP, DBNPG FP_7.2_Opex Business Cases_Confidential_Rev1, January 2020

525. In the draft decision, the ERA determined that DBP's forecast costs were overstated and that DBP could make savings similar to those made in the AA4 period for GEA and turbine overhauls. As a result, the ERA determined that with effective management of run hours and swapping of machines, DBP could defer some overhauls. The ERA applied a 13.2 per cent savings factor to DBP's forecast amount. The 13.2 per cent reduction in AA5 costs equated to achieving 50 per cent of the costs savings made by DBP in AA4 period for overhauls.

¹⁹⁹ The IT capital expenditure is reviewed between paragraphs 1162 and 1217 of this Final Decision.

Table 41 ERA draft decision on GEA and turbine overhaul operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
GEA overhauls	1.01	1.02	1.02	1.02	1.02	5.08
Turbine overhauls	7.81	6.50	6.51	3.26	1.03	25.10
Sub Total	8.83	7.52	7.53	4.28	2.04	30.18
Less Savings factor	(1.17)	(0.99)	(0.99)	(0.56)	(0.27)	(3.98)
Sub Total	7.66	6.52	6.53	3.71	1.77	26.20

Source: ERA, Draft decision AA5 operating expenditure model (confidential), 14 August 2020.

526. DBP did not accept the ERA's draft decision values for GEA and turbine overhauls in AA5. In its revised proposal, DBP forecast expenditure of \$29.92 million for the AA5 period.

Table 42 DBP revised proposal forecast GEA and turbine overhaul operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
GEA overhauls	1.02	1.02	1.02	1.02	1.02	5.10
Turbine overhauls	7.72	6.43	6.44	3.23	1.01	24.82
Total	8.74	7.45	7.46	4.25	2.03	29.92

Source: DBP, 2021-2025 Revised Final Plan, Attachment 7.1A Opex Forecast Model (Public), October 2020.

527. DBP noted that its forecast of \$29.92 million in AA5 to conduct the necessary gas turbine and GEA overhauls was the best estimate of the costs of undertaking the work because:

- The forecast was based on more mature asset management information than was available during the AA4 determination. Therefore, DBP considered that it had greater confidence that the AA5 forecast more accurately represented the costs DBP will incur and there is less opportunity to underspend.
- The operating expenditure forecast already included consideration of using overhauled swap machines and was based on an optimised expenditure profile.
- The method used to develop DBP's forecast was prudent and reasonable, as acknowledged by the ERA and EMCa.
- The unit rate assumptions were reasonable and efficient, as acknowledged by the ERA and EMCa.
- DBP's forecast was arrived at on a reasonable basis, represented the best estimate possible in the circumstances, and therefore met the requirements of rule 74 of the NGR.

528. DBP stated that, based on its assessment of asset condition, manufacturer guidance, opportunity for optimisation, and experience during AA4, it did not agree with the ERA's draft decision to apply a 13.2 per cent savings factor to the forecast of costs for GEA and turbine overhauls.

529. DBP noted that, as recognised by EMCa, not all measures that DBP took in AA4 were repeatable, or at least not to the same extent. The 26 per cent lower-than-forecast expenditure during the AA4 period was achieved via a combination of insurance benefits, foreign exchange savings and the availability of swap machines. The AA4 bottom-up forecast for the GEA and turbine overhauls was also developed on less-mature asset management information than currently exists, therefore part of the AA4 understanding may be attributed to over estimation in the first instance.
530. The ERA has reviewed DBP's initial and revised proposal and EMCa's report on GEA and turbine overhauls forecast expenditure for the AA5 period below.

Turbine overhauls

531. DBP's initial proposal forecast a total cost of \$25.22 million to overhaul [REDACTED] turbines in AA5. In AA4, DBP overhauled [REDACTED] units and had [REDACTED] premature failures at a cost of \$20.39 million.
532. DBP's replacement strategy for its turbine units is to overhaul them after 30,000 run hours in line with manufacturer specifications. DBP noted that, after 30,000 run hours, the likelihood and cost of failure of turbine units increased significantly as turbines were integral to the safe and reliable delivery of DBP's services. DBP stated that its turbine overhauls must be carefully planned because there could be long lead times in ordering parts.
533. DBP's initial proposal forecast an overhaul of [REDACTED] units in AA5 based on current run hours and use rates for turbine units. DBP also allowed for one additional overhaul in the event of a premature failure.
534. DBP noted that the increase in forecast cost was driven by higher unit costs for overhauling [REDACTED], and by additional work required [REDACTED] due to findings from investigations into premature failures during AA4.
535. DBP noted that the schedule for turbine overhauls was driven by the run hours on each machine, which fed into original equipment manufacturer warranty provisions. Run hours are largely throughput-driven and are managed by configuring the pipeline daily to deliver customers' requirements.
536. To optimise run hours and compressor performance across the fleet, DBP noted that it did, on occasion, swap engines between low use and high use sites. As a result, run hours were managed across the entire fleet of turbines as well as on an individual engine basis.
537. Based on the information provided at the time, in the draft decision the ERA considered that the method used to determine when each individual turbine was overhauled was prudent and the calculation of unit costs was reasonable.
538. However, the ERA determined that there was still the potential for DBP to make savings in this area as DBP did in the AA4 period. As a result, the ERA determined that a savings factor of 13.2 per cent be applied, resulting in a reduction equal to half of the savings made in the AA4 period. The ERA determined that \$21.78 million for turbine overhauls was reasonable and consistent with rule 91(1) of the NGR.
539. As set out above in paragraphs 526 to 530, DBP did not agree with the ERA's draft decision and in its revised proposal forecast expenditure for turbine overhauls of \$24.82 million in AA5. This was a decrease of \$0.40 million from DBP's initial

- proposal. The lower cost was a result of a lower labour escalation factor between submissions. The quantity of overhauls did not change between the initial and revised submissions.
540. The ERA requested further information from DBP on when each individual turbine was overhauled and the unit costs of the overhaul. DBP provided actual costs for each overhaul carried out during the AA4 period, broken down into Original Equipment Manufacturer (OEM) costs, transport, consumables and installation of the unit. The OEM costs were provided in Australian Dollars (AUD) and in United States Dollars (USD) with the applicable exchange rate for each overhaul.
541. EMCa noted that the USD OEM costs were consistent across the [REDACTED] units overhauled during AA4, with cost increases likely related to escalation provision in the [REDACTED], while the variances in the AUD costs were driven primarily by the fluctuating exchange rate.
542. DBP presented the USD cost of [REDACTED] for the OEM component of the most recent overhaul – [REDACTED] as the appropriate number to use for forecasting costs during the AA5 period as it reflects the most current pricing under the [REDACTED].
543. EMCa advised that DBP's USD-denominated cost assumptions were reasonable. However, it observed that DBP had assumed a forecast USD exchange rate of 0.68, which it stated was the exchange rate at the time of that overhaul in 2019.
544. EMCa noted that the USD exchange rate (as at 22 December 2020) was 0.75. EMCa also sought exchange rate forecasts from the major banks and the current costs of purchasing forward USD. The average exchange rate of the major banks for the medium term was 0.79.
545. Based on the current information, EMCa advised that assuming an exchange rate of 0.68 overstated the forecast requirement and was not a reasonable forecast for the Solar Mars units.
546. EMCa reviewed the unit cost assumptions and Euro exchange rates for the [REDACTED] overhaul costs and considered that both elements resulted in a reasonable forecast for the single unit DBP plans to overhaul in AA5.
547. The ERA notes that, as previously stated by DBP, some of the cost savings made in the AA4 period by DBP were from exchange rate savings. DBP advised that compared to annual budgeted costs, there was \$1.1 million in estimated foreign exchange savings in AA4.
548. The ERA considers that using a 2019 exchange rate to forecast the costs for the AA5 period, which runs from 2021 to 2025, does not provide a reasonable forecast when more recent data is available.
549. Accordingly, the ERA determines that an exchange rate of 0.75 should apply to the OEM component of the turbine overhaul cost as this more reasonably reflects recent higher forecasts exchange rate as identified in paragraph 544. The 0.75 exchange rate was the prevailing rate at the time of the ERA's assessment of AA5 turbine overhauls. The ERA considers that the remaining cost components, transport, consumables and installation, are reasonable.
550. The ERA has also reviewed the turbine overhaul program and DBP's information on run hours for the units it proposes to overhaul.

551. Following an information request, EMCa considered that for each of the units DBP proposed for overhaul during AA5, it was highly likely to reach the OEM's recommended maximum run-hours during the period, with the possible exception of [REDACTED], which currently had only 14,232 run hours (as at 1 November 2020).
552. EMCa noted that the forecast for when this unit was likely to reach 30,000 run-hours was very dependent on how the forecast demand and load cycle on the pipeline develops during the AA5 period.
553. For this unit to reach 30,000 run-hours during the period would require it to run on average, over eight hours per day every day for the five-year period. EMCa notes that while this sort of duty cycle was not uncommon when the DBNGP was operating at full capacity before and during the most recent expansion projects, it was less likely at current throughput levels, particularly when the operator was actively managing unit run-hours to optimise use across the fleet.
554. The ERA notes that DBP indicated that, with permission from the OEM, it has run units over 30,000 hours without penalty.
555. In addition to the possibility of going over the specified 30,000 hour threshold, there is uncertainty relating to the throughput and future run cycle of the DBP with recent developments regarding the Perth Basin, including the announcement by APA Group of the proposed Northern Goldfields Interconnector pipeline that is designed to deliver Perth Basin gas direct to markets in the Goldfields region, by-passing possible backhaul between CS7 and CS1 on the DBNGP.
556. With these developments occurring only recently, it is unlikely that DBP has been able to consider the effect they will have on the throughput on the DBNGP and how this will affect the run-hours and overhaul program. In addition, on 29 January 2021, DBP provided additional information to the ERA on contracted demand for the AA5 period. This information showed that since DBP submitted its revised proposal there had been a relinquishment of capacity. DBP forecast additional relinquishments to occur over the AA5 period.
557. Based on the information provided, the ERA considers that DBP will have an opportunity in AA5, through a combination of changing use of the DBNGP, the possibility of exceeding the run-hours threshold without penalty and its active management to optimise overhauls, to defer [REDACTED] into AA6.
558. As occurred in the draft decision, when reviewing the total cost for each activity the ERA recalculated the cost using the ERA's determined labour cost escalation values for the final decision.
559. As a result of the change in exchange rate and labour escalation rate, and the reduction in the number of turbine overhauls to be conducted in AA5 [REDACTED], the forecast cost for turbine overhauls decreases by \$4.26 million from \$24.82 million to \$20.56 million.

Gas engine alternator overhauls

560. DBP initially proposed to overhaul [REDACTED] GEAs at a forecast cost of \$5.12 million for AA5, compared to [REDACTED] overhauls in AA4 at a total cost of \$3.84 million.
561. GEAs are the primary source of electricity at many of DBP's remote facilities, including all compressor stations north of Perth. DBP services its GEAs regularly,

with major services (overhauls) required at 12,000 hours, 24,000 hours, 48,000 hours and 52,000 hours.

562. DBP stated that its schedule for GEA overhauls was driven by the run hours of each engine (or calendar hours for low use machines) and the original equipment manufacturer recommendations. Run hours are largely driven by site power requirements, which are in turn influenced by throughput as well as site ambient conditions and occupancy by staff.
563. Based on the information provided at the time, in the draft decision the ERA considered that the method DBP used to determine when GEA turbines were overhauled was prudent and the calculation of unit costs was reasonable.
564. However, the ERA determined that savings could be made in this area as DBP did in the AA4 period. As a result, the ERA determined that a savings factor of 13.2 per cent be applied, resulting in a reduction equal to half of the savings made in the AA4 period. The ERA determined that \$4.41 million for GEA overhauls was reasonable and consistent with rule 91(1) of the NGR.
565. As set out above in paragraphs 526 to 530, DBP did not agree with the ERA's draft decision and in its revised proposal forecast expenditure for GEA overhauls in AA5 of \$5.10 million. This was a decrease of \$0.02 million from DBP's initial proposal, due to lower labour escalation factor between submissions. The quantity of overhauls did not change between the initial and revised submissions.
566. The ERA requested further information from DBP on GEA overhauls and the unit costs of the overhauls. DBP applied its average of actual recent costs incurred to GEA overhauls in its forecast expenditure.
567. DBP stated that its unit cost was [REDACTED] per overhaul (in June 2019 dollars) with payments for all materials for GEA overhauls made in Australian Dollars.
568. The ERA has reviewed the [REDACTED] proposed GEA overhauls for AA5 and considers, based on the current run hours of the units, it is likely that all units proposed will reach the required threshold for overhaul in the AA5 period.
569. As occurred in the draft decision, when reviewing the total cost for each activity the ERA recalculated the cost using the ERA's determined labour cost escalation values for the final decision.
570. As a result of the change in exchange rate and labour cost escalation, the forecast cost for turbine overhauls decreases by \$0.03 million from \$5.10 million to \$5.07 million.

Summary of GEA and turbine overhauls expenditure

571. Based on the information provided and as set out above in paragraphs 531 to 570, the ERA is not satisfied that DBP's revised proposed expenditure of \$29.92 million on GEA and turbine overhauls is consistent with rule 91(1) of the NGR and 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.
572. The ERA is satisfied that expenditure of \$25.47 million on GEA and turbine overhauls is consistent with rule 91(1) of the NGR and 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.

573. The approved expenditure for DBP's GEA and turbine overhauls in AA5 is shown below in Table 43.

Table 43: ERA final decision on GEA and Turbine overhaul operating expenditure for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
Turbine overhauls	7.55	6.00	6.00	0.00	1.02	20.56
GEA overhauls	1.01	1.01	1.01	1.01	1.01	5.06
Total	8.57	7.01	7.01	1.01	2.03	25.63

Source: ERA, Final decision AA5 operating expenditure model (confidential), February 2021.

Change in capitalisation

574. In its initial proposal, DBP forecast \$10.42 million of operating expenditure for activities that were previously treated as capital expenditure.
575. EMCa reviewed DBP's proposal for the change in classification and noted that while DBP continued to identify some of this work as projects in some of its documentation, EMCa considered that work of this nature, and which was forecast as almost constant annual routine expenditure, was best classified as operating expenditure.
576. The activities for which costs were being moved from capital expenditure to operating expenditure were asset inspections, other minor pipeline works, and health and process safety initiatives, which DBP submitted were recurrent and operating in nature.
577. For the draft decision, the ERA reviewed the documentation provided for the change in capitalisation projects and was satisfied that the nature of the work outlined for those activities was consistent with the accounting standards criteria to be classified as operating expenditure.
578. The ERA noted that, for the activities proposed by DBP to be moved from capital expenditure to operating expenditure, DBP determined the cost for AA5 inclusive of its forecast inflation and labour cost escalation. When reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the draft decision.
579. The ERA determined in the draft decision that two of the activities' forecast costs were overstated and accordingly amended the 'Process safety' and 'Asset management' activities to be in line with their AA4 cost levels.
580. Table 44 sets out the ERA's draft decision for the proposed change in capitalisation activities for AA5.

Table 44 ERA draft decision for proposed change in capitalisation activities for AA5 (\$ million real as at 31 December 2019)

Category	2021	2022	2023	2024	2025	Total
Health, safety and environment	0.09	0.09	0.09	0.09	0.09	0.46
Station inspections	0.80	0.83	0.80	0.83	0.80	4.05
Asset management	0.54	0.54	0.54	0.54	0.54	2.69
Pipeline and mainline valve inspections	0.78	0.36	0.36	0.36	0.36	2.23
Process safety	0.00	0.00	0.00	0.00	0.00	0.04
Decommissioning	0.00	0.00	0.25	0.25	0.00	0.51
Total	2.22	1.83	2.05	2.09	1.80	9.98

Source: ERA, Draft decision AA5 operating expenditure model (confidential), 14 August 2020.

581. In its revised proposal, DBP noted that it has included \$10.25 million for the change in capitalisation projects. DBP updated its AA5 forecast for 'Asset management' and 'Process safety' based on the costs incurred for these activities in the AA4 period. DBP considered that these values reflected the best possible estimate in the circumstances. DBP did not make any adjustments to the other activities that the ERA accepted in the draft decision.
582. Each activity is assessed below for inclusion as part of DBP's AA5 operating expenditure.

Health, safety and environment

583. In its initial proposal, DBP proposed to spend \$0.46 million for 'Health, safety and environment' programs in the AA5 period. This was an increase of \$0.28 million from its expenditure in AA4.
584. DBP noted that its health and safety program delivered initiatives to support the health and safety of its employees and contractors, including safety systems and mental health practices. DBP further noted that its environmental program focused on compliance, ensuring that updates were rolled out as needed to reflect changes to regulatory and reporting requirements, which were often driven by external changes.
585. The ERA reviewed DBP's proposal for 'Health, safety and environment' expenditure in AA5. The ERA noted that expenditure in this category was driven predominately by changes in legislation and codes of practice requiring DBP to implement, adapt or update its systems to be compliant.
586. The ERA also noted DBP's response to an information request in which it noted the implications of the COVID-19 pandemic and other expenditure that would increase DBP's AA5 expenditure above AA4 levels.
587. In the draft decision, the ERA determined that the \$0.46 million proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.

588. In its revised proposal, DBP has again proposed to spend \$0.46 million for 'Health, safety and environment' programs in the AA5 period.
589. As occurred in the draft decision, when reviewing the total cost for each activity the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
590. Based on the information provided, the ERA is satisfied that the proposed expenditure of \$0.46 million on 'Health, safety and environment' activities is reasonable and consistent with rule 91(1) of the NGR and 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.

Station inspections

591. In its initial proposal, DBP proposed to spend \$4.09 million on 'Station inspections' in AA5. DBP estimated that its AA4 expenditure on this item was \$2.6 million, although there was no specific allowance for this inspection program in AA4 and these costs were included in a broader category of 'Subsequent works'.
592. 'Station inspections' is the program name given to the three core station inspections activities:
- mandatory inspection of pressure vessels
 - mandatory inspection of pressure relief valves
 - inspection and re-preservation of compressor bundles in long term storage.
593. DBP proposed to inspect ■■■ pressure vessels and ■■■ pressure relief valves at compressor stations and meter stations, and ■■■ compressor bundles in storage during AA5.
594. In the draft decision, the ERA reviewed the AA5 expenditure for DBP's proposed 'Station inspections'. The ERA noted that station inspections are conducted in line with Australian Standards, particularly AS 3788 (Pressure equipment – In-service inspection).
595. DBP considered three options for this program:
- Option 1 - Inspect consistent with volume and activities consistent with the Asset Management Plan.
 - Option 2 - Increase frequency of inspections.
 - Option 3 - Do not undertake station inspections program.
596. DBP considered option 1 to be the best option as it was based on the requirements of its Asset Management Plan, aligned to standard industry practice, complied with the requirements of AS3788, and aligned with DBP's Safety Case.
597. DBP noted that undertaking inspections at twice the current frequency was unlikely to reduce risk any further than for following the Asset Management Plan option. Also, if no inspections were undertaken, the failure of these assets would likely result in significant disruption to services and higher costs due to the likely higher consequences of the failure of the asset, being replacement rather than repair.
598. The ERA considered that the expenditure on 'Station inspections' was prudent to minimise the risk of failure to components and avoid disruption to the pipeline

operations. DBP noted that pressure vessels and pressure relief valves were considered high risk assets and an important control for managing this risk was preventative maintenance – in this case, inspection.

599. The ERA noted that inspection of pressure vessels and pressure relief valves complies with statutory requirements as denoted in DBP's Asset Management Plan. DBP noted some of the cost differences between AA4 and AA5 were due to improved activity-based cost capture, rather than a material difference in activities.
600. Regular inspections and re-preservation of compressor bundles is prudent, and the compressor bundles are valuable assets for which the original equipment manufacturers do not offer an exchange service, either for upgrades or for maintenance or repair.
601. EMCa noted that while a comparison with AA4 actual expenditure was problematic, the cost breakdown that DBP provided appeared reasonable. EMCa observed that some unit cost reductions from efficiencies identified during AA4 were included in the AA5 forecasts. EMCa considered that DBP's forecast AA5 expenditure for 'Station inspections' was reasonable.
602. As a result of using the ERA's draft decision forecast inflation and labour cost escalation values DBP's proposed expenditure for 'Station inspections' reduced to \$4.05 million.
603. In the draft decision, the ERA determined that the \$4.05 million proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.
604. In its revised proposal, DBP has proposed to spend \$4.06 million for 'Station inspections' in the AA5 period. This value was higher than the ERA's draft decision as DBP has proposed a higher labour cost escalation factor in its revised proposal.
605. As occurred in the draft decision, when reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
606. Based on the information provided and the recalculation of DBP's proposed forecast, the ERA is satisfied that proposed expenditure of \$4.05 million on 'Station inspections' is consistent with rule 91(1) of the NGR and 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.

Asset management

607. In its initial proposal, DBP proposed to spend \$2.86 million on 'Asset management' in the AA5 period. This was an increase of \$0.17 million on its AA4 period expenditure of \$2.69 million.
608. DBP noted that effective management of asset risks, including identification of risks and evaluation of the adequacy of controls was a principle of its Asset Management System Framework.
609. DBP's business case for this program outlined its approach for identifying, prioritising and responding to changing asset requirements and functionality based on real-time feedback from field crews.

610. The business case focused on two key streams of work:
- Engineering and Operational Projects (EOP) subsequent costs
 - Management of Change (MoC) projects.
611. DBP's business case noted that the 'Asset management' program provided for the works that could not be adequately forecast on an individual basis, but that DBP knew were likely to occur.
612. In the draft decision, the ERA reviewed DBP's proposed AA5 expenditure for 'Asset management' and noted that DBP's proposed increase of \$0.17 million between access arrangement periods equated to an increase of 6.3 per cent.
613. In its business case, DBP stated that the increases were due to:
- The expansion programs which drive increases as additional assets that have been added to the gas transmission system that need to be managed and maintained; and
 - As work volumes increase and improvement initiatives are assessed and implemented, MoC expenditure has been increasing.²⁰⁰
614. EMCa noted that this was an ongoing program and, according to DBP, this level of expenditure was likely to continue across future access arrangements.
615. While DBP's business case for this program provided information on the activities that DBP undertook, EMCa considered that 'Asset management' was effectively a business-as-usual activity and, while the increase that DBP proposed was relatively small, EMCa considered that DBP had not justified the need for the proposed increase. EMCa noted that the "additional assets" that DBP refers to were essentially uncovered assets.
616. EMCa considered that DBP's allowance for 'Asset management' had not been adequately justified and should be adjusted to its AA4 level.
617. DBP considered three options for this expenditure category. However, the business case included evaluation in detail of only two of those options:
- Option 1 – Remove provision for engineering and operational projects and management of change projects.
 - Option 2 – Provision for engineering and operational projects and management of change projects based on the average incurred in AA4.
618. DBP noted that Option 3 (to move to a proactive approach of repairing and replacing all identified defects) would result in no discernible risk improvement but would impose higher costs on customers. This was the extent of the evaluation of Option 3 in the submission.
619. DBP's access arrangement proposal was based on Option 2.
620. The ERA reviewed DBP's options and noted that DBP considered that only Option 2 appropriately addressed risks and reduced the inherent risk of these assets to the 'As Low As Reasonably Practicable' level.

²⁰⁰ MoC (Management of Change) projects include initiatives addressing defects or unsafe situations. These are typically engineering changes that are minor but can be safety or operation critical.

621. DBP's business case for Option 2 assumed that the same level of activity was required in AA5 as in AA4 and that the AA5 forecast expenditure was consistent with historical actual average operating expenditure.
622. The ERA could see no explanation as to why the cost was proposed to increase between access arrangement periods when, as stated by DBP, the same level of activity was required, and the expenditure was based on the historical actual average.
623. The ERA considered that the inclusion of a provision for 'Engineering and operational projects' and 'Management of change' projects based on an average of expenditure incurred in AA4 would be incurred by a prudent service provider.
624. In the draft decision, the ERA determined that \$2.69 million proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.
625. In its revised proposal, DBP has proposed to spend \$2.94 million for 'asset management' in the AA5 period.
626. DBP's revised proposal for 'Asset management' was based on an average of the updated actual costs for the AA4 period which was the approach taken by the ERA in the draft decision. For its revised proposal, DBP now has full year actuals for 2019 in which the actual costs were higher than its initial proposal forecast resulting in a higher average value than in the ERA's draft decision. As occurred in the draft decision, when reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
627. Based on the information provided and the recalculation of DBP's proposed forecast, the ERA is satisfied that proposed expenditure of \$2.92 million on 'Asset management' is consistent with rule 91(1) of the NGR and 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.

Pipeline and mainline valve inspections

628. In its initial proposal, DBP proposed to spend \$2.25 million on 'Pipeline and mainline valve inspections' in AA5. These inspections are scheduled in accordance with Australian Standards AS 2885 and AS 3788. There are five core inspection categories:
- in-line inspections of the main line, loop line and laterals (eight-yearly)
 - inspection of piping at above ground and below ground interfaces (five-yearly)
 - piping inspection under insulation and within buried pits (10-yearly)
 - mandatory inspection of pressure vessels (12-yearly)
 - mandatory inspection of pressure relief valves (five-yearly).
629. In AA4, DBP spent \$13 million on these inspections, including \$12.3 million for in-line inspections pigging, which are not required in AA5.
630. For each year in AA5, DBP proposed to inspect the above/below ground interface piping at ■ pipeline and mainline valve sites, ■ pressure vessels and ■ pressure relief valves. In the first year only of AA5, DBP proposed to inspect the interface piping at ■ locations where it was located within buried pits or under insulation.

631. DBP noted that the 'Pipeline and mainline valve inspection' program was an essential component of its asset management strategies adopted to ensure the integrity of the pipeline was not compromised over time.
632. In the draft decision, the ERA reviewed DBP's proposed expenditure for 'Pipeline and mainline valve inspections' in AA5. The ERA noted that DBP considered three options for the program of works: an inspection cycle consistent with its Asset Management Plan (chosen option); an increase in the frequency of inspections; and no inspections with only reactive action.
633. DBP noted that increasing the frequency of inspections beyond the Australian Standards would cause more disruption to customers and result in an increase in cost for no additional reduction in risk for the program. Also, DBP recognised that a 'reactive action' approach was not consistent with Australian Standards and failed to reduce the risk assessment to an acceptable level.
634. The ERA considered that the option proposed by DBP prudently considered the risk associated with the program of works and the costs, while ensuring that it met the Australian Standards for its inspections.
635. EMCa considered that the proposed inspections of above/below ground interfaces and of the interfaces of piping within pits and under insulation were prudent, especially in the light of findings about external pipe corrosion following the failure on Varanus Island in 2008.
636. EMCa noted that the inspections of pressure vessels and pressure relief valves complied with statutory requirements set out in DBP's Asset Management Plan. Some of the cost differences between AA4 and AA5 were due to improved activity-based cost capture, rather than a difference in activities.
637. EMCa considered that the proposed work plan was reasonable for a period which did not include any in line inspections and that the forecast expenditure in AA5 was reasonable and comparable with the inferred costs for AA4 for this work stream.
638. As noted at paragraph 558, the ERA recalculated DBP's proposed expenditure for 'Pipeline and mainline inspections' using the ERA's determined forecast inflation and labour cost escalation values for the draft decision, which reduced DBP's proposed expenditure for 'Pipeline and mainline inspections' to \$2.23 million.
639. In the draft decision, the ERA determined that the \$2.23 million proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.
640. In its revised proposal, DBP has again proposed to spend \$2.25 million for 'Pipeline and mainline valve inspections' in the AA5 period. This value was higher than the ERA's draft decision as DBP proposed a higher labour cost escalation factor in its revised proposal than what the ERA determined in the draft decision.
641. As occurred in the draft decision, when reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
642. Based on the information provided and the recalculation of DBP's proposed forecast, the ERA is satisfied that proposed expenditure of \$2.23 million on 'Pipeline and mainline inspections', is consistent with rule 91(1) of the NGR and 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.

Process safety

643. In its initial proposal, DBP proposed to spend \$0.25 million on 'Process safety' in AA5. In AA4, DBP spent \$0.04 million on 'Process safety'.
644. In its initial proposal, DBP noted that 'Process safety' was developed across the oil and gas industry due to recent major incidents in Australia and around the world. These incidents drove regulatory changes that require pipeline licence holders to develop measurable Key Performance Indicators to prevent the occurrence of "major accident events". As a result, DBP developed a Process Safety Dashboard in consultation with the Department of Mines, Industry Regulation and Safety (DMIRS).
645. DBP noted that this project was a business improvement initiative that commenced in 2017 and required ongoing evolution to maintain its relevance in changing operational and safety environments.
646. DMIRS advised DBP that Process Safety Indicators would be required under state safety regulations. In its business case, DBP provided further justification for the increase in cost between AA4 and AA5:
- AA4 expenditure related to the introduction of a new system.
 - AA5 expenditure related to ongoing evolution, implementation and continuous improvement of the system, as well as ongoing training for staff.
647. In the draft decision, the ERA reviewed DBP's proposal, including the options analysis provided by DBP for its proposed 'Process safety' expenditure in AA5. The ERA noted that 'Process safety' was a new initiative in AA4, with expenditure taking place in 2016 and 2017. However, for a system that DBP stated for AA5 required ongoing evolution, implementation and continuous improvement, the ERA noted that there was no expenditure on the system in 2018, 2019 or 2020.
648. The ERA also noted that DBP considered three options: maintain and improve the safety system as per the Safety Case (DBP's proposed option); maintain the safety system without enhancements; or introduce a new safety system.
649. DBP noted that introducing a new system would be the most expensive option as there was no available off-the-shelf system, and adopting a system that was currently in use by service providers like Chevron or Woodside would require modification and conversion to be effective in DBP's operating environment.
650. DBP also submitted that maintaining its existing system for AA5 without the proposed enhancements would fail to effectively manage the process safety risk.
651. While DBP noted that DMIRS advised it that Process Safety Indicators would be required as part of the revision and modernisation of safety regulations in WA, DBP did not provide any information on when these indicators were required and what information would be required above and beyond that provided by the current system.
652. While DBP provided information in its business case on what it included in this category, EMCa considered that the business case essentially described business-as-usual activities for which EMCa could not see a compelling reason for an increase of the magnitude sought. EMCa considered that DBP's expenditure in AA4 was a more accurate reflection of efficient costs for 'Process safety' expenditure.

653. The ERA considered that DBP failed to describe the activities for the higher expenditure in AA5 for 'Process safety' in its initial proposal and that the inclusion of a provision for 'Process safety' should be based on an average of expenditure incurred in AA4.
654. In the draft decision, the ERA determined that \$0.04 million of the expenditure proposed for 'process safety' proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.
655. In its revised proposal, DBP has proposed to spend \$0.04 million for 'Process safety' in the AA5 period. DBP's revised proposal was based on an average of the updated actual costs for the AA4 period. This is the approach taken by the ERA in the draft decision.
656. As occurred in the draft decision, when reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
657. The ERA notes that DBP forecast its AA5 costs for 'Process safety' based on its AA4 actual costs which is consistent with the ERA's Draft Decision calculation.
658. Based on the information provided and the recalculation of DBP's proposed forecast, the ERA is satisfied that proposed expenditure of \$0.04 million on 'Process safety' is consistent with rule 91(1) of the NGR and 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.

Decommissioning

659. In its initial proposal, DBP proposed to spend \$0.51 million during AA5 on decommissioning or mothballing non-operational assets and facilities to reduce risk to the environment, and for public and employee safety. DBP spent \$0.36 million in AA4 undertaking such projects.
660. While decommissioning renders an asset permanently unusable, mothballing ensures there can be a smooth transition into reoperation where the asset is required to deliver services in the future.
661. DBP noted as part of the variation in costs from AA4 to AA5, some assets are deemed a contractual obligation to keep intact, although they have not been in use for many years or the actual facility they serviced no longer exists, enabling them to be mothballed.
662. DBP identified 6 sites for decommissioning or mothballing during AA5 being:
- HiSmelt Meter Station & Offtake (decommission – onsite)
 - Carnarvon Power Station Lateral (mothball)
 - Westlime Meter Station (decommission – dismantle)
 - Mondarra Meter Station (decommission – onsite)
 - LM500 Water Bath Heaters (5) (decommission – dismantle)
 - Eneabba Meter Station (decommission – onsite).

663. EMCa reviewed DBP's proposal and the information provided. EMCa noted that DBP stated that this level of expenditure forecast for AA5 was not likely to continue and that, at this stage, there were no further assets identified for decommissioning in AA6.
664. In the draft decision, the ERA reviewed DBP's proposal including its options analysis for the decommissioning program. Other than DBP's chosen option of moving to a more proactive plan for decommissioning, DBP proposed two other options, being to not decommission or mothball non-operational assets or continue to take an *ad hoc* approach to decommissioning.
665. Under the *ad hoc* plan, no assets would be decommissioned in AA5, resulting in the two other options effectively being the same. DBP noted that for these other options, while normal planned maintenance would be stopped, there would still be some expenditure from unnecessary repairs and maintenance for safety reasons due to the deterioration of the asset over time.
666. In the draft decision, the ERA determined that the \$0.51 million proposed by DBP was reasonable and consistent with Rule 91(1) of the NGR.
667. In its revised proposal, DBP has proposed to spend \$0.51 million for 'Decommissioning' in the AA5 period.
668. As occurred in the draft decision, when reviewing the total cost for each activity, the ERA recalculated the cost using the ERA's determined forecast inflation and labour cost escalation values for the final decision.
669. Based on the information provided, the ERA is satisfied that the proposed expenditure of \$0.51 million for decommissioning, was consistent with rule 91(1) of the NGR and 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.

System use gas

670. In its initial proposal, DBP forecast system use gas (SUG) expenditure in AA5 of \$106.47 million. DBP noted that this was a significant reduction compared to the SUG costs incurred in AA4 and that the reduction was mainly driven by lower gas prices than when DBP last tendered for SUG requirements in 2014.
671. DBP noted that its SUG costs were a function of forecast quantity and forecast price. DBP stated that the forecast quantity of SUG was driven by expected gas quality, the quantity required as compressor fuel to transport forecast throughput and the quantity required for all other operational activities, including GEA's and heaters, and vented during normal operation and maintenance activities.
672. DBP adopted the same quantity calculation that was approved in AA4.
673. DBP stated that the forecast price for SUG was based on the weighted average price it would achieve across its SUG supply contracts secured in the market, and that this was consistent with the ERA's approach in AA4 to adopt the weighted average price of DBP's two SUG contracts.
674. On 28 May 2020, DBP provided revised SUG expenditure of \$92.34 million for the AA5 period. This was due to a decline in throughput as a result of renegotiation of forecast demand with several major customers.

675. In the draft decision, the ERA determined that the forecast cost for SUG for AA5 was \$122.07 million. This value was higher than that proposed by DBP as a result of the ERA requiring that the forecast of demand be amended to equal constant contracted capacity and throughput from the forecast level in 2020 for full haul reference services.
676. As a result, the ERA calculated a daily average SUG requirement of [REDACTED] TJ/day for AA5 compared to DBP's calculation of [REDACTED] TJ/day.
677. In its revised proposal, DBP did not agree with the ERA's draft decision SUG forecast for AA5. As set out in paragraphs 340 to 343, in its revised proposal DBP forecast a lower level of demand than in both the ERA's draft decision and DBP's initial proposal.
678. As a result, DBP forecast SUG expenditure in AA5 of \$83.03 million. This was based on an average daily requirement of [REDACTED] TJ/day with a weighted average price of SUG in AA5 of [REDACTED]/GJ.

System use gas – Quantity

679. In its initial proposal, DBP forecast a daily average SUG requirement of [REDACTED] TJ/day for AA5. On 28 May 2020, DBP provided revised modelling after contract renegotiations with several major customers reduced the forecast throughput for AA5. DBP's forecast daily average SUG requirement dropped to [REDACTED] TJ/day for AA5.
680. In the draft decision, the ERA required that the forecast of demand be amended to equal constant contracted capacity and throughput from the forecast levels in 2020 for full haul reference services.
681. Using DBP's SUG quantity calculation method with the draft decision throughput values the ERA calculated a daily average SUG requirement of [REDACTED] TJ/day for AA5.
682. As previously noted at paragraph 677, DBP did not accept the ERA's forecast demand and submitted a lower demand and full haul throughput forecast for AA5.
683. Based on these lower forecasts, DBP calculated a daily average SUG requirement of [REDACTED] TJ/day.
684. The ERA has reviewed DBP's revised proposal for SUG. As set out in paragraphs 392 to 399, in January 2021 DBP provided updated demand forecast information for the AA5 period from DBP in January 2021. In addition, the ERA has made an adjustment increasing DBP's updated demand forecast for AA5. As a result of the increase in the demand forecast for AA5 and subsequent changes to full haul throughput, the ERA has calculated a daily average SUG requirement of [REDACTED] TJ/day.
685. The ERA received a submission from GasTrading relating to SUG and the effect of the Perth Basin gas on the SUG requirements. The ERA requested further information from DBP on the effect of inclusion of Perth Basin gas starting in 2023 and how it would alter the SUG requirements of the DBNGP.
686. DBP noted the effect of the Waitsia gas transportation agreement on SUG depends on the following factors:
- The gas quality or heating value of Waitsia gas;
 - The "peakiness" of the full-haul demand profiles;

- Full haul throughput demand from other Shippers and throughput required under the Waitsia gas transportation agreement noting the terms of the Waitsia contract allows for a high-level of flexibility and interruptibility, and
 - The seasonal conditions.
687. As a result of the unknown factors still to be resolved, DBP has made assumptions and expects SUG to be higher in periods of low full haul throughput but marginally lower for periods of higher full haul throughput, on account of the operational changes anticipated with the advent of additional production in the Perth Basin. This is due to the need to keep a number of compressors in hot standby to ensure the DBNGP can respond to the constant changes in what upstream producers allocate to the pipeline and maintain contractual reliability requirements of Firm Services on the DBNGP.
688. DBP noted that based on its projected average daily throughput for AA5 it does not expect a reduction to SUG and could see an increase in SUG. However, DBP expect to be in a better position to understand the effect on SUG of the Waitsia agreement and other Perth Basin producers towards the end of the AA5.
689. SUG for the transport of gas in the DBNGP to provide the Ullage Service or other non-reference services is not included in the calculation of operating expenditure. These are direct costs and would be charged by DBP as part of the tariffs for non-reference services. The ERA has considered whether there are any benefits, in the way of potential reductions to the forecast SUG costs for reference services, that should be passed on to shippers of reference services resulting from the injection of Perth Basin gas. Perth Basin Ullage Service gas will effectively supply full haul reference service shippers, and the full haul gas that is swapped is transported to the Karratha Gas Plant from the northern gas production area.
690. The injection of Perth Basin gas and the related gas swaps will alter DBP's SUG requirements for the DBNGP. However, as identified by DBP, there is not enough information available to accurately determine whether forecast SUG costs increase or decrease. The ERA considers that while shippers are still requiring a full haul supply by contracting with producers in the Carnarvon Basin, these shippers would expect that any interruption caused by a supply interruption at Waitsia, however unlikely that may be, would not affect their supply. As a result, there might need to be some standby use of compressors.
691. The significant reduction in the dollar value of SUG determined for this final decision from 2023 of \$18.36 million to 2024 of \$13.73 million predominantly reflects the lower full haul equivalent throughput due to contracted part haul supply from the Perth Basin in 2024.
692. The ERA considers that based on the information available, the daily average SUG requirement for AA5 is [REDACTED] TJ/day.

System use gas – Price

693. As noted at paragraph 673, DBP stated that the forecast price for SUG was based on the weighted average price that it would achieve across its SUG supply contracts secured in the market and that this was consistent with the ERA's approach in AA4 to adopt the weighted average price of DBP's two SUG contracts.
694. For the draft decision, the ERA sought additional information from DBP. DBP noted that it required a firm supply to meet its commitments to provide pipeline services and therefore required a contract that incorporated obligations on the supplier to make certain quantities of firm gas available each day.

695. As was the case in AA4, two SUG contracts were put in place for AA5. These existing contracts were amended in 2019, modifying price, volumes and the term by extending the relevant supply period to the end of 2025.
696. For the AA5 period, DBP has a minimum and maximum daily expenditure for one of its contracts. While the [REDACTED] has no minimum daily expenditure, but it does have a maximum quantity, which is also the amount that DBP is required to request daily, although the [REDACTED] supplier is not obligated to supply.
697. In the draft decision, the ERA noted that DBP currently sourced its SUG from three suppliers, [REDACTED] and that [REDACTED] supplied its own portion of SUG based on its share of throughput.
698. The ERA determined in the draft decision, that for AA5, DBP's average daily SUG requirement would be [REDACTED].
699. In the draft decision, as was the case in AA4, the ERA determined the weighted average price of SUG by first using DBP's total daily requirement and removing the amount of SUG that was self-supplied. After removing the self-supply SUG, the remaining amount of SUG required was then assumed to be sourced from the lowest cost supplier based on supply availability up to the maximum daily quantity as set out in the contract. If this did not supply all the required SUG for the day, the remainder was supplied from the remaining contract.
700. The ERA determined that this SUG supply mix would result in the lowest average cost which would then be applied to the total daily requirement giving a weighted average price for SUG.
701. In DBP's initial tariff model for the AA5 period, DBP determined its weighted average price with the [REDACTED] supplying a fixed quantity each day for the AA5 period, implying there would be no days in which that contract did not provide the full quantity nominated by DBP.
702. In the draft decision, the ERA also modelled the supply of SUG on the same basis as DBP with the [REDACTED] supplying a fixed quantity each day when it was the lowest cost supplier.
703. The ERA determined, that for the first 3 years of AA5, DBP would source the fixed quantity from the [REDACTED] as the contract price is lower than that of the [REDACTED]. The remaining requirement of gas would then be sourced from the [REDACTED].
704. For the last two years of AA5, the [REDACTED] has a lower contract price than the [REDACTED]. As a result, the ERA determined that DBP would source the full contract quantity under its [REDACTED] with the remaining requirement of gas sourced from the [REDACTED].
705. Based on this supply mix of SUG, for the draft decision, the weighted average price of SUG in AA5 was [REDACTED]/GJ resulting in a total SUG expenditure for the AA5 period of \$122.07 million.
706. In its revised proposal, the DBP tariff model determined the weighted average price of SUG, taking into account the daily nomination it was required to make under the [REDACTED]. DBP then assumed a daily gas quantity from the [REDACTED], which was its minimum contract obligation. The cost of sourcing SUG from each supplier

was then determined by multiplying the applicable contract price by the supply from both contracts.

707. The weighted average price was then determined by totalling the cost of supply for both contracts and dividing this by the total supply. The average price was calculated for each year with the total supply remaining constant and the price from each supplier increasing as per the contract with DBP.
708. Using this method, DBP determined in its revised proposal that the weighted average price of SUG for AA5 would be [REDACTED]/GJ.
709. The ERA has reviewed DBP's revised proposal for SUG. The ERA notes that DBP has determined the weighted average cost of SUG using a method that is not consistent with the ERA's AA5 draft decision and AA4 final decision.
710. As set out above in paragraphs 699 to 700, for the final decision, the ERA has determined a SUG supply mix that results in the lowest average cost, and has then applied this to the average daily requirement of [REDACTED] TJ/day, giving a weighted average price for SUG.
711. The ERA has determined for the first three years of AA5 that, after deducting the supply from the self-supplied SUG, DBP would source a fixed supply from the [REDACTED] [REDACTED] as the contract price is lower than that of the [REDACTED]. The remaining requirement of gas would then be sourced from the [REDACTED].
712. For the last two years of AA5, the [REDACTED] has a lower contract price than the [REDACTED]. The ERA has determined that DBP would source the remaining requirement of SUG from the [REDACTED] after deducting the supply from the self-supplied SUG. As the remaining requirement is less than the maximum available under the [REDACTED], this would result in no gas being required to be sourced from the [REDACTED].
713. Based on this supply mix of SUG, the weighted average price of SUG in AA5 would be [REDACTED]/GJ resulting in a total SUG expenditure for the AA5 period of \$85.19 million.

Final decision conclusion

714. Following the reasoning and conclusions outlined in paragraphs 436 to 713, the ERA considers that DBP's forecast operating expenditure for AA5 that satisfies rules 74 and 91 of the NGR is \$426.62 million.
715. Table 45 sets out the ERA's draft decision operating expenditure forecast for AA5.

Table 45: ERA Final Decision determined AA5 operating expenditure (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Base year operating expenditure	60.90	60.90	60.90	60.90	60.90	304.49
<i>Add: bottom-up forecasts</i>						
System use gas	20.39	19.56	18.40	13.74	13.10	85.19
GEA/turbine overhauls	8.56	7.01	7.01	1.02	2.03	25.63
Capital expenditure to operating expenditure	2.25	1.87	2.14	2.12	1.83	10.21
Equals: Baseline forecast operating expenditure	92.10	89.33	88.45	77.77	77.87	425.51
<i>Add: Real labour cost escalation</i>						
Labour Cost	0.11	0.17	0.22	0.28	0.33	1.11
Equals: Baseline forecast operating expenditure including labour cost escalation	92.21	89.50	88.67	78.05	78.20	426.62
<i>Minus: Productivity growth factor</i>						
Productivity factor	0.00	0.00	0.00	0.00	0.00	0.00
Equals: Total operating expenditure	92.21	89.50	88.67	78.05	78.20	426.62

Source: ERA, Final decision AA5 operating expenditure model (confidential), February 2021.

Required Amendment 7

The operating expenditure for AA5 must be amended to \$426.62 million (real as at 31 December 2019). The calculation of operating expenditure is set out in Table 45 of this Final Decision

Opening capital base

716. Rule 77(2) of the NGR establishes the approach for determining the opening capital base for an access arrangement period that follows immediately on the conclusion of a preceding access arrangement period.

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, 84 or 86;

plus:

(c1) in relation to any existing extension specified in the extension and expansion requirements in accordance with rule 104(2), the following value:

(i) the cost of construction of the extension;

plus:

(ii) capital expenditure on the extension since construction of the extension;

less:

(iii) depreciation of the extension since the date the extension was commissioned; and

(iv) the value of pipeline assets constituting the extension disposed of since commissioning of the extension;

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.

717. Rule 79 of the NGR sets out the new capital expenditure criteria:

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; and

(b) the capital expenditure must be justifiable on a ground stated in subrule (2); and

(c) the capital expenditure must be for expenditure that is properly allocated in accordance with the requirements of subrule (6).

(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; and
 - (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) Conforming capital expenditure that is included in an access arrangement revision proposal must be for expenditure that is allocated between:
- (a) reference services;
 - (b) other services provided by means of the covered pipeline; and
 - (c) other services provided by means of uncovered parts (if any) of the pipeline,
- in accordance with rule 93.
718. Rule 93(2) of the NGR sets out the method for allocating costs between reference and other services:

93 Allocation of total revenue and costs

...

- (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].

719. All dollar amounts in this section are expressed in real dollars as at 31 December 2019 unless otherwise stated. The ERA has converted amounts supplied by DBP in real dollars as at 31 December 2020 using the inflation figures supplied by DBP. Where DBP provided amounts in real dollars as at 30 June 2019, the ERA has used the eight capital city weighted average Consumer Price Index published by the Australian Bureau of Statistics to convert to real dollars as at 31 December 2019.

DBP's initial proposal

720. DBP's initial proposed opening capital base for AA5 was \$3,329.03 million, derived as shown in Table 46.

Table 46: DBP's initial proposed AA5 opening capital base (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020
Opening capital base	3,724.25	3,637.05	3,553.51	3,467.05	3,391.99
Proposed conforming capital expenditure	18.10	24.41	22.24	27.30	29.57
Redundant and disposed assets	-	-	-	-	-
Depreciation	(105.29)	(107.95)	(108.69)	(102.36)	(92.52)
Closing capital base	3,637.05	3,553.51	3,467.05	3,391.99	3,329.03

Numbers may not add due to rounding.

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 13.1: Tariff Model, 28 May 2020.

721. DBP's initial proposed AA4 conforming capital expenditure comprised its actual capital expenditure for 2016 to 2018 and its forecast capital expenditure for 2019 and 2020.

722. As shown in Table 46, DBP's initial estimated capital expenditure was higher towards the end of AA4 than at the beginning. This increase was attributed to the capital expenditure for the 'Meter stations' business case, which was higher than expected due to three unforeseen events which required additional expenditure on meter stations assets, including an overpressure incident at a power station, identification of significant corrosion at a meter station facility and identification of unacceptable risks in the DBNGP's odorant system. These incidents and DBP's initial proposed 'Meter stations' capital expenditure are outlined at paragraphs 821 to 822.

723. DBP initially proposed \$122.27 million of conforming capital expenditure for AA4, which was \$8.90 million (7.85 per cent) higher than the capital expenditure included in the AA4 final decision forecast. The proposed capital expenditure was distributed between seven depreciable asset classes as shown in Table 47.

Table 47: Initial proposed conforming capital expenditure for AA4 by asset class (\$ million real as at 31 December 2019)

Proposed AA4 capital expenditure	
Pipeline	0.33
Compression	14.67
Metering	26.98
Computers and motor vehicles	17.56
Cathodic/corrosion protection	19.16
SCADA, electrical, control & instrumentation and communications	26.81
Other	16.76
Total	122.27

* SCADA is supervisory control and data acquisition.

Source: DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020, converted into dollars as at 31 December 2019 shown using the method outlined at paragraph 718. There is a small difference between the amounts shown in Table 47 and the capital expenditure included in the tariff model (Table 46) due to differences in the inflation assumptions applied to inflate nominal values to real values. This difference was advised in DBP, Response to information request ERA 18, 29 May 2020.

724. The seven depreciable asset classes shown in Table 47 comprised the four asset classes included in DBP's current access arrangement and three new asset classes proposed by DBP for AA5.
725. The four asset classes included in DBP's current access arrangement were:
- Pipelines
 - Compression
 - Metering
 - Other.
726. The three new asset classes proposed by DBP for AA5 were:
- Computers and motor vehicles
 - Cathodic/corrosion protection
 - SCADA, electrical, control & instrumentation and communications.
727. DBP provided examples of the types of assets and scope of the categories, which are shown in Table 48.

Table 48: DBP proposed AA5 asset categories

Asset category	Scope of category	Examples of assets
Pipelines	Pipeline system except for those assets included within any of the other categories.	Pipelines Mainline valves
Compression	Assets at a compressor site associated with the compression of natural gas, except for assets in the 'Computers and motor vehicles', 'Cathodic/corrosion protection', 'SCADA, electrical, control & instrumentation and communications' or 'Other' categories.	Compressors and associated rotating equipment Gas cooling equipment Inlet scrubbers Gas / diesel engine alternators Housing / other facilities associated with compressor site (excluding communications / electrical)
Metering	Assets at a metering site associated with the receipt, delivery, measurement and/or odourisation of natural gas, except for assets in the 'Computers and motor vehicles', 'Cathodic/corrosion protection', 'SCADA, electrical, control & instrumentation and communications' or 'Other' categories.	Meters Pressure reduction equipment, including gas heaters Odorant injection facilities
Computers and motor vehicles	Personal computers and personal electrical devices, software development and implementation and motor vehicles and like equipment.	Personal computers and other portable electronic devices Telephones Software development / implementation Vehicles and lifting equipment for maintenance and administration (including fit-out)
Cathodic/corrosion protection	Assets and activities for the prevention and/or control of corrosion to pipeline assets.	Intelligent pigging* Dig-ups / inspections Earthing Transformer rectifier units Sacrificial anodes Insulation joints / insulating gaskets Painting
SCADA, electrical, control & instrumentation and communications	Assets associated with the supervision, monitoring and control of equipment and associated hazard detection systems. Communications networks. Electrical systems, except for compressor-site generators.	SCADA system Control systems, including instrumentation, programmable logic controllers and human machine interfaces Communications infrastructure, including microwave network fibre Electrical infrastructure, including switching, transformers, load banks and batteries and chargers (excluding compressor-site generators) Fire and gas detection equipment

Asset category	Scope of category	Examples of assets
Other	Assets that do not fit into the other categories	Office fit-outs and office equipment Staff amenities Tools Capitalised management activities / initiatives Equipment storage

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 9.4: Review of Asset Recategorisation (public), January 2020, Appendix A, pp. 16-17.

*DBP proposed that intelligent pigging will be treated as operating expenditure during AA5.

728. DBP proposed to reclassify some of its capital expenditure incurred during and since 2005 into the three new asset classes from the commencement of AA5. DBP proposed that the historical depreciation of the regulatory asset base up to the start of AA5, and the total size of the regulatory asset base at the beginning of AA5, would be unchanged by its proposed reclassification of assets.²⁰¹
729. DBP's initial proposed capital expenditure comprised expenditure for 104 projects. DBP submitted that the work carried out under these projects was driven by stay-in-business requirements that focussed on maintaining or improving DBP's ability to deliver current reference services through the DBNGP.²⁰² These projects were allocated into business cases according to the asset to which the project-level expenditure related. DBP's initial proposed capital expenditure for AA4 was distributed across 27 business cases.
730. Table 49 shows the variance between DBP's initial proposed AA4 capital expenditure and the AA4 final decision forecast at a business case level.

Table 49: Variance between AA4 final decision forecast capital expenditure and DBP's initial proposed capital expenditure by business case (\$ million real as at 31 December 2019)

Business case	AA4 final decision forecast (A)	Proposed capital expenditure (B)	Variance (B minus A)
Compressor stations	43.46	25.81	(17.65)
Pipeline and mainline valves	7.30	6.22	(1.09)
SCADA	0.04	1.85	1.81
Health, safety and environment	0.61	0.18	(0.44)
Gas engine alternator control system replacement	5.85	0.47	(5.38)
Compressor station accommodation	9.57	2.47	(7.09)
Compressor package control system replacement	3.11	6.47	3.35

²⁰¹ The ERA's draft decision on DBP's proposed reclassification of its regulatory assets into new asset classes is outlined at paragraphs 1312 to 1319 of this final decision (paragraphs 914 to 947 of the draft decision).

²⁰² DBP, 2021-2025 Final Plan, January 2020, p. 73.

Business case	AA4 final decision forecast (A)	Proposed capital expenditure (B)	Variance (B minus A)
Jandakot site redevelopment	0.02	0.52	0.51
Maximo and DMZ	0.00	1.37	1.37
Safety case revisions	0.00	0.45	0.45
Compressor station inspection	0.02	2.59	2.57
Asset management	2.90	2.69	(0.21)
Meter stations	8.00	26.23	18.23
Tools	1.14	1.23	0.09
Fleet and civil equipment	3.84	5.23	1.39
Turbine exhaust replacement*	1.78	0.00	(1.78)
Pipeline mainline valve inspection	11.84	12.96	1.12
Customer reporting system	0.76	0.84	0.08
IT sustaining applications	2.89	6.58	3.68
IT security	0.00	1.41	1.41
Process safety	0.00	0.04	0.04
Decommissioning	0.12	0.15	0.03
Communications	0.79	2.34	1.55
Office relocation	0.00	4.19	4.19
Southern communications upgrade	2.04	6.91	4.86
CS1 compressor re-wheeling	6.21	1.26	(4.95)
IT sustaining infrastructure	1.07	1.81	0.74
Total	113.37	122.27	8.90

Numbers may not add due to rounding.

*DBP advised that the capital expenditure incurred for the 'Turbine exhaust replacement' business case during AA4 was captured under the reported expenditure for the 'Compressor stations' business case according to the source used to derive Table 49. The zero expenditure shown in Table 49 for the 'Turbine exhaust replacement' business case is therefore the result of a change in reporting structure rather than being an accurate expenditure amount. The initially proposed conforming capital expenditure for the 'Turbine exhaust replacement' business case is nonetheless discussed at paragraphs 837 to 839.

Source: Based on Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020, converted into dollars as at 31 December 2019 shown using the method outlined at paragraph 718.

731. DBP attributed most of the variance between its initially proposed capital expenditure for AA4 and the AA4 final decision forecast to unforeseen incidents that required it to reprioritise its capital expenditure to metering assets (captured in the 'Meter stations' business case) from other assets, most significantly the 'Compressor stations'

business case. These incidents are outlined at paragraph 822 and include an overpressure incident at a power station receiving gas from the DBNGP, identification of significant corrosion at a meter station facility and identification of unacceptable risks in the DBNGP odorant system following odorant spill events. DBP did not expect that the additional work undertaken due to these incidents would be required during AA5.²⁰³

732. Other significant sources of the variance between the initially proposed AA4 conforming capital expenditure and the AA4 final decision forecast were the following business cases:
- ‘Southern communications upgrade’ (\$4.86 million overspend) – Discussed at paragraphs 907 to 917. DBP attributed the overspend to a change in commercial circumstances during AA4 which resulted in DBP deciding it would be more cost-effective to construct its own towers and infrastructure to host communications equipment on the southern part of the DBNGP. This is an expansion to the original scope of the business case, which assumed that the equipment would continue to be hosted on third-party-owned infrastructure.
 - ‘Office relocation’ – Discussed at paragraphs 896 to 906. The work covered by this business case was not included in the AA4 final decision capital expenditure forecast. DBP decided to pursue this work during AA4 as its cost analyses showed that relocating to new premises would be more cost-effective than remaining at its existing premises.
 - ‘IT sustaining applications’ (\$3.68 million overspend) – Discussed at paragraphs 853 to 869. DBP submitted that the overspend on this business case, and the increase in its IT expenditure generally during AA4 and its planned increased IT expenditure during AA5, was driven by a heightened IT threat environment, including increased cyber threats.
733. The overspend on some business cases was offset by underspend on other business cases where DBP was either able to prudently defer work or undertake work at a lower cost than forecast. Significantly, DBP pursued an alternative option to the work originally planned for the ‘Compressor station accommodation’ business case, resulting in the capital expenditure for this business case being \$7.09 million less than the forecast amount. Other business cases where DBP was able to identify work that could be prudently deferred until a later access arrangement period include ‘Compressor stations’, ‘Pipeline and mainline valves’, ‘Gas engine alternator control system replacement’, ‘Turbine exhaust replacement’ and ‘CS1 compressor re-wheeling’.
734. DBP advised that it allocated costs between the regulated (that is, DBP) and non-regulated business entities of Australian Gas Infrastructure Group (AGIG) through operational accounting procedures and few capital costs were incurred which were shared between AGIG’s regulated and non-regulated business entities. Of its AA4 capital expenditure, DBP identified two project costs that were “shared costs” allocable to both DBP and non-regulated AGIG business entities. DBP excluded the shared costs allocable to non-regulated AGIG business entities from its initial proposed AA4 capital expenditure.²⁰⁴

²⁰³ DBP, *DBNGP Access Arrangement 2021-25, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 229.

²⁰⁴ DBP, *Response to information request ERA 27 (part 1), attachment ERA27.3 v2*, 15 July 2020. The combined value of the shared capital expenditure costs allocated to non-reference services was \$180,577 (real dollars as at 30 June 2019).

735. DBP further advised that, of its capital expenditure for pipeline services, where it was possible for capital expenditure for non-reference services to be directly attributed to an individual shipper, those costs were allocated directly to that shipper.²⁰⁵ Otherwise, DBP did not supply information that showed that it had made any allocation of shared capital expenditure for pipeline services between reference and non-reference services.²⁰⁶

Draft decision

736. In its draft decision, the ERA assessed DBP's initial proposed opening capital base for AA5 according to rules 77 and 79 of the NGR. Determining DBP's opening capital base for AA5 included an assessment of:
- DBP's conforming capital expenditure in AA4, including the allocation of capital expenditure between reference and non-reference services.
 - The depreciation of DBP's regulatory asset base.
 - Assessing DBP's general method of calculating the capital base.
737. The opening capital base at the commencement of AA4 included only actual capital expenditure incurred for the regulated assets on the DBNGP up to the commencement of AA4, and did not include any estimated capital expenditure. The calculation of the opening capital base for AA5 in the draft decision therefore did not include an adjustment for any benefit or penalty associated with any difference between the estimated and actual capital expenditure for AA3, as would be required by rule 77(2)(a) of the NGR if such a benefit or penalty existed.
738. Rule 79(6) of the NGR provides for capital expenditure to be allocated between reference services, other covered pipeline services and other uncovered pipeline services (if any). In each case, the allocation must be made in accordance with rule 93.
739. As stated at paragraphs 734 and 735, DBP confirmed that it allocated expenditure between the regulated and non-regulated business entities of AGIG in accordance with its operational accounting procedures. Where capital expenditure for non-reference services can be directly attributed to an individual shipper, those costs are allocated directly to that shipper.
740. DBP's initial proposal did not indicate any further allocation of capital expenditure between reference and non-reference services. Rather, DBP submitted that the allocation of all capital expenditure to reference services, other than costs directly attributable to non-reference services, was consistent with rule 94(3) of the NGR.²⁰⁷ Rule 94(3) reads as follows:

94 Tariffs – distribution pipeline

...

- (3) For each tariff class, the revenue expected to be recovered should lie on or between:

²⁰⁵ DBP, *Response to information request ERA 29*, 21 July 2020. The combined value of the shared capital expenditure costs allocated to non-reference services was \$180,577 (real dollars as at 30 June 2019).

²⁰⁶ Details of DBP's allocations of costs between regulated and unregulated assets were requested in information requests EMCa 47 (1 April 2020), ERA 27 (9 July 2020) and ERA 29 (17 July 2020).

²⁰⁷ DBP, *Response to information request ERA 29*, 21 July 2020.

- (a) an upper bound representing the stand alone cost of providing the reference service to customers who belong to that class; and
 - (b) a lower bound representing the avoidable cost of not providing the reference service to those customers.
741. The ERA considered that rule 94(3) of the NGR, which sets out the principles for determining tariff classes and tariff charges for *distribution pipelines*, is not relevant for determining the allocation of capital expenditure between reference services and other (non-reference) services.
742. The ERA determined that the relevant provisions for determining the allocation of capital expenditure between reference services and non-reference services are set out in rules 79(6) and 93(2) of the NGR. The ERA considered that rules 79(6) and 93(2) of the NGR:
 - Require capital expenditure that is directly attributable to reference services or non-reference services to be allocated to those services.
 - Require capital expenditure that cannot be directly attributed (that is, shared expenditure for the provision of both reference and non-reference services) to be allocated on a basis determined or approved by the ERA.
743. The ERA determined that the best allocation of capital expenditure that was for the provision of reference and non-reference services is calculated by an allocation of total revenue. The ERA was satisfied that this approach is consistent with the revenue and pricing principles and the national gas objective and is the best basis for allocation in the circumstances. The ERA considered the allocation of total revenue at paragraphs 1183 to 1191 of the draft decision (paragraphs 1837 to 1845 of this decision).
744. The ERA assessed DBP's initially proposed AA4 capital expenditure for each business case. The ERA concluded that DBP's conforming capital expenditure should be \$118.19 million during AA4, \$4.08 million less than DBP's initial proposal. The draft decision conforming capital expenditure for AA4 by asset class is shown in Table 50. The 2016, 2017 and 2018 conforming capital expenditure was determined based on actual expenditure and the 2019 and 2020 conforming capital expenditure was based on estimates. The ERA's draft decision considerations are summarised as part of the ERA's final decision considerations.

Table 50: AA5 draft decision - AA4 conforming capital expenditure by asset class (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
Compression	2.53	4.76	2.88	1.99	2.51	14.67
Computers and motor vehicles	2.58	2.51	3.84	3.01	1.55	13.47
Cathodic protection	0.88	1.57	4.90	7.50	4.32	19.16
Metering	3.48	3.65	6.88	6.16	6.81	26.98
Other	2.38	4.96	1.77	2.48	5.17	16.76
Pipeline	-	-	0.09	0.01	0.24	0.33
SCADA, electrical, control and instrumentation and communications	5.49	6.42	2.91	6.27	5.71	26.81
Total	17.34	23.85	23.27	27.41	26.31	118.19

Numbers may not add due to rounding.

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, 14 August 2020, p. 127, Table 54, based on ERA, Draft decision AA4 capital expenditure model (confidential), August 2020.

745. The draft decision values for calculating the opening capital base for DBP's AA5 period are shown in Table 51. Required amendment 10 from the draft decision, replicated below, required that DBP amend its opening capital base according to the values set out in Table 51 (Table 55 of the draft decision).

Table 51: Draft decision – Opening capital base at 1 January 2021 (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020
Opening capital base AA4	3,726.32	3,638.30	3,554.14	3,468.66	3,393.65
Plus: Conforming capital expenditure	17.34	23.85	23.27	27.41	26.31
Less: Depreciation	(105.35)	(108.01)	(108.75)	(102.42)	(92.58)
Less: Asset disposals	-	-	-	-	-
Opening capital base for AA5	3,638.30	3,554.14	3,468.66	3,393.65	3,327.39

Numbers may not add due to rounding.

Source: Reproduced from ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, 14 August 2020, p. 127, Table 55; which was sourced from ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 14 August 2020

Draft Decision Required Amendment 10

DBP must amend the opening capital base at 1 January 2021 to \$3,327.39 million (real as at 31 December 2019). The calculation of the opening capital base is set out in Table 55 of the draft decision [Table 51 of this final decision].

DBP's response to the draft decision

746. DBP's revised proposed opening capital base for AA5 was \$3,351.58 million, derived as shown in Table 52.

Table 52: DBP's revised proposed AA5 opening capital base (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020
Opening capital base	3,749.53	3,661.75	3,577.64	3,490.60	3,413.79
Proposed conforming capital expenditure	18.22	24.57	22.39	26.26	30.94
Redundant and disposed assets	-	-	-	-	-
Depreciation	-106.01	-108.69	-109.43	-103.06	-93.15
Closing capital base	3,661.75	3,577.64	3,490.60	3,413.79	3,351.58

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 13.1: Tariff Model, 28 May 2020.

747. The difference between DBP's initial and revised proposed opening capital bases for AA5 is due to:

- Differences between DBP's initial and revised proposed capital expenditure for AA4 arising from including DBP's actual 2019 expenditure in the revised proposed capital expenditure rather than its forecast 2019 expenditure and minor updates to its forecast 2020 expenditure. For all of the business cases except 'IT sustaining applications' these differences do not reflect a significant change in the scope of the work covered by the expenditure.
- Replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

748. DBP's revised proposed AA4 conforming capital expenditure comprised its actual capital expenditure for 2016 to 2019 and its forecast capital expenditure for 2020. DBP's initial proposed AA4 conforming capital expenditure comprised its actual capital expenditure for 2016 to 2018 and its forecast capital expenditure for 2019 and 2020.

749. The differences between DBP's initial and revised proposed conforming capital expenditure are small. The reasons for the variations for each business case are outlined in the final decision assessment of capital expenditure (paragraphs 753 to 933).

750. DBP accepted the ERA's draft decision in principle for all the business cases except 'IT sustaining applications'. For all AA4 business cases except 'IT sustaining applications' the only difference between DBP's revised proposed capital expenditure and the draft decision amounts arises from the use of DBP's actual capital expenditure in 2019 and small updates to the forecast amounts for 2020. For the 'IT sustaining applications' business case, the difference between the initial and revised proposal reflects a change in the scope of the work, outlined at paragraphs 861 to 865. The revised proposed amount for each business case is shown in Table 53.

Table 53: Revised proposed capital expenditure by business case (\$ million real as at 31 December 2019)

Business case	Revised proposed capital expenditure
Compressor stations	25.53
Pipeline and mainline valves	6.14
SCADA	1.95
Health, safety and environment	0.32
Gas engine alternator control system replacement	0.51
Compressor station accommodation	2.51
Compressor package control system replacement	6.43
Jandakot site redevelopment	0.53
Maximo and DMZ	1.28
Safety case revisions	0.45
Compressor station inspection	2.82
Asset management	2.94
Meter stations	27.02
Tools	1.22
Fleet and civil equipment	5.29
Turbine exhaust replacement	0.23
Pipeline mainline valve inspection	12.52
Customer reporting system	0.64
IT sustaining applications	6.67
IT security	1.15
Process safety	0.04
Decommissioning	0.15
Communications	2.38
Office relocation	4.21
Southern communications upgrade	6.92
CS1 compressor re-wheeling	1.27
IT sustaining infrastructure	1.84
Total	122.96

Source: DBP, Response to information request ERA 32, 21 October 2020.

Submissions to the ERA

751. The ERA did not receive any submissions in response to the issues paper which specifically addressed DBP's initially proposed capital expenditure for AA4.
752. In response to the draft decision Gas Trading Australia Pty Ltd (gasTrading) submitted that it was supportive of Amendment 10 of the draft decision.²⁰⁸

Final decision

Assessment of capital expenditure

753. The ERA's draft decision assessment of DBP's AA5 opening capital base considered:²⁰⁹
- The criteria for conforming capital expenditure set out at rule 79 of the NGR.
 - DBP's governance and investment management framework and how DBP applied that framework to its AA4 capital expenditure.
 - Technical advice received from Energy Market Consulting associates (EMCa).
 - The information supplied by DBP to explain the variations between its actual expenditure and forecast capital expenditure for AA4.
754. The ERA's final decision assessment of DBP's revised proposal for its AA5 opening capital base takes into account the above-listed points, the public submissions in response to the draft decision and technical advice provided by EMCa on DBP's revised proposal.²¹⁰

Compressor stations business case

755. DBP's initial proposal included \$25.81 million of conforming capital expenditure for the 'Compressor station' business case for AA4. This was \$17.65 million less than the amount included in the AA4 final decision forecast for this business case.
756. The work covered by the business case included expenditure on 42 projects for preventative work and the replacement and upgrade of equipment at compressor stations on the DBNGP.²¹¹ Due to a change in reporting structure the proposed capital expenditure also included expenditure incurred for a single project undertaken for the 'Turbine exhaust replacement' business case.
757. DBP submitted that its initially proposed AA4 capital expenditure for the 'Compressor station' business case was below the AA4 final decision forecast because DBP redirected its resources due to other priorities that emerged during AA4. Specifically, this included three incidents relating to 'Metering' assets which occurred during AA4 outlined at paragraph 822. In response to these incidents DBP made significant changes to its overall capital works program, including deferring some projects from the 'Compressor stations' program in order to accommodate the higher spend on metering. One significant project that it deferred was installation of fire suppressant

²⁰⁸ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

²⁰⁹ These considerations were outlined at paragraphs 444 to 464 of the draft decision.

²¹⁰ This technical advice is outlined in EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021.

²¹¹ DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

systems at some of its compressor stations.²¹² The AA4 final decision capital expenditure forecast included \$2.57 million for this project.

758. The ERA considered that DBP's ability to defer a large portion of the planned work for the 'Compressor stations' business case during AA4 is indicative of an overstatement of the need and necessary scope for this work in DBP's forecasts of its AA4 capital expenditure. The ERA took into account technical advice from its consultant, EMCa, that DBP's deferral of a large portion of its planned 'Compressor stations' work suggested that DBP has overstated the individual and collective risk of the assets covered by DBP's AA4 'Compressor stations' projects and/or DBP proposed undertaking low risk projects unnecessarily.²¹³ This point was a relevant consideration when evaluating DBP's initially proposed capital expenditure for the 'Compressor stations' business case for AA5 for the draft decision.
759. In the draft decision, the ERA was satisfied that the capital expenditure for the work covered by the 'Compressor stations' business case during AA4 was incurred efficiently and would have been incurred by a prudent service provider acting in accordance with accepted good industry practice and was necessary to maintain and improve the safety of services. DBP's deferral of a large portion of the planned work indicated that it reassessed the need to undertake the work covered by this business case due to competing capital expenditure priorities that emerged during AA4, particularly for assets within the 'Metering' asset class. The ERA considered that this is consistent with the actions of a prudent service provider. The ERA took into account EMCa's opinion that DBP's governance process means that this expenditure was likely incurred at reasonable cost and would likely have been undertaken by a prudent operator.²¹⁴
760. In the draft decision, the ERA concluded that the proposed capital expenditure for the 'Compressor stations' business case was conforming capital expenditure according to rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 54.
761. DBP's revised proposal included \$25.47 million of capital expenditure for the 'Compressor stations' business case, which was \$0.34 million less than in its initial proposal. The difference is due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure and replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms for the revised proposal.
762. The ERA considers that the work included in the revised 'Compressor stations' business case for AA4 was necessary to maintain and improve the safety of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$25.47 million for the revised 'Compressor stations' business case during AA4. The ERA therefore concludes that \$25.47 million satisfies the

²¹² DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, pp. 12-13.

²¹³ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 108.

²¹⁴ EMCa based this recommendation on its views that DBP's procurement practices were commensurate with good industry practice and that DBP's risk ranking tool was a satisfactory means of prioritising and re-prioritising work. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 108.

requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 54.

Table 54: AA5 final decision - AA4 conforming capital expenditure for the Compressor stations business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	5.53	7.32	3.92	4.60	4.44	25.81
Draft decision	5.53	7.32	3.92	4.60	4.44	25.81
DBP revised proposal	5.55	7.35	3.94	4.61	4.02	25.47
Final decision	5.55	7.35	3.94	4.61	4.02	25.47

Numbers may not add due to rounding.

Notes: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms. The proposed and conforming capital expenditure shown for the 'Compressor stations' business case also includes the AA4 conforming capital expenditure for the 'Turbine exhaust' business case, as detailed at paragraphs 756 and 837 to 839 (paragraphs 466 and 517 to 520 of the draft decision).

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential, 21 October 2020.

Pipeline and mainline valves

763. DBP initially proposed \$6.22 million of conforming capital expenditure for the 'Pipeline and mainline valves' business case for AA4. This was \$1.09 million less than the amount included in the AA4 final decision forecast for this business case.

764. DBP's initially proposed AA4 capital expenditure included expenditure on 19 projects under the 'Pipeline and mainline valves' business case during AA4, while only nine projects were included in the AA4 final decision forecast. Projects accounting for a large portion of the initially proposed capital expenditure for this business case included:

- An extensive rectification program to manage pipeline interface corrosion identified during additional inspections.
- The installation of fixed platforms at sites to comply with legislation.²¹⁵

765. DBP attributed the lower than forecast spend at the business case level to several efficiencies and prudent deferrals it identified during AA4, submitting that these efficiencies and deferrals enabled it to redeploy resources to undertake projects not included in the AA4 final decision forecast, for example:

- A project to address the poor performance of batteries was completed more efficiently than forecast by applying a technical solution not originally thought possible.

²¹⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 59. DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

- The replacement of solar panels due for replacement during AA4 was deferred because the performance of the existing solar panels continued to satisfy performance criteria.²¹⁶
766. In the draft decision, the ERA concluded that the work undertaken as part of the 'Pipeline and mainline valves' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain the safety and integrity of services on the DBNGP and to comply with DBP's regulatory obligations. The ERA's conclusion was based on technical advice that the projects undertaken during AA4 were commensurate with good industry practice and DBP's regulatory obligations and the costs incurred for the work were reasonable.²¹⁷ The ERA therefore included \$6.22 million of capital expenditure for the 'Pipeline and mainline valves' business case in DBP's opening capital base for AA5 as shown in Table 55.
767. DBP's revised proposal included \$6.13 million of capital expenditure for 18 projects for the 'Pipeline and mainline valves' business case, which was \$0.09 million less than the initial proposal. Capital expenditure for one project that was included in the initial proposal was not included in the revised proposal.²¹⁸
768. The ERA considers that the work included in the revised 'Pipeline and mainline valves' business case for AA4 was necessary to maintain the safety and integrity of services on the DBNGP and to comply with DBP's regulatory obligations. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$6.13 million for the 'Pipeline and mainline valves' business case during AA4. The ERA therefore concludes that \$6.13 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 55.

Table 55: AA5 final decision - AA4 conforming capital expenditure for the Pipeline and mainline valves business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.62	1.74	1.36	1.15	1.35	6.22
Draft decision	0.62	1.74	1.36	1.15	1.35	6.22
DBP revised proposal	0.62	1.75	1.37	0.98	1.42	6.13
Final decision	0.62	1.75	1.37	0.98	1.42	6.13

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

SCADA business case

769. DBP initially proposed \$1.85 million of conforming capital expenditure for its 'SCADA' business case for AA4. This was \$1.81 million above the amount included in the AA4

²¹⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 12-13.

²¹⁷ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraphs 251, 261 and 268.

²¹⁸ This project was 'Retuning CP after DCVG and COPS'.

final decision forecast for this business case. The AA4 final decision capital expenditure forecast included only \$0.04 million for one project, 'Alarm management for compressor stations'.

770. The initially proposed capital expenditure for the 'SCADA' business case included expenditure for:

- Hardware replacement, including replacement of servers, firewall and switches. DBP submitted that this expenditure was driven by the vendor for this hardware upgrading their operating systems from 32-bit to 64-bit systems which consequently required all DBNGP servers to be replaced with 64-bit equivalents.
- Master station security and resilience to protect the DBNGP from external disturbances. DBP submitted that it incurred this expenditure in response to audit findings on the resilience of its operational technology system.
- Simulation hardware, which DBP submitted enabled the operation of compressors to be simulated and changes to be made without compromising the integrity of the DBNGP's operating systems. DBP stated that it adopted these simulation exercises as part of a process safety initiative.²¹⁹

771. In the draft decision, the ERA concluded that the work undertaken as part of the 'SCADA' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services, as well as maintain the integrity of services on the DBNGP. This view was based on technical advice from EMCa that:

- DBP's upgrade of its existing servers to 64-bit servers was reasonable to undertake for the operational integrity of the SCADA system on the DBNGP, given the untreated risk ranking of this work.
- The AA4 expenditure on master station security and resilience was reasonable to undertake given the untreated risk ranking of this work. The audit findings which DBP cited as driving this expenditure indicated DBP has significant gaps when assessed against the Australian Energy Sector Cyber Security Framework, a globally adopted industry standard, which is an appropriate reference for DBP to evaluate its master station security.
- The simulation hardware purchases were reasonable to undertake.²²⁰

772. In the draft decision, the ERA concluded that the initially proposed capital expenditure for the 'SCADA' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 56.

773. DBP's revised proposal included \$1.95 million of capital expenditure for the 'SCADA' business case. The difference between the initial and revised proposal (\$0.10 million) was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure reflecting an increase in spending for hardware replacement and master station security resilience.²²¹

²¹⁹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 88.

²²⁰ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 108-109.

²²¹ DBP, *Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005)*, 21 October 2020.

774. The ERA considers that the work included in the revised 'SCADA' business case for AA4 was necessary to maintain and improve the safety of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.95 million for the SCADA business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'SCADA' business case can be considered to have resulted from prudent operational decisions.²²² The ERA therefore concludes that \$1.95 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 56.

Table 56: AA5 final decision - AA4 conforming capital expenditure for the SCADA business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2018	2020	AA4 total
DBP initial proposal	0.16	0.56	0.57	0.46	0.10	1.85
Draft decision	0.16	0.56	0.57	0.46	0.10	1.85
DBP revised proposal	0.16	0.56	1.57	0.45	0.21	1.95
Final decision	0.16	0.56	1.57	0.45	0.21	1.95

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Health, safety and environment business case

775. DBP initially proposed \$0.18 million of conforming capital expenditure for its 'Health, safety and environment' business case for AA4. This was \$0.44 million less than the amount included in the AA4 final decision forecast for this business case. DBP submitted that it set aside an amount every year to undertake reactive 'Health, safety and environment' projects and that during AA4 the full amount of the forecast 'Health, safety and environment' forecast capital expenditure was not used because fewer reactive projects came up than expected.²²³

776. DBP submitted that the scope of the work covered by the initially proposed capital expenditure included the following initiatives:

- Marking up drawings to identify all confined space locations along the DBNGP.
- The purchase of purpose-designed equipment for compressor stations, as well as the purchase of additional navigation devices.
- Installation of the contractor training management system.

²²² EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

²²³ DBP, Response to information request EMCa 01, 13 February 2020.

- The completion of heat stress monitoring work.²²⁴
777. In the draft decision, the ERA concluded that the work undertaken for the ‘Health, safety and environment’ business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services on the DBNGP. This conclusion was based on information supplied by DBP describing the work undertaken and technical advice that the costs incurred were likely reasonable.²²⁵ The ERA therefore included \$0.18 million of capital expenditure for the ‘Health, safety and environment’ business case in DBP’s opening capital base for AA5 as shown in Table 57.
778. DBP’s revised proposal included \$0.31 million of capital expenditure for the ‘Health, safety and environment’ business case. The difference between the initial and revised proposal (\$0.14 million) was due to some additional work being conducted including the purchase of equipment and work to address risks to health and safety arising from the Coronavirus pandemic.²²⁶
779. The ERA considers that the work covered by the revised ‘Health, safety and environment’ business case for AA4 was necessary to maintain and improve the safety of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.31 million for the revised ‘Health, safety and environment’ business case during AA4.²²⁷ This view is supported by technical advice that the increase in the proposed capital expenditure for the ‘Health, safety and environment’ business case can be considered to have resulted from prudent operational decisions.²²⁸ The ERA therefore concludes that \$0.31 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP’s opening capital base for AA5 as shown in Table 57.

²²⁴ DBP, Response to information request ERA 21, 5 June 2020.

²²⁵ DBP, Response to information request ERA 21, 5 June 2020; Energy Market Consulting Associates, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 264.

²²⁶ DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005), 21 October 2020; DBP, Response to information request EMCa 43, 8 April 2020.

²²⁷ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

²²⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 57: AA5 final decision - AA4 conforming capital expenditure for the Health, safety and environment business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	(0.00)	0.10	0.06	0.02	0.00	0.18
Draft decision	(0.00)	0.10	0.06	0.02	0.00	0.18
DBP revised proposal	(0.00)	0.10	0.06	0.09	0.07	0.31
Final decision	(0.00)	0.10	0.06	0.09	0.07	0.31

Numbers may not add due to rounding.

Notes: DBP's initial and revised proposals included small negative amounts for 2016. The amounts show as zero in the table because of rounding. The negative amounts for 2016 reflected a reversal of the provision for materials and services costs for the business case.

Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020. DBP, Response to information request 40, 29 January 2021.

Gas engine alternator control system replacement business case

780. DBP initially proposed \$0.47 million of conforming capital expenditure for its 'Gas engine alternator' business case for AA4. This was \$5.38 million less than the amount included in the AA4 final decision forecast for this business case. The proposed capital expenditure comprised the cost of one project where a gas engine alternator's performance was deteriorating and required replacement of critical components that could not be deferred.²²⁹
781. DBP submitted that its actual AA4 capital expenditure for the 'Gas engine alternator' business case was below forecast because it reprioritised its resources according to needs which emerged in its other work programs and because it was able to prudently defer most of the gas engine alternator program during AA4. DBP stated that its decision to extend the life of the assets covered by the 'Gas engine alternator' business case was based on an assessment of the assets' performance during AA4.²³⁰
782. In the draft decision, the ERA concluded that the work undertaken for the gas engine alternator business case during AA4 was undertaken efficiently and was necessary to maintain and improve the safety as well as maintain the integrity of services on the DBNGP. DBP's revisions to the original scope of the work demonstrated that DBP prudently deferred work where it identified this was possible and in line with good industry practice, and as a result DBP delivered the 'Gas engine alternator' business case for less than the forecast amount for AA4.²³¹ The ERA concluded that the initial proposed capital expenditure for the 'Gas engine alternator' business case for AA4

²²⁹ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, p. 103.

²³⁰ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, pp. 102-103.

²³¹ The ERA's view on this point was supported by EMCa's technical advice that DBP's decision to defer most of the gas engine alternator program was consistent with the actions of a prudent operator. Energy Market Consulting Associates, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraph 272.

satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in the opening capital base for AA5 as shown in Table 58.

783. DBP's revised proposal included \$0.51 million of capital expenditure for the 'Gas engine alternator' business case. The difference between the initial and revised proposal (\$0.04 million) was due to the payment of a missing invoice and cost adjustments for the work undertaken for this business case in 2017.²³²
784. The ERA considers that the work included in the revised 'Gas engine alternator' business case for AA4 was necessary to maintain and improve the safety as well as maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.51 million for the revised 'Gas engine alternator' business case during AA4. The ERA therefore concludes that \$0.51 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 58.

Table 58: AA5 final decision - AA4 conforming capital expenditure for the Gas engine alternator business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.03	0.44	0.00	0.00	0.00	0.47
Draft decision	0.03	0.44	0.00	0.00	0.00	0.47
DBP revised proposal	0.03	0.44	0.00	0.05	0.01	0.51
Final decision	0.03	0.44	0.00	0.05	0.01	0.51

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Compressor station accommodation business case

785. DBP initially proposed \$2.47 million of conforming capital expenditure for its 'Compressor station accommodation' business case for AA4. This was \$7.09 million less than the amount included in the AA4 final decision forecast for this business case.
786. The initially proposed conforming capital expenditure for AA4 for the 'Compressor station accommodation' business case comprised the cost of refurbishing bathrooms and kitchens, replacing carpet, paint and curtains, and building, installing and equipping fitness rooms at compressor stations on the DBNGP.²³³ The scope of work covered by the AA4 final decision capital expenditure forecast included shifting the existing compressor station accommodation on the DBNGP to outside of the

²³² DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005), 21 October 2020.

²³³ DBP, 2021-2025 Final Plan: Attachment 8.5 Capex Business Cases (public), January 2020, pp. 123-124.

compressor station facilities.²³⁴ DBP submitted that the initially proposed capital expenditure for the project was below the AA4 final decision forecast because it did not shift the accommodation outside of the DBNGP's compressor station facilities due to the high cost of acquiring land for this purpose, which was far more costly than initially estimated. Additionally, DBP submitted that it undertook several initiatives to improve its compressor station accommodation that were more cost-effective than the work originally planned, including:

- Upgrading to newer technologies including silencing material such as mufflers, centralised air-conditioning and other heat mitigation projects.
- Introducing process safety projects for inspection of below-ground pipework and interface corrosion inspections within the DBNGP's compressor stations.²³⁵

787. In the draft decision, the ERA concluded that the 'Compressor station accommodation' work undertaken during AA4 was in line with good industry practice and was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP and to comply with DBP's regulatory obligations for accommodation.²³⁶ DBP's revisions to the original scope for the work demonstrated that it undertook to deliver the work efficiently, given available options and the changed circumstances which eventuated during AA4. The ERA therefore included \$2.47 million for the 'Compressor station accommodation' business case in DBP's opening capital base for AA5 as shown in Table 59.
788. DBP's revised proposal included \$2.51 million of capital expenditure for the 'Compressor station accommodation' business case, which was \$0.04 million more than was included in the initial proposal. The difference was due to updates of DBP's 2019 actual capital expenditure.
789. The ERA considers that the work included in the revised 'Compressor station accommodation' business case for AA4 was necessary to maintain and improve the safety as well as maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$2.51 million for the revised 'Compressor station accommodation' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'Compressor station accommodation' business case can be considered to have resulted from prudent operational decisions.²³⁷ The ERA therefore concludes that \$2.51 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 59.

²³⁴ DBP, *Proposed Revision DBNGP Access Arrangement, Supporting Submission: 9, 2016 – 2020 Access Arrangement Period Forecast capital expenditure*, 31 December 2014, p. 69, Table 101.

²³⁵ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 123-124.

²³⁶ The ERA's view on this point was supported by EMCa's technical advice, which was that the refurbishment work undertaken by DBP on the compressor station accommodation during AA4 was reasonable given the age and condition of the existing facilities, and that DBP acted prudently in refurbishing rather than relocating given updated commercial circumstances. Energy Market Consulting Associates, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 232.

²³⁷ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 59: AA5 final decision - AA4 conforming capital expenditure for the Compressor station accommodation business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.21	0.13	1.02	0.80	0.32	2.47
Draft decision	0.21	0.13	1.02	0.80	0.32	2.47
DBP revised proposal	0.21	0.13	1.02	0.84	0.32	2.51
Final decision	0.21	0.13	1.02	0.84	0.32	2.51

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Compressor package control system replacement business case

790. DBP initially proposed \$6.47 million of conforming capital expenditure for its 'Compressor package control system replacement' business case for AA4. This was \$3.35 million more than the amount included in the AA4 final decision forecast for this business case. The work covered the design, procurement, installation and commissioning of control systems at [REDACTED] compressor stations, carried out in the years 2016 to 2019.²³⁸ DBP submitted that its actual expenditure exceeded its forecast because:

- [REDACTED] control systems were upgraded, which exceeded the [REDACTED] originally planned during AA4. One upgrade was brought forward due to its obsolete operating system being identified as posing a serious cybersecurity risk. Its components were no longer supported by the original equipment manufacturer and its obsolete software could not support recommended software changes.
- The unit costs for replacements undertaken were higher than the unit rate included in the AA4 forecast.²³⁹

791. In the draft decision, the ERA concluded that the compressor package control system work undertaken during AA4 was in line with good industry practice and was necessary to maintain the safety and integrity of services along the DBNGP. This view was based on technical advice that the untreated risk rankings of the work carried out were reasonable given the function of the control systems replaced and that these ratings warranted the remedial action taken.²⁴⁰

792. Based on information provided by DBP, the ERA considered that DBP delivered the replacements of the control systems undertaken during AA4 efficiently. DBP provided information showing that the unit cost increases for control system replacements were due to exchange rate fluctuations, manufacturer cost increases

²³⁸ DBP, Response to information request EMCa 13, 13 March 2020.

²³⁹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 165. DBP, Response to information request EMCa 09, 21 February 2020.

²⁴⁰ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases, January 2020, p. 120. EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, p. 109.

and an increase in the scope of works. The increase in the scope of works for the replacements was due to some units requiring more changes than others.²⁴¹ This view also took into account technical advice that the costs incurred for the control systems replacements were reasonable.²⁴²

793. In the draft decision, the ERA concluded that the proposed capital expenditure for the 'Compressor package control system replacement' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 60.
794. DBP's revised proposal included \$6.41 million of capital expenditure for the 'Compressor package control system replacement' business case, which was \$0.06 million less than in the initial proposal. The difference was due to updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
795. The ERA considers that the work included in the revised 'Compressor package control system replacement' business case for AA4 was necessary to maintain the safety and integrity of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$6.41 million for the revised 'Compressor package control system replacement' business case during AA4. The ERA therefore concludes that \$6.41 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 60.

Table 60: AA5 final decision - AA4 conforming capital expenditure for the Compressor package control system replacement business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	1.56	2.51	(0.08)	2.47	0.00	6.47
Draft decision	1.56	2.51	(0.08)	2.47	0.00	6.47
DBP revised proposal	1.56	2.52	(0.08)	2.43	-0.03	6.41
Final decision	1.56	2.52	(0.08)	2.43	-0.03	6.41

Numbers may not add due to rounding.

Notes: The negative amounts included in DBP's initial and revised proposal for 2018 reflected credit invoices for return of parts not required and a return of inventory to stores.

Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020. DBP, Response to information request 40, 29 January 2021.

²⁴¹ DBP, Response to information request EMCa 34, 13 March 2020.

²⁴² EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, p. 110.

Jandakot site redevelopment business case

796. DBP proposed \$0.52 million of conforming capital expenditure for the ‘Jandakot site redevelopment’ business case for AA4. This was \$0.51 million more than the amount included in the AA4 final decision forecast for this business case.²⁴³
797. DBP submitted that the overspend on the ‘Jandakot site redevelopment’ was for urgent replacement of one of the demountable buildings on the site that arose during AA4 and was not foreseen when the forecast capital expenditure for the site was developed.²⁴⁴
798. In the draft decision, the ERA considered that the ‘Jandakot site redevelopment’ work undertaken during AA4 was necessary to improve the safety of services on the DBNGP. DBP’s revision to the original scope of the work demonstrated that DBP delivered the work efficiently and in line with good industry practice. This view took into account technical advice that the condition of the refurbished accommodation was unacceptable based on safety, and that DBP’s procurement policy and practices adequately ensured that the capital expenditure incurred during AA4 reflected a competitive price for the work.²⁴⁵ The ERA concluded that the proposed capital expenditure for the ‘Jandakot site redevelopment’ business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP’s opening capital base for AA5 as shown in Table 61.
799. DBP’s revised proposal included \$0.52 million of capital expenditure for the ‘Jandakot site redevelopment’ business case.
800. The ERA maintains its position from the draft decision that the work included in the ‘Jandakot site redevelopment’ business case for AA4 was necessary to improve the safety of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.52 million for the ‘Jandakot site redevelopment’ business case during AA4. The ERA therefore concludes that \$0.52 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP’s opening capital base for AA5 as shown in Table 61.

²⁴³ In the business case document, the AA4 capital expenditure for this program was stated as \$0.28 million (real dollars as at 30 June 2019). DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 181. DBP confirmed that the correct amount was \$0.52 million. DBP, Response to information request ERA 21, 5 June 2020.

²⁴⁴ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 181.

²⁴⁵ The ERA’s view on this point was supported by EMCa’s technical advice that the replacement of one of the demountable units was reasonable given the condition of the unit. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 110.

Table 61: AA5 final decision - AA4 conforming capital expenditure for the Jandakot site redevelopment business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.00	0.52	0.00	0.00	0.00	0.52
Draft decision	0.00	0.52	0.00	0.00	0.00	0.52
DBP revised proposal	0.00	0.52	0.00	0.00	0.00	0.52
Final decision	0.00	0.52	0.00	0.00	0.00	0.52

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Maximo and DMZ business case

801. DBP initially proposed \$1.37 million of conforming capital expenditure for the 'Maximo and DMZ' business case for AA4. There was no capital expenditure included in the AA4 final decision capital expenditure forecast for this business case.
802. Maximo and DMZ are primary components of DBNGP's operational technology. The capital expenditure DBP initially proposed for the 'Maximo and DMZ' business case during AA4 covered:
- upgrade of control room equipment
 - operational facilities upgrade
 - Maximo patching
 - refresh of the DMZ hardware
 - Maximo business process redesign
 - firewall installation.²⁴⁶
803. In the draft decision, the ERA concluded that the work undertaken as part of the 'Maximo and DMZ' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP. This view was based on information supplied by DBP and technical advice that DBP's approach to conducting the work, including a staged approach involving testing benefits realisation and project reconfiguration and the results of testing benefits realisation, demonstrated that the work has been carried out prudently and reasonably.²⁴⁷ The ERA concluded that the proposed capital expenditure for the 'Maximo and DMZ' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 62.

²⁴⁶ DBP, Response to information request EMCa 01, 13 February 2020.

²⁴⁷ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, pp. 110-111.

804. DBP's revised proposal included \$1.28 million of capital expenditure for the 'Maximo and DMZ' business case, which was \$0.09 million less than in its initial proposal. The difference was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
805. The ERA considers that the work included in the revised 'Maximo and DMZ' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.28 million for the revised 'Maximo and DMZ' business case during AA4. The ERA therefore concludes that \$1.28 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 61.

Table 62: AA5 final decision - AA4 conforming capital expenditure for the Maximo and DMZ business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.22	0.07	0.25	0.32	0.51	1.37
Draft decision	0.22	0.07	0.25	0.32	0.51	1.37
DBP revised proposal	0.22	0.07	0.25	0.34	0.40	1.28
Final decision	0.22	0.07	0.25	0.34	0.40	1.28

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA draft decision AA4 capital expenditure model, August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Safety case revisions business case

806. DBP initially proposed \$0.45 million of conforming capital expenditure for the 'Safety case revisions' business case for AA4. There was no capital expenditure included in the AA4 final decision forecast for this business case.
807. The DBNGP safety case is the primary document that outlines how the operation of the pipeline is conducted in compliance with DBP's obligations under the *Petroleum Pipelines Act 1969* and *Petroleum Pipelines Regulations 2010*. A review and revision of the safety case is required every five years. DBP submitted that no capital expenditure was included in the AA4 final decision capital expenditure forecast because it only became necessary to reassess the safety case due to the requirements of another project in 2015, which was after the finalisation of the AA4 proposal.²⁴⁸
808. In the draft decision, the ERA concluded that revising the DBNGP safety case in AA4 was necessary to comply with regulatory obligations and to maintain the integrity of DBP's services. The ERA also considered that the review and revision of DBNGP's safety case to keep it current was consistent with the actions of a prudent service

²⁴⁸ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 220.

provider maintaining good industry practice. This view took into account technical advice that revising the DBNGP safety case was consistent with the actions of a prudent service provider acting efficiently.²⁴⁹ The ERA concluded that the proposed capital expenditure for the ‘Safety case revisions’ business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this amount in DBP’s opening capital base for AA5 as shown in Table 63.

809. DBP’s revised proposal included \$0.45 million of capital expenditure for the ‘Safety case revisions’ business case.
810. The ERA considers that the work included in the revised ‘Safety case revisions’ business case for AA4 was necessary to comply with regulatory obligations and to maintain the integrity of DBP’s services and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.45 million for the revised ‘Safety case revisions’ business case during AA4. The ERA therefore concludes that \$0.45 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP’s opening capital base for AA5 as shown in Table 63.

Table 63: AA5 final decision - AA4 conforming capital expenditure –for the Safety case revisions business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.45	0.00	0.00	0.00	0.00	0.45
Draft decision	0.45	0.00	0.00	0.00	0.00	0.45
DBP revised proposal	0.45	0.00	0.00	0.00	0.00	0.45
Final decision	0.45	0.00	0.00	0.00	0.00	0.45

Numbers may not add due to rounding.

Note: Part of the difference between DBP’s initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Compressor station inspection business case

811. DBP initially proposed \$2.59 million of conforming capital expenditure for the ‘Compressor station inspection’ business case for AA4. This was \$2.57 million more than the amount included in the AA4 final decision forecast for this business case.
812. The work covered by the ‘Compressor station inspection’ business case comprised five projects including:
- Inspection and preservation of compressor bundles in storage.
 - Inspection of pressure relief valves at compressor stations and meter stations on the DBNGP.

²⁴⁹ The ERA’s view on this point was supported by EMCa’s technical advice that revising the DBNGP safety case is consistent with a prudent service provider acting efficiently. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 264.

- Inspection of pressure vessels, including at meter stations on the DBNGP.²⁵⁰
813. In the draft decision, the ERA concluded that the inspection work covered by the 'Compressor station inspection' business case was carried out efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services on the DBNGP. This view was based on technical advice that conducting compressor station inspections is consistent with good industry practice and the costs incurred for this work during AA4 were reasonable.²⁵¹ The ERA therefore concluded that the initially proposed capital expenditure for the 'Compressor station inspection' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 64.
814. DBP's revised proposal included \$2.81 million of capital expenditure for the 'Compressor station inspection' business case. The increase between the initial and revised proposal (\$0.22 million) was due to updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure for pressure vessel inspections.²⁵²
815. The ERA considers that the work included in the revised 'Compressor station inspection' business case for AA4 was necessary to comply with regulatory obligations and to maintain the integrity of DBP's services and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$2.81 million for the revised 'Compressor station inspection' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'Compressor station inspection' business case can be considered to have resulted from prudent asset management practice.²⁵³ The ERA therefore concludes that \$2.81 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 64.

Table 64: AA5 final decision - AA4 conforming capital expenditure for the Compressor station inspection business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.28	0.20	0.90	0.46	0.75	2.59
Draft decision	0.28	0.20	0.90	0.46	0.75	2.59
DBP revised proposal	0.28	0.20	0.90	0.40	1.03	2.81
Final decision	0.28	0.20	0.90	0.40	1.03	2.81

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

²⁵⁰ DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

²⁵¹ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraphs 233 and 255.

²⁵² DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005), 21 October 2020.

²⁵³ EMCa, Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025), January 2021, p. 15, paragraph 96.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Asset management business case

816. DBP initially proposed \$2.69 million of conforming capital expenditure for the 'Asset management' business case for AA4. This was \$0.21 million less than the amount included in the AA4 final decision forecast for this business case.
817. The initially proposed capital expenditure was for five projects, including:
- A small amount of expenditure for completion of a project that commenced in 2015.²⁵⁴
 - Modifications to pipeline engineering information.
 - Replacement of air conditioning in a server room.
 - Reactive requirements to support the engineering and projects team.
 - Implementation of minor engineering changes as part of normal operations.²⁵⁵
818. In the draft decision, the ERA concluded that the work undertaken for the 'Asset management' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP. This view was based on information supplied by DBP describing the work undertaken and technical advice that the costs incurred were prudent and reasonable.²⁵⁶ The ERA therefore concluded that the proposed capital expenditure for the 'Asset management' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 65.
819. DBP's revised proposal included \$2.93 million of capital expenditure for the 'Asset management' business case. The increase between the initial and revised proposal (\$0.24 million) was due to additional reactive maintenance and replacement being conducted.²⁵⁷
820. The ERA considers that the work included in the revised 'Asset management' business case for AA4 was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$2.93 million for the revised 'Asset management' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'Asset management' business case can be considered to have resulted from prudent asset management practice.²⁵⁸ The ERA therefore concludes that \$2.93 million satisfies the

²⁵⁴ \$0.12 million. DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

²⁵⁵ DBP, Response to information request ERA 21, 5 June 2020.

²⁵⁶ DBP, Response to information request ERA 21, 5 June 2020; EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 264.

²⁵⁷ DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005), 21 October 2020.

²⁵⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 65.

Table 65: AA5 final decision - AA4 conforming capital expenditure for the Asset management business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.74	0.58	0.26	0.68	0.43	2.69
Draft decision	0.74	0.58	0.26	0.68	0.43	2.69
DBP revised proposal	0.74	0.58	0.26	0.89	0.46	2.93
Final decision	0.74	0.58	0.26	0.89	0.46	2.93

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Meter stations business case

821. DBP initially proposed \$26.23 million of conforming capital expenditure for the 'Meter stations' business case for AA4. This was \$18.23 million more than the amount included in the AA4 final decision forecast for this business case.

822. DBP submitted that the work undertaken for the 'Meter stations' business case was primarily due to three unforeseen events that resulted in the reprioritisation of capital expenditure from other programs. These events were:

- An overpressure incident at a power station receiving gas from the DBNGP, which resulted in a reassessment of the risks associated with meter stations. Because of this reassessment, a new approved meterset design was rolled out to retrofit all relevant meter stations on the DBNGP to manage the risk of downstream over-pressurisation to an acceptable level. This work contributed \$11 million to the variance of the AA4 'Meter stations' capital expenditure above forecast.²⁵⁹
- Identification of significant corrosion at a meter station facility. To prevent further similar failures DBP installed a revised piping layout. This work contributed approximately \$5 million to the variance of the AA4 'Meter stations' capital expenditure above forecast.²⁶⁰
- Identification of unacceptable risks in the odorant system following odorant spills during AA4. Therefore, DBP undertook a design change of the odorant

²⁵⁹ Dollars as at 30 June 2019. DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 234-235.

²⁶⁰ Dollars as at 30 June 2019. DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 234-235.

system. This work contributed approximately \$1 million to the variance of the AA4 'Meter stations' capital expenditure above forecast.²⁶¹

823. In the draft decision, the ERA concluded that the work undertaken for the 'Meter stations' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP. This view took into account technical advice that the revised scope of the work for the meter stations business case in AA4, described at paragraph 822, was a reasonable and prudent response to address the unforeseen events cited as driving the capital expenditure incurred.²⁶² The ERA therefore concluded that the proposed capital expenditure for the 'Meter stations' business case satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this amount in DBP's opening capital base for AA5 as shown in Table 66.
824. DBP's revised proposal included \$26.96 million of capital expenditure for the 'Meter stations' business case, which was \$0.73 million more than was included in the initial proposal. The difference was due to additional reactive works and maintenance being required during 2020.²⁶³
825. The ERA considers that the work included in the revised 'Meter stations' business case for AA4 was necessary to maintain and improve the safety of services and to maintain the integrity of DBP's services and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$26.96 million for the revised 'Meter stations' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'Meter stations' business case can be considered to have resulted from prudent asset management practice.²⁶⁴ The ERA therefore concludes that \$26.96 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 66.

²⁶¹ Dollars as at 30 June 2019. DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 234-235.

²⁶² EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 111.

²⁶³ DBP, Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005), 21 October 2020.

²⁶⁴ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 66: AA5 final decision - AA4 conforming capital expenditure for the Meter stations business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	3.48	3.67	6.70	6.10	6.27	26.23
Draft decision	3.48	3.67	6.70	6.10	6.27	26.23
DBP revised proposal	3.49	3.69	6.72	5.43	7.62	26.96
Final decision	3.49	3.69	6.72	5.43	7.62	26.96

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Tools business case

826. DBP initially proposed \$1.23 million of conforming capital expenditure for the 'Tools' business case for AA4. This was \$0.09 million more than the amount included in the AA4 final decision forecast for this business case. The proposed expenditure included nine projects for the replacement of various tools used on the DBNGP, including transmission operations management tools, transmission asset management tools, borescope equipment and emergency response equipment. \$0.90 million of the proposed capital expenditure was for a single project for the replacement of transmission operations management tools.
827. In the draft decision, the ERA concluded that the proposed capital expenditure for the 'Tools' business case was incurred efficiently and in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP. This view took into account information supplied by DBP and technical advice that the tools were replaced based on their economic life in line with good industry practice and that the incurred cost was reasonable.²⁶⁵ The ERA therefore concluded that the \$1.23 million of capital expenditure for the 'Tools' business case satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 67.
828. DBP's revised proposal included \$1.21 million of capital expenditure for the 'Tools' business case, which was \$0.02 million less than the initial proposal. The difference was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
829. The ERA considers that the work included in the revised 'Tools' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.21 million for the revised 'Tools' business case during AA4. The ERA therefore concludes that \$1.21 million satisfies the requirements for conforming capital expenditure set out in

²⁶⁵ EMCa, Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraph 234.

rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 67.

Table 67: AA5 final decision - AA4 conforming capital expenditure for the Tools business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.13	0.37	0.50	0.13	0.10	1.23
Draft decision	0.13	0.37	0.50	0.13	0.10	1.23
DBP revised proposal	0.13	0.37	0.50	0.11	0.11	1.21
Final decision	0.13	0.37	0.50	0.11	0.11	1.21

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Fleet and civil equipment business case

830. DBP initially proposed \$5.23 million of conforming capital expenditure for the 'Fleet and civil equipment' business case for AA4. This was \$1.39 million more than the amount included in the AA4 final decision forecast for this business case.

831. DBP attributed the expenditure above forecast to:

- The replacement of an average of [redacted] vehicle per year above the number of replacements planned. For the vehicles replaced, the average cost exceeded the expected cost by approximately \$5,000 on average (real dollars as at June 2019).
- The purchase of [redacted] additional maintenance vehicles due to an increase in the number of personnel on DBP's day teams roster resulting from DBP's optimisation review and restructure of its field workforce.
- The replacement of the canopy on one vehicle.
- The replacement of a transport odorant vessel in 2019, which DBP submitted was a matter of urgency due to major design faults being discovered which did not comply with the Dangerous Goods Code.²⁶⁶

832. In the draft decision, the ERA concluded that the fleet and civil equipment replaced by DBP in AA4 was replaced in line with good industry practice. This view was based on technical advice from EMCa that:

- DBP's vehicle asset management practice was sound, as evidenced by the average mileage of vehicles at replacement.
- DBP's civil fleet asset management practices were commensurate with good industry practice and the urgent replacement of an odorant transport vessel in

²⁶⁶ DBP, Response to information request EMCa 44, 31 March 2020.

2019, cited as the major driver of the cost increase for civil equipment, was reasonable.²⁶⁷

833. The ERA also concluded that the replacement of fleet and civil equipment was necessary to maintain the integrity of services on the DBNGP and to maintain and improve safety on the DBNGP and that the replacements were carried out efficiently. The unit cost of fleet vehicle replacement was only slightly above the forecast unit cost. This conclusion also took into account technical advice that DBP's procurement process and practices are commensurate with good industry practice.²⁶⁸
834. In the draft decision, the ERA therefore considered that the proposed conforming capital expenditure for the 'Fleet and civil equipment' business case for AA4 was conforming capital expenditure and included this amount in DBP's opening capital base for AA5 as shown in Table 68.
835. DBP's revised proposal included \$5.28 million of capital expenditure for the 'Fleet and civil equipment' business case, which was \$0.05 million more than was included in the initial proposal. The difference was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
836. The ERA considers that the work included in the revised 'Fleet and civil equipment' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and to maintain and improve safety on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$5.28 million for the revised 'Fleet and civil equipment' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'Fleet and civil equipment' business case can be considered to have resulted from prudent asset management practice.²⁶⁹ The ERA therefore concludes that \$5.28 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 68.

²⁶⁷ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 112.

²⁶⁸ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 22.

²⁶⁹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 68: AA5 final decision - AA4 conforming capital expenditure for the Fleet and civil equipment business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	1.37	0.95	1.09	1.09	0.73	5.23
Draft decision	1.37	0.95	1.09	1.09	0.73	5.23
DBP revised proposal	1.37	0.95	1.09	1.06	0.80	5.28
Final decision	1.37	0.95	1.09	1.06	0.80	5.28

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Turbine exhaust replacement business case

837. DBP submitted in its initial proposal that it incurred approximately \$0.4 million of capital expenditure for the 'Turbine exhaust replacement' business case during AA4.²⁷⁰ This was below the AA4 final decision forecast amount for this business case of \$1.78 million. As stated at paragraph 756, due to a change in reporting structure the \$0.4 million of AA4 capital expenditure for 'Turbine exhaust replacement' was included in the initial proposed capital expenditure for the 'Compressor stations' business case.
838. The work covered by the initially proposed conforming capital expenditure included the inspection and replacement of the turbine exhaust at one compressor station site and the repair of the turbine exhaust at another site.²⁷¹ DBP advised that it was able to defer the replacement of one turbine exhaust that was scheduled for AA4 by instead undertaking patchwork.²⁷²
839. In the draft decision, the ERA concluded that the work covered by the 'Turbine exhaust replacement' business case was carried out efficiently, as was demonstrated by DBP deferring work which it identified could be deferred without material risk and applying an alternative and lower-cost option (patchwork). The ERA also considered that the capital expenditure incurred for the work covered by the 'Turbine exhaust replacement' business case during AA4 would have been incurred by a prudent service provider acting in accordance with accepted good industry practice and was necessary to maintain and improve the safety of services. The ERA's conclusions took into account EMCa's opinion that DBP's governance process meant that this expenditure was likely to have been incurred at reasonable cost and would likely have been undertaken by a prudent operator.²⁷³ The ERA therefore concluded that the

²⁷⁰ The estimated capital expenditure was denominated in dollars as at 30 June 2019. DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases*, January 2020, p. 281.

²⁷¹ DBP, Response to information request EMCa 14, 3 March 2020.

²⁷² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 284.

²⁷³ EMCa based this recommendation on its views that DBP's procurement practices were commensurate with good industry practice and that DBP's risk ranking tool was a satisfactory means of prioritising and re-prioritising work. EMCa, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 108.

initially proposed capital expenditure for the ‘Turbine exhaust replacement’ business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP’s opening capital base for AA5. As stated, due to a change in reporting structure the initially proposed capital expenditure for the ‘Turbine exhaust replacement’ business case was included in the proposed capital expenditure for the ‘Compressor stations’ business case. In the draft decision, the conforming AA4 capital expenditure for the ‘Turbine exhaust replacement’ business case was therefore included in the conforming AA4 capital expenditure for the ‘Compressor stations’ business case, shown in Table 54.

840. DBP’s revised proposal included a total of \$0.63 million of capital expenditure for the ‘Turbine exhaust replacement’ business case, of which \$0.4 million was included in the revised proposed capital expenditure for the ‘Compressor stations’ business case and \$0.23 million was included under the ‘Turbine exhaust replacement’ business case itself.²⁷⁴ The \$0.4 million included in the revised proposed capital expenditure for the ‘Compressor stations’ business case covers the same scope of work as was covered by the initially proposed capital expenditure outlined in paragraph 838. The \$0.23 million of additional capital expenditure captured under the ‘Turbine exhaust replacement’ business case in DBP’s revised proposal was for the replacement of [REDACTED] in 2020 following [REDACTED] failure.
841. The ERA considers that the work covered by the revised ‘Turbine and exhaust replacement’ business case for AA4, including the work covered by the capital expenditure for this business case included under the ‘Compressor stations’ business case, was necessary to maintain and improve the safety of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.63 million for the revised ‘Turbine exhaust replacement’ business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the ‘Turbine exhaust replacement’ business case can be considered to have resulted from prudent asset management practice.²⁷⁵ The ERA therefore concludes that \$0.63 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR. Of this expenditure:
- \$0.4 million is included in the conforming AA4 capital expenditure for the ‘Compressor stations’ business case, shown in DBP’s opening capital base for AA5 as shown in Table 56.
 - \$0.23 million is included in the conforming AA4 capital expenditure for the ‘Turbine exhaust replacement’ business case as shown in Table 69.

²⁷⁴ DBP, Response to information request ERA 33, 4 November 2020.

²⁷⁵ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 69: AA5 final decision - AA4 conforming capital expenditure for the Turbine exhaust replacement business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	-	-	-	-	-	-
Draft decision	-	-	-	-	-	-
DBP revised proposal	0.00	0.00	0.00	0.00	0.23	0.23
Final decision	0.00	0.00	0.00	0.00	0.23	0.23

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Pipeline mainline valve inspection business case

842. DBP initially proposed \$12.96 million of conforming capital expenditure for the 'Pipeline mainline valve inspection' business case for AA4. This was \$1.12 million more than the amount included in the AA4 final decision forecast for this business case.
843. The work completed during AA4 comprised four projects for in-line inspection and intelligent pigging of the DBNGP pipeline, laterals and loops. \$12.21 million of the proposed capital expenditure was for a single project for intelligent pigging of the DBNGP.²⁷⁶ In-line inspections of the DBNGP's pipeline and mainline valves occur on an eight-year cycle and are conducted in accordance with Australian Standards AS 2885 and AS 3788.²⁷⁷
844. DBP submitted that its initially proposed expenditure for in-line inspection was above the AA4 final decision forecast for this work due to:
- An increase in the cost of carrying out the inspections due to the presence of radon gas embedded in debris which resulted in additional costs to manage radioactive contamination.
 - Additional inspection of piping at above and below ground interfaces, under insulation and within buried pits identified and prioritised through DBP's annual stay-in-business governance process.²⁷⁸
845. In the draft decision, the ERA concluded that the work undertaken for the 'Pipeline and mainline valves inspections' business case during AA4 was necessary to maintain and improve the safety of services as well as maintain the integrity of services on the DBNGP.²⁷⁹ Based on the reasons supplied by DBP for the actual expenditure exceeding the AA4 final decision forecast for this work, the ERA was

²⁷⁶ DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

²⁷⁷ DBP, 2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public), January 2020, pp. 66-67.

²⁷⁸ DBP, 2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public), January 2020, p. 71.

²⁷⁹ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraphs 253 and 265.

satisfied that the work was carried out efficiently. The ERA concluded that the initially proposed capital expenditure for the ‘Pipeline and mainline valves’ business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP’s opening capital base for AA5 as shown in Table 70.

846. DBP’s revised proposal included \$12.49 million of capital expenditure for the ‘Pipeline mainline valve inspection’ business case, which was \$0.47 million less than was included in the initial proposal. The difference was due to minor updates of DBP’s 2019 actual capital expenditure and 2020 forecast capital expenditure.
847. The ERA considers that the work included in the revised ‘Pipeline mainline valve inspection’ business case for AA4 was necessary to maintain and improve the safety of services as well as maintain the integrity of services on the DBNGP and was consistent with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$12.49 million for the revised ‘Pipeline mainline valve inspection’ business case during AA4. The ERA therefore concludes that \$12.49 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP’s opening capital base for AA5 as shown in Table 70.

Table 70: AA5 final decision - AA4 conforming capital expenditure for the Pipeline and mainline valve inspection business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.30	0.39	3.84	4.96	3.47	12.96
Draft decision	0.30	0.39	3.84	4.96	3.47	12.96
DBP revised proposal	0.30	0.39	3.85	4.98	2.96	12.49
Final decision	0.30	0.39	3.85	4.98	2.96	12.49

Numbers may not add due to rounding.

Note: Part of the difference between DBP’s initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Customer reporting system business case

848. DBP initially proposed \$0.84 million of conforming capital expenditure for the ‘Customer reporting system’ business case for AA4. This was \$0.08 million less than the amount included in the AA4 final decision forecast for this business case. The proposed capital expenditure comprised a single project to upgrade DBP’s customer reporting system.
849. DBP submitted that it expected to incur less capital expenditure for its customer relationship system enhancements and upgrades during AA4 because of delays due to the resourcing availability of the system vendor.²⁸⁰

²⁸⁰ DBP, Response to information request EMCa 01, 13 February 2020.

850. In the draft decision, the ERA concluded that the work undertaken for the 'Customer reporting system' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP. This view was based on technical advice that the system enhancements and upgrades were reasonable initiatives to undertake to ensure the system continued to meet business and customer requirements, and that the costs incurred were likely reasonable given the nature of the project.²⁸¹ The ERA concluded that the proposed capital expenditure for the 'Customer reporting system' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included the expenditure in DBP's opening capital base for AA5 as shown in Table 71.
851. DBP's revised proposal included \$0.64 million of capital expenditure for the 'Customer reporting system' business case, which was \$0.21 million less than was included in the initial proposal. The difference was due to:
- A revised scope of works being delivered in 2019 due to certain work items awaiting approval and execution of a new support agreement.
 - Revision of the forecast capital expenditure for this business case for 2020 based on more detailed timing and costs from the vendor.²⁸²
852. The ERA considers that the work included in the revised 'Customer reporting system' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.64 million for the revised 'Customer reporting system' business case during AA4. The ERA therefore concludes that \$0.64 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 71.

²⁸¹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 245.

²⁸² DBP, *Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005)*, 21 October 2020.

Table 71: AA5 final decision - AA4 conforming capital expenditure for the Customer reporting system business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	(0.06)	0.05	0.20	0.50	0.15	0.84
Draft decision	(0.06)	0.05	0.20	0.50	0.15	0.84
DBP revised proposal	(0.06)	0.05	0.20	0.33	0.11	0.64
Final decision	(0.06)	0.05	0.20	0.33	0.11	0.64

Numbers may not add due to rounding.

Notes: DBP's initial and revised proposals included small negative amounts for 2016. These negative amounts reflected a transfer of costs which were previously incorrectly invoiced to the business case. Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020. DBP, Response to information request 40, 29 January 2021.

IT sustaining applications business case

853. DBP initially proposed \$6.58 million of conforming capital expenditure for the 'IT sustaining applications' business case for AA4, covering capital expenditure incurred for ten projects. This was \$3.68 million more than the amount included in the AA4 final decision forecast for this business case, which covered three projects.
854. DBP submitted that its increased capital expenditure during AA4 and planned increased expenditure during AA5 on IT projects generally, was due to a heightened IT threat environment, including increased cyber threats.²⁸³
855. DBP submitted that the spend on 'IT sustaining applications' in excess of forecast in AA4 was due to the following:
- Microsoft Dynamics, DBP's core financial and enterprise resource planning (ERP) system. DBP submitted that it incurred expenditure during AA4 to undertake critical updates to this system which were not included in the scope of work covered by the AA4 final decision forecast and would incur additional expenditure for a planned upgrade in 2020.
 - An email system upgrade and other upgrades and updates.²⁸⁴
856. DBP also advised that the spend in excess of forecast was "caused due to the *ad hoc* approach towards lifecycle management which will be corrected for under the proactive approach recommended in AA5."²⁸⁵
857. \$0.88 million was included in the AA4 final decision forecast for a project covering annual enhancements and maintenance for Microsoft Dynamics. DBP implemented the Microsoft Dynamics system in 2013 as a replacement to SAP, its previous ERP system, and experienced significant difficulty in the set-up, configuration and

²⁸³ Meeting between DBP and the ERA, 6 March 2020.

²⁸⁴ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 323, 328.

²⁸⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 328.

integration of the system with ancillary systems which could not be resolved, resulting in a sub-optimal outcome.²⁸⁶ The initially proposed AA4 capital expenditure for the project to update and enhance Microsoft Dynamics was \$3.53 million, of which \$3.03 million was proposed to be incurred in 2020 to upgrade the existing version of Microsoft Dynamics to an interim system which would be applied until the existing version comes out of support at the end of 2021 when it was planned that DBP would re-implement SAP.²⁸⁷

858. The planned Microsoft Dynamics replacement, commencing in AA4 with the planned implementation of an interim solution in 2020 and continuing into AA5, was described in AGIG's IT initiative roadmap as being "subject to further investigation."²⁸⁸ The options analysis for the replacement work did not take into account the planned expenditure of \$3.53 million in 2020 and when this was corrected, the total capital expenditure for the replacement was higher than the alternative options considered.²⁸⁹ The ERA was not satisfied on this basis that the planned work for this project would be undertaken by a service provider acting prudently and efficiently and in accordance with good industry practice.
859. DBP proposed \$3.05 million of capital expenditure for nine other 'IT sustaining applications' projects, of which two were included in the AA4 final decision forecast. In the draft decision, the ERA agreed with technical advice received that this was indicative of poor IT asset management, which was supported by DBP's statements regarding its *ad hoc* approach to IT application lifecycle maintenance which was 'not consistent with industry standard practice'.²⁹⁰ DBP did not demonstrate that the capital expenditure incurred for the work covered by these nine projects in excess of the AA4 final decision forecast for projects other than the Microsoft Dynamics annual enhancement and maintenance would be incurred by a prudent service provider acting efficiently and in line with good industry practice.
860. In the draft decision, the ERA considered that only \$2.49 million of the initially proposed capital expenditure was conforming capital expenditure according to rule 79 of the NGR, as shown in Table 72. The conforming capital expenditure was derived as the sum of the following:
- The actual expenditure incurred by DBP in 2016 and 2017 for its upgrade to Microsoft Dynamics (\$0.49 million).
 - The capital expenditure included in the AA4 final decision forecast for the other two projects included in that forecast (\$2.00 million).
861. DBP's revised proposal included \$6.66 million for the 'IT sustaining applications' business case, which is \$0.08 million more than was included in DBP's initial proposal. DBP's revised proposal reflects the following changes in the proposed scope of work from its initial proposal:

²⁸⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 327-328. DBP, Response to information request EMCa 34, 1 April 2020.

²⁸⁷ DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020. DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 328. DBP, Response to information request EMCa 34, 1 April 2020.

²⁸⁸ AGIG IT Roadmap (Confidential), p. 2.

²⁸⁹ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 113.

²⁹⁰ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 115, paragraph 534. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 113. DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases*, January 2020, p. 326.

- DBP's revised proposal includes \$3.66 million for the Microsoft Dynamics upgrade, which includes \$0.49 million for costs incurred in 2016 and 2017 and \$3.17 million which would be incurred in 2020. DBP is no longer proposing to implement the interim ERP solution as part of the Microsoft Dynamics upgrade outlined in its initial proposal, rather the \$3.17 million proposed for 2020 is for a scope of work covering the implementation of the SAP S/4 HANA system at DBP. The work covered by the \$3.17 million proposed for 2020 and the drivers DBP has cited for the change are outlined at paragraphs 862 to 865.
 - DBP maintained that the capital expenditure for all the projects included in its initial proposal other than the Microsoft Dynamics project was conforming capital expenditure.²⁹¹ These other projects include two projects which were included in the AA4 final decision forecast and eight others which were not included in the AA4 final decision forecast. DBP's revised proposal therefore includes \$3.00 million for these 10 projects, which reflects minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure compared to DBP's initial proposal for these projects (\$3.05 million). DBP's reasons for considering the capital expenditure for these projects as conforming capital expenditure are outlined in paragraph 866.
862. The \$3.17 million included in DBP's revised proposal to be incurred in 2020 for upgrade of its ERP system covers the beginning of the implementation of the SAP S/4 HANA system, including the build, test and deployment phases at DBP and the beginning of the warranty phase.²⁹²
863. DBP submitted that its decision not to pursue the interim ERP system implementation it had planned for 2020 was driven by a failure of its Microsoft Dynamics system in October 2019 and its continued underperformance in day-to-day transactional activities. Further, continuing with the Microsoft Dynamics system to 2023 and beyond was highlighted as a significant risk by DBP's statutory auditors and DBP considered it unsustainable.²⁹³ Instead, DBP's revised proposal is to accelerate the timing of the AGIG-wide 'One ERP' program' and bring forward the start of the SAP S/4 HANA rollout at DBP.
864. The 'One ERP' program is an AGIG-wide IT project to bring all AGIG's network and pipeline businesses under a common ERP system. DBP submitted that its objective in moving to a shared ERP platform with the rest of AGIG is to achieve economies of scale, which will reduce the overall cost of pipeline services for its customers, and to bring its system up to a standard which will better support the provision of pipeline services.²⁹⁴
865. The \$3.17 million DBP proposed for 2020 for upgrade of its ERP system is an allocated share of the total costs to be incurred during 2020 during phase one of the 'One ERP' program. Phase one is scheduled over 2020 and 2021 and covers the implementation of SAP S/4 HANA at DBP and Australian Gas Networks (AGN). The forecast cost of phase one is \$18.94 million and is based on the results of a competitive tender process conducted between March and August 2020. \$12.59 million of this total cost has been allocated to DBP, with \$3.17 million forecast

²⁹¹ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 156.

²⁹² DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 140.

²⁹³ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 134, p. 137.

²⁹⁴ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 135.

for 2020 and the remainder forecast to be incurred during 2021.²⁹⁵ The costs were allocated between DBP and AGN based on the number of SAP users within each business. DBP considered that this basis for allocation reflects the respective levels of usage of the new ERP system in both businesses.²⁹⁶ The result of applying this allocation method is that approximately 33.5 per cent of the phase one costs of the program will be borne by AGN, while 66.5 per cent will be borne by DBP.

866. Regarding the projects within the 'IT sustaining applications' business case other than the Microsoft Dynamics replacement, DBP attributed its decision to undertake the projects that were not included in the AA4 final decision capital expenditure forecast to its change in ownership during AA4 and a change in its approach to managing its IT infrastructure from a reactive approach to a proactive one.²⁹⁷ DBP's revised proposal included the following information for these projects:

- 'Maximo upgrade' - \$0.69 million proposed AA4 capital expenditure. This project was included in the AA4 final decision capital expenditure forecast. DBP considered that this project was necessary due to servers reaching the end of their technical lives and warranties, ageing out of vendor support, incompatibility with planned upgrades of other applications and because disaster recovery exercises identified that DBP's existing disaster recovery environment was underspecified and inadequately patched. The proposed capital expenditure for the project is less than the amount included for the work in the AA4 final decision forecast.²⁹⁸
- 'Other core systems' - \$1.04 million proposed AA4 capital expenditure. This project was included in the AA4 final decision capital expenditure forecast. This project was for the upgrade of DBP's managed operating environment in 2016 and 2017, which DBP submitted was necessary due to its current managed operating environment presenting unacceptable security and compatibility risks.²⁹⁹
- 'AGIG common email and internet' - \$0.66 million proposed AA4 capital expenditure. DBP submitted that this expenditure was for two projects conducted in 2017. The first project was the implementation of an interim solution to provide visibility of information and communication capabilities between the AGIG businesses. The second project was the implementation of a more permanent solution including a common email and intranet platform. DBP did not include this work in its AA4 capital expenditure forecasts as it had not foreseen the transition to AGIG at the time it developed the forecasts. DBP considered that the capital expenditure for these projects was incurred efficiently and the projects were prudent and necessary to maintain the integrity of services after its acquisition by AGIG.³⁰⁰
- 'SPOT Journey Management' - \$0.34 million proposed AA4 capital expenditure. DBP submitted that this expenditure was for the implementation of a new

²⁹⁵ The component of the project costs forecast to be incurred during 2021 is discussed at paragraphs 1170-1172 of this final decision.

²⁹⁶ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 137-140.

²⁹⁷ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 157.

²⁹⁸ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 162-163.

²⁹⁹ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 161-162.

³⁰⁰ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 163-164.

system for managing and monitoring its vehicle fleet conducted in 2016 and 2017. The purchased system supplanted the previously leased system. DBP submitted that the decision to purchase the new system was based on identified safety and functionality concerns arising from the previous system. DBP considered that the new system was necessary to improve safety for its employees and to allow it to manage its fleet more efficiently. The new system is expected to yield operating expenditure savings compared to the pre-existing system. DBP submitted that to date the new system has yielded an operating expenditure saving of around \$114,000 per year from 2018 levels.³⁰¹

- 'DBP design office CAD' - \$0.09 million proposed AA4 capital expenditure incurred for the upgrade of DBP's computer-aided design and drafting applications. DBP considered that the upgrade was consistent with good industry practice as it allowed improvements in the execution of DBP's project management, design, process, procurement, document control and construction activities. DBP considered that the capital expenditure for the upgrade was incurred efficiently and was necessary to maintain the integrity of services on the DBNGP.³⁰²
- 'Corporate IT system availability improvements' - \$0.08 million proposed AA4 capital expenditure which was incurred to improve DBP's corporate data backup capability after its existing solution reached capacity during AA4. DBP submitted that this expenditure was incurred efficiently and to maintain the integrity of services on the DBNGP given that data integrity and security is essential to DBP's ongoing operation.³⁰³
- 'Enhancements to Pay Global' - \$0.06 million proposed AA4 capital expenditure for enhancements to DBP's human resources software platform. DBP considered that this capital expenditure was incurred prudently and efficiently and improved the integrity and efficiency of its services.³⁰⁴

867. The ERA considers the \$3.66 million proposed for the Microsoft Dynamics upgrade project is conforming capital expenditure in accordance with rule 79 of the NGR. The amount of \$3.66 million is the sum of the actual expenditure incurred by DBP in 2016 and 2017 for its upgrade to Microsoft Dynamics (\$0.49 million) and the \$3.17 million included in DBP's revised proposal for the implementation of SAP S/4 HANA during AA4. The ERA considers that the \$0.49 million incurred by DBP in 2016 and 2017 for its upgrade to Microsoft Dynamics is conforming capital expenditure based on the need to incur critical enhancements. The ERA also considers that the \$3.17 million of capital expenditure included in DBP's revised proposal for the implementation of SAP S/4 HANA is conforming capital expenditure. This conclusion is based on the forecast costs for the project having been determined by the results of a competitive tender and the ERA's view that allocation of the total costs for the 'One ERP' program is based on a reasonable allocator (number of SAP users) which provides a reasonable proxy of the proportionate benefits of the new system to DBP and AGN. Further, the ERA's conclusions are based on technical advice that:

³⁰¹ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, pp. 164-165.

³⁰² DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, pp. 165-166.

³⁰³ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, pp. 166-167.

³⁰⁴ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, pp. 167.

- The \$0.49 million incurred by DBP in 2016 and 2017 for critical enhancements to Microsoft Dynamics was reasonable to incur.³⁰⁵
 - Replacement of Microsoft Dynamics with the SAP S/4 HANA system beginning in 2020 is a reasonable strategy given the performance of Microsoft Dynamics during AA4.³⁰⁶
 - The functionality to be provided by SAP S/4 HANA usefully replaces the functions of DBP's existing enterprise resource planning system and the selection of SAP S/4 HANA was an appropriate decision.³⁰⁷
 - The expenditure DBP expected to incur for the replacement in 2020 is reasonable.³⁰⁸
 - Given the distinct split between phases 1 and 2 of the 'One ERP' program, revenue is not an appropriate allocation method.³⁰⁹
868. Regarding the proposed AA4 conforming capital expenditure for the eight other projects in the 'IT sustaining applications' business case, the ERA considers that the proposed \$0.66 million of capital expenditure for the 'AGIG common email and intranet' project is not conforming capital expenditure. The ERA is not satisfied that the expenditure is justifiable according to any of the grounds stated in rule 79(2) of the NGR. The costs were incurred to integrate with the AGIG Group subsequent to DBP's acquisition by AGIG in 2017 and DBP has not demonstrated that the capital expenditure is justified under any of the grounds stated in rule 79(2) of the NGR. The ERA has therefore not included any of the proposed expenditure for the 'AGIG common email and intranet' project in DBP's opening capital base for AA5.
869. The ERA is satisfied that, other than the expenditure for the project 'AGIG common email and intranet', DBP's revised proposed capital expenditure for the 'IT sustaining applications' business case satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR. This conclusion reflects that:
- The ERA considers that the capital expenditure incurred for the two projects included in the AA4 final decision forecast, 'Maximo upgrade' and 'Other core systems', satisfies the criteria for conforming capital expenditure.
 - Based on the information supplied by DBP and technical advice received, the ERA is satisfied that the capital expenditure incurred for the other projects was justifiable for one or more of the grounds stated in subrule 79(2) of the NGR and satisfied the other capital expenditure criteria at rule 79(1).
870. The ERA therefore includes \$5.92 million in DBP's opening capital base for AA5 for the 'IT sustaining applications' business case as shown in Table 72.

³⁰⁵ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 14, paragraph 90.

³⁰⁶ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 13, paragraph 81.

³⁰⁷ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 44, paragraphs 250 and 252.

³⁰⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 14, paragraphs 83-85, 89.

³⁰⁹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 44-45, paragraph 254.

Table 72: AA5 final decision - AA4 conforming capital expenditure for the IT sustaining applications business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	1.43	1.82	(0.01)	0.08	3.25	6.58
Draft decision	0.53	1.09	0.87	0.00	0.00	2.49
DBP revised proposal	1.43	1.82	(0.01)	0.08	3.25	6.58
Final decision	1.43	1.12	0.03	0.08	3.25	5.92

Numbers may not add due to rounding.

Notes: DBP's initial and revised proposals included small negative amounts for 2018. These negative amounts reflected a transfer of costs which were previously incorrectly invoiced to the business case. Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020. DBP, Response to information request 40, 29 January 2021.

IT security business case

871. DBP initially proposed \$1.41 million of conforming capital expenditure for the 'IT security' business case for AA4. The AA4 final decision capital expenditure forecast did not include any capital expenditure for this business case.
872. The expenditure DBP expected to incur during AA4 for the 'IT security' business case covered two projects for:
- Developing and implementing DBP's cyber security framework.
 - Standardising rights and role-based access and implementing multifactor authentication.³¹⁰
873. As stated at paragraph 854, DBP attributed its increased IT expenditure during AA4 to a heightened IT threat environment, including increased cyber threats.³¹¹ DBP also cited an increased focus by regulators and the public on how organisations manage their cyber risk as driving its increased IT expenditure.³¹²
874. In 2017, DBP conducted a maturity assessment against the Australian Energy Sector Cyber Security Framework. DBP targeted a maturity indicator level of three as measured by the Framework but DBP had not achieved this target at the time of the assessment. DBP commenced initiatives to achieve its targeted maturity level, including the work outlined at paragraph 872. DBP also planned additional IT security initiatives to be conducted during AA5 to achieve its targeted maturity level against the Framework.³¹³ The planned AA5 initiatives are outlined and evaluated at paragraphs 1189 to 1195 (paragraphs 738 to 744 of the draft decision).

³¹⁰ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 374.

³¹¹ Meeting between DBP, EMCa and the ERA, 6 March 2020.

³¹² DBP, 2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public), January 2020, p. 372.

³¹³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 371-372.

875. In the draft decision, the ERA considered that the IT security initiatives DBP undertook during AA4 were prudent and in line with good industry practice given the risks associated with not undertaking initiatives to enhance the level of IT security on the DBNGP.³¹⁴ The ERA considered that these initiatives were conducted efficiently based on technical advice that:
- Supported DBP’s statement that the work undertaken during AA4 was reasonable in the context of the global and Australian energy sector emphasis on cybersecurity which has emerged over the preceding five years.
 - The maturity assessment which DBP undertook against the Australian Energy Sector Cyber Security Framework, which was the precursor for the IT security initiatives undertaken during AA4, was consistent with good industry practice.
 - The costs incurred for the IT security initiatives were reasonable.³¹⁵
876. In the draft decision, the ERA concluded that the proposed capital expenditure for the ‘IT security’ business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP’s opening capital base for AA5 as shown in Table 73.
877. DBP’s revised proposal included \$1.14 million of capital expenditure for the ‘IT security’ business case, which was \$0.27 million less than was included in the initial proposal. DBP attributed the difference to incurring lower cyber resilience capital expenditure during AA4 due to:
- Reassessment of DBP’s cyber security obligations in light of proposed amendments to relevant legislation. This reassessment is outlined at paragraph 1197.
 - Incorporation of DBP’s previously standalone cyber security program into the group-wide cyber security program. The group-wide cyber security program is outlined at paragraph 1197.³¹⁶
878. The ERA considers that the work included in the revised ‘IT security’ business case for AA4 is necessary to maintain the integrity of services on the DBNGP and is in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.14 million for the revised ‘IT security’ business case during AA4. The ERA therefore concludes that \$1.14 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP’s opening capital base for AA5 as shown in Table 73.

³¹⁴ DBP assessed its overall untreated risk rating for IT security as high. DBP, *2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public)*, January 2020, p. 376.

³¹⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 247 and p. 114.

³¹⁶ DBP, *Response to information request ERA 32, worksheet ERA 32_AA4 Capex Update_Confidential (005)*, 21 October 2020.

Table 73: AA5 final decision - AA4 conforming capital expenditure for the IT security business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.06	0.14	0.80	0.42	0.00	1.41
Draft decision	0.06	0.14	0.80	0.42	0.00	1.41
DBP revised proposal	0.06	0.14	0.80	0.14	0.00	1.14
Final decision	0.06	0.14	0.80	0.14	0.00	1.14

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Process safety business case

879. DBP initially proposed \$0.04 million of conforming capital expenditure for the 'Process safety' business case for AA4. The AA4 final decision capital expenditure forecast did not include any capital expenditure for this business case.
880. The work covered by the initially proposed conforming capital expenditure was for a single project for process safety initiatives and compliance upgrades.³¹⁷ DBP submitted that the scope of work conducted during AA4 under the 'Process safety' business case commenced in 2017 due to regulatory changes driven by recent major incidents in the oil and gas industry. These regulatory changes required pipeline license holders to develop measurable key performance indicators to prevent the occurrence of 'Major accident events', defined by regulation as events that have the potential to cause more than one fatality. During AA4, DBP developed a process safety dashboard in consultation with the Department of Mines, Industry Regulation and Safety. This dashboard incorporated key performance indicators for the prevention and control of 'Major accident events'.³¹⁸ Expenditure related to the implementation and continuous improvement of this system and training of staff on this system will be classified as operating expenditure during AA5.
881. DBP submitted that the work conducted during AA4 for the 'Process safety' business case was required to comply with DBP's regulatory obligations. Additionally, DBP considered that developing and maintaining key performance indicators such as those developed during AA4 has become standard industry practice and cited as support several other organisations which also implemented process safety systems to gather data on process safety type events. DBP stated that through the 'Process safety' business case work it identified many issues that had the potential to escalate to major events, for example a better ability to identify and manage mitigations to corrosion as well as more effective deployment of safety critical systems.³¹⁹

³¹⁷ DBP, Response to information request EMCa 25, Worksheet *EMCa25_AA4 Capex_Confidential_Updated model for Asset Class*, 13 March 2020.

³¹⁸ DBP, *2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public)*, January 2020, pp. 83-85.

³¹⁹ DBP, *2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public)*, January 2020, p. 88.

882. Based on the information supplied by DBP, in the draft decision the ERA concluded that the work undertaken for the 'Process safety' business case during AA4 was necessary to maintain and improve the safety of services and to comply with DBP's regulatory obligations. The ERA considered that DBP's decision to initiate the work was in line with good industry practice, as supported by the development of the process safety dashboard in collaboration with the Department of Mines, Industry Regulation and Safety. Based on the amount of capital expenditure incurred for the work (\$0.04 million) the ERA was satisfied that the work was conducted efficiently. The ERA concluded that the proposed capital expenditure for the 'Process safety' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 74.
883. DBP's revised proposal included \$0.04 million of capital expenditure for the 'Process safety' business case.
884. The ERA considers that the work included in the revised 'Process safety' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.04 million for the revised 'Process safety' business case during AA4. The ERA therefore concludes that \$0.04 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 74.

Table 74: AA5 final decision - AA4 conforming capital expenditure for the Process safety business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.01	0.03	0.00	0.00	0.00	0.04
Draft decision	0.01	0.03	0.00	0.00	0.00	0.04
DBP revised proposal	0.01	0.03	0.00	0.00	0.00	0.04
Final decision	0.01	0.03	0.00	0.00	0.00	0.04

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Decommissioning business case

885. DBP initially proposed \$0.15 million of conforming capital expenditure for the 'Decommissioning' business case for AA4. This was \$0.03 million more than the amount included in the AA4 final decision forecast for this business case.
886. The initially proposed capital expenditure covered two projects for:
- the electrical and mechanical isolation of LM500 turbines on the DBNGP
 - the decommissioning of the Jandakot gas engine alternator in 2016.

887. DBP submitted that the driver for the above forecast expenditure for this business case was that the actual cost of decommissioning the LM500 turbines was higher than forecast. The original scope was to isolate the gas system of these turbines, but this was extended during AA4 to include removal of the control system, which was integrated with operational station controls and therefore represented a scope of work that was more complex than originally planned.³²⁰
888. Based on the nature of the work undertaken, in the draft decision the ERA concluded that the work conducted under the 'Decommissioning' business case during AA4 was in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP. Based on the reasons supplied by DBP for the amount of the capital expenditure incurred for this work during AA4 the ERA was also satisfied that this work was conducted efficiently. The ERA concluded that the proposed capital expenditure for the 'Decommissioning' business case for AA4 satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 75.
889. DBP's revised proposal included \$0.15 million of capital expenditure for the 'Decommissioning' business case.
890. The ERA considers that the work included in the revised 'Decommissioning' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$0.15 million for the revised 'Decommissioning' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the revised 'Decommissioning' business case can be considered to have resulted from prudent asset management practice.³²¹ The ERA therefore concludes that \$0.15 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 75.

Table 75: AA5 final decision - AA4 conforming capital expenditure for the Decommissioning business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.02	0.13	0.00	0.00	0.00	0.15
Draft decision	0.02	0.13	0.00	0.00	0.00	0.15
DBP revised proposal	0.02	0.13	0.00	0.00	0.00	0.15
Final decision	0.02	0.13	0.00	0.00	0.00	0.15

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

³²⁰ DBP, 2021-2025 Final Plan, Attachment 7.2: OPEX Business cases (public), January 2020, p. 102.

³²¹ EMCa, Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025), January 2021, p. 15, paragraph 96.

Communications business case

891. DBP initially proposed \$2.34 million of conforming capital expenditure for the 'Communications' business case for AA4. This was \$1.55 million more than the amount included in the AA4 final decision forecast for this business case. The proposed expenditure covered 10 projects for the replacement and upgrade of communications equipment on the DBNGP.³²²
892. DBP attributed the spend in excess of the AA4 final decision forecast to undertaking unplanned activities including:
- Replacement of UHF radios. DBP submitted that this work became necessary due to changes in Australian Communications and Media Authority requirements.
 - Upgrade of network cabling and ethernet extenders at compressor stations. DBP submitted that this work was undertaken because the old cabling could no longer handle data transfer requirements.
 - Telecommunications resilience. DBP submitted that it undertook this work in response to communications outages experienced in 2017.³²³
893. In the draft decision, the ERA concluded that the work undertaken for the 'Communications' business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP. This view was based on technical advice that the untreated risk ranking of each of the unplanned activities warranted the work undertaken and that the cost incurred for the work undertaken was reasonable.³²⁴ The proposed capital expenditure for the 'Communications' business case for AA4 therefore satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and was included in DBP's opening capital base for AA5 as shown in Table 76.
894. DBP's revised proposal included \$2.38 million of capital expenditure for the 'Communications' business case, which was \$0.04 million more than was included in the initial proposal. The difference was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
895. The ERA considers that the work included in the revised 'Communications' business case for AA4 was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$2.38 million for the 'Communications' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the revised 'Communications' business case can be considered to have resulted from prudent asset management practice.³²⁵ The ERA therefore concludes that \$2.38 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 76.

³²² DBP, Response to information request EMCa 25, worksheet EMCa25_AA4 Capex_Confidential_Updated model for Asset Class, 13 March 2020.

³²³ DBP, Response to information request EMCa 01, 13 February 2020.

³²⁴ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 275 and p. 114.

³²⁵ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 15, paragraph 96.

Table 76: AA5 final decision - AA4 conforming capital expenditure for the Communications business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.29	0.29	0.00	0.81	0.95	2.34
Draft decision	0.29	0.29	0.00	0.81	0.95	2.34
DBP revised proposal	0.29	0.29	0.00	0.84	0.96	2.38
Final decision	0.29	0.29	0.00	0.84	0.96	2.38

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Office relocation business case

896. DBP initially proposed \$4.19 million of capital expenditure for its 'Office relocation' business case for AA4. The AA4 final decision capital expenditure forecast did not include any capital expenditure for this business case.
897. DBP submitted that the expiry of its office lease on 31 July 2020 prompted it to assess the value of an early lease renewal against the value of a relocation in mid-2020. DBP undertook an options analysis which considered the costs and benefits of renegotiating an extension on its current lease against the costs and benefits of relocating to two alternative sites. DBP opted to relocate and fit out a new location as this provided better value than renewing its existing lease.³²⁶
898. DBP submitted that the option of remaining at its previous premises would result in a capital expenditure of \$5.46 million. This was \$1.27 million more than the expected capital expenditure for the option DBP selected, which was to relocate to new premises on St Georges Terrace. DBP stated that remaining at its previous premises would have required carrying out refit works to ensure the premises could continue to meet DBP's business requirements. Additionally, given the age of the fit out at its previous office, DBP estimated that a refit of the premises would involve more significant work than relocating and therefore be more costly than fitting out the new premises. DBP also considered that its previous premises presented ongoing technology infrastructure challenges because the building was originally developed as a single tenant location, so DBP's connections were shared with other floors, limiting capacity and causing interruptions. Refitting the premises would not address these concerns. DBP submitted that it wanted to provide a CBD office with reliable network access, upgraded control and server rooms, a contemporary work environment and a variety of meeting facilities, and DBP considered that its new premises best met these requirements at the lowest cost.³²⁷

³²⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 391-392, 395. DBP, Response to information request EMCa 23, 8 May 2020.

³²⁷ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, pp. 392-399. DBP, Response to information request EMCa 23, 8 May 2020.

899. The expenditure DBP initially expected to incur during AA4 for the ‘Office relocation’ business case covered expenditure for:
- The fit out of the selected new premises.
 - Vacating DBP’s previous premises at the end of the lease and meeting the ‘make good’ requirements of the lease.
 - Relocating DBP’s control room, server room and office resources by mid-2020.³²⁸
900. The \$4.19 million of initially proposed capital expenditure for the ‘Office relocation’ business case was based on actual costs incurred and the costs forecast to be incurred in 2020. The forecast costs were based on estimates provided by landlords and subject matter experts.³²⁹
901. DBP submitted that the capital expenditure it would incur during AA4 to relocate its office and control room to new premises was necessary to maintain and improve the safety and integrity of DBP’s services as the new premises would provide an open office space conducive to collaboration, remove the technology infrastructure risks of the current location, provide adequate meeting facilities, upgrade DBP’s control room, information technology and operational technology server rooms, provide its staff modern amenities and thereby position DBP as an employer of choice in the oil, gas and utilities industry, as well as enable DBP to effectively manage and operate the DBNGP.³³⁰
902. In the draft decision, the ERA concluded that the proposed capital expenditure for relocation of DBP’s office to new premises during AA4 was in line with the cost that would be incurred by a service provider acting efficiently. This view was based on evaluation of DBP’s cost estimate for the alternative option of remaining at its previous premises, which showed that remaining at those premises would incur a higher amount of capital expenditure than the option pursued of relocating to the selected new premises. The ERA reviewed the cost assumptions underlying the cost estimates for both options and considered that they were reasonable, and the estimates therefore provided a sound basis for comparing the cost of these two options.
903. In the draft decision, the ERA concluded that the office relocation undertaken during AA4 was in line with good industry practice and was necessary to maintain and improve the safety, as well as maintain the integrity of DBP’s services. This conclusion was based on consideration of the non-cost benefits of relocating to the selected new premises outlined at paragraph 901 and the evaluation that relocating to the new premises would incur a lower cost than remaining at DBP’s current premises. This conclusion also took into account technical advice that the option of remaining at DBP’s current premises and refitting it would not resolve the operational risks to DBP’s control room.³³¹
904. The ERA therefore concluded in the draft decision that the initially proposed capital expenditure for the ‘Office relocation’ business case for AA4 satisfied the criteria for

³²⁸ DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, pp. 391-392, 409.

³²⁹ DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, p. 409.

³³⁰ DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, pp. 392, 408.

³³¹ The ERA’s view on this point was supported by EMCa’s technical advice that DBP’s selected option of relocating its office and the associated costs were reasonable. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 115.

conforming capital expenditure set out in rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 77.

905. DBP's revised proposal included \$4.21 million of capital expenditure for the 'Office relocation' business case, which was \$0.02 million more than was included in DBP's initial proposal. The difference was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
906. The ERA considers that the work included in the revised 'Office relocation' business case for AA4 was necessary to maintain and improve the safety and integrity of services on the DBNGP and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred revised capital expenditure of \$4.21 million for the 'Office relocation' business case during AA4. The ERA therefore concludes that \$4.21 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 77.

Table 77: AA5 final decision - AA4 conforming capital expenditure for the Office relocation business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.04	0.01	0.11	0.49	3.54	4.19
Draft decision	0.04	0.01	0.11	0.49	3.54	4.19
DBP revised proposal	0.04	0.01	0.11	0.49	3.55	4.21
Final decision	0.04	0.01	0.11	0.49	3.55	4.21

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020;

Southern communications upgrade business case

907. DBP's initially proposed capital expenditure for the 'Southern communications upgrade' business case for AA4 was \$6.91 million, comprising expenditure for a single project. This was \$4.86 million more than the amount included in the AA4 final decision forecast for this business case/project.
908. DBP submitted that during AA4 the circumstances surrounding the Southern communications upgrade project changed significantly. At the time of the AA4 access arrangement review, the scope of the project was based on replacing DBP communications equipment hosted on ██████████-owned shared infrastructure assets, including towers and land. Due to operational developments during AA4, DBP concluded that accessing and using these shared assets under existing arrangements in future would no longer be acceptable to DBP in terms of cost and its ongoing ability to manage the equipment.³³² DBP advised that:

³³² DBP, Response to information request EMCa 24, 17 March 2020.

██████████ signalled it was no longer willing to permit us to install our new equipment on the shared assets without significant upgrades to existing infrastructure. In some circumstances, ██████████ required us to build new infrastructure and gift it to them. While we considered this option, ██████████ stressed that this would not guarantee access to the assets or the continuation of this shared infrastructure arrangement.

██████████ also signalled it planned to sell its assets at Joel Terrace in East Perth. Our southern communications network currently connects to ██████████ shared infrastructure by fibre optic cable running between the Esplanade and Joel Terrace. Should the sale proceed, we would need to establish a new link between our system and ██████████ facility.

Given the uncertainty around ██████████ ongoing support, and the criticality of the southern communications network to DBP operations, we decided it would be prudent to install the new communications equipment on new DBP-owned assets (towers, poles and land). We also took steps to redesign the system configuration so that our southern communications network was no longer connected to East Perth, and established an alternative communication system to replace our shared use of the ██████████ pilot cable network in the Kwinana Industrial Area. This would remove our reliance on ██████████ altogether, and allow us full control over asset upgrade, maintenance and replacement in the future.³³³

909. ██████████ did not allow DBP to access one of its tower sites, Serpentine, where DBP had requested approval to install new communications equipment. A structural analysis of the tower had indicated that the tower would not be able to support DBP's communications equipment unless major reinforcement or reconstruction was conducted. ██████████ advised that DBP would be required to bear these costs.³³⁴

910. While ██████████ approved DBP's request to upgrade DBP's communications equipment on three other sites, the terms of the licence agreements for these three sites were not acceptable to DBP in terms of cost and the scope they allowed for DBP to manage the equipment. The revised annual fees proposed by ██████████ for the three new sites were considerably higher than previous annual costs. DBP assessed that the cost of building new DBP-owned towers on these three sites would have an estimated payback period of five to eight years. Taking into account the cost of building DBP-owned towers and the additional costs that would be required to reinforce the Serpentine tower, DBP concluded that it would be more efficient to build, own and maintain its own towers going forward. Additionally, DBP considered that building and maintaining its own towers would have additional benefits including:

- Eliminating the uncertainty of obtaining approvals for upgrading equipment hosted on shared infrastructure and the costs associated with time delays due to delays in approval processes.
- Enabling ready site access to communications equipment for DBP staff.
- Eliminating the risks of losing access to communications equipment hosted on shared infrastructure due to shared infrastructure retirements or cancellation of licence agreements.³³⁵

³³³ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 416-417, 420.

³³⁴ DBP, Response to information request EMCa 24, 17 March 2020.

³³⁵ DBP, Response to information request EMCa 24, 17 March 2020.

911. As a result of the changes in access to infrastructure which occurred during AA4, DBP revised the project scope to include the construction of new DBP-owned infrastructure including:
- new communications towers
 - upgraded data centres and rectifiers
 - installing fibre optic cable to form a new standalone microwave backbone.³³⁶
912. DBP submitted that the initially proposed capital expenditure for the ‘Southern communications upgrade’ was necessary to maintain and improve the safety of services, to maintain the integrity of services and to comply with DBP’s regulatory obligations and requirements. Given the change in operating circumstances which occurred during AA4, DBP considered that the expansion of the scope of the project to include moving to a DBP-owned and operated, standalone southern communications network was necessary to maintain the long-term performance and reliability of DBP’s communications network and to enable the continued operation of the pipeline by providing visibility of the network to DBP’s operations and field staff and allowing access to important data across the DBNGP.³³⁷
913. In the draft decision, the ERA concluded that the capital expenditure DBP incurred for the ‘Southern communications upgrade’ during AA4 was incurred efficiently. DBP supplied information that demonstrated that constructing its own towers would be more cost effective than continuing to use shared towers.³³⁸ The ERA’s conclusion on the efficiency of the costs incurred was also supported by technical advice that the costs incurred were likely to be reasonable as DBP’s procurement process and practices were commensurate with good industry practice.³³⁹
914. The ERA considered that the ‘Southern communications upgrade’ work DBP undertook in AA4 was in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP and to comply with DBP’s regulatory obligations and requirements. This view was based on technical advice that whilst the restrictions on DBP’s access to its communications assets hosted on shared infrastructure cited by DBP as driving the increased project scope were not a major impediment to operating those assets, having stand-alone infrastructure would be more operationally efficient for DBP.³⁴⁰
915. The ERA therefore considered the initially proposed capital expenditure for the ‘Southern communications upgrade’ business case was conforming capital expenditure according to rule 79 of the NGR and included this in DBP’s opening capital base for AA5 as shown in Table 78.
916. DBP’s revised proposal included \$6.90 million of capital expenditure for the ‘Southern communications upgrade’ business case. The difference between the initial and revised proposal (approximately \$5,000) was due to minor updates of DBP’s 2019 actual capital expenditure and 2020 forecast capital expenditure.

³³⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 425.

³³⁷ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 417-418.

³³⁸ DBP, Response to information request EMCa 24, 17 March 2020.

³³⁹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 116.

³⁴⁰ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 116.

917. The ERA considers that the work included in the revised 'Southern communications upgrade' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and to comply with DBP's regulatory obligations and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$6.90 million for the revised 'Southern communications upgrade' business case during AA4. The ERA therefore concludes that \$6.90 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 78.

Table 78: AA5 final decision - AA4 conforming capital expenditure for the Southern communications upgrade business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	1.14	0.83	0.38	1.52	3.03	6.91
Draft decision	1.14	0.83	0.38	1.52	3.03	6.91
DBP revised proposal	1.15	0.84	0.38	1.51	3.03	6.90
Final decision	1.15	0.84	0.38	1.51	3.03	6.90

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

CS1 compressor re-wheeling business case

918. DBP initially proposed \$1.26 million for the 'CS1 compressor re-wheeling' business case for AA4. This was \$4.95 million less than the amount included in the AA4 final decision forecast for this business case.
919. DBP submitted that its actual AA4 capital expenditure for the 'CS1 compressor re-wheeling' business case was below the AA4 final decision forecast because DBP re-wheeled only one compressor rather than the two that were budgeted for in the forecast. As part of DBP's revised AA4 submission, DBP proposed to re-wheel the two CS1 compressors because changing pipeline hydraulics resulted in the flow of gas through CS1 reducing over time to approximately half of the design flow, which imposed safety risks and inefficiencies as the impellers (or wheels) were too large to operate safely and efficiently under the new, low flow operating conditions. However, a front-end engineering study undertaken by DBP in 2016 with the equipment manufacturer, [REDACTED], identified that only one of the two compressors needed re-wheeling due to the low utilisation of compressor station 1 at that time. DBP determined that the re-wheeling of the second compressor could be deferred without material risk.³⁴¹
920. DBP submitted that the initially proposed expenditure to re-wheel the compressor was necessary to maintain and improve the safety and integrity of services along the

³⁴¹ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, pp. 430, 432-433.

DBNGP because it would ensure safe and efficient operation of the compressors at CS1 at the lower levels of flow which eventuated during AA4.³⁴²

921. In the draft decision, the ERA concluded that the proposed expenditure for the 'CS1 compressor re-wheeling' business case was necessary to maintain and improve the safety and integrity of services along the DBNGP and was incurred in line with good industry practice. This conclusion was based on technical advice that the work undertaken, including the front-end engineering study outlined at paragraph 919, which identified the potential for deferral of re-wheeling of one compressor, accorded with good industry practice.³⁴³
922. The ERA was satisfied that the work covered by the business case was carried out efficiently, as was demonstrated by DBP deferring a large proportion of the work because it identified that a portion of the work could be deferred without material risk. This conclusion was supported by technical advice that the cost of the work carried out was reasonable.³⁴⁴
923. In the draft decision, the ERA therefore concluded that the initially proposed capital expenditure for the 'CS1 compressor re-wheeling' business case was conforming capital expenditure according to rule 79 of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 79.
924. DBP's revised proposal included \$1.27 million of capital expenditure for the 'CS1 compressor re-wheeling' business case. The difference between the initial and revised proposal (approximately \$5,000) was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
925. The ERA considers that the work included in the 'CS1 compressor re-wheeling' business case for AA4 was necessary to maintain and improve the safety and integrity of services on the DBNGP and to comply with DBP's regulatory obligations and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.27 million for the revised 'CS1 compressor re-wheeling' business case during AA4. The ERA therefore concludes that \$1.27 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 79.

³⁴² DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, p. 431.

³⁴³ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 236.

³⁴⁴ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 236.

Table 79: AA5 final decision - AA4 conforming capital expenditure for the CS1 compressor re-wheeling business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.03	1.33	(0.09)	0.00	0.00	1.26
Draft decision	0.03	1.33	(0.09)	0.00	0.00	1.26
DBP revised proposal	0.03	1.33	(0.09)	0.00	0.00	1.27
Final decision	0.03	1.33	(0.09)	0.00	0.00	1.27

Numbers may not add due to rounding.

Notes: DBP's initial and revised proposals included negative amounts for 2018. These negative amounts reflected a true up of costs incurred against one of the projects in this business case that were accrued in 2017.

Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020. DBP, Response to information request 40, 29 January 2021.

IT sustaining infrastructure business case

926. DBP initially proposed \$1.81 million capital expenditure for the 'IT sustaining infrastructure' business case for AA4. This was \$0.74 million more than the amount included in the AA4 final decision forecast for this business case.
927. DBP attributed the expenditure in excess of the AA4 final decision forecast to undertaking:
- An office re-fit and audio-visual upgrade.
 - A transition to virtual servers due to encountering physical server issues during AA4 which raised the risk of server outages.
 - Additional hardware renewal for end-of-life user equipment.³⁴⁵
928. The ERA considered that the work undertaken for the IT sustaining infrastructure business case during AA4 was undertaken efficiently and in line with good industry practice and was necessary to maintain the integrity of services on the DBNGP. This view was based on technical advice that:
- The office re-fit and audiovisual upgrade undertaken were a reasonable decision at the time this work was undertaken (financial year 2016/17).
 - DBP's transition to virtual servers was consistent with industry IT trends.
 - DBP's expenditure for hardware renewal was based on reasonable end-user equipment renewal criteria.³⁴⁶
929. In the draft decision, the ERA therefore concluded that the proposed capital expenditure for the IT sustaining infrastructure business case for AA4 satisfied the

³⁴⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 452.

³⁴⁶ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, p. 117.

criteria for conforming capital expenditure set out in rule 79(1) of the NGR and included this in DBP's opening capital base for AA5 as shown in Table 80.

930. DBP's revised proposal included \$1.84 million of capital expenditure for the 'IT sustaining infrastructure' business case. The difference between the initial and revised proposal (\$0.03 million) was due to minor updates of DBP's 2019 actual capital expenditure and 2020 forecast capital expenditure.
931. The ERA considers that the work included in the 'IT sustaining infrastructure' business case for AA4 was necessary to maintain the integrity of services on the DBNGP and to comply with DBP's regulatory obligations and was in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would have incurred capital expenditure of \$1.84 million for the revised 'IT sustaining infrastructure' business case during AA4. This view is supported by technical advice that the increase in the proposed capital expenditure for the 'IT sustaining infrastructure' business case can be considered to have resulted from prudent asset management practice.³⁴⁷ The ERA therefore concludes that \$1.84 million satisfies the requirements for conforming capital expenditure set out in rule 79 of the NGR and includes this in DBP's opening capital base for AA5 as shown in Table 80.

Table 80: AA5 final decision - AA4 conforming capital expenditure for the IT sustaining infrastructure business case (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	AA4 total
DBP initial proposal	0.21	0.39	0.63	0.43	0.15	1.81
Draft decision	0.21	0.39	0.63	0.43	0.15	1.81
DBP revised proposal	0.21	0.39	0.63	0.36	0.24	1.84
Final decision	0.21	0.39	0.63	0.36	0.24	1.84

Numbers may not add due to rounding.

Note: Part of the difference between DBP's initial and revised proposed capital expenditure is due to replacing forecast 2019 inflation (as was applied in the initial proposal) with actual 2019 inflation in converting the 2016 to 2018 nominal capital expenditures into real dollar terms.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), August 2020; ERA, Final decision AA4 capital expenditure model (confidential), February 2021; DBP, Response to information request ERA 32, 21 October 2020.

Final decision conclusion

932. Based on the considerations outlined at paragraphs 755 to 931, the ERA concludes that DBP incurred \$122.30 million of conforming capital expenditure during AA4. The final decision conforming capital expenditure for AA4 is shown in Table 81 by asset class. The 2016, 2017, 2018 and 2019 capital expenditure has been determined based on actual expenditure and the 2020 capital expenditure has been based on estimates.

³⁴⁷ EMCa, Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025), January 2021, p. 16.

Table 81: AA5 final decision – AA4 conforming capital expenditure by asset class (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020	Total
Pipeline	-	-	0.09	0.01	0.23	0.33
Compression	2.55	4.79	2.90	1.91	2.45	14.59
Metering	3.50	3.67	6.92	5.40	8.27	27.76
Other	2.37	4.99	1.78	2.68	4.33	16.14
Computers and motor vehicles	3.49	2.55	3.02	2.52	5.02	16.60
Cathodic protection	0.88	1.58	4.93	7.37	4.26	19.02
SCADA, electrical, control and instrumentation and communications	5.52	6.46	2.93	6.53	6.40	27.84
Building	0.02	-	-	-	-	0.02
Total	18.34	24.02	22.57	26.42	30.94	122.30

Numbers may not add due to rounding.

Source: ERA final decision AA4 capital expenditure model, February 2021.

933. Table 82 summarises the final decision AA4 conforming capital expenditure by asset class showing the movements from the initial proposal through to the draft decision, revised proposal and the final decision.

Table 82: AA4 conforming capital expenditure – Initial and revised proposed amounts and draft decision and final decision amounts by asset class

	Initial proposal	Draft decision	Revised proposal	Final decision
Pipeline	0.33	0.33	0.33	0.33
Compression	14.67	14.67	14.59	14.59
Metering	26.98	26.98	27.76	27.76
Other	16.76	16.76	16.16	16.14
Computers and motor vehicles	17.56	13.47	17.27	16.60
Cathodic protection	19.16	19.16	19.02	19.02
SCADA, electrical, control and instrumentation and communications	26.81	26.81	27.84	27.84
Building*	0.00	0.00	0.00	0.02
Total	122.27	118.19	122.96	122.30

Numbers may not add due to rounding.

Note: *DBP's initial and revised proposals did not include an allocation of its initially proposed capital expenditure into the 'Buildings' asset class. The amounts allocated to the 'Buildings' asset class and the other asset

classes in DBP's revised proposal were obtained through an information request. DBP, Response to information request ERA 46, 24 February 2021.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), 14 August 2020. ERA, Final decision AA4 capital expenditure model (confidential), February 2021.

934. Table 83 summarises the final decision AA4 conforming capital expenditure by business case.

Table 83: Final decision AA4 conforming capital expenditure

Business case	Final decision
Compressor stations	25.53
Pipeline and mainline valves	6.14
SCADA	1.95
Health, safety and environment	0.32
Gas engine alternator control system replacement	0.51
Compressor station accommodation	2.51
Compressor package control system replacement	6.43
Jandakot site redevelopment	0.53
Maximo and DMZ	1.28
Safety case revisions	0.45
Compressor station inspection	2.82
Asset management	2.94
Meter stations	27.02
Tools	1.22
Fleet and civil equipment replacement	5.29
Turbine exhaust replacement*	0.23
Pipeline mainline valve inspection	12.52
Customer reporting system	0.64
IT sustaining applications	6.01
IT security	1.15
Process safety	0.04
Decommissioning	0.15
Communications	2.38
Office relocation	4.21
Southern communications upgrade	6.92

Business case	Final decision
CS1 compressor re-wheeling	1.27
IT sustaining infrastructure	1.84
Total	122.30

* As outlined in paragraph 840, in DBP's revised proposal \$0.4 million of the expenditure for the 'Turbine exhaust replacement' business case was captured under the proposed expenditure for the 'Compressor stations' business case, and \$0.23 million was captured under the 'Turbine exhaust replacement' business case itself.

Source: ERA, Final decision AA4 capital expenditure model (confidential), February 2021.

935. Table 84 shows the ERA's draft decision values for calculating the opening capital base for DBP's fifth access arrangement period. The ERA requires that the opening capital base at 1 January 2021 be amended to \$3,331.50 million (real dollars).

Table 84: Final decision - AA5 opening capital base (\$ million real as at 31 December 2019)

	2016	2017	2018	2019	2020
Opening capital base	3,726.32	3,639.30	3,555.31	3,469.13	3,393.13
Conforming capital expenditure	18.34	24.02	22.57	26.42	30.94
Redundant and disposed assets	-	-	-	-	-
Depreciation	(105.35)	(108.01)	(108.75)	(102.42)	(92.58)
Closing capital base	3,639.30	3,555.31	3,469.13	3,393.13	3,331.50

Numbers may not add due to rounding.

Source: ERA, Final decision on proposed revisions to the Dampier Bunbury Natural Gas Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 1 April 2021.

Required Amendment 8

The opening capital base as at 1 January 2021 must be amended to \$3,331.50 million (real as at 31 December 2019). The calculation of the opening capital base is set out in Table 84 of this final decision.

Projected capital base

936. Rule 78 of the NGR establishes how to determine the projected capital base for a particular period:

78 Projected capital base

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.

937. Rule 79 of the NGR sets out the new capital expenditure criteria:

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; and
 - (b) the capital expenditure must be justifiable on a ground stated in subrule (2); and
 - (c) the capital expenditure must be for expenditure that is properly allocated in accordance with the requirements of subrule (6).
- (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 at 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; and
 - (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) Conforming capital expenditure that is included in an access arrangement revision proposal must be for expenditure that is allocated between:

- (a) reference services;
- (b) other services provided by means of the covered pipeline; and
- (c) other services provided by means of uncovered parts (if any) of the pipeline,

in accordance with rule 93.

938. Rule 93(2) of the NGR sets out the method for allocating costs between reference and other services:

93 Allocation of total revenue and costs

...

- (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].

939. 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

940. All dollar amounts in this section are expressed in real dollars as at 31 December 2019 unless otherwise stated. The ERA has converted amounts supplied by DBP in real dollars as at 31 December 2020 using the inflation figures supplied by DBP. Where DBP has provided amounts in real dollars as at 30 June 2019, the ERA has used the eight capital city weighted average Consumer Price Index published by the Australian Bureau of Statistics to convert to real dollars as at 31 December 2019.

DBP's initial proposal

941. DBP's initial proposed forecast capital base for AA5 is shown in Table 85.

Table 85: DBP's initial proposed forecast capital base for AA5 (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025
Opening capital base	3,329.03	3,232.27	3,139.39	3,029.20	2,925.42
Capital expenditure	40.92	35.80	22.19	30.74	28.93
Depreciation	(137.68)	(128.68)	(132.38)	(134.53)	(137.74)
Asset disposals	0.00	0.00	0.00	0.00	0.00
Closing capital base	3,232.27	3,139.39	3,029.20	2,925.42	2,816.61

* SCADA is supervisory control and data acquisition.

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 13.1: Tariff Model, 28 May 2020.

942. DBP initially proposed a forecast of \$158.58 million for conforming capital expenditure for AA5. This was 29.70 per cent higher than DBP's initial proposed capital expenditure for AA4. DBP submitted that the proposed increase in capital expenditure was due to more replacements of the pipeline assets being due during AA5 than during AA4.
943. DBP reclassified six business cases that were treated as capital expenditure during AA4 as operating expenditure for AA5. These business cases were 'Health, safety and environment', 'Compressor station inspection', 'Asset management', 'Pipeline mainline valve inspection', 'Process safety' and 'Decommissioning'. The work covered by these business cases was developed as a specific forecast as part of the proposed AA5 operating expenditure forecast. These specific forecasts are outlined at paragraphs 583 to 669.
944. The distribution of the initially proposed forecast capital expenditure between the asset classes DBP proposed to be in effect during AA5 is shown in Table 86. DBP submitted that all the initially proposed AA5 capital expenditure was for maintaining or improving its ability to deliver current reference services.

Table 86: DBP's initial proposed AA5 forecast capital expenditure for AA5 by asset class (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Pipeline	0.00	0.00	0.00	0.00	0.00	0.00
Compression	6.14	3.44	4.01	3.81	4.54	21.94
Metering	1.76	1.20	1.41	1.21	1.39	6.97
Other depreciable	2.67	1.34	1.13	4.97	4.77	14.88
Computers and motor vehicles	7.37	5.23	3.94	5.68	3.67	25.89
Cathodic/corrosion protection	3.43	2.88	3.11	2.91	2.40	14.73
SCADA, electrical, control & instrumentation and communications	19.54	21.72	8.59	12.16	12.14	74.15
Non-depreciable	0.00	0.00	0.00	0.00	0.00	0.00
Total	40.92	35.80	22.19	30.74	28.93	158.58

Source: DBP, DBNGP Access Arrangement 2021-25, Attachment 13.1: Tariff Model, 28 May 2020.

945. DBP's initial proposal included business cases for the projects comprising its forecast AA5 capital expenditure as shown in Table 87.³⁴⁸

³⁴⁸ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 62.

Table 87: Initial proposed forecast capital expenditure by business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Compressor stations	9.63	5.23	5.87	7.37	8.26	36.35
Pipeline and mainline valves	2.04	1.68	2.40	1.94	1.56	9.61
SCADA	0.13	0.13	0.13	1.16	0.35	1.92
Gas engine alternator	0.92	-	1.38	3.23	2.77	8.30
Compressor stations accommodation	1.02	1.02	1.02	1.02	1.03	5.11
Northern communications system	15.25	15.29	-	-	-	30.54
Compressor package control systems replacement	-	4.69	4.70	4.71	4.73	18.84
Jandakot site redevelopment	0.53	-	-	4.10	3.91	8.53
Maximo and DMZ	1.52	0.16	0.16	0.30	0.16	2.30
Safety Case	0.51	-	-	-	-	0.51
Meter Stations	1.94	1.39	1.59	1.39	1.58	7.89
Tools	0.38	0.28	0.28	0.28	0.46	1.68
Fleet and civil equipment replacement	1.03	0.83	1.03	0.83	1.04	4.75
Turbine exhaust replacement	1.21	1.12	0.87	0.87	0.87	4.94
Customer reporting system	0.61	0.25	0.15	1.68	0.15	2.85
IT sustaining applications	1.59	0.84	0.42	0.36	0.17	3.38
IT enabling	1.48	1.28	1.35	0.56	0.57	5.25
IT security	0.39	0.57	0.36	0.23	0.23	1.78
IT sustaining infrastructure	0.75	1.04	0.46	0.70	1.09	4.05
Total	40.92	35.80	22.19	30.74	28.93	158.58

Source: DBP, DBNGP Access Arrangement 2021-2025 Final Plan, Attachment 8.6: Capex forecast model 2021-25 (public), January 2020, p. 73.

946. DBP submitted that the work it planned to carry out during AA5 was driven by stay-in-business requirements that focussed on maintaining or improving its ability to deliver current reference services through the DBNGP.³⁴⁹

³⁴⁹ DBP, 2021-2025 Final Plan, January 2020, p. 73.

947. DBP's initially proposed AA5 capital expenditure forecast included real labour cost escalation of 0.69 per cent. This was calculated as outlined at paragraphs 465 to 469.
948. As stated at paragraph 734, DBP advised that most of its expenditure was directly allocated to either pipeline services or unregulated services through its accounting system and it incurred few capital costs that were shared between pipeline services and unregulated services. DBP advised that, of its capital expenditure for pipeline services, where it was possible for capital expenditure for non-reference services to be directly attributed to an individual shipper, those costs were allocated directly to that shipper. DBP did not supply information that showed that it had made any allocation of shared capital expenditure for pipeline services for its initial proposed AA5 forecast between reference and non-reference services.³⁵⁰

Draft decision

949. In the draft decision the ERA assessed DBP's proposed capital expenditure for AA5 in accordance with rules 74, 78 and 79 of the NGR.
950. Consistent with the reasoning outlined at paragraphs 738 to 743 (paragraphs 446 to 450 of the draft decision), the ERA considered that, apart from capital expenditure that was identified and directly allocated to individual shippers by DBP (see paragraph 734), all other capital expenditure during AA5 would be shared expenditure and the apportionment of this expenditure should be made under rule 93 on a basis consistent with its allocation of total revenue. The ERA considered the allocation of total revenue at paragraphs 1183 to 1191 of the draft decision (reproduced at paragraphs 1837 to 1845 of this final decision).
951. The ERA assessed DBP's proposed AA5 capital expenditure for each business case, and its proposed AA5 equity raising costs. The ERA concluded that \$126.17 million was the best estimate possible for DBP's capital expenditure for its business cases during AA5. The draft decision AA5 capital expenditure forecast is shown in Table 88 for the business cases, which included project cost adjustments and an overall adjustment for a lower estimate of real labour cost escalation. The ERA's draft decision considerations are summarised as part of the ERA's final decision considerations. The ERA considered that the best estimate of the equity raising costs DBP would incur during AA5 was \$5.77 million, and included this amount in the AA5 capital expenditure forecast as shown in Table 89, where the forecast capital expenditure is shown by asset class.

³⁵⁰ Details of DBP's allocations of costs between regulated and unregulated assets were requested in information requests EMCa 47 (1 April 2020), ERA 27 (9 July 2020) and ERA 29 (17 July 2020).

Table 88: Draft decision AA5 capital expenditure forecast by business case (\$ million real as at 31 December 2019)

Business case	Proposed capital expenditure	Project adjustment	Labour cost adjustment	Draft decision AA5 capital expenditure forecast
Compressor stations	36.35	(7.19)	(0.25)	28.91
Pipeline and mainline valves	9.61	(2.87)	(0.07)	6.67
SCADA	1.92	0.00	(0.01)	1.90
Gas engine alternator	8.30	(1.82)	(0.07)	6.41
Compressor stations accommodation	5.11	(0.40)	(0.03)	4.68
Northern communications system	30.54	0.00	(0.11)	30.43
Compressor package control system replacement	18.84	(4.65)	(0.14)	14.04
Jandakot site redevelopment	8.53	(3.84)	(0.09)	4.60
Maximo and DMZ	2.30	0.00	(0.01)	2.29
Safety case revisions	0.51	(0.20)	(0.00)	0.31
Meter stations	7.89	(0.78)	(0.05)	7.06
Tools	1.68	(0.34)	(0.01)	1.33
Fleet and civil equipment	4.75	(0.46)	(0.03)	4.27
Turbine exhaust replacement	4.94	(1.81)	(0.04)	3.10
Customer reporting system	2.85	(0.55)	(0.02)	2.27
IT sustaining applications	3.38	0.00	(0.02)	3.37
IT enabling	5.25	(5.20)	(0.05)	0.00
IT security	1.78	(0.31)	(0.01)	1.46
IT sustaining infrastructure	4.05	(0.94)	(0.03)	3.08
Total	158.58	(31.37)	(1.04)	126.17

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

Table 89: Draft decision AA5 capital expenditure forecast by asset class (\$ million real as at 31 December 2019)

Asset class	2021	2022	2023	2024	2025	AA5 total
Compression	4.95	3.06	3.32	2.05	2.87	16.25
Computers & motor vehicles	6.42	3.16	2.41	3.38	2.79	18.16
Cathodic protection	2.75	2.31	2.49	2.33	1.93	11.81
Metering	1.58	1.08	1.26	1.08	1.24	6.24
Other	2.14	1.05	0.89	0.68	4.78	9.55
Pipeline	-	-	-	-	-	-
SCADA, electrical, control & instrumentation and communications	18.84	16.63	7.15	9.89	11.64	64.15
Cost of raising equity	1.27	1.13	1.05	1.10	1.21	5.77
Total	37.95	28.43	18.58	20.51	26.46	131.93

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

952. Table 90 shows the draft decision values for calculating DBP's projected capital base for AA5 in real dollars. Table 91 shows the draft decision values for calculating DBP's projected capital base for AA5 in nominal dollars.

Table 90: Draft decision projected AA5 capital base (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025
Opening capital base AA5	3,327.39	3,241.40	3,161.66	3,071.41	2,983.22
Plus: Forecast capital expenditure	37.95	28.43	18.58	20.51	26.46
Less: Depreciation	(123.94)	(108.17)	(108.83)	(108.70)	(109.45)
Less: Asset disposals	-	-	-	-	-
Closing capital base	3,241.40	3,161.66	3,071.41	2,983.22	2,900.23

Numbers may not add due to rounding.

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff model (Public), 14 August 2020.

Table 91: Draft decision projected AA5 capital base (\$ million nominal)

	2021	2022	2023	2024	2025
Opening capital base	3,370.31	3,325.57	3,285.60	3,232.98	3,180.67
Inflation	43.48	42.90	42.38	41.71	41.03
Opening capital base (end of period)	3,413.79	3,368.47	3,327.98	3,274.69	3,221.70
Plus: Forecast capital expenditure	38.94	29.54	19.56	21.87	28.58
Less: Depreciation	(127.16)	(112.41)	(114.56)	(115.89)	(118.20)
Less: Asset disposals	-	-	-	-	-
Closing capital base	3,325.57	3,285.60	3,232.98	3,180.67	3,132.07

Numbers may not add due to rounding.

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 14 August 2020.

953. The draft decision set out the following required amendment:

Draft Decision Required Amendment 11

DBP must amend the projected capital base to reflect the values set out in Table 103 of this draft decision (Table 91 of this final decision) so that the closing capital base as at 31 December 2025 will be \$3,132.07 million.

DBP's response to the draft decision

954. DBP's revised forecast closing capital base for AA5 was \$2,859.14 million, derived as shown in Table 92.

Table 92: DBP's revised forecast projected capital base for AA5 (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025
Opening capital base	3,344.09	3,216.90	3,138.53	3,042.99	2,957.63
Capital expenditure	53.63	36.90	21.84	32.19	20.85
Depreciation	(180.82)	(115.27)	(117.38)	(117.56)	(119.33)
Asset disposals	0.00	0.00	0.00	0.00	0.00
Closing capital base	3,216.90	3,138.53	3,042.99	2,957.63	2,859.14

Source: DBP, 2021-2025 Revised Final Plan, Attachment 13.1A: AGIG Revised Final Plan Tariff Model (Confidential)

955. DBP's revised proposed AA5 forecast capital expenditure was \$158.15 million, which was \$0.43 million lower than its initial proposal. The reasons for the variations for each business case are outlined in the assessment of each business case below.

956. DBP's revised proposed AA5 forecast capital expenditure for each business case is shown in Table 93.

Table 93: DBP's revised proposed AA5 capital expenditure by business case (\$ million real as at 31 December 2019)

Business case	Revised proposed AA5 capital expenditure
Compressor stations	33.70
Pipeline and MLV	8.87
SCADA	1.91
Gas engine alternator	6.44
Compressor stations accommodation	4.60
Northern communications system	30.53
Compressor package control systems replacement	16.45
Jandakot Site redevelopment	8.75
Maximo and DMZ	2.30
Safety case revisions	0.51
Meter stations	7.89
Tools	1.68
Fleet and civil equipment	4.75
Turbine exhaust replacement	4.85
Customer reporting system	2.85
IT sustaining applications	10.91
IT enabling	5.65
IT security	2.37
IT sustaining infrastructure	3.15
Total	158.15

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), October 2020.

957. DBP accepted the ERA's draft decision in principle for the 'SCADA', 'Northern communications system', 'Maximo and DMZ', 'Safety case revisions', 'Meter stations', 'Tools', 'Fleet and civil equipment', 'Customer reporting system' and 'IT sustaining infrastructure' business cases. For these business cases, the only difference between DBP's initial proposed capital expenditure and its revised proposed capital expenditure is due to DBP's revised rate of labour escalation (0.57 per cent), which is 0.12 per cent lower than the rate of labour escalation it included in its initial proposal (0.69 per cent)

958. The largest differences between DBP's revised proposed amounts and its initial proposal are for the 'IT sustaining applications', 'Compressor stations', 'Compressor package control system replacement' and 'Gas engine alternator' business cases. 'IT enabling' and 'IT security' business cases.
959. DBP increased its proposed capital expenditure for three business cases primarily involving IT assets ('IT sustaining applications', 'IT enabling' and 'IT security') by \$7.63 million from its initial proposal, with the largest increase being for the 'IT sustaining applications' business case. The differences between DBP's revised proposed amounts and its initial proposed amounts are due to changes in scope arising from implementation of the AGIG-wide IT programs. The revised proposed costs are allocations of costs from group-wide programs, rather than being standalone costs for delivering the work as was the case in the initial proposal. The increases in the proposed capital expenditure for the 'IT sustaining applications', 'IT enabling' and 'IT security' business cases were offset by decreases in the proposed capital expenditure for other business cases.

Submissions to the ERA

960. The ERA received seven submissions in response to its issues paper of which three referred to DBP's forecast of capital expenditure for AA5. These submissions were from Gas Trading Australia Pty Ltd (gasTrading), CITIC Pacific Mining Management Pty Ltd (CPM) and Wesfarmers Chemicals, Energy & Fertilisers Ltd (WesCEF) and were considered by the ERA in the draft decision.³⁵¹
961. In response to the draft decision, gasTrading submitted that it was supportive of Amendment 11 of the draft decision.³⁵²

Final decision

Assessment of capital expenditure

962. The ERA's draft decision assessment of DBP's proposed projected capital base for AA5 considered:
- The criteria for forecasts set out at rule 74 of the NGR and the criteria for conforming capital expenditure set out at rule 79 of the NGR.
 - DBP's governance and investment management framework.
963. The ERA's final decision assessment of DBP's revised proposal for its AA5 projected capital base takes into account the above-listed points, the public submissions to the draft decision and technical advice provided by EMCa on DBP's revised proposal.³⁵³
964. After reviewing DBP's initially proposed AA4 capital expenditure, in the draft decision the ERA concluded that the extent of the variance between DBP's estimated actual capital expenditure and forecast expenditure at the business case level raised doubt about the reliability of DBP's capital expenditure forecasts. Based on this conclusion, in the draft decision the ERA applied percentage reductions at the business case level to the initially proposed capital expenditure for AA5 for the 'Compressor stations', 'Pipeline and mainline valve', 'Meter stations' and 'IT sustaining

³⁵¹ These submissions were outlined at paragraphs 597 to 601 of the draft decision.

³⁵² Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 2.

³⁵³ This technical advice is outlined in EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021.

infrastructure' business cases as part of determining the efficient capital expenditure for the work the ERA considered was prudent for these business cases.

965. In its revised proposal, DBP submitted that it made incremental improvements to its investment governance process over AA4, including improvements in response to feedback on its governance process received during the access arrangement review for AA4. DBP therefore did not accept the ERA's conclusion in the draft decision that there would be significant variance between DBP's forecast costs and actual costs at the business case level during AA5. DBP submitted that the variation between its forecast and actual costs for AA4 was due to its forecasting process at the time of the access arrangement revision for AA4, and DBP undertook to improve its forecasting process over AA4.³⁵⁴
966. In its revised proposal and in response to information requests DBP supplied detailed information on the condition of the assets covered by its revised proposed capital expenditure for AA5. This information included advice from external advisers, investigation reports, test reports with condition assessment reports and performance history, photographs of assets and copies of work orders. Based on this information the ERA concludes that the scopes of work covered by the revised proposal for the 'Compressor stations', 'Pipeline and mainline valve', 'Meter stations' and 'IT sustaining infrastructure' business cases are justified by the condition of the assets included in these business cases and would be undertaken by prudent service providers acting efficiently and consistently with good industry practice.
967. In its revised proposal, DBP applied a revised forecast labour escalation rate of 0.57 per cent, which DBP calculated as outlined in paragraphs 473 to 477. As stated in paragraph 480, the ERA has determined a real labour escalation rate of 0.18 per cent for this final decision. In the final assessments of each of the business cases comprising DBP's AA5 capital expenditure forecast which follow (paragraphs 968 to 1217), the ERA's forecast of DBP's conforming capital expenditure therefore includes a real labour escalation rate of 0.18 per cent.

Compressor stations business case

968. DBP initially proposed \$36.35 million of forecast capital expenditure for the compressor stations business case for AA5. The initial proposal covered 34 projects as shown in Table 94.

³⁵⁴ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 8-9, 25-26.

Table 94: DBP's initial proposed AA5 forecast capital expenditure – Compressor stations business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Hazardous area inspection and rectification	0.41	0.20	-	0.20	0.41	1.23
24VDC batteries & charger replacement	0.17	-	-	-	-	0.17
Upgrade of ██████████ HMI software to latest Windows version	-	0.25	-	-	0.26	0.51
Replacement of air conditioning at compressor stations	0.39	0.39	0.39	-	-	1.18
Measurement of earthing grid resistance to remote earth in compressor No 7	0.10	-	-	-	-	0.10
Refurbishment of below ground pipework	1.32	1.33	1.33	1.33	1.34	6.64
Upgrade of station & unit F&G monitoring system at CSs (Inc SESD & MLESD)	0.36	-	-	-	-	0.36
Installation of fire suppression system on stage 3A units	0.43	0.43	0.56	0.56	-	1.99
Loadbank control panel redesign and replacement program	0.25	0.13	0.13	0.13	0.13	0.77
████████ compressor package dynamic vibration data visibility annual upgrade	0.06	0.06	0.06	0.06	0.06	0.31
Compressor units online dynamic data vibration monitoring system - Server based	0.09	0.09	0.09	0.09	0.09	0.46
Compressor station CP visibility	0.20	0.20	-	-	-	0.41
As-build of CP equipment at compressor stations	0.13	-	-	-	-	0.13
Replacement of corroded exhaust flange at CS10U3	0.13	-	-	-	-	0.13
Upgrade of fuel gas pressure control loop for CS01/U1, CS03/U1, CS05/U1 & U2, CS08/U2	0.14	-	0.14	-	-	0.29
████████ turbines ██████████ software upgrade/licensing	0.57	-	-	-	-	0.57
Painting of aboveground facility	0.51	0.51	1.02	1.02	0.51	3.58
Unit isolation valve replacement	0.31	0.31	0.31	0.31	0.31	1.53
Station isolation valve replacement	0.51	-	0.51	-	0.51	1.53
Recycle valve replacement/overhaul	0.20	0.20	0.20	0.20	0.21	1.02
CS unit F&G monitoring system replacement (ACS)	-	-	-	0.92	0.92	1.85

Project	2021	2022	2023	2024	2025	AA5 total
CS unit F&G control system replacement (Stage 2)	-	-	-	-	0.31	0.31
CS unit F&G control system replacement (Stage 4)	-	-	-	1.23	1.23	2.46
UPS system 110v	0.08	-	-	0.08	0.31	0.46
UPS system 24v	0.04	-	-	0.10	0.33	0.47
Dry gas seal replacement	0.41	0.41	0.41	0.41	0.41	2.04
Turbine combustion air inlet filter system replacement	0.92	-	-	-	-	0.92
Electrical protection integrity testing	0.11	0.11	0.11	0.11	0.11	0.56
Station PLC replacement	0.31	0.31	0.31	0.31	0.31	1.53
Refurbishment of underground oil sump tanks	0.08	0.08	0.08	0.08	0.08	0.41
Instrument air system replacement	0.09	-	-	-	-	0.09
Relocate unit piping to above ground at CS3	0.30	-	-	-	-	0.30
Compressor sites cladding removal	0.81	-	-	-	-	0.81
Fuel gas heater	0.20	0.20	0.20	0.20	0.41	1.23
Total	9.63	5.23	5.87	7.37	8.26	36.35

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: ACS – Additional compressor stations; CP - cathodic protection; CS – compressor station; F&G - fire and gas; HMI – human machine interface; MLESD – main line emergency shut down; PLC – programmable logic controller; SESD – station emergency shut down; UPS – uninterruptable power supply; VDC – volt direct current.

969. The 'Compressor stations' business case covered ongoing capital works for maintaining the performance of compressor station assets. DBP submitted that the works were necessary to maintain the safety and integrity of services along the DBNGP.³⁵⁵
970. The program included projects within three categories, being end-of-life asset replacement, upgrades and proactive works. The initially proposed AA5 'Compressor stations' capital expenditure was divided between these categories as shown in Table 95. The difference between the program totals shown in Table 94 and Table 95 was labour escalation, which is not included in the total shown in Table 95.

³⁵⁵ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, p. 3.

Table 95: DBP's initial proposed AA5 forecast capital expenditure – Compressor stations business case costs excluding labour escalation, by category (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Replacement	4.69	1.60	2.11	3.52	4.78	16.70
Proactive	2.82	2.22	2.52	2.72	2.42	12.69
Upgrade	2.07	1.37	1.18	1.04	0.94	6.59
Program total	9.58	5.19	5.81	7.28	8.13	35.99

Source: DBP, 2021-2025 Final Plan, Attachment 8.5A: Addendum to Capex Business Cases (Confidential), January 2020, p. 7, Table 0.5.

971. DBP initially proposed \$25.81 million of conforming capital expenditure for the 'Compressor station' business case for AA4. DBP submitted that the initially proposed AA5 capital expenditure for the compressor stations business case covered a larger volume of works than undertaken during AA4 because a significant number of the assets would reach the end of their useful life during AA5.
972. Approximately \$7.54 million of the difference between the proposed AA4 capital expenditure and the initial AA5 forecast was due to end-of-life replacement expenditure. The volume of end-of-life asset replacements scheduled during AA5 was higher than that scheduled during AA4, which DBP attributed to the need to replace various electrical controls instrumentation, rotating and mechanical equipment at compressor stations due to these assets reaching their 15-year and 30-year replacement cycles during AA5.
973. The upgrades component of the initial 'Compressor stations' forecast covered the upgrade of equipment and software items that were either obsolete or would become obsolete or unsupported during AA5. DBP submitted that the main projects driving the increase in forecast upgrades expenditure compared to AA4 were the 'Installation of Fire Suppression System on Stage 3A Units' and the 'Fuel gas heater' projects, shown in Table 94 as costing \$2.01 million and \$1.24 million respectively. DBP submitted that these projects were critical due to the integrity risks of these assets in their current condition.³⁵⁶
974. The capital expenditure included in the initially proposed 'Compressor stations' forecast for proactive works was approximately consistent with what DBP incurred during AA4. Proactive works are activities that are necessary to repair and maintain assets that are not due for end-of-life replacement or do not have identified obsolescence/upgrade issues. The largest proactive works project included in the 'Compressor stations' program for AA5 was 'Refurbishment of below ground pipework', which was forecast to require \$6.64 million as shown in Table 94.
975. In the draft decision, the ERA accepted that some level of increase in 'Compressor stations' expenditure would be required during AA5 compared to AA4 to maintain the safety and integrity of services. DBP deferred a large portion of its 'Compressor stations' work scheduled for AA4, and the ERA accepted that some of the deferred work will be carried out during AA5. Additionally, this conclusion was based on

³⁵⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 9-10.

technical advice that DBP's explanation that the driver for the increase in the AA5 capital expenditure (the timing of replacement cycles) was reasonable.³⁵⁷

976. However, the ERA was not satisfied that the proposed capital expenditure for the 'Compressor stations' business case for AA5 was consistent with the amount a prudent service provider acting efficiently would incur. This view was based on EMCa's technical advice that:
- DBP's pipeline supply performance reliability of 100 per cent for the last two years indicated that there was some scope for reducing investment in the 'Compressor stations' program and still satisfying the 100 per cent reliability target.
 - In previous access arrangement periods, DBP had demonstrated its ability to deliver a portion of its planned work for less than the amount forecast, including due to finding that the condition of assets was sufficient to allow deferral and integrating proposed projects with other, related projects at a lower combined cost.³⁵⁸
977. In the draft decision, the ERA concluded that DBP was likely to be able to deliver the work comprising this business case at less than DBP's initially proposed cost by deferring some of its planned work to the next access arrangement period or by delivering the work at a lower cost than allowed for in the preliminary cost estimate. The ERA therefore adjusted the initially proposed capital expenditure for the 'Compressor stations' business case by 20 per cent. This reflected the ERA's view, stated at paragraph 963, that the variance between DBP's estimated actual capital expenditure and forecast expenditure at the business case level during AA4 raised doubt about the reliability of DBP's capital expenditure forecasts for AA5. DBP estimated that it would incur 41 per cent less capital expenditure during AA4 than was included in the AA4 final decision forecast for the 'Compressor stations' business case. The 20 per cent adjustment was based on technical advice that DBP could prudently defer some of its planned AA5 'Compressor stations' work at no material risk to the DBNGP's performance reliability or attainment of its asset management objectives and a 20 per cent reduction was reasonable. This was supported by information supplied by DBP that the replacement of some of its compressor station assets was conducted based on condition, rather than age, which provided scope for deferral of replacement of some assets.³⁵⁹ Additionally, 43 per cent of DBP's forecast 'Compressor stations' expenditure was scheduled for 2024 and 2025, and any deferral of work which was identified from the schedule for these years would likely delay the expenditure until the sixth access arrangement period.
978. In the draft decision, the ERA required DBP to amend its initially proposed capital expenditure forecast for AA5 to reflect a total forecast of \$28.91 million for the 'Compressor stations' business case. This amount was derived by:
- Reducing the initially proposed capital expenditure for the business case by 20 per cent as outlined at paragraph 977.
 - Adjusting the labour escalation included in the business case forecast to include a real labour cost escalation rate of 0.30 per cent as outlined at paragraph 967.

³⁵⁷ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 119.

³⁵⁸ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 119.

³⁵⁹ DBP, Response to information request EMCa 10, 11 March 2020, p. 1.

979. The ERA therefore concluded that \$28.91 million was the best estimate of the efficient cost of this work program during AA5 and satisfied rule 74 of the NGR. This amount was included in the draft decision capital expenditure forecast as shown in Table 96.

Table 96: Draft decision AA5 capital expenditure forecast – Compressor stations business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	9.63	5.23	5.87	7.37	8.26	36.35
Project adjustment	(1.92)	(1.04)	(1.16)	(1.45)	(1.63)	(7.19)
Labour cost escalation adjustment	(0.03)	(0.03)	(0.04)	(0.06)	(0.08)	(0.25)
Draft decision capital expenditure	7.68	4.16	4.67	5.85	6.55	28.91

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

980. DBP's revised proposal included \$33.70 million for the 'Compressor stations' business case, which was \$2.65 million less than its initial proposed forecast. DBP considered that the \$28.91 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered would be necessary during AA5.

981. DBP attributed the difference between its initial and revised proposals for this business case to a review it conducted of the projects comprising this business case, through which it identified the reductions to its forecast expenditure shown in Table 97. Based on this review, DBP did not accept that a 20 per cent reduction to its initial proposed forecast would be achievable within AA5.³⁶⁰

³⁶⁰ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 6.

Table 97: Revised proposal reductions to initial proposed AA5 capital expenditure forecast for 'Compressor stations' business case (\$ million real as at 31 December 2019)

Project	Reduction in forecast AA5 cost	Reason for reduction in AA5 forecast cost
Upgrade of station & unit F&G monitoring system at CSs (Inc SESD & MLESD)	0.35	DBP's review concluded that this project could be deferred by 12 months without materially impacting the risk of the assets and therefore commence in 2026 (AA6).
CS unit F&G control system replacement (Stage 2)	0.30	DBP's review concluded that this project could be deferred by 12 months without materially increasing the risk of the assets and therefore commence in 2026 (AA6).
CS unit F&G control system replacement (Stage 4)	1.19	DBP's review concluded that half of the project could be deferred until AA6.
Refurbishment of below ground pipework	0.70	The reduction in forecast costs was a result of detailed design work undertaken since DBP's initial proposal. The design work identified that lower unit rates could be applied than in the initial proposal, which used unit rates mostly based on historical averages because the AA5 scope covers proportionately more pipework above ground than below ground than the work on which the historical averages were based.

Source: DBP, *DBNGP Revised Final Plan, Attachment 8.5: Capex Business Cases (public)*, pp. 7-8, Table 1.

Note: * Abbreviations: CS – compressor station; F&G - fire and gas; MLESD – main line emergency shut down; SESD – station emergency shut down.

982. Part of the difference between DBP's initial and revised proposals for this business case was also due to its revised rate of labour escalation (0.57 per cent).
983. The ERA considers that the scope of work covered by DBP's revised proposed capital expenditure for the 'Compressor stations' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice. DBP supplied detailed information on the condition of the assets covered by the revised 'Compressor stations' business case, including advice from external advisers, investigation reports, test reports with condition assessment reports and performance history, photographs of the assets and copies of work orders.³⁶¹ Based on this information, and technical advice that the revised scope of work is prudent given the documented condition of the compressor station assets, the ERA is satisfied that the proposed work is necessary to maintain the safety and integrity of services on the DBNGP.³⁶² The ERA therefore considers that the 20 per cent reduction to the proposed capital expenditure applied in the draft decision is not appropriate as it would not provide sufficient capital expenditure to enable the prudent level of work on the 'Compressor station' assets during AA5.
984. The ERA considers that \$33.51 million is the amount that would be incurred for the revised 'Compressor stations' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of

³⁶¹ DBP, Response to information request EMCa 51, 18 November 2020.

³⁶² EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 20-21, paragraphs 109-111.

0.18 per cent to DBP's estimate of the unescalated costs of the revised business case. DBP's estimates of the unescalated costs were based on:

- Three-year averages of actual costs incurred during AA4 or other historical costs for the same or similar programs of work where possible.
- Internally-developed estimates based on input from DBP staff or external engineering specialists for unique projects or work that has not been required in the past.³⁶³
- The ERA considers that the application of these estimation methods has provided reliable estimates of the forecast unescalated costs for the planned AA5 work. Technical advice also supports the reasonableness of DBP's cost estimates for the revised scope of work.³⁶⁴ However, the ERA considers that the labour escalation included in the revised proposal is not the best estimate of the rate of labour escalation for AA5. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA has therefore determined the forecast efficient costs of the 'Compressor stations' business case by applying a rate of labour escalation of 0.18 per cent to the unescalated cost estimates for the revised business case.

985. Based on the conclusions in paragraphs 983 and 984, the ERA considers that \$33.51 million is the best forecast of DBP's conforming capital expenditure for AA5 and therefore satisfies rule 74 of the NGR. The ERA has included \$33.51 million for the 'Compressor stations' business case in DBP's projected capital base for AA5 as shown in Table 98.

Table 98: Final decision AA5 capital expenditure forecast – Compressor stations business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	9.27	5.22	5.86	7.36	5.99	33.70
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.03)	(0.02)	(0.03)	(0.05)	(0.05)	(0.19)
Final decision capital expenditure	9.24	5.20	5.83	7.30	5.93	33.51

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Pipeline and mainline valves business case

986. DBP initially proposed \$9.61 million of forecast capital expenditure for the 'Pipeline and main line valves' business case for AA5. The forecast expenditure covered 14 projects as shown in Table 99.

³⁶³ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 10.

³⁶⁴ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 21-22, paragraphs 112-113.

Table 99: DBP's initial proposed AA5 forecast capital expenditure - Pipeline and mainline valves business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Annual dig up program based on Runcom results	0.15	0.00	0.00	0.00	0.00	0.15
CP visibility on non-visible sites	0.12	0.00	0.00	0.00	0.00	0.12
TRU replacement	0.06	0.08	0.06	0.06	0.06	0.33
DC power upgrade MLV6	0.07	0.00	0.00	0.00	0.00	0.07
Replacement of original DBNGP signage	0.46	0.46	0.46	0.38	0.00	1.76
Piping interface wrap removal	0.42	0.27	0.20	0.00	0.00	0.90
Long range ultrasonic or dig up of unpiggable pipes at facilities	0.10	0.20	0.20	0.20	0.21	0.92
Impressed current ground beds replacement	0.10	0.10	0.10	0.10	0.10	0.51
Replacement of solar panels	0.00	0.00	0.51	0.00	0.00	0.51
MLV redesign for closing operation	0.26	0.27	0.00	0.00	0.00	0.53
Pig barrel isolation valve replacement	0.00	0.00	0.31	0.61	0.62	1.54
Lister GEA control system replacement	0.00	0.00	0.20	0.22	0.22	0.63
RTU replacement	0.00	0.00	0.35	0.36	0.36	1.07
Replace batteries at MLV and meter stations	0.29	0.30	0.00	0.00	0.00	0.59
Business case total	2.04	1.68	2.40	1.94	1.56	9.61

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: DC – direct current; GEA – gas engine alternator; MLV – mainline valve.

987. The initially proposed AA5 capital expenditure for the 'Pipeline and mainline valves' business case was 54.68 per cent higher than the proposed capital expenditure for AA4. DBP attributed the increase to:

- More assets reaching the end of their design life during AA5.
- Increasing corrosion prevention measures on ageing assets to maintain the assets' integrity.
- Valve installations to facilitate ongoing in-line inspection compliance.³⁶⁵

³⁶⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 55.

988. The 14 projects covered by the 'Pipeline and mainline valves' business case fell under three broad categories and the scope of the works covered by these projects included:
- Replacement of end of life electrical control and instrumentation equipment: replacement of the gas engine control systems, remote terminal units, solar panels, as well as the replacement of batteries at main line valves and meter stations, which will reach the end of their design and useful lives during AA5. An additional project that fell under this category was the data centre power upgrade at mainline valve six, which was scheduled for 2021.
 - Replacement of end of life mechanical equipment: replacement of DBNGP signage along the pipeline that is no longer legible and the replacement of pig barrel isolation valves to accommodate pig launch and retrieval during the inline inspection program.
 - Preventative works to protect pipeline and main line valve assets from corrosion: the annual dig up program designed to test the adequacy of the cathodic protection system, the replacement of 47 transformer rectifier units that have reached the end of their design lives, the replacement of two ground beds, the installation of cathodic protection visibility in non-visible sites to ensure reliability of the cathodic protection system, the removal of piping interface wrap to remove the risk of creating a corrosive environment underneath the tape, and the implementation of the long-range ultrasonic tool at unpiggable sites to enable assessment of areas that are unpiggable.³⁶⁶
989. DBP considered that its initially proposed forecast capital expenditure for the 'Pipeline and main line valves' business case was necessary to maintain the safety and integrity of services along the DBNGP. Specifically, DBP submitted that the renewal of electrical control and instrumentation equipment and mechanical equipment, as well as the proactive works undertaken to protect from corrosion and safety hazards and maintain performance, would ensure the continued operation of the pipeline and the main line valves, and minimise the likelihood of leakage or explosion on the DBNGP.³⁶⁷ Additionally DBP considered that the planned AA5 'Pipeline and main line valves' work program would contribute to enabling the DBNGP to operate with minimal direct and costly repair or replacement of the pipeline itself, thereby maximising the DBNGP's design life.
990. Where possible, DBP derived its initially proposed forecast costs for the pipeline and main line valves business case by multiplying the proposed volume of activities by estimated unit rates.
991. DBP submitted that it based the proposed volume of activities for the 'Pipeline and main line valves' business case on all factors that, in its knowledge, drove replacement including asset age, equipment obsolescence, original equipment manufacturer product life cycle and condition monitoring.³⁶⁸
992. The estimated unit rates used to derive the initial forecast cost for the business case were based on:
- The three-year average actual cost incurred in AA4, where this was possible.

³⁶⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 54, 76-82.

³⁶⁷ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 55, 72.

³⁶⁸ DBP, Response to information request EMCa 01, 26 February 2020, pp. 1-2.

- Where this was not possible, other historical costs for the same or similar programs of work, which generally were determined through a competitive tender process.³⁶⁹
993. In the draft decision, the ERA accepted that the ‘Pipeline and mainline valves’ work program DBP proposed would contribute to maintaining the safety and integrity of services on the DBNGP and that replacing pipeline and mainline valve assets at the end of their design life was commensurate with good industry practice.³⁷⁰
994. However, the ERA was not satisfied that the amount of expenditure initially proposed for AA5 was a reasonable estimate of the amount that a prudent service provider operating efficiently would incur for the program. The ERA’s conclusion was based on:
- DBP’s ‘Pipeline and mainline valves’ business case expenditure for AA4. Specifically, as outlined at paragraph 763, DBP’s proposed AA4 expenditure was 14.90 per cent below the AA4 final decision forecast for this business case, which DBP attributed to finding efficiencies and possibilities to defer work during AA4. The ERA therefore considered that DBP had scope to find efficiencies and possibilities to defer work in its planned program of work for AA5.³⁷¹
 - Technical advice that the DBNGP’s pipeline supply performance reliability of 100 per cent for the last two years indicated that there was some scope for reducing investment in the proposed program of work and still satisfying the target.³⁷²
 - The inclusion of two projects with a risk-ranking of ‘Low’ in the AA5 forecast for this business case.³⁷³ According to DBP’s risk ranking framework, ‘Low’ risks are tolerable.³⁷⁴ The combined proposed capital expenditure for these two projects was \$1.70 million, or 17.64 per cent of the total proposed expenditure for this business case. DBP did not demonstrate how it accounts for the risk rankings of projects to determine the projects and expenditure included in its AA5 proposal.
 - Technical advice that the ‘Pig barrel isolation valve replacement’ project could be prudently deferred by two years because the valve replacement work could be undertaken in the year prior to the scheduled inline inspections.³⁷⁵

³⁶⁹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 73.

³⁷⁰ The ERA’s view took into account technical advice that DBP’s stated driver for the increase in capital expenditure for the ‘Pipeline and mainline valves’ business case compared to AA4 (that a significant number of pipeline and mainline valve assets will reach the end of their design life during AA5) was commensurate with good industry practice. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 120.

³⁷¹ That the ERA took this into account in determining the AA5 forecast was supported by technical advice that DBP demonstrated in the AA4 period that it was able to prudently defer or deliver work for pipeline and mainline valve assets for less than the regulatory forecast. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 120.

³⁷² EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 120.

³⁷³ These projects are ‘Lister GEA control system replacement’ and ‘RTU replacement’. DBP, Response to information request EMCa 30, document *EMCa30-4_DBNGP AA5 Capex Plan 14 January 2019*, 27 April 2020.

³⁷⁴ DBP, *2021-2025 Final Plan, Attachment 8.8: Operational Risk Management Framework (confidential)*, January 2020, p. 2.

³⁷⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 120.

995. The ERA concluded that \$6.67 million was the best estimate of the prudent and efficient amount of capital expenditure for the 'Pipeline and mainline valves' business case for AA5, and therefore satisfied rule 74 of the NGR. This amount was derived by reducing the proposed forecast capital expenditure by:
- Assuming the 'Pig barrel isolation valve replacement' would commence in 2025, rather than 2023 as currently scheduled.
 - Reducing the proposed capital expenditure remaining after taking into account the reduction from assuming the 'Pig barrel isolation valve replacement' would commence in 2025 by 20 per cent.
 - Adjusting the real labour cost escalation rate included in the forecast to 0.30 per cent, as outlined at paragraph 967.
996. The draft decision capital expenditure forecast included capital expenditure for the 'Pipeline and mainline valves' business case as shown in Table 100.

Table 100: Draft decision AA5 capital expenditure forecast – Pipeline and mainline valves business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	2.04	1.68	2.40	1.94	1.56	9.61
Project adjustment	(0.41)	(0.33)	(0.72)	(0.87)	(0.55)	(2.87)
Labour cost escalation adjustment	(0.01)	(0.01)	(0.02)	(0.02)	(0.02)	(0.07)
Draft decision capital expenditure	1.63	1.33	1.66	1.05	0.99	6.67

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020.

997. DBP's revised proposal included \$8.87 million for the 'Pipeline and mainline valves' business case. DBP considered that the \$6.67 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered will be necessary during AA5. DBP's revised proposed amount was \$0.74 million below its initially proposed amount. DBP attributed the difference to a review of the projects comprising this business case which it conducted, through which it identified the reductions to its forecast expenditure shown in Table 101. Based on this review, DBP did not accept that the reductions made to its initial proposal for this business case in the draft decision were achievable and submitted that the reductions would not reflect a prudent level of replacement and refurbishment of the assets within the scope of the 'Pipeline and mainline valves' business case.³⁷⁶

³⁷⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 23.

Table 101: Revised proposal reductions to initial proposed AA5 capital expenditure forecast for 'Pipeline and mainline valves' business case (\$ million real as at 31 December 2019)

Project	Reduction in forecast AA5 cost	Reason for reduction in AA5 forecast cost
'Pig barrel isolation valve replacement'	0.30	DBP's review concluded that [REDACTED] of the pig barrel isolation valve replacements it had scheduled for replacement during AA5 in its initial proposal could be deferred to AA6.
'Lister GEA control system replacement'	0.42	The condition of some of the gas engine alternators scheduled for replacement during AA5 deteriorated more than expected during AA4, which necessitated their replacement during AA4. As a result, some of the scope of works scheduled for AA5 has been brought forward into AA4 and is not forecast to be carried out during AA5.

Source: DBP, 2021-25 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 24-25.

Note: * Abbreviation: GEA – gas engine alternator.

998. Part of the difference between DBP's initial and revised proposals for this business case was also due to its revised rate of labour escalation (0.57 per cent).
999. Regarding the 'Pig barrel isolation valve replacement' project, DBP disagreed with the ERA's conclusion in the draft decision that the commencement of the project could be deferred from 2023 to 2025, effectively meaning that only [REDACTED] of the [REDACTED] valves originally scheduled for replacement during AA5 would be replaced within the period. DBP's review of the project concluded that the program could be deferred by one year to commence in 2024, with only [REDACTED] of the valve replacements being deferred to AA6. DBP considered that the current valves did not have sufficient sealing capacity to provide positive isolation from mainline pressure when installing pigging equipment and must therefore be replaced ahead of the commencement of the next round of inline inspections. DBP submitted that [REDACTED] of the [REDACTED] valves originally forecast for replacement in AA5 already had minor leakage and, of the [REDACTED] valves not currently leaking, at least [REDACTED] would be in poor enough condition to be leaking within AA5. DBP therefore did not consider that a prudent asset manager would defer replacement of [REDACTED] of the [REDACTED] valves to AA6 and such deferral was not in line with industry practice.³⁷⁷
1000. Regarding the 'Lister GEA control system replacement' project, DBP's revised proposal includes \$0.20 million of capital expenditure for AA5, which was the capital expenditure estimated for the remaining scope of the project after the work carried out during AA4 was taken into account.³⁷⁸
1001. DBP supplied detailed information to support its revised proposal for the 'Pipeline and mainline valves' business case including investigation reports, test reports with condition assessment reports and performance history and photographs of assets.³⁷⁹ Based on this information and technical advice received, the ERA is now satisfied

³⁷⁷ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 24.

³⁷⁸ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 25. DBP, 2021-2025 Revised Final Plan, Attachment 8.6A: Capex Forecast Model 2021-25, October 2020.

³⁷⁹ DBP, Response to information request EMCa 52, 16 November 2020.

that the scope of work covered by DBP's revised proposed capital expenditure for the 'Pipeline and mainline valves' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and is necessary to maintain the safety and integrity of services on the DBNGP due to the documented condition of the 'Pipeline and mainline valves' assets.³⁸⁰

1002. The ERA considers that the \$8.87 million forecast capital expenditure proposed for the revised business case is not the best estimate of the efficient amount for the work because the ERA considers that the labour escalation included in the proposed amount (0.57 per cent) is not the best estimate of the rate of labour escalation for AA5. However, the ERA considers that DBP's estimate of the unescalated costs of the revised business case are reasonable because they have been developed using reasonable estimation methods (outlined in paragraph 992). Further, the ERA agrees with technical advice that DBP has taken appropriate steps to provide reasonable cost estimates for the projects comprising this business case.³⁸¹
1003. The ERA considers that a service provider acting efficiently would incur \$8.82 million of capital expenditure for the work comprising the 'Pipeline and mainline valves' business case. This forecast has been derived by applying a labour cost escalation rate of 0.18 per cent to the unescalated cost estimate for this work developed by DBP. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent.
1004. Based on the conclusions in paragraphs 1001 to 1003, the ERA considers that \$8.82 million is the best forecast of DBP's conforming capital expenditure for AA5 and therefore satisfies rule 74 of the NGR. \$8.82 million is therefore included in DBP's projected capital base for AA5 for the 'Pipeline and mainline valves' business case.

Table 102: Final decision AA5 capital expenditure forecast – Pipeline and mainline valves business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	2.04	1.68	2.39	1.72	1.04	8.87
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.05)
Final decision capital expenditure	2.03	1.67	2.38	1.71	1.03	8.82

Source: ERA, *Final decision AA5 capital expenditure model (confidential)*, February 2021.

³⁸⁰ The technical advice received recommended that the work covered by the revised 'Pipeline and mainline valves' business case was prudent given the condition of the assets covered by the revised business case and the requirement to maintain the integrity of some of these assets through inspections. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 24, paragraph 125.

³⁸¹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 24, paragraph 127.

SCADA business case

1005. DBP initially proposed \$1.92 million of forecast capital expenditure for the SCADA business case for AA5. The forecast expenditure covered two projects as shown in Table 103.

Table 103: DBP's initial proposed AA5 forecast capital expenditure - SCADA business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
SCADA hardware upgrade	0.13	0.13	0.13	0.14	0.35	0.89
SCADA software upgrade	0.00	0.00	0.00	1.02	0.00	1.02
Business case total	0.13	0.13	0.13	1.16	0.35	1.92

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1006. The hardware upgrade component of the SCADA business case covered the replacement of server and switch hardware in line with the standard warranty by the hardware manufacturers. The software upgrade component of the SCADA business case covered a full software upgrade of the DBNGP's SCADA assets to avoid obsolescence and ensure integration and alignment with other assets used on the DBNGP.
1007. DBP based the initially proposed forecast capital expenditure for the software upgrade on a quote provided by the software provider and similarly the proposed expenditure for the server hardware was based on the lowest-priced quotes by vendors for each server identified as needing replacement during AA5.
1008. DBP submitted that its initially proposed forecast expenditure for the SCADA business case was necessary to maintain and improve the safety and integrity of services on the DBNGP. DBP submitted that the proposed work covered by the expenditure would maintain and improve the safety and integrity of services because SCADA assets feed information from the DBNGP's assets back to its control centre and thereby support safe and reliable pipeline control and monitoring.³⁸²
1009. The ERA considered that the proposed upgrades to be undertaken as part of the SCADA business case were necessary to maintain and improve the safety and integrity of services on the DBNGP, were in line with good industry practice and the proposed costs were those that would be incurred by a prudent service provider acting efficiently. This view was based on technical advice that:
- It was necessary to keep SCADA hardware and software current to avoid failure of the SCADA hardware and software, which could lead to the loss of visibility of DBNGP's assets and materially affect the safety and efficiency of the affected assets.
 - DBP's proposed costs for the SCADA software and hardware upgrades were based on current and reasonable estimates and DBP's replacement schedule for the servers and switches was aligned with good industry practice.

³⁸² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 84.

- DBP's decision to use [REDACTED] instead of [REDACTED], for any required professional services was prudent as it reduced the cost of the software upgrade.³⁸³

1010. In the draft decision, the ERA concluded that capital expenditure of \$1.90 million for the SCADA business case was conforming capital expenditure according to rule 79 of the NGR and included this in the draft decision capital expenditure forecast for AA5 as shown in Table 104. This capital expenditure included labour cost escalation of 0.30 per cent, as outlined at paragraph 967.

Table 104: Draft decision for AA5 capital expenditure forecast – SCADA business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.13	0.13	0.14	1.16	0.35	1.92
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.01)	(0.00)	(0.01)
Draft decision capital expenditure	0.13	0.13	0.13	1.15	0.35	1.90

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

1011. In its revised proposal, DBP accepted the ERA's draft decision on the SCADA business case, but revised the proposed forecast to reflect its revised proposed labour cost escalation rate of 0.57 per cent.³⁸⁴ DBP's revised proposed forecast was \$1.91 million.
1012. As outlined at paragraph 967, the ERA considers that the best forecast of the labour escalation rate for AA5 is 0.18 per cent.
1013. The ERA maintains its position from the draft decision that the work included in the SCADA business case, which is unchanged from the initial proposal, will be necessary during AA5 to maintain and improve the safety and integrity of services on the DBNGP and is in line with what would be incurred by a prudent service provider acting efficiently good industry practice. The ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$1.90 million for the SCADA business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$1.90 million satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 105.

³⁸³ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 120-121.

³⁸⁴ DBP, *2021-2025 Revised Final Plan, Attachment 8.11: Response to Draft Decision on Capex*, October 2020, p. 12.

Table 105: Final decision AA5 capital expenditure forecast – SCADA business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.13	0.13	0.13	1.16	0.35	1.91
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.01)	(0.00)	(0.01)
Final decision capital expenditure	0.13	0.13	0.13	1.15	0.35	1.90

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Gas engine alternator business case

1014. DBP initially proposed \$8.30 million of forecast capital expenditure for the gas engine alternator control system replacement business case for AA5. The proposed expenditure, distributed over AA5 as shown in Table 106, comprised the estimated cost for replacement of [redacted] gas engine alternator and diesel engine alternator control systems and the transition to a standardised power management system for all gas engine alternator control systems on the DBNGP. There are four different brands of gas engine alternator control systems used on the DBNGP, and all brands require replacement approximately every 15 years according to DBP's asset management plan and manufacturer recommendations. The forecast cost of replacing the control systems identified for replacement during AA5 covered four projects as shown in Table 106, with each project covering the costs of replacing control systems using one brand.

Table 106: DBP's initial proposed AA5 forecast capital expenditure - Gas engine alternator control system replacement business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
GEA control system replacement [redacted]	0.92	-	-	-	-	0.92
GEA control system replacement [redacted]	-	-	-	0.92	0.92	1.85
GEA control system replacement [redacted]	-	-	0.46	0.92	1.39	2.77
GEA control system replacement [redacted]	-	-	0.92	1.38	0.46	2.77
Business case total	0.92	0.00	1.38	3.23	2.77	8.30

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1015. DBP submitted that the current gas engine alternator control systems used obsolete control system hardware and the architecture of those systems restricted effective integration into the DBNGP's compressor station control system. This restriction led to a loss of event history and other data required for failure analysis. An independent front-end engineering and design study, conducted by a consultant in 2012, recommended that the DBNGP's gas engine alternator power management systems

be standardised.³⁸⁵ DBP therefore considered that the proposed expenditure for the gas engine alternator control systems business case was required to maintain and improve the safety and integrity of services on the DBNGP.³⁸⁶

1016. The initially forecast cost of the gas engine alternator control system replacement business case was based on the cost of the most recent replacement conducted on the DBNGP.³⁸⁷
1017. In the draft decision, the ERA considered that, while some of the proposed control system replacements were necessary to maintain the integrity of services on the DBNGP, the full program of [redacted] replacements would not be undertaken by a prudent service provider acting efficiently. This was based on technical advice that DBP had demonstrated its ability to defer most of its planned control system replacements at no material risk in AA4, and that DBP can prudently defer the replacement of [redacted] control systems to the next access arrangement period.³⁸⁸ DBP's proposed schedule of gas engine alternator control system replacements for AA5 showed that the average age of the control systems at replacement would be 14.7 years, which was less than the control systems' technical design lives of 15 years and that [redacted] control systems were scheduled to be replaced at less than the technical design life. Deferring the replacement of [redacted] control systems to AA6, with no control systems replaced at less than 15 years, would increase the average replacement age to 15.2 years but at minimal risk to the DBNGP's operations.³⁸⁹ The ERA concluded that it would be prudent and consistent with good industry practice to replace [redacted] control systems instead of the proposed [redacted] in AA5.
1018. The ERA concluded that a service provider acting efficiently would incur \$6.41 million for the replacement of [redacted] gas engine alternator control systems on the DBNGP during AA5. This amount was derived by:
- Applying DBNGP's cost estimate reduced by the estimated cost of the [redacted] replacements that the ERA identified could be deferred to AA6.
 - Adjusting the labour cost escalation included in the forecast to reflect a rate of 0.30 per cent.
1019. The ERA included \$6.41 million in the draft decision capital expenditure forecast for the 'Gas engine alternator' business case as shown in Table 107. The ERA considered that \$6.41 million was the best estimate possible of the capital expenditure that will be necessary for this program of work during AA5, as required by rule 74 of the NGR.

³⁸⁵ The reasons given for this recommendation were to simplify and optimise the DBNGP's control and system stability, allow DBP to monitor gas engine alternator performance more closely and identify when proactive intervention is required, and to save fuel and reduce emissions. DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 98.

³⁸⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 99, 102, 112.

³⁸⁷ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 113.

³⁸⁸ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 376. As stated at paragraph 781, DBP deferred most of the gas engine alternator program scheduled for AA4 based on an assessment of the assets' performance during AA4.

³⁸⁹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 121.

Table 107: Draft decision AA5 capital expenditure forecast – Gas engine alternator business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.92	0.00	1.38	3.23	2.77	8.30
Project adjustment	0.00	0.00	(0.91)	(1.37)	0.46	(1.82)
Labour cost escalation adjustment	(0.00)	0.00	(0.01)	(0.03)	(0.02)	(0.07)
Draft decision capital expenditure	0.91	0.00	0.46	1.83	3.21	6.41

**The positive adjustment in 2025 reflected that the GEAs scheduled for replacement in 2023 would be deferred to 2025. The capital expenditure for the GEAs scheduled for replacement in 2024 would be deferred to the sixth access arrangement revision period.*

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020.

1020. In its revised proposal, DBP accepted the ERA's draft decision on the Gas engine alternator case, but revised the proposed forecast to reflect its revised proposed labour cost escalation rate of 0.57 per cent. DBP submitted that while the units that would be deferred for replacement will be at or beyond their technical life by the end of AA5, DBP could likely salvage sufficient spare parts from other gas engine alternator control units to manage the risk of failure for the deferred units.³⁹⁰ DBP's revised proposed forecast was \$6.44 million.
1021. As outlined at paragraph 967, the ERA considers that the best forecast of the labour escalation rate for AA5 is 0.18 per cent.
1022. The ERA maintains its position from the draft decision that the work included in the 'Gas engine alternator' business case, which is unchanged from the initial proposal, is necessary to maintain the integrity of services on the DBNGP and is in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$6.40 million for the Gas engine alternator business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$6.40 million satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 108.

³⁹⁰ DBP, 2021-2025 Revised Final Plan, Attachment 8.11: Response to Draft Decision on Capex, October 2020, p. 12.

Table 108: Final decision AA5 capital expenditure forecast – Gas engine alternator business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.92	0.00	1.38	2.76	1.38	6.44
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	0.00	(0.01)	(0.02)	(0.01)	(0.04)
Final decision capital expenditure	0.91	0.00	1.37	2.74	1.37	6.40

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Compressor stations accommodation business case

1023. DBP initially proposed \$5.11 million of forecast capital expenditure for the 'Compressor stations accommodation' business case for AA5. The proposed expenditure, which was distributed over AA5 as shown in Table 109, comprised the forecast cost for the refurbishment of accommodation within the nine compressor station compounds along the DBNGP, including:

- Building reinforcement in cyclone-prone areas and demountable building refurbishment.
- Improving amenity at the accommodation consistent with the recommendations and findings of the 2015 parliamentary inquiry into mental health impacts of fly-in, fly-out work arrangements.³⁹¹
- Improving the standard of living conditions at the compressor station compounds by making the kitchen, bathroom and bedroom areas more contemporary, functional and private.³⁹²

Table 109: DBP's initial proposed AA5 forecast capital expenditure - Compressor stations accommodation business case (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Refurbishment of compressor station accommodation/control room buildings and replacement of beds	1.02	1.02	1.02	1.02	1.03	5.11
Business case total	1.02	1.02	1.02	1.02	1.03	5.11

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1024. DBP submitted that its proposed refurbishment of compressor station accommodation during AA5 was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP and to assist DBP to comply with regulatory obligations.³⁹³ DBP considered that refurbishment of accommodation along the DBNGP would improve the overall safety of the DBNGP

³⁹¹ Western Australia Parliament Legislative Assembly, Education and Health Standing Committee, *The impact of FIFO work practices on mental health: Final Report*, 18 June 2015, cited in DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 120.

³⁹² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 128.

³⁹³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 117.

by enhancing the accommodation so it provides protection from excessive noise and heat conditions and withstands the prevailing environmental conditions. DBP considered that these improvements were necessary to fulfil its obligations under the *Petroleum Pipeline Act 1969 (WA)* and the *Mines Safety and Inspection Act 1994 (WA)* regarding accommodation provided to employees.³⁹⁴

1025. In the draft decision, the ERA concluded that the scope of work covered by the 'Compressor stations accommodation' business case was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP and would be undertaken by a prudent operator acting in line with good industry practice.³⁹⁵ However, the ERA did not consider that the proposed expenditure would be incurred by a service provider acting efficiently.
1026. DBP based the initially proposed forecast capital expenditure for the compressor stations accommodation business case on:
- Actual costs it incurred during AA4 for the refurbishment of kitchens, replacement of carpet, paint and curtains, being \$0.4 million per site.
 - Replacement costs for air-conditioning units for noise and heat mitigation and building reinforcement work.³⁹⁶
1027. The estimated cost of each activity covered by the initially proposed forecast capital expenditure during AA5 was as shown in Table 110.

Table 110: Accommodation refurbishment – Cost by activity, not including labour escalation (\$ million real as at 30 June 2019)

Activity	AA5 total
Noise & heat mitigation on the accommodation units	1.00
Building reinforcement in cyclone prone areas and demountable refurbishment	2.70
Finish kitchen, carpets, curtains, painting and any outstanding bathroom issues	1.60
Total	5.00

Source: DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 128, Table 0.13.

1028. DBP submitted that the initially proposed capital expenditure for the compressor station accommodation business case for AA5 covered the refurbishment of kitchens, carpets, curtains and paint at three compressor station sites.³⁹⁷ For one of those compressor station sites, the refurbishment of the kitchens, carpets, curtains and paint would be carried out over 2020 and 2021 and therefore only a portion of the

³⁹⁴ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 118-120.

³⁹⁵ The ERA's view on this point was supported by EMCa's technical advice, which was that the compressor stations accommodation refurbishment planned by DBP for AA5 was necessary due to the condition of the assets. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 122.

³⁹⁶ The cost per site for refurbishment of kitchens and replacement of carpet, paint and curtains is denominated in real dollars as at 30 June 2019. DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 133.

³⁹⁷ DBP, 2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public), January 2020, p. 123, Table 0.5.

work would be conducted during AA5. Multiplying the stated cost assumption of \$0.4 million per site for this work by the three sites scheduled for refurbishment of kitchens, carpets, curtains and paint gave \$1.2 million, which did not reconcile to the \$1.6 million which DBP included in its AA5 forecast for this work.³⁹⁸

1029. In the draft decision, the ERA concluded that \$4.68 million was the best estimate of the efficient cost of the 'Compressor stations accommodation' scope of work for AA5, as required by rule 74 of the NGR. This amount was derived by adjusting the initially proposed expenditure to:

- Include capital expenditure of \$0.25 million, on average, for each of the kitchen refurbishments to be conducted during 2021, and \$0.3 million for the kitchen refurbishment to be conducted during 2022. The average unit costs for the kitchen refurbishments were based on technical advice that these unit costs were reasonable.³⁹⁹ Additionally, for the refurbishment at compressor station 4, some of the work would be conducted during 2020 and therefore part of the costs would not be incurred during 2021.
- Reflect the ERA's draft decision estimate of the real labour escalation rate for AA5 (0.30 per cent).

1030. The draft decision forecast capital expenditure included \$4.68 million for the 'Compressor stations accommodation' business case as shown in Table 111.

Table 111: Draft decision AA5 capital expenditure forecast – Compressor stations accommodation business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.02	1.02	1.02	1.02	1.03	5.11
Project adjustment	(0.30)	(0.10)	0.00	0.00	0.00	(0.40)
Labour cost escalation adjustment	(0.00)	(0.00)	(0.01)	(0.01)	(0.01)	(0.03)
Draft decision capital expenditure	0.71	0.91	1.02	1.02	1.02	4.68

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

1031. In its revised proposal, DBP accepted the ERA's draft decision on the 'Compressor stations accommodation' business case although it revised the proposed forecast to reflect its revised proposed labour cost escalation rate of 0.57 per cent.⁴⁰⁰ DBP's revised proposed forecast is \$4.60 million.

1032. As outlined at paragraph 967, the ERA considers that the best forecast of the labour escalation rate for AA5 is 0.18 per cent.

1033. The ERA maintains its position from the draft decision that the work included in the 'Compressor stations accommodation' business case, which is unchanged from the initial proposal, is necessary to maintain the integrity of services on the DBNGP. The

³⁹⁸ Real dollars as at 30 June 2019.

³⁹⁹ EMCa, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 122.

⁴⁰⁰ DBP, *2021-2025 Revised Final Plan, Attachment 8.11: Response to Draft Decision on Capex*, October 2020, p. 12.

ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$4.57 million for the Compressor stations accommodation business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$4.57 million for the 'Compressor stations accommodation' business case satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 105.

Table 112: Final decision AA5 capital expenditure forecast – Compressor stations accommodation business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.51	1.02	1.02	1.02	1.03	4.60
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.01)	(0.01)	(0.01)	(0.03)
Final decision capital expenditure	0.51	1.01	1.02	1.02	1.02	4.57

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Northern communications system business case

1034. DBP initially proposed \$30.54 million of forecast capital expenditure for the 'Northern communications system' business case for AA5. The proposed expenditure covered the replacement of telecommunications infrastructure on the northern section of the DBNGP, which covers approximately 1,500 kilometres of pipeline between Perth and Dampier. The scope of work for the business case included the replacement of equipment at 42 repeater sites and the replacement of the existing copper cables used to connect communications repeater sites to nine compressor stations with optic fibre. The proposed expenditure was distributed over AA5 as shown in Table 113.

Table 113: DBP's initial proposed AA5 forecast capital expenditure - Replacement of northern communications system business case (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Replacement of northern communications system	15.25	15.29	-	-	-	30.54
Business case total	15.25	15.29	0.00	0.00	0.00	30.54

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1035. DBP submitted that the communications equipment it proposed to replace was at the end of its design life, with many of the equipment manufacturers no longer offering product and system support or supplying spare parts. DBP considered that the technological obsolescence of this equipment meant that the reliability of DBNGP's communications network had deteriorated, and therefore the proposed capital expenditure for the northern communications system was necessary to maintain the

long-term performance and reliability of the DBNGP's communications network, the continued operation of the pipeline and the safety and integrity of services.⁴⁰¹

1036. DBP based its estimate of the costs of the proposed northern communications system replacements on an estimate provided by independent consultant, [REDACTED], which DBP engaged to provide an estimate of the costs for replacing failing and obsolete communications equipment on the DBNGP. DBP's forecast expenditure of \$30.54 million for the northern communications system replacements was lower than its consultant's estimate, reflecting adjustments where DBP considered it was possible to prudently and safely defer certain capital works, for example voice communications network upgrades.⁴⁰² DBP submitted that, while the number of sites addressed by the northern communications system business case was higher than the number addressed by the 'Southern communications system' business case for AA4 (evaluated at paragraphs 907 to 917), the cost per location was expected to be approximately 40 per cent lower due to the use of existing tower structures and economies of scale in procurement.⁴⁰³
1037. In the draft decision, the ERA concluded that the proposed replacement of the northern communications system was necessary to maintain the safety and integrity of services along the DBNGP and was in line with good industry practice. This view was based on technical advice that:
- Replacing the northern communications system was justified and required given its deteriorating reliability, lack of available spare parts, technological obsolescence of the equipment and other condition-related issues which increase the risk of failure of the northern communications system, which is a critical asset for DBNGP's operations.
 - The planned scope and timing of the work proposed was consistent with the undertakings of a prudent operator.⁴⁰⁴
1038. The ERA also considered that the proposed capital expenditure for the replacement of the northern communications system, excluding the labour cost escalation component, reflected an amount that would be incurred by a service provider acting efficiently. This view was based on the support for the cost estimates provided by [REDACTED] and that DBP had identified opportunities to defer work where prudent by further refining [REDACTED] cost estimate. The ERA's view was also supported by technical advice that DBP's replacement options for the major components were selected based on cost and benefit analyses which applied reasonable estimates.⁴⁰⁵
1039. In the draft decision, the ERA concluded that capital expenditure of \$30.54 million for the 'Northern communications system' business case satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR and included this in the draft decision capital expenditure forecast for AA5 as shown in Table 114. This capital expenditure included labour cost escalation of 0.30 per cent, as outlined at paragraph 967.

⁴⁰¹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 137-138, 157.

⁴⁰² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 138, 151.

⁴⁰³ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 138.

⁴⁰⁴ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 122-123.

⁴⁰⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 122-123.

Table 114: Draft decision AA5 capital expenditure forecast – Northern communications system business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	15.25	15.29	0.00	0.00	0.00	30.54
Labour cost escalation adjustment	(0.05)	(0.07)	(0.00)	(0.00)	(0.00)	(0.11)
Draft decision capital expenditure	15.20	15.22	0.00	0.00	0.00	30.43

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1040. In its revised proposal, DBP accepted the ERA's draft decision on the Northern communications system business case although it revised the proposed forecast to reflect its revised proposed labour cost escalation rate of 0.57 per cent.⁴⁰⁶ DBP's revised proposed forecast is \$30.53 million.
1041. As outlined at paragraph 967, the ERA considers that the best forecast of the labour escalation rate for AA5 is 0.18 per cent.
1042. The ERA maintains its position from the draft decision that the work included in the Northern communications system business case, which is unchanged from DBP's initial proposal, is necessary to maintain the safety and integrity of services on the DBNGP and is in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$30.42 million for the Northern communications system business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$30.42 million satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 105.

Table 115: Final decision AA5 capital expenditure forecast – Northern communications system business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	15.25	15.28	0.00	0.00	0.00	30.53
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.05)	(0.07)	0.00	0.00	0.00	(0.11)
Final decision capital expenditure	15.20	15.21	0.00	0.00	0.00	30.42

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

⁴⁰⁶ DBP, 2021-2025 Revised Final Plan, Attachment 8.11: Response to Draft Decision on Capex, October 2020, Source: Insert-source-details p. 12.

Compressor package control system replacement business case

1043. DBP initially proposed \$18.84 million of forecast capital expenditure for the 'Compressor package control system replacement' business case for AA5. The proposed expenditure covered the replacement of [REDACTED] turbine compressor package control systems during AA5 at the end of their technical design lives. The proposed expenditure was distributed over AA5 as shown in Table 116.

Table 116: DBP's initial proposed AA5 forecast capital expenditure - Compressor package control system replacement business case (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Compressor unit control system replacement (Stage 3 & Stage 4 Units)	-	4.69	4.70	4.71	4.73	18.84
Business case total	-	4.69	4.70	4.71	4.73	18.84

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 PUBLIC, January 2020.

1044. DBP submitted that the replacement of turbine compressor package control systems as planned in its 'Compressor package control system replacement' business case was necessary to ensure the continued operation of compressors to maintain the safety and integrity of services along the DBNGP.⁴⁰⁷ DBP stated that turbine unit control systems that were not replaced at the end of their technical design lives and for which there was minimal or no support were classified as high risk under its internal risk rating system.⁴⁰⁸
1045. The initial proposed forecast for the compressor package control system business case was based on a forecast unit rate multiplied by the number of units scheduled for replacement during AA5. The unit rate included the internal labour, external labour and materials and other costs necessary to complete the replacements. This unit rate was based on historical actual costs for similar replacements and was tested against a formal quote from the vendor of one type of the control systems.⁴⁰⁹
1046. The ERA received technical advice that age is not the sole determinant of the prudent replacement date of the control systems. DBP's proposed schedule of turbine unit control system replacements for AA5 had an average replacement age of 17.5 years, which was less than the control system's technical design life of 18 years. [REDACTED] control systems were planned to be replaced at less than 18 years. Based on the technical advice received, in the draft decision the ERA concluded that DBP could defer the replacement of [REDACTED] control systems to AA6 by employing the life extension strategy that it adopted during AA4 (cannibalising spare parts from replaced units), which would increase the average replacement age of the systems to 18.5 years at minimal risk.⁴¹⁰
1047. The ERA therefore required that the capital expenditure forecast for AA5 be amended to reflect a total forecast of \$14.04 million for the 'Compressor package control

⁴⁰⁷ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 161.

⁴⁰⁸ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 167.

⁴⁰⁹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 176.

⁴¹⁰ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, paragraph 376 and p. 124.

system replacement' business case as shown in Table 117.⁴¹¹ The ERA considered that this amount satisfied the criteria for conforming capital expenditure set out in rule 79 of the NGR. This amount was derived by:

- Applying the adjustment to the initial proposed capital expenditure outlined at paragraph 1046.
- Adjusting the labour cost escalation included in the forecast to reflect a real labour cost escalation rate of 0.30 per cent as outlined at paragraph 967.

Table 117: Draft decision AA5 capital expenditure forecast – Compressor package control system replacement business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.00	4.69	4.70	4.71	4.73	18.84
Project adjustment	0.00	(4.65)	0.00	0.00	0.00	(4.65)
Labour cost escalation adjustment	0.00	(0.04)	(0.03)	(0.03)	(0.04)	(0.14)
Draft decision capital expenditure	0.00	0.00	4.67	4.68	4.69	14.04

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020.

1048. DBP's revised proposal included \$16.45 million for the 'Compressor package control system replacement' business case. DBP considered that the \$14.04 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered will be necessary during AA5.
1049. DBP's revised proposed amount was \$2.39 million below its initially proposed amount. DBP attributed the difference to its revised proposed labour escalation rate and a review it conducted of the projects comprising this business case, through which it identified that it could defer the replacement of [REDACTED] system [REDACTED] that was scheduled for replacement during AA5 until AA6. DBP considered that the increased risk of failure associated with deferring the replacement of this system to AA6 was tolerable and manageable by using emergency spares and parts recovered from replaced units. DBP submitted that by deferring only [REDACTED] unit for replacement in AA6, rather than [REDACTED], the average age at replacement of the [REDACTED] units it originally scheduled for replacement during AA5 would be 18 years which would mean that on average the age of the assets at replacement would be within the manufacturer's recommendations. Additionally, DBP submitted that the time and effort required to replace each control system meant it would not be practicable to replace [REDACTED] [REDACTED] systems it initially proposed to replace by 2024 as it had scheduled.⁴¹²
1050. DBP disagreed that it could defer the replacement of [REDACTED] units as the ERA concluded in the draft decision. While DBP acknowledged that, in some circumstances, it could manage assets to operate past their technical design lives and age was not an absolute determinant of the replacement date for the turbine control systems, DBP submitted that deferring [REDACTED] units would increase the risk of asset failure beyond a

⁴¹¹ The revised forecast was derived by reducing the proposed business case capital expenditure by the amount of proposed capital expenditure for 2022.

⁴¹² DBP, 2021-2025 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases, pp. 37-38.

prudent level given spare parts and support for the systems are increasingly limited.⁴¹³

1051. Additionally, DBP submitted that deferring more than one system replacement to AA6 would be inefficient because it would increase the number of replacements in AA6 and thereby increase the delivery risk and potential for scheduling conflicts during AA6 as well as necessitate greater resource and contractor deployment during that period.⁴¹⁴
1052. The ERA accepts DBP's submission that age at replacement of the control systems is not the sole determinant of prudent replacement scheduling for the compressor package control system replacements and that other considerations such as availability of spare parts, availability of technical support and the efficiencies of scheduling the replacements in blocks are relevant. Based on the information on the asset condition, availability of spares and operational information for the DBNGP's compressor package systems in DBP's revised proposal, the ERA considers that the replacements covered by DBP's revised proposed capital expenditure would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and are necessary to maintain the safety and integrity of services on the DBNGP.⁴¹⁵
1053. The ERA considers that \$16.35 million is the amount that would be incurred for the revised 'Compressor package control system replacement' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the revised business case. The ERA considers that DBP's unescalated cost estimates for the revised scope of work are reasonable given that DBP's revised proposal reflects further testing of the cost estimates for the control systems against a recent formal vendor quote and technical advice that DBP's revised cost estimate is reasonable.⁴¹⁶ However, the ERA considers that the labour escalation included in the revised proposal is not the best estimate of the rate of labour escalation for AA5. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent.
1054. Based on the conclusions in paragraphs 1052 and 1053, the ERA considers that \$16.35 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Compressor package control system replacement' business case and has included this in DBP's projected capital base for AA5 as shown in Table 118.

⁴¹³ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases*, pp. 37-38.

⁴¹⁴ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases*, pp. 38-39.

⁴¹⁵ This view takes into account technical advice that the revised proposal for the 'Compressor package control system replacement' business case provides a sufficient level of justification for the work proposed. This technical advice includes that the economies of scale gained from scheduling the replacement of compressor packages in blocks may be diminished by the increase in delivery risk that may occur from managing the replacement of more units within a fixed amount of time. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 26-27, paragraphs 136-137, 140.

⁴¹⁶ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases*, p. 40; EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 26, paragraph 138.

Table 118: Final decision AA5 capital expenditure forecast – Compressor package control system replacement business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.00	4.69	4.70	4.71	2.36	16.45
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	0.00	(0.02)	(0.03)	(0.03)	(0.02)	(0.10)
Final decision capital expenditure	0.00	4.67	4.67	4.67	2.34	16.35

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Jandakot site redevelopment business case

1055. DBP initially proposed \$8.53 million of forecast capital expenditure for the ‘Jandakot site redevelopment’ business case for AA5. The forecast capital expenditure was split between two projects as shown in Table 119. Together, these projects covered:

- Residual work in 2021 from the work on the site undertaken in AA4 (outlined at paragraphs 796 to 800). This included construction of a facility to provide office space, a workshop, storage area and test environment lab for DBP’s industrial automation control systems team by converting an existing space and completion of a program of minor upgrades, including upgraded security fencing.⁴¹⁷
- The redevelopment of the DBNGP’s Jandakot depot during AA5 including the construction of additional new office and warehouse facilities.

Table 119: DBP’s initial proposed AA5 capital expenditure - Jandakot site redevelopment business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Jandakot upgrade completion	0.29	0.00	0.00	4.10	3.91	8.29
IACS office/workshop/test lab	0.24	0.00	0.00	0.00	0.00	0.24
Business case total	0.53	0.00	0.00	4.10	3.91	8.53

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: IACS – industrial automation control systems.

1056. The Jandakot depot was constructed in the late 1980s and DBP submitted that its use had expanded from that originally planned for the site when it was constructed. Consequently, the accommodation and warehouse facilities were now functioning beyond their capacity and giving rise to health and safety risks, security risks, stock loss risks and growing safety incident risks.⁴¹⁸ DBP therefore considered that incurring the proposed capital expenditure to redevelop the Jandakot depot was

⁴¹⁷ DBP, Response to information request EMCa 24, 8 July 2020.

⁴¹⁸ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 181-182.

necessary to improve the safety of services on the DBNGP and to comply with DBP's regulatory obligations and requirements.⁴¹⁹

1057. The forecast cost submitted for the redevelopment of the Jandakot depot in DBP's initial proposal was an estimate. DBP stated that a formal procurement process would be undertaken before commencing the work.⁴²⁰
1058. In the draft decision, the ERA accepted that the proposed redevelopment of the Jandakot site was necessary to improve the safety of services on the DBNGP and to comply with DBP's regulatory obligations. This view was based on technical advice that:
- The current facilities on the site will need to be improved to offset the constraints and risk presented by the state of the current facilities outlined at paragraph 1056.⁴²¹
 - DBP considered some alternatives to the planned redevelopment and concluded these alternatives were not sustainable long-term options and this conclusion was reasonable. The alternatives included leasing warehouse and training facilities and changing staff rosters to reduce the need for hotel accommodation for staff attending training.⁴²²
1059. However, the ERA was not satisfied that the amount of expenditure initially proposed for AA5 was a reasonable estimate of the amount that a prudent service provider operating efficiently would incur for the site redevelopment. This view was based on technical advice that one of the options considered by DBP in its options analysis for the redevelopment, which DBP did not select to pursue, would deliver the same outcome as the planned redevelopment.⁴²³ This option was to pursue the redevelopment in stages, with the office and traffic-management issues being addressed in AA5 and the construction of the warehouse facility being deferred until the AA6 period.⁴²⁴ Effectively, this option involved the same scope of work, but deferred the timing of the work by one year, resulting in a lower net present cost for the work.
1060. The ERA considered that delays to the work compared to the planned schedule may occur in any case, based on technical advice that the work was likely to be delayed compared to the schedule due to the prevailing on-site conditions.⁴²⁵ DBP's work schedule allowed six months for the approvals process for environmental, heritage and class A water mound approvals to be secured. The ERA took into account technical advice that DBP had not demonstrated that it had adequately considered

⁴¹⁹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 188, 198-199.

⁴²⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 199.

⁴²¹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 125.

⁴²² EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 125. DBP's reason for not pursuing these alternatives was supplied in DBP, Response to information request EMCa 19, 3 March 2020.

⁴²³ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 125.

⁴²⁴ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 197.

⁴²⁵ The development site is on a class A water mound with limits on development which may have constrain DBP's proposed redevelopment.

the likelihood of a more protracted approvals process, which is typical with projects of this nature.⁴²⁶

1061. The ERA therefore considered that \$4.60 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'Jandakot site redevelopment' business case for AA5 and satisfied rule 74 of the NGR. This amount was derived by:

- Reducing the initially proposed forecast capital expenditure by assuming the site redevelopment work program would be deferred by one year.
- Adjusting the labour cost escalation included in the forecast to reflect a real labour cost escalation rate of 0.30 per cent as outlined at paragraph 967.

1062. The draft decision capital expenditure forecast therefore included capital expenditure for the 'Jandakot site redevelopment' business case as shown in Table 120.

Table 120: Draft decision AA5 capital expenditure forecast – Jandakot site redevelopment business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.53	0.00	0.00	4.10	3.91	8.53
Project adjustment	0.00	0.00	0.00	(4.05)	0.20	(3.84)
Labour cost escalation adjustment	(0.00)	0.00	0.00	(0.05)	(0.03)	(0.09)
Draft decision capital expenditure	0.52	0.00	0.00	0.00	4.07	4.60

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1063. DBP's revised proposal included \$8.75 million for the 'Jandakot site redevelopment' business case. DBP's revised proposal reflected the revised proposed labour escalation rate of 0.57 per cent and that DBP modified the original schedule for the work covered by the business case by bringing forward the approvals process for the site redevelopment by one year within the AA5 period. DBP submitted that this change would allow sufficient time for the approval processes and for construction to occur in 2024 and 2025, thereby allowing completion of the project within AA5.⁴²⁷

1064. DBP considered that deferring the site redevelopment by one year, in line with the ERA's draft decision, was not prudent and would not yield an efficient outcome because:

- It would require an interim IACS workshop, office space and laboratory to be constructed in 2021 at a forecast cost of \$234,000 as DBP considered that it would be inconsistent with its operational risk framework to not address this until 2026.
- Deferral of the site redevelopment would require additional operating expenditure of \$65,000 for extra travel to the site by specialist technicians

⁴²⁶ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 125.

⁴²⁷ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25, Attachment 8.5A – Addendum to Capex Business Cases*, October 2020, p. 46.

because currently there was inadequate space for them to perform their work at the Jandakot site.

- It would not reduce the identified risks to health, safety and environment associated with the Jandakot site to an acceptable level within AA5.
- It would take longer to address the increasing operating expenditure associated with the ongoing operations of the site, including stock loss and ongoing accommodation costs.
- DBP experienced significant changes to its Jandakot site operational procedures as a result of the COVID-19 pandemic and would likely undertake measures to enhance site security in line with COVID-19 preventative measures. DBP therefore considered the site redevelopment should be completed as soon as reasonably practical.⁴²⁸

1065. DBP submitted that its revised proposal would provide a superior outcome to deferring the site redevelopment by one year in line with the ERA's draft decision because it would:

- Reduce the risks to health, safety and environment associated with the Jandakot site to an acceptable level within AA5.
- Defer the interim IACS workshop, office space and laboratory works until the construction phase in 2024, thereby providing a cost saving.
- Mitigate increasing operating expenditure costs associated with the operation of the site in its present condition.⁴²⁹

1066. DBP supplied a net present value analysis which indicates that the reductions to operating expenditure forecast under DBP's revised scope of work exceed the capital deferment benefits that would be gained from deferring the project by one year.⁴³⁰ The ERA considers this analysis is based on reasonable assumptions and that a cost saving would therefore be expected from completing the site redevelopment according to DBP's revised schedule as opposed to deferring the development. Based on this analysis, consideration of the non-cost benefits (reduction of identified risks within AA5) of completing the site redevelopment according to DBP's revised schedule, and technical advice that DBP's revised proposal allows a sufficient time frame for obtaining approvals for the site redevelopment, the ERA considers that DBP's revised proposal for the 'Jandakot site redevelopment' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice.⁴³¹

1067. The ERA considers that \$8.69 million is the amount that would be incurred for the revised 'Jandakot site redevelopment' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the revised business case. The ERA considers that DBP's unescalated cost estimates for the revised business case scope reflect the efficient unescalated costs of carrying out the work given that:

⁴²⁸ DBP, *2021-25 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases*, October 2020, pp. 48, 50-52.

⁴²⁹ DBP, *2021-25 Revised Final Plan, Attachment 8.5A – Addendum to Capex Business Cases*, October 2020, pp. 48-51.

⁴³⁰ DBP, *2021-25 Revised Final Plan, Supporting Information to Attachment 8.5A*, October 2020.

⁴³¹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 28-29, paragraph 149.

- DBP's revised proposal reflects further refinement since its initial proposal and some of the costs of the site redevelopment have been allocated to AGIG.
- DBP's net present value analysis, which the ERA accepts is based on reasonable assumptions, indicates that the reductions to operating expenditure forecast under DBP's revised scope of work exceed the capital deferment benefits that would be gained from deferring the project by one year.

The ERA considers, however, that the labour escalation included in the revised proposal is not the best estimate of the rate of labour escalation for AA5. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent and has applied this to DBP's estimate of the unescalated costs of the redevelopment to derive an amount consistent with what would be incurred by a prudent service provider acting efficiently.

1068. The ERA therefore considers that \$8.69 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Jandakot site redevelopment' business case for AA5 and satisfies rules 74 and 79 of the NGR. This expenditure has been included in DBP's projected capital base for AA5 as shown in Table 121.

Table 121: Final decision AA5 capital expenditure forecast – Jandakot site redevelopment business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.77	0.00	0.00	5.88	2.11	8.75
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	0.00	0.00	(0.04)	(0.02)	(0.06)
Final decision capital expenditure	0.77	0.00	0.00	5.83	2.09	8.69

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Maximo and DMZ business case

1069. DBP initially proposed \$2.30 million of forecast capital expenditure for the 'Maximo and DMZ' business case for AA5. The forecast capital expenditure covered four projects as shown in Table 122.

Table 122: DBP's initial proposed AA5 forecast capital expenditure - Maximo and DMZ business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
CSN Cisco firewall and server replacement	0.16	0.00	0.00	0.00	0.00	0.16
Maximo annual patching	0.00	0.11	0.11	0.11	0.11	0.43
DMZ upgrade	0.17	0.05	0.05	0.19	0.05	0.52
Maximo business process redesign	1.19	0.00	0.00	0.00	0.00	1.19
Business case total	1.52	0.16	0.16	0.30	0.16	2.30

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: CSN – control system network.

1070. 'Maximo' and 'DMZ' are primary components of DBNGP's operational technology, which directly support the safe and reliable operations and control of the DBNGP. DBP submitted that the 'CSN Cisco firewall and server replacement' project was a standard end of life replacement. The Maximo annual patching project covered the application of patches to the Maximo software, which DBP applies annually in line with vendor guidelines, to maintain the system's reliability and performance. The 'DMZ upgrade' project also covered regularly conducted upgrades, which are required to ensure the environment remains robust and to maintain system-based security within the DBNGP. The Maximo business process redesign was a continuing project commenced in AA4 which is forecast to be completed in 2021, designed to realign asset and maintenance activity structures in Maximo with DBP's asset management plans and introduce additional functionality to track safety elements.
1071. DBP based its initially proposed forecast capital expenditure for the end of life replacement and annual patching work on historical actual information. DBP based the initially proposed forecast capital expenditure for the DMZ upgrade and Maximo business process redesign projects on the respective manufacturers' guidance on cost and supplied details of this guidance.⁴³²
1072. DBP submitted that its initially proposed forecast expenditure for the 'Maximo and DMZ' business case was necessary to maintain the integrity of services on the DBNGP. DBP submitted that the proposed work covered by the expenditure maintained the integrity of services because DMZ and Maximo were critical operational technology tools and the management and maintenance of these tools ensured its systems and data accuracy were reliable.⁴³³
1073. In the draft decision, the ERA concluded that the proposed projects to be undertaken as part of the 'Maximo and DMZ' business case during AA5 were necessary to maintain the integrity of services on the DBNGP and that the proposed capital expenditure, which was driven by standard end-of-life replacements, standard

⁴³² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 202. DBP, Response to EMCa 21, 20 March 2020.

⁴³³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 212.

maintenance investment and the continuation of an improvement project, was in line with good industry practice.⁴³⁴

1074. Based on review of the cost estimates supplied for the work and technical advice received that the proposed costs were based on reasonable estimates, the ERA concluded that the initially proposed expenditure was consistent with the amount that would be incurred by a prudent service provider acting efficiently, excluding the labour cost escalation component.⁴³⁵ The ERA adjusted the labour cost escalation included in the forecast to reflect a real rate of 0.30 per cent as outlined at paragraph 967 and concluded that \$2.29 million for the 'Maximo and DMZ' business case satisfied the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR. \$2.29 million was therefore included in the draft decision capital expenditure forecast for AA5 as shown in Table 123.⁴³⁶

Table 123: Draft decision AA5 capital expenditure forecast – Maximo and DMZ business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.52	0.16	0.16	0.30	0.16	2.30
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Draft decision capital expenditure	1.52	0.16	0.16	0.30	0.16	2.29

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1075. In its revised proposal, DBP accepted the ERA's draft decision on the Maximo and DMZ business case, however, revised the proposed forecast to reflect its revised proposed labour cost escalation rate of 0.57 per cent. DBP's revised proposed forecast is \$2.30 million.
1076. The ERA maintains its position from the draft decision that the work included in the Maximo and DMZ business case, which is unchanged from the initial proposal, is necessary to maintain the integrity of services on the DBNGP and is in line with good industry practice. The ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$2.29 million for the Maximo and DMZ business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$2.29 million satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 124.

⁴³⁴ The ERA's view on this point was supported by EMCa's technical advice that it is prudent for DBP to undertake the proposed activities for the 'Maximo and DMZ' business case. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 126.

⁴³⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 126.

⁴³⁶ The amount of capital expenditure included in the draft decision forecast appears unchanged due to rounding in the text and Table 123.

Table 124: Final decision AA5 capital expenditure forecast – Maximo and DMZ business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	1.52	0.16	0.16	0.30	0.16	2.30
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.01)
Final decision capital expenditure	1.52	0.16	0.16	0.30	0.16	2.29

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Safety case revisions business case

1077. DBP initially proposed \$0.51 million of forecast capital expenditure for the 'Safety case revisions' business case for AA5. The forecast expenditure covered one project as shown in Table 125.

Table 125: DBP's initial proposed AA5 forecast capital expenditure - Safety case revisions business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Safety case revision and remaining life review	0.51	-	-	-	-	0.51
Business case total	0.51	-	-	-	-	0.51

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1078. The DBNGP safety case is the primary document that outlines how the operation of the pipeline is conducted in compliance with DBP's legislative obligations under the *Petroleum Pipelines Act 1969 (WA)* and the *Petroleum Pipelines (Management of Safety of Pipeline Operations) Regulations 2010*. A comprehensive review and revision of the safety case is required every five years. As the most recent review occurred in 2016, DBP is required to submit a revised safety case in 2021. The proposed forecast capital expenditure for AA5 covered the cost for the required review and revision of the DBNGP safety case.

1079. DBP submitted that its proposed forecast expenditure for the 'Safety case revisions' business case was necessary to comply with regulatory obligations and to maintain the integrity of services by maintaining good industry practice by keeping the DBNGP's safety case current.⁴³⁷

1080. DBP based the proposed forecast capital expenditure for the 'Safety case revisions' business case on the historical costs of previous safety case reviews and revisions.⁴³⁸ DBP submitted that it incurred \$0.65 million in total for the last revision of its safety case, with \$0.21 million of this being incurred in 2015 and the remainder incurred in 2016.

⁴³⁷ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 217, 226.

⁴³⁸ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 227.

1081. In the draft decision, the ERA concluded that DBP's proposed capital expenditure for the 'Safety case revisions' business case was not consistent with the amount that a prudent service provider acting efficiently would incur. This was based on technical advice that the revision of the safety case should be straightforward given the incremental nature of the work.⁴³⁹
1082. The ERA included \$0.31 million of capital expenditure for the 'Safety case revisions' business case in the draft decision capital expenditure forecast, as shown in Table 126. This amount was derived based on technical advice that an amount of \$0.31 million is a reasonable amount for updating DBP's safety case in AA5. The ERA considered that this amount was the best estimate possible of the capital expenditure that would be necessary for the safety case revision taking place during AA5, as required by rule 74 of the NGR. This amount included real labour escalation of 0.30 per cent as outlined at paragraph 967.

Table 126: Draft decision AA5 capital expenditure forecast – Safety case revisions business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.51	0.00	0.00	0.00	0.00	0.51
Project adjustment	(0.20)	0.00	0.00	0.00	0.00	(0.20)
Labour cost escalation adjustment	(0.00)	0.00	0.00	0.00	0.00	(0.00)
Draft decision capital expenditure	0.31	0.00	0.00	0.00	0.00	0.31

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1083. DBP's revised proposal included \$0.51 million for the 'Safety case revisions' business case. DBP considered that the \$0.31 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered would be necessary during AA5 and maintained that \$0.51 million satisfied rules 74 and 79 of the NGR.⁴⁴⁰ Part of the difference between DBP's initial and revised proposed forecast for this business case was also attributable to the change in DBP's proposed labour escalation rate, which was 0.57 per cent in its revised proposal.
1084. DBP submitted in its revised proposal that the forecast cost of revising its safety case in 2021 was driven by the requirements of the applicable regulations. DBP planned to adopt the same method previously accepted by the Department of Mines, Industry Regulation and Safety to conduct a similar scope of revision. DBP submitted that this approach entailed significant input from across different areas of its organisation and submitted an additional cost breakdown to support its forecast cost for the 'Safety case revision' work.⁴⁴¹
1085. The ERA accepts that a revision of DBP's safety case will be necessary during AA5 to comply with DBP's regulatory obligations, that such a revision would be undertaken

⁴³⁹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 126.

⁴⁴⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 63-64.

⁴⁴¹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 62 and 65.

by a prudent service provider and that it is good industry practice to keep the DBNGP's safety case current.

1086. However, the ERA is not satisfied that the amount of expenditure proposed for the 'Safety case revisions' business case for AA5 is a reasonable estimate of the amount that a prudent service provider operating efficiently would incur for the work covered by the business case. This conclusion is based on technical advice that the time and cost estimates for the work included in the additional cost breakdown supplied by DBP are excessive given that:
- There has been relatively little change during AA4 to the DBNGP's covered assets and any changes should be recorded as part of a prudent service provider's ordinary activities.
 - DBP has a comprehensive asset management plan, sound knowledge of the safety risks posed by its assets and a comprehensive set of controls.⁴⁴²
1087. The ERA considers that a service provider acting efficiently would incur \$0.31 million of capital expenditure for the scope of the work covered by the 'Safety case revisions' business case. This amount reflects the ERA's view that the cost for the work is excessive for the reasons outlined in paragraph 1086 and also takes into account that \$0.31 million is sufficient for the work related to the covered assets.
1088. Based on the conclusions in paragraphs 1086 and 1087 the ERA considers that \$0.31 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Safety case revisions' business case and therefore satisfies rules 74 and 79 of the NGR. \$0.31 million is included in DBP's projected capital base for AA5 as shown in Table 127.

Table 127 Final decision AA5 capital expenditure forecast – Safety case revisions business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.51	0.00	0.00	0.00	0.00	0.51
Project adjustment	(0.20)	0.00	0.00	0.00	0.00	(0.20)
Labour cost escalation adjustment	(0.00)	0.00	0.00	0.00	0.00	(0.00)
Final decision capital expenditure	0.31	0.00	0.00	0.00	0.00	0.31

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Meter stations business case

1089. DBP initially proposed \$7.89 million of forecast capital expenditure for the 'Meter stations' business case for AA5. The forecast expenditure covered 10 projects as shown in Table 128. The initially proposed AA5 expenditure was significantly lower than the proposed capital expenditure for this business case (\$26.23 million) for AA4.

⁴⁴² EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 30, paragraphs 157-158.

This is because the work undertaken for the 'Meter stations' business case in AA4 was driven by unforeseen events, outlined at paragraph 822.

Table 128: DBP's initial proposed AA5 forecast capital expenditure - Meter stations business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Flow computer replacement	-	-	-	-	0.15	0.15
Meter station valves and control valves overhauls	0.94	0.75	0.76	0.76	0.76	3.97
Upgrade of gas chromatographs	0.13	-	-	-	-	0.13
Coriolis meter replacement	0.16	-	-	-	-	0.16
Cockburn power station and PEPL flow meter	0.29	-	-	-	-	0.29
Earthing replacement and AC mitigation of facilities	0.10	0.10	0.10	0.10	0.10	0.51
Turbine meter replacement	-	-	-	-	0.23	0.23
Water bath heater replacement at meter stations	0.24	0.24	0.25	0.25	0.25	1.23
MLV and meter station hazardous area inspection and rectification works	-	0.20	0.41	0.20	-	0.82
Meter station piping repair due to corrosion	0.08	0.08	0.08	0.08	0.08	0.41
Business case total	1.94	1.39	1.59	1.39	1.58	7.89

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: AC – alternating current; MLV – Mainline valve; PEPL – Pilbara extension pipeline.

1090. The scope of works covered by the 10 projects that comprised the meter stations business case included:

- The replacement or refurbishment of end of life measurement equipment.
- The replacement of end of life gas quality analysis equipment.
- The replacement and refurbishment of gas heating equipment and associated utilities.
- The replacement and refurbishment of pressure, temperature and flow control equipment.
- The replacement and refurbishment of electrical and instrumentation equipment required to monitor and control the field equipment.⁴⁴³

1091. DBP submitted that its initially proposed forecast expenditure for the meter stations business case was necessary to maintain and improve the safety and integrity of services on the DBNGP, as well as to comply with its regulatory obligations including

⁴⁴³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 233.

obligations specified by DBP's commercial agreements and legislation including the *Petroleum Pipelines Act 1969 (WA)* and *Petroleum Pipelines (Management of Safety of Pipeline Operations) Regulations 2010* and Australian Standards 2885, 3000 and 60079.⁴⁴⁴

1092. Where possible, DBP derived its initially proposed forecast costs for the meter stations business case by multiplying the proposed volume of activities by estimated unit rates that were based on three-year actual average costs incurred in AA4. Where this was not possible, due to infrequent or new activities identified for AA5, DBP based its proposed forecast costs for the meter stations business case on tender contract values that were determined through a competitive tender process.⁴⁴⁵
1093. The proposed volume of activities and the schedule for those activities aligned with the volume and schedule of activities specified in DBP's pipeline and mainline valves asset management plan.⁴⁴⁶
1094. In the draft decision, the ERA accepted that the 'Meter stations' work program DBP proposed would contribute to maintaining the safety and integrity of services on the DBNGP, as well as complying with DBP's regulatory obligations. This was based on technical advice that good industry practice for meter stations assets is for preventative management of the assets rather than reactive management. DBP's proposed schedule of activities reflected a preventative management approach.
1095. However, the ERA was not satisfied that the amount of expenditure initially proposed for AA5 was a reasonable estimate of the amount that a prudent service provider operating efficiently would incur. This conclusion was based on technical advice that, of the 10 projects proposed for AA5, based on historical expenditure, DBP was likely to be able to prudently reduce its expenditure on five of these due to these being either recurring annual expenditures or having high annual capital costs and/or rounded-up estimates.⁴⁴⁷
1096. The ERA concluded that \$7.06 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'Meter stations' business case for AA5, and therefore satisfied rule 74 of the NGR. This amount was derived by:
- Reducing the un-escalated costs included in the initially proposed forecast by 10 per cent.
 - Adjusting the labour cost escalation included in the forecast to reflect a real rate of 0.30 per cent as outlined at paragraph 967.
1097. The adjustment to the un-escalated costs was made based on DBP's demonstrated ability during the AA4 period to identify opportunities to prudently defer planned work or identify efficiencies in executing that work for other business cases, and technical advice that a reduction of 10 per cent was likely to result in a reasonable amount for

⁴⁴⁴ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 229-230.

⁴⁴⁵ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 246-247.

⁴⁴⁶ DBP, *Asset Management Plan Metering Facilities (Confidential)*, 2 January 2020 (submitted to ERA as part of DBP, Response to information request EMCa 07, 21 February 2020).

⁴⁴⁷ These projects were 'Earthing replacement and AC mitigation of facilities', 'Meter station valves and control valves overhauls', 'Water gas heater fuel train replacement at meter stations', 'Mainline valve and meter station hazardous area inspection and rectification works' and 'Meter station piping repair due to corrosion'. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 127.

the 'Meter stations' work.⁴⁴⁸ The draft decision capital expenditure forecast included capital expenditure for the 'Meter stations' business case as shown in Table 129.

Table 129: Draft decision AA5 capital expenditure forecast – Meter stations business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.94	1.39	1.59	1.39	1.58	7.89
Project adjustment	(0.19)	(0.14)	(0.16)	(0.14)	(0.16)	(0.78)
Labour cost escalation adjustment	(0.01)	(0.01)	(0.01)	(0.01)	(0.02)	(0.05)
Draft decision capital expenditure	1.74	1.24	1.43	1.25	1.41	7.06

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1098. DBP's revised proposal included \$7.89 million for the 'Meter stations' business case. DBP considered that the \$7.06 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered will be necessary during AA5 and maintained that \$7.89 million satisfied rules 74 and 79 of the NGR.⁴⁴⁹ Part of the difference between DBP's initial and revised proposed forecast for this business case is also attributable to the change in DBP's proposed labour escalation rate, which is 0.57 per cent in its revised proposal.
1099. DBP submitted in its revised proposal that it conducted a bottom-up, project-level review of the scope of work for the 'Meter stations' business case and found no further opportunities to optimise the program.⁴⁵⁰ This review and its conclusions also covered the five projects for which the ERA considered DBP was likely to be able to prudently reduce its expenditure during AA5.⁴⁵¹
1100. DBP did not accept the ERA's adjustment of ten per cent to its initial proposed forecast because:
- DBP's bottom-up review did not identify that any of the work in its initial proposal for the 'Meter stations' business case could be prudently deferred without materially impacting risk or inhibiting achievement of its asset management objectives. DBP considered that its meter station assets were critical, and deferrals would put at risk the safety and integrity of services on the DBNGP as well as leading to non-compliance with its regulatory obligations. DBP submitted that the assets covered by the proposed work were either in poor condition, obsolete or would reach the end of their design lives during AA5.⁴⁵²
 - DBP's bottom-up review did not find any further scope for achieving efficiencies in order to deliver the business case scope for less than its initial forecast. DBP submitted that its ability to achieve cost reductions in other capital expenditure programs did not support that it was able to make similar savings

⁴⁴⁸ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 127.

⁴⁴⁹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 63-64.

⁴⁵⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 66, p. 70.

⁴⁵¹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 72.

⁴⁵² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 70 and 72.

in all projects because the drivers for replacing or refurbishing an asset could vary significantly by program.⁴⁵³

1101. Regarding EMCa's technical advice that the 'Meter stations' AA5 forecast was based on rounded-up estimates, DBP submitted that rounding its forecasts was a reasonable practice and any differences in profiling or rounding were unlikely to be material and were expected to be outweighed by other cost factors such as exchange rates, market rates, asset conditions, changes in volumes, changes in manufacturer specifications and unforeseen circumstances.⁴⁵⁴
1102. DBP supplied detailed information including investigation reports, test reports with condition assessment reports and performance history and photographs of assets to support the conclusions of its project-level review outlined in paragraph 1100.⁴⁵⁵ The ERA considers that this information validates the conclusions of DBP's project-level review and therefore there is no further opportunity for deferral of work from DBP's revised 'Meter stations' business case given the condition of the meter station assets.⁴⁵⁶ The ERA therefore considers that the work covered by DBP's revised proposed capital expenditure for the 'Meter stations' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and is necessary to maintain the safety and integrity of services on the DBNGP and to comply with DBP's regulatory obligations.
1103. The ERA considers that DBP's unescalated cost estimates for the 'Meter stations' business case are reasonable given that economies of scale and efficiencies were built in to the AA5 forecast because the unit cost estimates were based on the actual AA4 unit costs and the AA4 program of work was much larger than the planned AA5 program.⁴⁵⁷ Additionally, the ERA's conclusion on this point takes into account technical advice that DBP's cost estimates for the revised scope of work are reasonable.⁴⁵⁸ However, the ERA considers that the labour escalation included in DBP's revised proposal is not the best estimate of the rate of labour escalation for AA5. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA considers that \$7.84 million is the amount that would be incurred for the revised 'Meter stations' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the business case.
1104. Based on the conclusions in paragraphs 1102 and 1103, the ERA considers that \$7.84 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Meter stations' business case and has included this in DBP's projected capital base for AA5 as shown in Table 130.

⁴⁵³ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 70-72.

⁴⁵⁴ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 71, 73-74.

⁴⁵⁵ This information included investigation reports, test reports with condition assessment reports and performance history and photographs of assets. DBP, Response to information request EMCa 52, 16 November 2020.

⁴⁵⁶ The ERA's conclusion is supported by technical advice that the revised proposed scope of work would be conducted by a prudent service provider to address failure risk and/or inefficient maintenance costs. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 32, paragraphs 170-172.

⁴⁵⁷ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 66-67.

⁴⁵⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 33, paragraph 173.

Table 130 Final decision AA5 capital expenditure forecast – Meter stations business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	1.94	1.39	1.59	1.39	1.57	7.89
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.05)
Final decision capital expenditure	1.94	1.38	1.58	1.38	1.56	7.84

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Tools business case

1105. DBP initially proposed \$1.68 million of forecast capital expenditure for the 'Tools' business case for AA5. This was 45.21 per cent higher than the capital expenditure for this business case that DBP proposed for AA4. The forecast expenditure covered four projects as shown in Table 131.

Table 131: DBP's initial proposed AA5 forecast capital expenditure - Tools business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
TAM tools	0.08	0.08	0.08	0.08	0.08	0.38
TOM tools	0.20	0.20	0.20	0.20	0.21	1.02
Borescope replacement	0.10	-	-	-	0.10	0.20
Emergency response equipment replacement	-	-	-	-	0.07	0.07
Business case total	0.38	0.28	0.28	0.28	0.46	1.68

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

Note: * Abbreviations: TAM - transmission asset management; TOM - transmission operations management.

1106. The four projects together covered the regular inspection and periodic, proactive replacement of the tools and equipment which DBP submitted were necessary for DBP's technicians, tradespeople and engineers to perform their work in a safe manner.

1107. DBP derived the initially proposed forecast capital expenditure for the 'Tools' business case by multiplying the proposed volume of activities, which was based on historical average volumes, by estimated unit rates for materials and labour.⁴⁵⁹

⁴⁵⁹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 261. The historical actual volume of borescope equipment was adjusted for an expected increased frequency of replacement for borescope equipment during AA5.

1108. DBP attributed the increase in the forecast 'Tools' capital expenditure for AA5 compared to AA4 to:
- An increase in replacement for borescope equipment, which was required every four years and occurs twice in AA5 (2021 and 2025 as shown in Table 131). This replacement was only required once during AA4.
 - A change to its reporting structure whereby part of the cost of transmission asset management ('TAM') tools was previously captured under another business case.
 - An increase in the number of tools required.
1109. DBP submitted that its initially proposed forecast expenditure for the 'Tools' business case was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP, as well as to comply with a regulatory obligation because the provision of appropriate tools to its employees and contractors provides a safe working environment, and thereby ensures the tools can be used to deliver safe and reliable supply.⁴⁶⁰
1110. In the draft decision, the ERA accepted that the regular inspection and periodic replacement of the tools and equipment used to perform work on the DBNGP was necessary to maintain and improve the safety of services and maintain the integrity of services on the DBNGP, as well as to comply with DBP's regulatory obligations, and would therefore be undertaken by a prudent service provider acting consistently with good industry practice.⁴⁶¹
1111. However, DBP had not adequately explained the increase in the expected costs for the 'Tools' program of work and therefore the ERA was not satisfied that the forecast capital expenditure for the business case was consistent with an efficient amount.
1112. DBP cited its historical AA4 cost for one borescope replacement cycle as [REDACTED], however, its forecast cost for the business case effectively applied a unit cost of [REDACTED].⁴⁶²
1113. The ERA also received technical advice that the increase in expenditure for transmission operations management and transmission asset management tools appeared to relate at least in part to the addition of un-regulated assets.⁴⁶³
1114. The ERA considered that \$1.33 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'Tools' business case for AA5, and therefore satisfied rules 74 and 79 of the NGR. This amount was derived by reducing the proposed forecast capital expenditure by:
- Applying the AA4 unit rate for borescope replacement and assuming two replacements will take place during AA5.

⁴⁶⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 250.

⁴⁶¹ This view was supported by technical advice that replacing operational tools on failure was not consistent with good industry practice. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 128.

⁴⁶² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 255. The units costs stated are denominated in real dollars as at June 2019.

⁴⁶³ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 128.

- Setting the forecast expenditure for transmission asset management and transmission operations management tools equal to the AA4 expenditure for these tools.
- Adjusting the labour cost escalation included in the forecast to reflect a real rate of 0.30 per cent as outlined at paragraph 967.

1115. The draft decision capital expenditure forecast included capital expenditure for the 'Tools' business case as shown in Table 132.

Table 132: Draft decision AA5 capital expenditure forecast – Tools business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.38	0.28	0.28	0.28	0.46	1.68
Project adjustment	(0.07)	(0.06)	(0.06)	(0.06)	(0.07)	(0.34)
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.01)
Draft decision capital expenditure	0.31	0.21	0.21	0.21	0.38	1.33

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model, 14 August 2020

1116. DBP's revised proposal included \$1.68 million for the 'Tools' business case. DBP considered that the \$1.33 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered would be necessary during AA5 and maintained that \$1.68 million satisfied rules 74 and 79 of the NGR.⁴⁶⁴

1117. DBP's reasons for not accepting the ERA's draft decision on the 'Tools' business case were:

- The difference between the forecast AA5 unit rate for borescope replacement it applied in its initial proposal [REDACTED] and the AA4 actual unit rate [REDACTED] was explained by the inclusion of vibration testing equipment costs in the forecast AA5 unit rate. DBP's revised proposal included detailed cost estimates showing the breakdown of the borescope replacement costs between borescope inspection replacement tools and vibration test equipment.⁴⁶⁵
- DBP maintained that its AA5 forecast included only costs for tools related to regulated assets and costs for tools related to unregulated assets are allocated to the unregulated assets through its accounting system where costs are coded directly to specific assets or locations.⁴⁶⁶ In its revised proposal DBP has provided the details, including numbers and types, of the tools which it would replace under the scope of the 'Tools' business case and confirmed that these tools are for the management, operation and maintenance of the regulated DBNGP assets.⁴⁶⁷

⁴⁶⁴ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 63-64.

⁴⁶⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 86-87.

⁴⁶⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 87.

⁴⁶⁷ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 83-87.

1118. The information supplied by DBP in its revised proposal on its planned AA5 tool replacement, including the volumes and types of replacement activity and its timing, demonstrates that the proposed replacement activity would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and is necessary to maintain the safety and integrity of services on the DBNGP and comply with DBP's regulatory obligations.⁴⁶⁸
1119. The ERA considers that DBP's unescalated cost estimates for the 'Tools' business case are reasonable as they are based on historical costs and based on technical advice that historical costs are a good guide for future costs for the assets covered by the 'Tools' business case.⁴⁶⁹ However, as stated at paragraph 967 the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA considers that \$1.67 million is the amount that would be incurred for the 'Tools' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the business case.
1120. Based on the conclusions in paragraphs 1118 and 1119 the ERA considers that \$1.67 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Tools' business case and therefore satisfies rules 74 and 79 of the NGR. \$1.67 million is included this in DBP's projected capital base for AA5 for the "Tools' business case as shown in Table 133.

Table 133: Final decision AA5 capital expenditure forecast – Tools business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.46	0.52	0.21	0.17	0.32	1.68
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.01)
Final decision capital expenditure	0.46	0.51	0.20	0.17	0.32	1.67

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Fleet and civil equipment replacement business case

1121. DBP initially proposed \$4.75 million of forecast capital expenditure for the fleet and civil equipment business case for AA5. The forecast expenditure covered two projects as shown in Table 134.

⁴⁶⁸ The ERA's conclusion is supported by technical advice that the volume and type of replacement activity forecast is at a prudent level for the DBNGP. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 34, paragraph 179.

⁴⁶⁹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 34 paragraphs 180-181.

Table 134: DBP's initial proposed AA5 forecast capital expenditure - Fleet and civil equipment business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Annual replacement of DBNGP fleet vehicles	0.82	0.83	0.83	0.83	0.83	4.14
Replacement of civil equipment - truck, grader and tractor	0.20	0.00	0.20	0.00	0.21	0.61
Business case total	1.03	0.83	1.03	0.83	1.04	4.75

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020

1122. Together, the two projects included in the fleet and civil equipment business case covered the replacement of fleet vehicles and civil equipment on the DBNGP. The civil equipment DBP proposed to replace during AA5 included trailers, plant, heavy vehicles and equipment. DBP considered that its initially proposed forecast expenditure for the fleet and civil business case was necessary to maintain and improve the safety and integrity of services on the DBNGP.⁴⁷⁰
1123. DBP submitted that it based the proposed forecast capital expenditure for the fleet and civil business case on recent historical actual costs for the vehicles and equipment scheduled for replacement.
1124. In the draft decision, the ERA concluded that the forecast AA5 cost for civil equipment replacements would be incurred by a service provider acting efficiently and in line with good industry practice. This view was based on technical advice that the rate of replacement activity assumed for civil equipment for AA5, which aligned with historical replacement activity, was reasonable.⁴⁷¹
1125. For the fleet vehicle replacement, DBP applied an annual replacement rate of [REDACTED] vehicles, which was not consistent with the average replacement rate for AA4 of [REDACTED] vehicles per year, and did not account for the increase in number of replacements.⁴⁷² While the ERA accepted that DBP would be required to incur some expenditure during AA5 for fleet vehicle replacement, without further information the ERA was not satisfied that a prudent operator acting efficiently would increase its rate of vehicle replacement.
1126. The ERA therefore concluded that \$4.27 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'Fleet and civil equipment replacement' business case for AA5 and satisfied rule 74 of the NGR. This amount was derived by:
- Adjusting the initially proposed capital expenditure for this business case by \$0.46 million to reflect a replacement rate for fleet vehicles of [REDACTED] per year in AA5, rather than [REDACTED], at the same unit cost as incurred by DBP during AA4.

⁴⁷⁰ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 265.

⁴⁷¹ EMCa, Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5), August 2020, p. 129.

⁴⁷² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 264; DBP, Response to information request EMCa 44, 31 March 2020.

- Adjusting the proposed capital expenditure to reflect the ERA's estimate of the real labour escalation rate for AA5 (0.30 per cent) as stated at paragraph 967.

1127. The draft decision forecast capital expenditure included \$4.27 million for the 'Fleet and civil equipment replacement' business case as shown in Table 135.

Table 135: Draft decision AA5 capital expenditure forecast – Fleet and civil equipment replacement business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.03	0.83	1.03	0.83	1.04	4.75
Project adjustment	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.46)
Labour cost escalation adjustment	(0.00)	(0.00)	(0.01)	(0.01)	(0.01)	(0.03)
Draft decision capital expenditure	0.93	0.73	0.93	0.73	0.94	4.27

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1128. DBP's revised proposal included \$4.75 million for the 'Fleet and civil equipment' business case. DBP considered that the \$4.27 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered will be necessary during AA5 and maintained that \$4.75 million satisfied rules 74 and 79 of the NGR.⁴⁷³

1129. DBP disagreed with the ERA's draft decision conclusions regarding the initial 'Fleet and civil equipment' business case for the following reasons:

- DBP considered that the ERA miscalculated the average replacement rate of vehicles over AA4. DBP submitted that, to calculate an average replacement rate of [redacted] vehicles per year, the ERA omitted the eight vehicles delivered early in 2016, which were delayed deliveries, and two additional maintenance vehicles purchased in 2018 due to an increase in the number of personnel on DBP's day teams roster.⁴⁷⁴
- DBP considered that to determine the prudent replacement rate of vehicles for AA5 the ERA should have based its conclusion on a longer-term average as DBP considered that over AA5 actual replacements would reflect the longer-term average. DBP submitted that its average replacement rate over the last five years (2015 to 2019) was [redacted], and over the last 9.5 years was [redacted].⁴⁷⁵
- DBP did not accept the increase in the average age of its vehicle fleet (from 9.8 years to 10.1 years) that would result from implementing the replacements provided for in the draft decision capital expenditure forecast.⁴⁷⁶
- DBP considered that implementing the replacements provided for in the draft decision capital expenditure forecast would push its vehicle lives and kilometres up to the point where maintenance costs for those vehicles increase.⁴⁷⁷

⁴⁷³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 97-98.

⁴⁷⁴ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 91-92.

⁴⁷⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 92-93.

⁴⁷⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 94.

⁴⁷⁷ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 95-96.

1130. The ERA accepts that a long-term average of DBP's vehicle replacement rate is appropriate to apply for deriving an estimate of DBP's vehicle replacement costs for AA5. Based on the information supplied by DBP on its historical vehicle replacements outlined in paragraph 1129 and technical advice, DBP's long-run average vehicle replacement rate is [redacted] vehicles per year, which rounds to [redacted], and this replacement rate reflects a prudent volume of vehicle replacement activity.⁴⁷⁸ This rate [redacted] is the replacement rate which has been applied in DBP's revised scope of work for the 'Fleet and civil equipment' business case. The ERA therefore considers that the revised scope of work for the vehicle and civil equipment replacements is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and is necessary to maintain the safety and integrity of services on the DBNGP.
1131. DBP's forecast unit costs for vehicles and equipment scheduled for replacement are reasonable given that they are based on recent actual costs. However, as stated at paragraph 223 the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA has therefore applied a labour escalation rate of 0.18 per cent to DBP's unescalated cost estimates to derive the amount that would be incurred for the 'Fleet and civil equipment' business case by a prudent service provider acting efficiently. This yields a forecast of \$4.72 million.
1132. Based on the conclusions in paragraphs 1130 and 1131 the ERA considers that \$4.72 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Fleet and civil equipment replacement' business case and therefore satisfies rules 74 and 79 of the NGR. \$4.72 million is included this in DBP's projected capital base for AA5 for this business case as shown in Table 136.

Table 136: Final decision AA5 capital expenditure forecast – Fleet and civil equipment business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	1.03	0.83	1.03	0.83	1.04	4.75
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.01)	(0.01)	(0.01)	(0.03)
Final decision capital expenditure	1.02	0.82	1.03	0.82	1.03	4.72

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Turbine exhaust replacement business case

1133. DBP initially proposed \$4.94 million of forecast capital expenditure for the 'Turbine exhaust replacement' business case for AA5. The proposed expenditure covered the replacement of [redacted] turbine exhaust systems during AA5 at the end of their recommended useful lives and the cost of inspection of patchwork previously

⁴⁷⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 37, paragraphs 195-196.

undertaken on one system. The proposed expenditure for the 'Turbine exhaust replacement' business case was distributed over AA5 as shown in Table 137.

Table 137: Proposed AA5 forecast capital expenditure - Turbine exhaust replacement business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Turbine exhaust replacement	1.21	1.12	0.87	0.87	0.87	4.94
Business case total	1.21	1.12	0.87	0.87	0.87	4.94

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020

1134. DBP incurred significantly lower capital expenditure (\$0.4 million) for this business case during AA4.⁴⁷⁹ As stated at paragraph 838, the work completed during AA4 comprised the inspection and replacement of the turbine exhaust at one compressor station site and the repair of the turbine exhaust at another site, whereas seven replacements and inspection of one system were scheduled for AA5.⁴⁸⁰ During AA4 DBP was able to defer one planned replacement by applying patchwork instead.⁴⁸¹
1135. DBP submitted that the replacement of turbine exhaust systems as outlined in its 'Turbine exhaust replacement' business case was necessary to maintain the integrity of services along the DBNGP as turbine exhaust systems were critical to maintain the performance and ensure the safe operation of compressor units at compressor stations on the DBNGP. In addition, DBP also submitted that the replacement of turbine exhaust systems was necessary to comply with regulatory obligations as the proactive replacement of turbine exhaust systems enabled DBNGP assets to deliver the gas requirements of its customers.⁴⁸²
1136. DBP's forecast costs for the turbine exhaust replacements included internal labour, external labour, materials, travel and other costs. Where possible, DBP based its forecast costs on three-year average actual costs incurred in AA4. Where this was not possible, DBP based its forecast expenditure for turbine exhaust replacements on tender contract values that were determined through a competitive tender process.⁴⁸³
1137. In the draft decision, the ERA was not satisfied that the entirety of the planned program of replacement work for AA5 would be undertaken by a prudent operator acting efficiently. While proactive replacement of the turbine exhaust systems is consistent with good industry practice, based on technical advice the ERA considered that the following work would not be conducted by a prudent service provider during AA5:
- The planned replacements at CS5/1 and CS5/2, which could be prudently deferred until AA6. DBP's proposed schedule would replace these units at less than 35 years old, which based on technical advice was overly conservative.

⁴⁷⁹ The estimated capital expenditure is denominated in dollars as at 30 June 2019. DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 281.

⁴⁸⁰ DBP, Response to information request EMCa 14, 3 March 2020.

⁴⁸¹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 284.

⁴⁸² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 281.

⁴⁸³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 293-294.

- The planned inspection work for the CS6/2 exhaust in 2021 prior to its replacement.⁴⁸⁴ Based on technical advice, inspection of this unit would not be prudent to undertake at the scheduled timing in 2021 because by that date the unit would be seven years past its useful life.⁴⁸⁵
1138. The ERA concluded that \$3.10 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the ‘Turbine exhaust replacement’ business case for AA5, and therefore satisfied rule 74 of the NGR. This amount was derived by:
- Reducing the un-escalated costs included in the proposed forecast by \$1.81 million, which was the amount DBP included in its forecast for the work that would not be prudent to undertake during AA5 identified at paragraph 1137.
 - Adding labour cost escalation of 0.30 per cent to the remaining expenditure, in line with the ERA’s estimate of the real labour escalation rate for AA5 as stated at paragraph 967.
1139. The draft decision capital expenditure forecast included capital expenditure for the ‘Turbine exhaust replacement’ business case as shown in Table 138.

Table 138: Draft decision AA5 capital expenditure forecast – Turbine exhaust replacement business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.21	1.12	0.87	0.87	0.87	4.94
Project adjustment	(0.09)	0.00	0.00	(0.86)	(0.86)	(1.81)
Labour cost escalation adjustment	(0.00)	(0.00)	(0.01)	(0.01)	(0.01)	(0.04)
Draft decision capital expenditure	1.12	1.12	0.86	(0.00)	(0.00)	3.10

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1140. DBP’s revised proposal included \$4.85 million for the ‘Turbine exhaust replacement’ business case. DBP considered that the \$3.10 million included in the draft decision capital expenditure forecast for this business case was not sufficient to cover the work it considered will be necessary during AA5.
1141. DBP’s revised proposal was based on a revised scope of work which included the following differences to the initially proposed scope:
- Deferral of the replacement of one unit, CS05 unit 1, initially scheduled for replacement in 2024, to AA6 in line with the ERA’s adjustment for this unit in the draft decision. DBP maintained, however, that another unit (CS05 unit 2) would be replaced in 2025, contrary to the replacements provided for in the draft decision.
 - No longer undertaking the inspection work for CS6/2 scheduled for 2021.

⁴⁸⁴ These are the two turbine exhaust replacements planned for CS5/1 and CS5/2. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 130.

⁴⁸⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 130.

- Bringing forward the replacement of one unit, CS03 unit 1, to 2024 rather than replacing this in 2026 as originally planned.
1142. Additionally, DBP's revised proposal reflected the change in DBP's proposed labour escalation rate, which was 0.57 per cent in its revised proposal.
1143. DBP submitted that its revised scope was based on the condition of the assets subject to replacement, which experienced cracking over AA4 to an extent that DBP considered could not be effectively mitigated by repairs. DBP determined through inspection of CS05 unit 2 and CS03 unit 1 that these units would require replacement during AA5.⁴⁸⁶ DBP supplied additional information to illustrate the condition of the turbine exhausts scheduled for replacement during AA5, including the repair history and photos of the assets.⁴⁸⁷
1144. Based on the additional information supplied in DBP's revised proposal and technical advice received, the ERA accepts DBP's statement that the turbine exhausts planned for replacement during AA5 have external cracking for which repair is no longer effective and replacement of these assets during AA5 is therefore warranted.⁴⁸⁸ The ERA therefore considers that the scope of work covered by DBP's revised proposed capital expenditure for the 'Turbine exhaust replacement' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice and is necessary to maintain the safety and integrity of services on the DBNGP and comply with DBP's regulatory obligations.
1145. DBP's cost estimates for the revised business case are based on historical actuals and tender contract values.⁴⁸⁹ The ERA considers this provides a reasonable basis for estimating the costs of the replacements scheduled for AA5.⁴⁹⁰ As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA considers that \$4.82 million is the amount that would be incurred for the revised 'Turbine exhaust replacement' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the revised business case.
1146. \$4.82 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Turbine exhaust replacement' business case and therefore satisfies rules 74 and 79 of the NGR. \$4.82 million has therefore been included in DBP's projected capital base for AA5 for this business case as shown in Table 139.

⁴⁸⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 109-111.

⁴⁸⁷ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25, Attachment 8.5A Addendum to Capex Business Cases*, pp. 109, 113-116.

⁴⁸⁸ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 38-39, paragraphs 204-207.

⁴⁸⁹ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25, Attachment 8.5A Addendum to Capex Business Cases*, p. 111.

⁴⁹⁰ This conclusion is supported by technical advice that the forecast unit costs are reasonable. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 39, paragraph 208.

Table 139: Final decision AA5 capital expenditure forecast – Turbine exhaust replacement business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	1.12	1.12	0.87	0.87	0.87	4.85
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.01)	(0.01)	(0.01)	(0.01)	(0.03)
Final decision capital expenditure	1.12	1.12	0.86	0.86	0.86	4.82

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Customer reporting system business case

1147. DBP initially proposed \$2.85 million of forecast capital expenditure for the ‘Customer reporting system’ (CRS) business case for AA5. The business case covered one project, with the proposed capital expenditure for the project distributed over AA5 as shown in Table 140.

Table 140: DBP’s initial proposal AA5 forecast capital expenditure - Customer reporting system business case (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Customer reporting system upgrade	0.61	0.25	0.15	1.68	0.15	2.85
Business case total	0.61	0.25	0.15	1.68	0.15	2.85

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1148. CRS is the contract management and gas accounting system used on the DBNGP to manage gas transportation and gas storage contracts and is also the key customer interface for billing and gas nominations for the DBNGP. The proposed capital expenditure for AA5 covered the cost for rebuilding the user interface for the system and the cost of subsequent enhanced support arrangements during AA5.

1149. DBP submitted that the proposed upgrade of the CRS was necessary to maintain the integrity of services on the DBNGP and to comply with regulatory obligations.⁴⁹¹

1150. DBP’s forecast costs for the CRS upgrade comprised internal labour, external labour, materials, travel and other costs. Where possible DBP based its forecast costs on three-year average actual costs incurred in AA4. Otherwise DBP based the cost forecast on:

- Estimates from vendors and prospective vendors.
- The historic cost of similar programs of work.

⁴⁹¹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (EMCa), January 2020, pp. 297-298.

- Consultation with internal stakeholders, DBP’s IT support partner and external market specialists to determine the most likely implementation approaches and effort requirements to implement the program.⁴⁹²
1151. DBP conducted an options analysis which considered the values of the project covered by the proposed AA5 capital expenditure for the ‘Customer reporting system’ business case and two other alternatives. ‘Option 3’, which DBP did not select to pursue, was to continue with its existing customer reporting system but move to a new vendor with enhanced support and a different technology platform.⁴⁹³ The ERA considered that some enhancement of the CRS would be necessary to maintain the integrity of services on the DBNGP and to comply with DBP’s regulatory obligations during AA5. However, the ERA considered that an operator acting prudently and efficiently would have selected ‘Option 3’ rather than the selected option (‘Option 2’) based on the following:
- ‘Option 3’ had a lower net present cost than ‘Option 2’.⁴⁹⁴
 - Technical advice that ‘Option 3’ was likely to achieve the same or better outcomes as ‘Option 2’.⁴⁹⁵
1152. In response to the issues paper gasTrading submitted that it was broadly in support of DBP’s ‘Customer reporting system’ business case, provided that DBP “engages with its customers and stakeholders to efficiently manage the transition of systems and interface with other parties’ systems.”⁴⁹⁶ DBP submitted that its stakeholder engagement identified that the DBNGP’s shippers considered that billing could be simplified and modernised, which the proposed ‘Customer reporting system’ program proposed to do. The new CRS program would allow shippers to access the system on mobile devices, while also providing for greater flexibility for upgrades and enhancements in line with business and customer needs.⁴⁹⁷ Under ‘Option 3’ an upgraded user interface would also be delivered that was suitable for mobile use, with the user interface being implemented in 2021 and ‘business as usual’ annual modifications to meet changing business and customer needs being carried out over 2021 to 2025. DBP stated that ‘Option 3’ would support its vision objectives of delivering for customers in terms of reliability and customer service.⁴⁹⁸
1153. In the draft decision, the ERA concluded that \$2.27 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the ‘Customer reporting system’ business case for AA5, and therefore satisfied rule 74 of the NGR. This amount was derived by:
- Setting the proposed forecast capital expenditure equal to the forecast un-escalated costs for ‘Option 3’.
 - Adjusting the labour cost escalation included in the proposed forecast to reflect a real rate of 0.30 per cent as outlined at paragraph 967.

⁴⁹² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (EMCa)*, January 2020, p. 314.

⁴⁹³ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (EMCa)*, January 2020, p. 307.

⁴⁹⁴ The net present cost analyses for the options considered were supplied by DBP, Response to information request EMCa 08, worksheet EMCa08-1_DBP20.01_NPC analysis, 21 February 2020.

⁴⁹⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 131.

⁴⁹⁶ GasTrading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Issues Paper*, 30 March 2020, p. 11.

⁴⁹⁷ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 298.

⁴⁹⁸ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 307.

The ERA included \$2.27 million in the draft decision capital expenditure forecast for the 'Customer reporting system' business case as shown in Table 141.

Table 141: Draft decision AA5 capital expenditure forecast – Customer reporting system business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.61	0.25	0.15	1.68	0.15	2.85
Project adjustment	0.95	0.00	0.00	(1.50)	0.00	(0.55)
Labour cost escalation adjustment	0.00	(0.00)	(0.00)	(0.02)	(0.00)	(0.02)
Draft decision capital expenditure	1.56	0.25	0.15	0.15	0.15	2.27

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), 14 August 2020

1154. In its revised proposal, DBP maintained that 'Option 2' was superior to 'Option 3' in terms of prudence and efficiency, and included \$2.85 million for the 'Customer reporting system' business case. The difference between DBP's initial and revised proposed forecast for this business case is attributable to the change in DBP's proposed labour escalation rate, which was 0.57 per cent in its revised proposal.
1155. DBP disagreed with the ERA's draft decision conclusion that an operator acting prudently and efficiently would have selected 'Option 3' rather than the 'Option 2' because:
- DBP considered that moving to a new vendor was "high risk".
 - The current vendor had a superior offering to the new vendor under 'Option 3' due to its product's features and support capabilities. DBP submitted that it had recently resolved the issues with the responsiveness and support from the current vendor that EMCa cited in its technical advice to the ERA as a potential drawback of 'Option 2'.⁴⁹⁹
 - DBP was planning for the retirement of multiple billing team members and the replacement of its finance system and these changes combined with shifting to a new system entailed too high a risk of disruption to the billing process.⁵⁰⁰
1156. DBP considered that moving to a new vendor was "high risk" for the following reasons:
- The new vendor did not have access to the source code or supporting documentation from the current vendor that would allow them to understand the system and provide support, which could cause implementation delays and increase unforeseen costs.⁵⁰¹
 - The new vendor did not have demonstrated experience with the Australian Energy Market Operator's requirements, which could lead to a risk of regulatory non-compliance.⁵⁰²

⁴⁹⁹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 121.

⁵⁰⁰ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 122.

⁵⁰¹ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 120.

⁵⁰² DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 120.

- Transition to a new system could possibly affect local customer supply and interrupt DBP's billing and reporting activities.⁵⁰³
 - The costs and timeframes presented by the proposed new vendor were presented through an expression of interest process rather than a detailed request for proposal and, as such, included a level of cost uncertainty of approximately 30 per cent and the possibility of lengthy delays in delivery. DBP's arrangements with the existing vendor were for delivery under fixed price contracts.⁵⁰⁴
 - DBP did not agree with the technical advice to the ERA that the provision for transition support costs included in the cost estimate for 'Option 3' would sufficiently mitigate the risks associated with the new vendor.⁵⁰⁵
1157. The ERA considers that the additional information supplied by DBP in its revised proposal demonstrates that it would be more prudent for DBP to implement 'Option 2' rather than 'Option 3'. From an operational perspective, the information supplied:
- Indicates that the vendor for 'Option 2' has improved its responsiveness by taking on additional staff and integrating other existing staff to assist in support of the product and enhancing the functionality of its product offering.⁵⁰⁶
 - Supports DBP's submission that moving to a new vendor as part of 'Option 3' would entail a high risk of business disruption and service delivery failure (outlined in paragraph 1156) that would not be satisfactorily mitigated by the provision for extra transitional support costs included for 'Option 3' in DBP's initial proposal.
1158. Regarding the costs of the revised proposal, the information supplied is sufficient to conclude that the cost advantage of 'Option 3' over 'Option 2' in DBP's initial proposal is not likely to be realised in practice.⁵⁰⁷ The information supplied indicates that the cost estimate accuracy of DBP's initial cost estimate for 'Option 3' is plus or minus 30 per cent, which could lead to a cost commensurate with or higher than 'Option 2'.
1159. The ERA therefore concludes that the scope of work covered by the revised 'Customer reporting system' business case is consistent with what would be undertaken by a prudent service provider acting in accordance with accepted good industry practice.
1160. While the ERA concludes that there is unlikely to be a cost advantage of pursuing 'Option 3' over 'Option 2', the proposed amount for 'Option 2' does not reflect the efficient cost of undertaking its scope because it reflects a labour escalation rate of 0.57 per cent. As stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA considers that \$2.83 million is the amount that would be incurred for the revised 'Customer reporting system' business case by a prudent service provider acting efficiently. This amount has been derived by applying a rate of labour escalation of 0.18 per cent to DBP's estimate of the unescalated costs of the revised business case.

⁵⁰³ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 120.

⁵⁰⁴ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 120.

⁵⁰⁵ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 120.

⁵⁰⁶ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 121-122.

⁵⁰⁷ The ERA's conclusion on this point is supported by technical advice that 'Option 2' is not likely to confer a cost advantage over 'Option 3'. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 40-41, paragraphs 218-225.

1161. The ERA considers that \$2.83 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'Customer reporting system' business case and therefore satisfies rules 74 and 79 of the NGR. \$2.83 million is therefore included in DBP's projected capital base for AA5 for this business case as shown in Table 142.

Table 142 Final decision AA5 capital expenditure forecast – Customer reporting system business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.61	0.25	0.15	1.67	0.15	2.85
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.01)	(0.00)	(0.02)
Final decision capital expenditure	0.61	0.25	0.15	1.66	0.15	2.83

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

IT sustaining applications business case

1162. DBP initially proposed \$3.38 million of forecast capital expenditure for the 'IT sustaining applications' business case for AA5. The business case was comprised of six projects which DBP considered necessary to maintain the security and integrity of its IT applications. The proposed capital expenditure for this business case was distributed over AA5 as shown in Table 143.

Table 143: DBP's initial proposal AA5 forecast capital expenditure - IT sustaining applications business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Microsoft Dynamics AX Annual Enhancements/Maintenance	1.02	0.51	0.26	0.26	-	2.04
I-02 Maximo Upgrade	0.17	-	-	-	-	0.17
I-05 Other Core Systems	0.20	0.07	0.15	0.07	0.15	0.64
I-04 Customer Support/Service Desk	0.02	0.10	-	-	-	0.13
I-01 CRS Billing Revenue Management System upgrade	0.10	-	-	-	-	0.10
IT Program & Change Management Apps Component	0.09	0.15	0.02	0.03	0.02	0.31
Business case total	1.59	0.84	0.42	0.36	0.17	3.38

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1163. DBP submitted that the initial scope of the IT sustaining applications projects planned for AA5 reflected a shift from the *ad hoc* approach to IT application maintenance

previously applied, to a proactive approach, which DBP considered was aligned with good industry practice.⁵⁰⁸ The projects covered:

- The implementation of an upgrade of DBP’s core finance management system, Microsoft Dynamics AX, and maintenance of the existing system in parallel for a period of three months. This was the largest component of the proposed expenditure for the IT sustaining applications business case, with an estimated cost of \$2.04 million (60.29 per cent of proposed business case expenditure) over AA5.
 - A project to enhance the functionality of Maximo, DBP’s core asset management system. The project was planned to enhance Maximo’s procurement, works program management and reporting functions and integrate Maximo with DBP’s proposed new finance management system (described above) and other ancillary applications.
 - Enhancements, software version upgrades and patches for other core systems used by DBP and software license and support costs for the DBP website and document management systems.
 - An upgrade to DBP’s customer support and service desk applications and processes and implementation of an IT asset management capability.
 - A project to enhance DBP’s customer reporting system functionality and provision of software version upgrades and patches including development, testing and deployment of these upgrades and patches.⁵⁰⁹
1164. DBP considered that the proposed expenditure for the IT sustaining applications business case was necessary to maintain the integrity of services on the DBNGP and comply with its regulatory obligations because current, supported and fit-for-purpose IT applications would enable DBP to manage technology risks and prevent outages.⁵¹⁰
1165. Where possible, DBP based its initially forecast costs for the IT sustaining applications projects on three-year average actual costs incurred in AA4. Otherwise, DBP based the cost forecast on:
- estimates from vendors and prospective vendors
 - the historic cost of similar programs of work
 - input from IT strategy development experts
 - input from market specialists
 - where projects would require new products, at least two vendor quotes.⁵¹¹
1166. In the draft decision, the ERA concluded that the proposed work for the IT sustaining applications business case was in line with good industry practice and was justified to maintain the integrity of services on the DBNGP, and the proposed costs were those that would be incurred by a prudent service provider acting efficiently. This was informed by technical advice that the scope of the work for the ‘IT sustaining applications’ business case for AA5 included initiatives that were in line with good

⁵⁰⁸ DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, p. 328.

⁵⁰⁹ DBP, *2021-2025 Final Plan, Attachment 8.5 Capex Business Cases (public)*, January 2020, pp. 327-328.

⁵¹⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 339.

⁵¹¹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 340-341.

industry practice and were necessary to maintain the integrity of services on the DBNGP.⁵¹²

1167. However, as outlined at paragraph 967, in the draft decision the ERA concluded that the best estimate of the real labour cost escalation rate for AA5 was 0.30 per cent. While the ERA considered that DBP's un-escalated cost estimates were reasonable, it adjusted the labour cost escalation included in the initially proposed forecast to reflect a real labour cost escalation rate of 0.30 per cent.⁵¹³
1168. The ERA therefore included capital expenditure of \$3.37 million for the 'IT sustaining applications' business case in the draft decision capital expenditure forecast for AA5 as shown in Table 144. The ERA considered that \$3.37 million was the best estimate possible for the cost of the 'IT sustaining applications' business case for AA5, as required by rule 74, which would be incurred by a service provider acting efficiently as required by rule 79 of the NGR.

Table 144: Draft decision AA5 capital expenditure forecast – IT sustaining applications business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.59	0.84	0.42	0.36	0.17	3.38
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.02)
Draft decision capital expenditure	1.59	0.83	0.42	0.36	0.17	3.37

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020

1169. DBP's revised proposal included \$10.91 million for the 'IT sustaining applications' business case for AA5. The difference between the revised proposed amount and the initially forecast amount reflects a change in scope for the 'Microsoft Dynamics AX Annual Enhancements/Maintenance' project arising from accelerating the implementation of the AGIG-wide 'One ERP' program. The 'One ERP' program is outlined at paragraphs 863 and 864. The scope and unescalated forecast costs for the remainder of the projects are the same in DBP's revised proposal as in its initial proposal, however, the revised forecast reflects DBP's revised proposed labour cost escalation rate of 0.57 per cent.
1170. The initial scope for the 'Microsoft Dynamics AX Annual Enhancements/Maintenance' project, which was to span AA4 and AA5, covered implementation of an interim solution to replace Microsoft Dynamics AX, for which DBP initially forecast to incur \$3.53 million in AA4 and \$2.04 million in AA5. DBP is no longer proposing to implement the interim solution but rather to transition directly to another Enterprise Resource Planning (ERP) system (SAP S/4 HANA) as part of the 'One ERP' program, with the work for this transition to begin in AA4 and continue into AA5. The revised proposed AA5 forecast for the 'IT sustaining applications' business case included \$9.55 million for the SAP S/4 HANA implementation.

⁵¹² EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 131-132.

⁵¹³ The ERA's view on this point was supported by EMCa's technical advice that DBP's proposed expenditure was consistent with what a prudent operator would incur, and the estimated costs were reasonable. Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 131-132.

1171. The \$9.55 million DBP proposed for AA5 for upgrade of its ERP system is scheduled to be incurred in 2021 only. This amount is an allocated share of the total costs to be incurred during 2021 for the second half of phase one of the 'One ERP' program. Phase one is scheduled over 2020 and 2021 and covers the implementation of SAP S/4 HANA at DBP and AGN. The forecast cost of phase one is \$18.94 million and is based on the results of a competitive tender process conducted between March and August 2020. \$12.59 million of this total cost has been allocated to DBP in total with \$9.55 million forecast to be incurred during AA5, in 2021.⁵¹⁴ The costs were allocated between DBP and AGN based on the number of SAP users within each business. DBP considered that this basis for allocation reflected the respective levels of usage of the new ERP system in both businesses.⁵¹⁵ The result of applying this allocation method is that approximately 33.5 per cent of the phase one costs of the program will be borne by AGN, while 66.5 per cent will be borne by DBP.
1172. As outlined in paragraph 867, the ERA considers that DBP's planned replacement of Microsoft Dynamics with the SAP S/4 HANA system would be undertaken by a prudent service provider acting in accordance with good industry practice. For the same reasons as outlined in paragraph 867, the ERA considers that the Microsoft Dynamics upgrade work scheduled for AA5, which is a continuation of the upgrade initiated in 2020, would be undertaken by a prudent service provider acting in accordance with good industry practice.
1173. The ERA maintains its view from the draft decision that the other proposed projects for AA5 in the IT sustaining applications business case are in line with good industry practice and are justified to maintain the integrity of services on the DBNGP.
1174. The ERA has adjusted the proposed forecast amount for the projects comprising the IT sustaining applications business case to reflect a rate of labour escalation of 0.18 per cent. While the ERA accepts that the unescalated forecast costs of the projects are reasonable, as stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent.
1175. Based on the conclusions in paragraphs 1173 and 1174, the ERA considers that \$10.87 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'IT sustaining applications' business case and therefore satisfies rules 74 and 79 of the NGR. \$10.87 million is therefore included in DBP's projected capital base for AA5 for this business case as shown in Table 145.

⁵¹⁴ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 140.

⁵¹⁵ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 137-140.

Table 145 Final decision AA5 capital expenditure forecast – IT sustaining applications business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	10.14	0.33	0.17	0.10	0.17	10.91
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.03)	(0.00)	(0.00)	(0.00)	(0.00)	(0.03)
Final decision capital expenditure	10.11	0.33	0.17	0.10	0.17	10.87

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

IT enabling business case

1176. DBP initially proposed \$5.25 million of forecast capital expenditure for the 'IT enabling' business case for AA5. The business case was comprised of a single project, which was comprised of three initiatives. The proposed capital expenditure for this business case was distributed over AA5 as shown in Table 146.

Table 146: DBP's initial proposed AA5 forecast capital expenditure - IT enabling business case (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
IT enabling	1.48	1.28	1.35	0.56	0.57	5.25
Business case total	1.48	1.28	1.35	0.56	0.57	5.25

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1177. DBP considered that the work covered by the initially proposed 'IT enabling' business case capital expenditure for AA5 would implement systems and processes to enable decision-making based on more accurate and timely information. This would translate into cost efficiencies and therefore lower future gas prices. The scopes of the three initiatives comprising the 'IT enabling' business case were:

- Business intelligence initiative: define a master data model, consolidate data from a variety of sources, introduce a data governance framework, identify and implement an enterprise business intelligence platform with models, toolsets and dashboards for reporting and migration of current reporting to the new platform where viable.
- Data analytics: extend the business intelligence platform and people skills to incorporate data analytics and machine learning to enable predictive analytics.
- Digital transformation: implement fit-for-purpose document management solutions and establish process automation capabilities to automate repetitive manual processes between DBP's operational technology systems.⁵¹⁶

⁵¹⁶ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 350.

1178. DBP considered that the overall economic value of the initially proposed capital expenditure for the IT enabling business case in AA5 would be positive. DBP submitted a net present value analysis of the initially proposed 'IT enabling' business case initiatives, which estimated that investing in this capital expenditure would yield a total net benefit of \$0.49 million.⁵¹⁷ DBP also considered that the capital expenditure would yield additional benefits not captured by this net benefit for the stakeholders of the DBNGP, including improved safety, customer services, information management, data quality, asset integrity and reliability.⁵¹⁸
1179. The initially proposed capital expenditure for the IT enabling business case was based, where possible, on a three-year average actual cost based on actual cost data incurred by DBP in AA4. Where this was not possible, due to infrequent or new activities planned during AA5, the cost estimates applied were based on one of or a combination of the following:
- the historical cost of similar programs of work
 - input from IT strategy development experts
 - where initiatives will need new products, a minimum of two vendor quotes
 - consultation with market specialists.⁵¹⁹
1180. Based on information provided by DBP about the net present value analysis of its initially proposed initiatives and technical advice received, the ERA considered that DBP did not adequately demonstrate that the benefits of the proposed initiatives were likely to be sufficient to justify DBP's proposed capital expenditure for the 'IT enabling' business case for AA5.⁵²⁰ This view took into account technical advice regarding the proposed initiatives which included the following:
- The benefits and costs of the proposed initiatives were preliminary given it was still in the early stages of planning.
 - DBP's approach and the resulting benefits were based on AGN's distribution experience and 'rule of thumb' assumptions of the benefits (costs avoided) of pursuing the planned initiatives, which, in EMCa's view, did not translate to management of a linear transmission pipeline.⁵²¹
 - 60 per cent of DBP's proposed \$0.5 million net present value was derived from the business intelligence initiatives based on the rule of thumb benefit, but given the number of customers DBP has, it was questionable how much benefit the business intelligence initiative would convey.
 - The net benefit was marginal and the project would likely not be viable under a range of cost-benefit scenarios.⁵²²

⁵¹⁷ Real dollars as at 30 June 2019. The net present cost analyses for the options considered were supplied by DBP, Response to information request EMCa 08, workbook EMCa08-1_DBP20.01_1_NPV analysis, 21 February 2020.

⁵¹⁸ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 365.

⁵¹⁹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 3.

⁵²⁰ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 349.

⁵²¹ These assumptions included the average percentage savings on workforce costs due to productivity efficiencies based on a reported average for the document management industry and the cost savings on operating expenditure based on a reported average for the business intelligence industry.

⁵²² EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, pp. 132-133.

1181. The ERA did not include any forecast capital expenditure for the IT enabling business case in the draft decision capital expenditure forecast. The ERA was not satisfied that the planned work covered by the business case would be undertaken by a prudent operator acting in accordance with good industry practice. Moreover, for the reasons outlined at paragraph 1180 the ERA was not satisfied that the work would convey any benefit to gas consumers. The draft decision AA5 capital expenditure forecast therefore included no expenditure for the 'IT enabling' business case as shown in Table 147.

Table 147: Draft decision AA5 capital expenditure forecast – IT enabling business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	1.48	1.28	1.35	0.56	0.57	5.25
Project adjustment	(1.48)	(1.27)	(1.34)	(0.55)	(0.56)	(5.20)
Labour cost escalation adjustment	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.05)
Draft decision capital expenditure	0.00	0.00	0.00	0.00	0.00	0.00

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020

1182. DBP's revised proposal included \$5.65 million for the 'IT enabling' business case for AA5, which was \$0.40 million higher than the initially forecast amount. The difference reflects a change in scope for the 'IT enabling' business case arising from revisions to the proposed work program for the AGIG-wide 'One IT Strategy and Roadmap'.

1183. The 'One IT Strategy and Roadmap' has the objective of delivering aligned IT management processes, architectures, procurement, cyber security and core technology platforms across AGIG. The revised 'IT enabling' business case covers two broad workstreams that form one part of the 'One IT Strategy and Roadmap':

- Developing an application integration platform: this workstream is for development of an integration layer to facilitate streamlined and automated communication between applications within AGIG's IT application environment.
- Establishing data architecture, reporting and governance capabilities: this workstream is for delivery of an enterprise data model and associated data governance framework which will apply to DBP, AGN and Multinet Gas. The enterprise data model will provide an integrated view of the data produced and consumed across these businesses. Previously DBP, AGN and Multinet Gas operated using different processes on different platforms.

1184. The forecast costs of the AGIG-wide program reflects revised cost and benefit estimates by an independent consultant.⁵²³ The costs included in DBP's revised AA5 capital expenditure forecast consist of a DBP-specific component (\$1.11 million) for the DBP data and applications being migrated to the new integrated platform and an apportionment of shared costs (\$4.46 million) to DBP.⁵²⁴

⁵²³ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, pp. 170, 185-186.

⁵²⁴ DBP, 2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, October 2020, p. 183.

1185. The shared costs were allocated between DBP, AGN and Multinet based on the revenue of each business as a percentage of the summed revenue of the three businesses. DBP submitted that apportioning shared costs by revenue would result in an allocation of costs that reflects the value of the program to each business.⁵²⁵
1186. DBP anticipated that it will benefit from taking part in the 'One IT Strategy and Roadmap' by being able to share implementation costs and ongoing expenditure of IT initiatives with other AGIG businesses.⁵²⁶ DBP submitted a net present value analysis which it considers quantifies the benefits to DBP of undertaking the workstreams outlined in paragraph 1183 as part of the 'One IT Strategy and Roadmap'.⁵²⁷ The benefits DBP expected from undertaking the workstreams and that it has included in its net present value analysis were:
- Process benefits reflecting the reduction in process time and costs expected from undertaking the 'IT enabling' work across a range of DBP's functions including tax, treasury, accounts payable, accounts receivable, accounting, budgeting and procurement.
 - Strategic sourcing benefits reflecting anticipated cost savings from leveraging strategic sourcing opportunities by having higher volume national contracts.⁵²⁸
1187. The ERA considers that the net present value analysis submitted by DBP does not adequately demonstrate that there would be a net benefit to DBP from undertaking the 'IT enabling' work. The net benefit of the work would be negative for even small cost variances. Based on technical advice the ERA considers that cost variances from the assumptions included in DBP's net present value analysis are likely, given that some of the assumptions in the net present value analysis reflect a material underestimation of the costs of undertaking the work, including:
- The net present value analysis does not include any additional capital expenditure for replacements and enhancements in the 10 years after the initial capital expenditure scheduled for 2021 and 2022.
 - The net present value analysis does not include the operational expenses associated with realising the benefits from the IT systems.⁵²⁹
1188. The ERA considers that the work for the 'IT enabling' business case would not be undertaken by a prudent service provider as is required by rule 79 of the NGR as it would not yield a net benefit for DBP. The ERA has therefore not included any capital expenditure for this business case in the AA5 capital expenditure forecast, as shown in Table 148.

⁵²⁵ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 183-184.

⁵²⁶ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 175.

⁵²⁷ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases, Supporting information to Attachment 8.5A*, October 2020.

⁵²⁸ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 180.

⁵²⁹ EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, pp. 48-50, paragraphs 271-275.

Table 148: Final decision AA5 capital expenditure forecast – IT enabling business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	3.87	1.78	0.00	0.00	0.00	5.65
Project adjustment	(3.85)	(1.77)	0.00	0.00	0.00	(5.62)
Labour cost escalation adjustment	(0.02)	(0.01)	0.00	0.00	0.00	(0.03)
Final decision capital expenditure	0.00	0.00	0.00	0.00	0.00	0.00

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

IT security business case

1189. DBP initially proposed \$1.78 million of forecast capital expenditure for the 'IT security' business case for AA5. The business case covered three projects as shown in Table 149.

Table 149: DBP's initial proposed AA5 forecast capital expenditure - IT security business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Cyber resilience	0.17	0.32	0.33	0.23	0.23	1.27
Technology governance and automation	0.03	0.07	0.03	-	-	0.13
Data protection and privacy	0.19	0.19	-	-	-	0.37
Business case total	0.39	0.57	0.36	0.23	0.23	1.78

Numbers may not add due to rounding.

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1190. DBP considered that the work covered by the initially proposed IT security business case would ensure that its systems were resilient and robust with security measures commensurate with the cyber risks affecting DBP's business. The work would also align DBP's cyber risk management approach to a more contemporary approach and contribute to an increased level of cyber maturity. The scopes of the three projects comprising the IT security business case were:

- Cyber resilience: development of an approach that would ensure all systems implemented for DBP were secure by design, establishment of a multi-audience approach to ensure the right messages reached the right people at the right frequency, extension of DBP's supply chain's capability to facilitate informed decisions about a supplier's potential cyber impact and enable them to work with relevant third parties during a cyber-crisis, fine tuning of DBP's business continuity approach, introduction of a threat intelligence capability and implementation of a security incident and event management service.
- Technology governance: definition and establishment of appropriate network architectures and processes to enable the effective management of IT, internet of things and operational technology devices.

- Data protection and privacy: identification of all information pools, definition of a classification policy and process that allocates responsibility to information owners and design and implementation of a solution that enables the enforcement of the information classification policy.⁵³⁰
1191. DBP stated that the confidentiality, integrity and availability of information and information technology systems was critical to ensure the DBNGP's services could be delivered effectively and in line with applicable regulatory obligations. DBP therefore considered that the initially proposed forecast capital expenditure for its IT security business case was necessary to comply with regulatory obligations and to maintain the integrity of services on the DBNGP because it would ensure that DBP's systems were secure and remained resilient to external threats.⁵³¹
1192. The initially proposed capital expenditure for the IT security business case was based, where possible, on a three-year average actual cost incurred by DBP in AA4. Where this was not possible, due to infrequent or new activities planned during AA5, the cost estimates applied were based on one of or a combination of the following:
- the historical costs of similar programs of work
 - input from IT strategy development experts
 - where initiatives would need new products, a minimum of two vendor quotes
 - consultation with market specialists.⁵³²
1193. The ERA accepted that DBP needed to continue to improve its cybersecurity maturity, however, it was not satisfied that the capital expenditure proposed for the 'IT security' business case for AA5 would be undertaken by a prudent service provider. This view was based on technical advice that:
- DBP had not provided sufficient support for the risk rating of 'High' it concluded for cyber security risk on the DBNGP.⁵³³
 - DBP proposed capital expenditure for IT software and hardware projects under multiple business cases in AA5, which like the projects proposed in the 'IT security' business case, would all contribute to improving DBP's cyber security, and a large number of which appeared to be 'business as usual' activities or closely related to work undertaken in AA4.⁵³⁴
1194. Given the lack of support for the level of expenditure initially proposed for the 'IT security' business case for AA5, the ERA considered that \$1.46 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'IT security' business case for AA5, and therefore satisfied rules 74 and 79 of the NGR. \$1.46 million was therefore included in the AA5 draft decision capital expenditure forecast for this business case as shown in Table 150. This adjusted amount was based on:
- Technical advice that the cost of one of the alternative options considered by DBP in its options analysis for the business case but not pursued represented a

⁵³⁰ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 373-374.

⁵³¹ DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, pp. 371, 285.

⁵³² DBP, *2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public)*, January 2020, p. 386.

⁵³³ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 133.

⁵³⁴ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, paragraph 352.

reasonable amount that would be required by a prudent operator.⁵³⁵ Under this alternative option DBP would attain a maturity level indicator of three in 2026. As stated at paragraph 874, DBP targets a maturity indicator level of three as measured by the Australian Energy Sector Cyber Security Framework.

- The amount aligning approximately with the level of expenditure incurred for the same business case during AA4 (\$1.41 million).
- A real labour cost escalation rate of 0.30 per cent, as outlined at paragraph 967.

1195. The draft decision capital expenditure forecast included \$1.46 million for the 'IT security' business case as shown in Table 150.

Table 150: Draft decision AA5 capital expenditure forecast – IT security business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.39	0.57	0.36	0.23	0.23	1.78
Project adjustment	0.00	(0.22)	(0.03)	(0.03)	(0.03)	(0.31)
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.01)
Draft decision capital expenditure	0.39	0.35	0.33	0.19	0.19	1.46

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020

1196. DBP's revised proposal included \$2.37 million for the 'IT security' business case for AA5, which was \$0.59 million higher than the initially forecast amount. The difference is due to a change in the scope for the 'IT security' business case.

1197. The change in scope for the 'IT security' business case was driven by:

- Reassessment of DBP as being at a maturity indicator level of one under the Australian Energy Sector Cyber Security Framework in July 2020. DBP considered that this risk was unacceptable, particularly given the inter-dependence and inter-operations across the AGIG businesses also exposes the other businesses' assets to risk.⁵³⁶
- DBP's expectation that its obligations under the *Security of Critical Infrastructure Act 2018* (Cth) would require it to achieve a maturity indicator level of three within a short timeframe.⁵³⁷
- Development of an AGIG-wide plan to address cyber security weaknesses, known as the 'Uplift Cyber Security Technology and Capabilities' program, as part of AGIG's 'One IT Strategy'. DBP submitted that it sought to optimise the revised scope of the 'IT security' business case and achieve economies of scale and scope by incorporating the standalone DBP cyber security program into the AGIG-wide program. The 'Uplift Cyber Security Technology and

⁵³⁵ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 134.

⁵³⁶ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 194.

⁵³⁷ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 194.

Capabilities' program is designed to raise the maturity indicator levels of AGIG's businesses to three. AGIG engaged a consultant to identify the necessary work to achieve full implementation of all maturity indicator level three practices within its IT architecture.⁵³⁸

1198. The three initiatives that comprised DBP's initial 'IT security' business case (outlined in paragraph 1190) will be delivered as part of the AGIG-wide 'Uplift Cyber Security Technology and Capabilities' program.
1199. The forecast cost of the 'Uplift Cyber Security Technology and Capabilities' program is based on estimates developed by an independent consultant in conjunction with subject matter experts from AGIG, with these estimates being based on latest market conditions and rates. Delivery of the program will be subject to a competitive market tender process prior to project initiation.⁵³⁹
1200. The \$2.37 million DBP proposed for AA5 for the 'IT security' business case is an allocated share of the total costs to be incurred during AA5 for the 'Uplift Cyber Security Technology and Capabilities' program. \$2.37 million of this total cost has been allocated to DBP. The costs were allocated between DBP, AGN and Multinet Gas based on revenue. The result of applying this allocation method is that approximately 35 per cent of the costs of the program will be borne by DBP.⁵⁴⁰
1201. The ERA considers that DBP's expectations of its legislative obligations regarding IT security over the next five years are reasonable and that the 'IT security' scope of work is therefore necessary to comply with DBP's regulatory obligations.⁵⁴¹ Further, the ERA accepts that DBP's reassessment of its cyber security risk level as 'high' is reasonable given the increased threat environment and there should be medium to long-term advantages from undertaking the 'Uplift Cyber Security Technology and Capabilities' program.⁵⁴² The ERA therefore considers the 'IT security' scope of work would be undertaken by a prudent service provider acting in accordance with good industry practice.
1202. The ERA accepts that the unescalated forecast costs of the projects, which were developed by a consultant and for which the actual costs will be determined by a competitive tender, are reasonable. The ERA also considers that allocation of the total costs for the program between DBP, AGN and Multinet Gas is based on a reasonable allocator (revenue) which provides a reasonable proxy of the proportionate benefits of the new system to these businesses. However, as stated at paragraph 967, the ERA considers that the best estimate of the rate of labour escalation for AA5 is 0.18 per cent. The ERA has therefore adjusted the proposed forecast amount for the 'IT security' business case to reflect a rate of labour escalation of 0.18 per cent, which results in a forecast capital expenditure of \$2.36 million for

⁵³⁸ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 194-195.

⁵³⁹ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, p. 207.

⁵⁴⁰ DBP, *2021-2025 Revised Final Plan, Attachment 8.5A: Addendum to Capex Business Cases*, October 2020, pp. 206-207.

⁵⁴¹ The ERA's conclusion on this point takes into account technical advice on DBP's likely IT security obligations under the proposed amendments to the *Security of Critical Infrastructure Act 2018*. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 52, paragraph 288.

⁵⁴² The ERA's conclusion on this point takes into account technical advice that DBP's reassessment of its cybersecurity risk level is realistic. EMCa, *Review of Selected Aspects of Revised Final Plan for AA5 (2021 to 2025)*, January 2021, p. 53, paragraph 292.

the 'IT security' business case. The ERA considers this is the amount that would be incurred for this business case by a prudent service provider acting efficiently.

1203. Based on the conclusions in paragraphs 1201 and 1202, the ERA considers that \$2.36 million is the best forecast of DBP's conforming capital expenditure for AA5 for the 'IT security' business case and therefore satisfies rules 74 and 79 of the NGR. \$2.36 million is therefore included in DBP's projected capital base for AA5 for this business case as shown in Table 151.

Table 151: Final decision AA5 capital expenditure forecast – IT security business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	1.28	0.46	0.47	0.17	0.00	2.37
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	0.00	(0.01)
Final decision capital expenditure	1.27	0.46	0.47	0.17	0.00	2.36

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

IT sustaining infrastructure business case

1204. DBP initially proposed \$4.05 million of forecast capital expenditure for the 'IT sustaining infrastructure' business case for AA5. This was 123.57 per cent more than DBP incurred for this business case in AA4. The proposed capital expenditure for AA5 covered two projects as shown in Table 152.

Table 152: DBP's initial proposed AA5 forecast capital expenditure - IT sustaining infrastructure business case, by project (\$ million real as at 31 December 2019)

Project	2021	2022	2023	2024	2025	AA5 total
Annual IT asset renewal	0.75	0.78	0.46	0.44	1.09	3.52
Citrix virtual servers upgrade	-	0.27	-	0.27	-	0.53
Business case total	0.75	1.04	0.46	0.70	1.09	4.05

Source: DBP, 2021-2025 Final Plan, Attachment 8.6: Capex Forecast Model 2021-25 (public), January 2020.

1205. The projects comprising the IT sustaining infrastructure business case covered the following scope:

- Refreshment of key IT infrastructure and assets in line with DBP's lifecycle management plan, incorporating the office relocation where necessary. This IT infrastructure and assets includes servers, switches, routers, internet service provider connections, wireless networks, telephone and meeting room technologies, laptops, tables and desktop computers.
- Continuing the refresh of virtual IT infrastructure (including servers) and associated operating software.

- Whole of group services integration.⁵⁴³

1206. DBP provided another breakdown of the proposed expenditure as shown in Table 153. The difference between the total shown in Table 153 and the total shown in Table 152 is the labour escalation component of the proposed capital expenditure.

Table 153: Breakdown of initial proposed AA5 capital expenditure, excluding labour escalation – IT sustaining infrastructure (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
IT asset renewal (lifecycle management)	0.05	0.00	0.03	0.00	0.64	0.72
IT asset renewal (end-user compute)	0.43	0.43	0.43	0.43	0.43	2.16
IT asset renewal (virtual servers)	0.00	0.26	0.00	0.26	0.00	0.53
Group services (introduction program)	0.26	0.34	0.00	0.00	0.00	0.60
Total	0.74	1.03	0.46	0.69	1.07	4.00

Source: DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 459, Table 0.14

1207. DBP submitted that the proposed capital expenditure for the IT sustaining infrastructure business case was required to maintain the integrity of services on the DBP through current, vendor-supported and fit-for-purpose IT infrastructure that it considered would assist the management of technology risks and prevent material outages.⁵⁴⁴

1208. The proposed capital expenditure for the IT sustaining infrastructure business case was based, where possible, on a three-year average actual cost using actual cost data incurred by DBP in AA4. Where this was not possible, due to infrequent or new activities planned during AA5, the cost estimates applied were based on one or a combination of the following:

- the historical cost of similar programs of work
- input from IT strategy development experts
- where initiatives would need new products, a minimum of two vendor quotes
- consultation with market specialists.⁵⁴⁵

1209. While the ERA accepted that the replacement of IT infrastructure aligned with good industry practice, the ERA did not consider that the full program of work proposed for the 'IT sustaining infrastructure' business case would be undertaken by a prudent service provider acting efficiently. Specifically, the ERA considered that DBP:

- Had not demonstrated that the proposed capital expenditure for the group services introduction program would yield net benefits for consumers.

⁵⁴³ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 451.

⁵⁴⁴ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, p. 465.

⁵⁴⁵ DBP, 2021-2025 Final Plan, Attachment 8.5: Capex Business Cases (public), January 2020, pp. 465-466.

- Had not justified the level of expenditure proposed for the proposed IT asset renewals.⁵⁴⁶
1210. DBP submitted that the group services introduction program would:
- Support the implementation of AGIG-wide end user devices, standardised environment management, Citrix consolidation and active directory consolidation and change the managed operating environment approach.
 - Deliver end-user design and user acceptance testing to support the rollout of Office 365 collaboration.⁵⁴⁷
1211. The ERA was not satisfied that the group services introduction program would be undertaken by a prudent service provider acting efficiently. The costs of the program appeared to be comprised of costs for integration into AGIG's systems. DBP did not demonstrate that there would be sufficient net benefit to DBP and the DBNGP's customers to justify undertaking this work. This evaluation aligns with gasTrading's view that the costs related to integrating DBP's and AGIG's systems should not be included in the capital expenditure forecast unless there was a business case for the customer.⁵⁴⁸
1212. For the asset renewal initiatives DBP did not adequately support the reasons for the full amount of the proposed increase for asset renewal tasks compared to AA4.
1213. The ERA considered that \$3.08 million was the best estimate possible of the prudent and efficient amount of capital expenditure for the 'IT sustaining infrastructure' business case for AA5, and therefore satisfied rule 74 of the NGR. This amount was derived by reducing the proposed expenditure by:
- Subtracting the proposed costs of the group services introduction program.
 - Subtracting 10 per cent of the remainder of the proposed expenditure. This adjustment was made because, while the ERA was satisfied based on technical advice that an increase in IT expenditure was required to manage DBP's technology risks, DBP had demonstrated that it was able to prudently defer the replacement of assets, allowing for longer replacement intervals which result in cost deferrals with minimal increased risk.⁵⁴⁹
 - Adjusting the labour cost escalation included in the proposed expenditure remaining after the above two adjustments to reflect a real rate of 0.30 per cent, as outlined at paragraph 967.
1214. As a result, \$3.08 million was included in the draft decision capital expenditure forecast as shown in Table 91.

⁵⁴⁶ This view was supported by technical advice that the replacement of IT infrastructure to maintain a stable technology environment is aligned with good industry practices and that, on the basis of information supplied by DBP, it could not be verified that there would be net benefits from the group services introduction program. EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 134.

⁵⁴⁷ DBP, Response to information request EMCa20, 20 March 2020, pp. 1-2.

⁵⁴⁸ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 11.

⁵⁴⁹ EMCa, *Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 135.

Table 154: Draft decision AA5 capital expenditure forecast - IT sustaining infrastructure business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Initially proposed capital expenditure	0.75	1.04	0.46	0.70	1.09	4.05
Project adjustment	(0.31)	(0.41)	(0.05)	(0.07)	(0.11)	(0.94)
Labour cost escalation adjustment	(0.00)	(0.01)	(0.00)	(0.01)	(0.01)	(0.03)
Draft decision capital expenditure	0.44	0.63	0.41	0.63	0.97	3.08

Numbers may not add due to rounding.

Source: ERA, Draft decision AA5 capital expenditure model (confidential), August 2020

1215. DBP accepted the ERA's draft decision on this business case and included \$3.15 million for the 'IT sustaining infrastructure' business case for AA5, applying a revised rate of labour escalation of 0.57 per cent.

1216. As outlined at paragraph 967, the ERA considers that the best forecast of the labour escalation rate for AA5 is 0.18 per cent.

1217. The ERA maintains its position from the draft decision that the work included in the 'IT sustaining infrastructure' business case, which is unchanged from the initial proposal, will be necessary during AA5 to maintain and improve the safety and integrity of services on the DBNGP and is in line with what would be incurred by a prudent service provider acting efficiently good industry practice. The ERA considers that a prudent service provider acting efficiently would incur capital expenditure of \$3.13 million for this business case during AA5, which the ERA has derived by applying a labour escalation rate of 0.18 per cent to the unescalated costs of the program proposed by DBP. The ERA therefore concludes that \$3.13 million satisfies the requirements for conforming capital expenditure and forecasts set out in rules 79 and 74 of the NGR and includes this in DBP's projected capital base for AA5 as shown in Table 155.

Table 155: Final decision AA5 capital expenditure forecast – IT sustaining infrastructure business case (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	AA5 total
Revised proposed capital expenditure	0.44	0.66	0.42	0.66	0.98	3.15
Project adjustment	0.00	0.00	0.00	0.00	0.00	0.00
Labour cost escalation adjustment	(0.00)	(0.00)	(0.00)	(0.00)	(0.01)	(0.02)
Final decision capital expenditure	0.44	0.65	0.41	0.65	0.97	3.13

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Equity raising cost

1218. Equity raising costs reflect the direct transaction costs of raising equity. Equity is assumed to be raised to fund a capital investment program and is used to maintain the benchmark gearing assumption adopted.
1219. The ERA provided an allowance for equity raising costs in the capital expenditure building block. Equity raising costs are capitalised and incorporated into capital expenditure allowances, which are then recovered over time. Equity raising costs do not form part of the rate of return.⁵⁵⁰
1220. DBP initially proposed that its equity raising costs for AA5 be based on the following assumptions:
- Retained earnings of 30 per cent of after-tax profits will be available to increase equity at zero cost.
 - Dividends will be assumed to be paid at the benchmark payout ratio of 70 per cent of after-tax profits.
 - 25 per cent of dividends paid out will be treated as being reinvested through dividend reinvestment plans, with an equity raising cost allowance of 1 per cent.
 - Any further required equity is raised at the seasoned equity offering cost of 3 per cent.
1221. DBP proposed that equity raising costs be capitalised into the regulatory asset base and recovered over the weighted average life of the assets in its regulatory asset base (62.19) years.
1222. To determine whether equity funding is required the formula below is used. If the equity required is less than zero then equity raising is not required.
- $$\text{Equity required} = \text{capital expenditure} - \text{debt component of the capital expenditure} - (\text{retained cash flow} - \text{dividend payout} + \text{dividend reinvestment})$$
1223. The equity raising cost is the sum of external equity raising cost and dividend reinvestment cost. When equity raising costs are greater than zero, they are capitalised.
1224. In the draft decision, the ERA accepted the proposed method and assumptions for calculating equity raising costs in AA5. The method and assumptions applied were the same as those applied for the most recent access arrangement revisions for the Mid-West and South-West Gas Distribution Systems and the Goldfields Gas Pipeline.
1225. DBP's proposed method and assumptions for calculating equity raising costs are unchanged in its revised proposal. The ERA accepts the proposed method and assumptions.

Final decision conclusion

1226. The ERA concludes that \$151.48 million is the best estimate possible for DBP's capital expenditure for its business cases during AA5. The draft decision AA5 capital expenditure forecast is shown in Table 156 for the business cases. The ERA considers that the best estimate of the equity raising costs DBP will incur during AA5

⁵⁵⁰ ERA, *Final Rate of Return Guidelines*, 18 December 2020, Paragraph 218; ERA, *Final Gas Rate of Return Explanatory Statement*, 18 December 2018, paragraph 1543.

is \$7.68 million, and includes this amount in the AA5 capital expenditure forecast as shown in Table 157, where the forecast AA5 capital expenditure is shown by asset class.

Table 156: Final decision AA5 capital expenditure forecast by business case (\$ million real as at 31 December 2019)

Business case	Proposed capital expenditure	Project adjustment	Labour cost adjustment	Final decision AA5 capital expenditure forecast
Compressor stations	33.70	0.00	(0.19)	33.51
Pipeline and mainline valves	8.87	0.00	(0.05)	8.82
SCADA	1.91	0.00	(0.01)	1.90
Gas engine alternator	6.44	0.00	(0.04)	6.40
Compressor stations accommodation	4.60	0.00	(0.03)	4.57
Northern communications system	30.53	0.00	(0.11)	30.42
Compressor package control system replacement	16.45	0.00	(0.10)	16.35
Jandakot site redevelopment	8.75	0.00	(0.06)	8.69
Maximo and DMZ	2.30	0.00	0.00	2.30
Safety case revisions	0.51	(0.20)	(0.00)	0.31
Meter stations	7.89	0.00	(0.05)	7.84
Tools	1.68	0.00	(0.01)	1.67
Fleet and civil equipment	4.75	0.00	(0.03)	4.72
Turbine exhaust replacement	4.85	0.00	(0.03)	4.82
Customer reporting system	2.85	0.00	(0.02)	2.83
IT sustaining applications	10.91	0.00	(0.03)	10.87
IT enabling	5.65	(5.62)	(0.03)	0.00
IT security	2.37	0.00	(0.01)	2.36
IT sustaining infrastructure	3.15	0.00	(0.02)	3.13
Total	158.15	(5.82)	(0.84)	151.48

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

Table 157: Final decision AA5 capital expenditure forecast by asset class (\$ million real as at 31 December 2019)

Asset class	2021	2022	2023	2024	2025	AA5 total
Pipeline	-	-	-	-	-	-
Compression	5.03	2.40	2.96	2.76	3.17	16.33
Metering	1.75	1.20	1.40	1.20	1.38	6.93
Other	2.78	1.69	1.17	0.88	1.60	8.12
Computers & motor vehicles	14.97	2.92	2.38	4.72	2.73	27.73
CP	3.42	2.86	3.09	2.89	1.67	13.92
SCADA, electrical control and instrumentation and communications	16.56	19.04	8.53	11.38	6.56	62.08
Buildings	3.07	3.46	0.89	6.73	2.23	16.38
Cost of raising equity	1.97	1.49	1.35	1.50	1.38	7.68
Total	49.56	35.06	21.78	32.05	20.72	159.16

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2020.

1227. Table 158 summarises the final decision AA5 capital expenditure by asset class showing the movements from the initial proposal through to the draft decision, revised proposal and the final decision.

Table 158: AA5 capital expenditure – Initial and revised proposed forecasts and draft decision and final decision forecasts by asset class

	Initial proposal	Draft decision	Revised proposal	Final decision
Pipeline	0.00	0.00	0.00	0.00
Compression	21.94	16.25	16.42	16.33
Metering	6.97	6.24	6.97	6.93
Other	14.88	9.55	8.36	8.12
Computers & motor vehicles	25.89	18.16	33.50	27.73
CP	14.73	11.81	14.00	13.92
SCADA, electrical control and instrumentation and communications	74.15	64.15	62.41	62.08
Buildings*	0.00	0.00	16.48	16.38
Total	158.58	126.17	158.15	151.48

Numbers may not add due to rounding.

Note: *DBP's initial and revised proposals did not include an allocation of its initially proposed capital expenditure into the 'Buildings' asset class. The amounts allocated to the 'Buildings' asset class and the other asset classes in DBP's revised proposal were obtained through an information request.

Source: ERA, Draft decision AA4 capital expenditure model (confidential), 14 August 2020. ERA Final decision AA4 capital expenditure model (confidential), February 2021. DBP, Response to information request ERA 41, 5 February 2021.

1228. Table 159 summarises the final decision forecast of DBP's AA5 capital expenditure by business case.

Table 159: Final decision AA5 capital expenditure forecast

Business case	Final decision AA5 capital expenditure forecast
Compressor stations	33.51
Pipeline and mainline valves	8.82
SCADA	1.90
Gas engine alternator	6.40
Compressor stations accommodation	4.57
Northern communications system	30.42
Compressor package control system replacement	16.35
Jandakot site redevelopment	8.69
Maximo and DMZ	2.29
Safety case revisions	0.31
Meter stations	7.84
Tools	1.67
Fleet and civil equipment	4.72
Turbine exhaust replacement	4.82
Customer reporting system	2.83
IT sustaining applications	10.87
IT enabling	0.00
IT security	2.36
IT sustaining infrastructure	3.13
Total	151.48

Numbers may not add due to rounding.

Source: ERA, Final decision AA5 capital expenditure model (confidential), February 2021.

1229. Table 164 shows the final decision values for calculating DBP's projected capital base for AA5 in real dollars. Table 165 shows the draft decision values for calculating DBP's projected capital base for AA5 in nominal dollars.

Table 160: Final decision projected AA5 capital base (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025
Opening capital base AA5	3,331.50	3,201.96	3,122.98	3,028.90	2,944.80
Plus: Forecast capital expenditure	49.56	35.06	21.78	32.05	20.72
Less: Depreciation	(179.09)	(114.04)	(115.86)	(116.14)	(117.44)
Less: Asset disposals	-	-	-	-	-
Closing capital base	3,201.96	3,122.98	3,028.90	2,944.80	2,848.09

Numbers may not add due to rounding.

Source: ERA, Final decision on proposed revisions to the Dampier Bunbury Natural Gas Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 1 April 2021

Table 161: Final decision projected AA5 capital base (\$ million nominal)

	2021	2022	2023	2024	2025
Opening capital base	3,369.81	3,276.03	3,231.97	3,170.65	3,118.07
Inflation	38.75	37.67	37.17	36.46	35.86
Opening capital base (end of period)	3,408.56	3,313.70	3,269.13	3,207.11	3,153.93
Plus: Forecast capital expenditure	50.70	36.28	22.80	33.93	22.19
Less: Depreciation	(183.24)	(118.02)	(121.28)	(122.97)	(125.78)
Less: Asset disposals	-	-	-	-	-
Closing capital base	3,276.03	3,231.97	3,170.65	3,118.07	3,050.34

Numbers may not add due to rounding.

Source: ERA, Final decision on proposed revisions to the Dampier Bunbury Natural Gas Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 1 April 2021

Required Amendment 9

DBP must amend the projected capital base to reflect the values set out in Table 161 of this final decision so that the closing capital base as at 31 December 2025 will be \$3,050.34 million (nominal).

Return on the regulatory capital base

Rate of return

1230. The rate of return, based on the Weighted Average Cost of Capital (WACC), provides for a return on the regulatory asset base. Rule 87 of the NGR states the formula for calculating the rate of return:

87 Rate of return

The return on the projected capital base for a service provider for a regulatory year of an access arrangement period for an applicable access arrangement ($RPCB_t$) is to be calculated using the following formula:

$$RPCB_t = a_t \times v_t$$

where:

a_t is the allowed rate of return for the regulatory year; and

v_t is the value, as at the beginning of the regulatory year, of the projected capital base for the regulatory year (as established under rule 78 and subject to rule 82(3)).

1231. Sections 30A and 30D of the National Gas Law (reproduced below) require the ERA to make and publish a rate of return instrument. The instrument must set out:

- The methods that the ERA proposes to use to estimate the allowed rate of return.
- The estimation methods, financial models, market data and other evidence that the ERA proposes to take into account to estimate the return on equity, the return on debt and the value of imputation credits:

30A—Definitions

In this Division—

consumer reference group, for making a rate of return instrument, see section 30H(1)(a);

explanatory information, for a rate of return instrument, means information about the content of the instrument, including (but not limited to) information explaining—

- (a) the reasons for the rate of return on capital or the value of imputation credits under the instrument; and
- (b) how the stated value, or the way to calculate the rate or value, was decided; and
- (c) if the instrument replaces another instrument—
 - (i) the differences (if any) between the instrument and the replaced instrument; and
 - (ii) the reasons for any differences; and,
- (d) why the [ERA] is satisfied the instrument will, or is most likely to, contribute to the achievement of the national gas objective to the greatest degree; and
- (e) how the [ERA] had regard to the following in making the instrument:
 - (i) the revenue and pricing principles;
 - (ii) the matters mentioned in section 30G;
 - (iii) estimation methods, financial models, market data and other evidence relevant to making the instrument;
 - (iv) prevailing conditions in the market for equity funds;

- (v) the interrelationships between financial parameters used, or to be used, in relation to deciding the rate or value.

30D—[ERA] to make rate of return instrument

- (1) This section applies if a rate of return on capital or the value of imputation credits is required for performing or exercising an [ERA] economic regulatory function or power.
 - (2) The [ERA] must make an instrument (a rate of return instrument) stating—
 - (a) for a rate of return on capital—the way to calculate the rate; and
 - (b) for the value of imputation credits—the value or the way to calculate the value.
 - (3) The [ERA] may make an instrument only if satisfied the instrument will, or is most likely to, contribute to the achievement of the national gas objective to the greatest degree.
 - (4) Subject to subsection (3), the way to calculate a rate of return on capital must include a weighted average of an allowed return on equity and an allowed return on debt.
 - (5) In making an instrument, the [ERA] must have regard to—
 - (a) the revenue and pricing principles; and
 - (b) other information the [ERA] considers appropriate.
1232. On 18 December 2018, the ERA published its rate of return guideline, specifying its approach for determining the rate of return.
1233. In April 2019, the Western Australian Government adopted binding rate of return legislation and, at that time, the rate of return guideline became a binding instrument.
1234. The binding gas rate of return instrument sets out the approach for determining each WACC parameter and forms the basis for determining the rate of return for a five-year gas access arrangement.
1235. The ERA and DBP cannot depart from the binding instrument when reviewing the access arrangement for the DBNGP.
1236. Further information about the rate of return instrument and the relevant documents can be found on the ERA's website.⁵⁵¹

DBP's initial proposal

1237. DBP used the ERA's rate of return instrument to estimate the rate of return in its AA5 proposal. DBP's proposed estimate of the rate of return was 4.31 per cent (vanilla nominal after tax). Table 162 details the individual rate of return components initially proposed by DBP for AA5 compared to the existing rate of return components for AA4.⁵⁵²

⁵⁵¹ ERA, *Final Rate of Return Guidelines (2018)*, 18 December 2018 ([online](#)) (accessed May 2020).

⁵⁵² DBP, *2021-2025 Final Plan*, January 2020, p. 99, p.104-106.

Table 162: DBP's rate of return estimate

Component	AA4 actual*	AA5 proposed
Return on debt		
5-year interest rate swap (effective yield) (%)	2.10	1.11
Debt risk premium (10-year average) (%)	2.339	2.280
Debt issuing cost + hedging cost (%)	0.239	0.214
<i>Nominal return on debt (%)</i>	<i>4.68</i>	<i>3.61</i>
Return on equity		
Nominal risk free rate (%)	1.80	0.96
Market risk premium (%)	7.40	6.00
Equity beta	0.7	0.7
<i>Nominal return on equity (%)</i>	<i>6.98</i>	<i>5.16</i>
Other parameters		
Debt proportion (%)	60	55
Inflation rate (%)	1.43	1.19
Corporate tax rate (%)	30	30
Franking credits	0.4	0.5
Nominal after-tax WACC (%)	5.60	4.31
Real after-tax WACC (%)	4.11	3.08

*Based on 2019 debt risk premium values.

Source: DBP, 2 January 2020, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline: 2021-2025 Final Plan*, pp.99; 104-106. ERA tariff model, August 2020.

Draft decision

1238. The ERA's considerations of the rate of return can be found in the ERA's rate of return guidelines explanatory statement. Under the National Gas Law, the rate of return guidelines is a binding instrument in Western Australia.⁵⁵³

1239. The ERA's draft decision was consistent with the binding gas rate of return guidelines.

Overall rate of return approach

1240. The rate of return, based on a weighted average cost of capital, provides a service provider with a return on the capital it has invested in its business.

⁵⁵³ WA Gazette, 5 April 2019 at 1007.

1241. The ERA's gas rate of return instrument requires that the ERA adopts a nominal vanilla WACC to develop the rate of return for the benchmark efficient entity.
1242. A vanilla WACC does not include any adjustment for tax impacts, such as the effect of imputation credits on the rate of return. The impact of tax on the returns must be accounted for separately, as an explicit deduction from the relevant cash flows. A vanilla WACC is therefore applied within a post-tax framework.
1243. In the draft decision, the ERA stated that it would adopt a WACC for a benchmark efficient entity in its simplest 'vanilla' form, expressed as:

$$WACC_{vanilla} = E(r_e) \frac{E}{V} + E(r_d) \frac{D}{V}$$

where:

$E(r_e)$ is the expected return on equity

$E(r_d)$ is the expected return on debt

$\frac{E}{V}$ is the proportion of equity in total financing (comprising equity and debt)

$\frac{D}{V}$ is the proportion of debt in total financing.

Return on debt approach

1244. In the draft decision, the ERA estimated the return on debt based on a risk premium over and above the risk free rate, combined with an additional margin for administrative costs:⁵⁵⁴

Return on debt = risk free rate + debt risk premium + debt raising costs + hedging costs

Risk free rate (debt)

1245. The risk free rate is the return an investor would expect when investing in an asset with no risk.
1246. The interbank rate can represent a risk free rate for the purposes of debt financing. Though interbank lending has a cost above that of Commonwealth Government Securities used to calculate the cost of equity, the use of the interbank rate is equivalent to using a Government Security and separately adjusting the debt risk premium. For the purposes of determining the cost of debt the use of the interbank rate is more convenient for businesses and regulators. The ERA considered the five-year bank bill swap rate as a proxy for the risk free rate when calculating the cost of debt.
1247. The ERA used the 20-day averaging period to 28 February 2020 as a placeholder for the calculation of the risk free rate and noted that the final decision would be updated for DBP's final averaging period.

⁵⁵⁴ ERA, *Final Gas Rate of Return Guidelines Explanatory Statement*, 18 December 2018, p. 83.

1248. For the draft decision, the ERA estimated a risk free rate for the cost of debt of 0.84 per cent for the 20-day averaging period to 28 February 2020.

Debt risk premium

1249. The debt risk premium is the return above the risk free rate that lenders require to compensate for the risk of providing debt funding to a benchmark business. The debt risk premium compensates holders of debt securities for the possibility of default by the issuer.

1250. The ERA used the revised bond yield approach to determine the debt risk premium at a point in time by taking the following steps⁵⁵⁵:

- Step 1: Determining the benchmark sample – identifying a sample of relevant corporate bonds that reflect the credit rating of the benchmark efficient entity.
- Step 2: Collecting data and converting yields to Australian dollar equivalents – converting the bond yields from the sample into hedged Australian dollar equivalent yields.
- Step 3: Averaging yields over the averaging period - calculating an average Australian dollar equivalent bond yield for each bond across the averaging period.
- Step 4: Estimating curves - estimating yield curves on the bond data by applying the Gaussian Kernel, Nelson-Siegel and Nelson-Siegel-Svensson techniques.
- Step 5: Estimating the cost of debt – calculating the simple average of the three yield curves' 10-year cost of debt to arrive at a market estimate of the 10-year cost of debt.
- Step 6: Calculating the debt risk premium - calculating the debt risk premium by subtracting the 10-year interest rate swap rate from the 10-year cost of debt.

1251. The ERA's revised bond yield approach used international and domestic BBB+ bonds identified by Bloomberg as having Australia as their country of risk to estimate the cost of debt each year.

1252. To determine the debt risk premium used to calculate the rate of return, the ERA constructed a 10-year trailing average debt risk premium. This consisted of a debt risk premium for the current year and a debt risk premium for each of the nine prior years.

1253. The 10-year trailing average debt risk premium is updated each year. The detailed process for the debt risk premium is provided in the 2018 gas rate of return guidelines explanatory statement.⁵⁵⁶

1254. Table 163 details ERA's estimated trailing average debt risk premium for the draft decision (being 2.240 per cent). Historical annual debt risk premium estimates are unchanged. The debt risk premium for the 2021 calendar year was updated for the 20-day averaging period to 28 February 2020, as a placeholder.

⁵⁵⁵ ERA, *Final Rate of Return Guidelines (2018)*, 18 December 2018, p. 23.

⁵⁵⁶ ERA, *Final Gas Rate of Return Guidelines Explanatory Statement*, 18 December 2018, Chapter 10.

Table 163: ERA draft decision estimated trailing average debt risk premium for AA5

Year	Debt risk premium (%)
2012	3.168
2013	3.043
2014	2.251
2015	2.070
2016	2.612
2017	2.274
2018	1.756
2019	1.712
2020	1.995
2021	1.515
Trailing average debt risk premium	2.240

**Debt risk premium estimate for 20-day averaging period to 28 February 2020, as a placeholder.*

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021-2025, 14 August 2020, p.187, Table 105.

Debt raising and hedging costs

1255. Debt raising costs and hedging costs are the administrative costs and other charges incurred by businesses when obtaining and hedging finance.
1256. Consistent with the 2018 gas rate of return guidelines, the ERA determined an allowance of 0.100 per cent for debt raising costs.
1257. The ERA also provided for the recovery of an annual swap allowance of 0.114 per cent to compensate for the cost of conducting hedging for exposure to movements in the risk free rate.

Return on equity approach

1258. The return on equity is the return that investors require from a firm to compensate them for the risk they take by investing their capital.
1259. There are no readily observable proxies for the expected return on equity. While estimates of the cost of debt can be obtained by observing debt instruments, financial markets do not provide a directly observable proxy for the cost of equity, for either individual firms or for the whole market.
1260. Estimating a forward-looking return on equity that is sufficient to enable regulated firms to recoup their prevailing equity financing costs requires the use of models. Generally, these models seek to explain the required return on equity through a relationship with some portfolio of risk factors, or else in terms of the present value of the expected stream of future cash flows. The model most used by Australian regulators for quantifying the return on equity and associated risk has been the Sharpe Lintner Capital Asset Pricing Model (CAPM).

1261. The ERA stated that it would use the Sharpe Lintner CAPM to determine a single point estimate for the return on equity:

$$R_i = R_f + \beta_i (R_m - R_f)$$

Where:

R_i is the required rate of return on equity for the asset, firm or industry in question

R_f is the risk free rate.

β_i is the equity beta that describes how a particular portfolio i will follow the market which is defined as $\beta_i = \text{cov}(R_i, R_m) / \text{var}(R_m)$

$(R_m - R_f)$ is the market risk premium.

Risk free rate (equity)

1262. The ERA stated that it would use observed yields from the five-year Commonwealth Government Security bonds as the best proxy for risk free assets in Australia to estimate the risk free rate of return for the purpose of estimating the return on equity.
1263. For the draft decision the ERA estimated a risk free rate for the cost of equity of 0.74 per cent for the 20-day averaging period to 28 February 2020, as a placeholder.

Market risk premium

1264. The market risk premium is the expected rate of return over and above the risk free rate that investors require to invest in a fully-diversified portfolio.
1265. The market risk premium compensates an investor for the systematic risk of investing in a fully diversified portfolio. Systematic risk is risk that cannot be diversified away by investors because it affects all firms in the market.⁵⁵⁷ Therefore, the market risk premium represents an investor's required expected return, over and above the risk free rate of return, on a fully diversified portfolio of assets. This is a forward-looking concept.
1266. Consistent with the 2018 gas rate of return guidelines, the ERA determined a market risk premium of 6.0 per cent.

Equity beta

1267. Equity beta is the 'slope' parameter β in the Sharpe Lintner CAPM. The slope parameter β correlates the return on the specific asset, in excess of the risk free rate of return, to the rise and fall of the return on the market portfolio.
1268. The equity beta is a parameter that measures the systematic risk of a security or a portfolio in comparison to the market.

⁵⁵⁷ The foundation of the Sharpe Lintner CAPM is the proposition that adding an asset to a portfolio reduces risk via the diversification effect but not beyond the risks that the assets in a portfolio share, that is, their systematic risk. At the limit, when one has invested in all available assets in the market portfolio, there is only systematic risk left. An important assumption of the CAPM is that assets are priced as though it is only their systematic risk that is relevant to investors.

1269. Consistent with the 2018 gas rate of return guidelines, the ERA determined an equity beta of 0.7.

Gearing

1270. Gearing is the proportion of a business's assets assumed to be financed by debt and equity. Gearing is defined as the ratio of the value of debt to total capital (that is, including debt and equity) and so is generally expressed as follows:

$$\text{Gearing} = \frac{\text{Debt}}{\text{Debt} + \text{Equity}}$$

1271. The gearing ratio is used to weight the costs of debt and equity when the regulated WACC is determined. The ERA considered the allowed rate of return for a regulatory year should be a weighted average of the return on equity for the access arrangement period in which that year occurs and the return on debt for that year.
1272. Consistent with the 2018 gas rate of return guidelines, the ERA determined a gearing of 55 per cent.

Inflation

1273. Inflation is the rate of change in the general level of prices of goods and services. Forecast inflation can also be used to translate the nominal post-tax WACC to a real post-tax WACC.
1274. A nominal rate of return incorporates the real rate of return, compounded with a rate that reflects expectations of inflation. In line with the gas rate of return instrument, the ERA uses a nominal vanilla rate of return for its decisions.
1275. The ERA stated that it would estimate the expected inflation rate using the Treasury bond implied inflation approach. This approach uses the Fisher equation and the observed yields of:
- Five-year Commonwealth Government Securities, which reflect a market-based estimate of the nominal risk free rate.
 - Five-year indexed Treasury bonds, which reflect a market-based estimate of a real risk free rate.
1276. The Fisher equation can be expressed in the equation below:

$$1 + i = (1 + r)(1 + \pi^e)$$

where:

i is the nominal interest rate

r is the real interest rate

π^e is the expected inflation rate.

1277. The ERA further stated that it would estimate the expected inflation rate consistent with the estimate of the risk free rate by adopting an averaging period of 20 trading days. The approach uses linear interpolation to derive the daily point estimates of both the nominal five-year risk free rate and the real five-year risk free rate, for use in

the Fisher equation.⁵⁵⁸ The term of the resulting average expected inflation rate is five years, consistent with the length of the access arrangement period.

1278. For the draft decision the ERA estimated a forecast inflation of 1.29 per cent for the 20-day averaging period to 28 February 2020, as a placeholder.

Value of imputation credits (gamma)

1279. The imputation tax system prevents corporate profits from being taxed twice. Prior to the introduction of imputation on 1 July 1987, company profits were taxed once at the corporate level and again at the dividend recipient level (for example, as personal income tax). Under the Australian imputation tax system, franking credits are distributed to investors at the time that dividends are paid to provide an offset to those investors' taxation liabilities.
1280. The gamma parameter accounts for the reduction in the effective corporate taxation that is generated by the distribution of franking credits to investors. Generally, investors who can use 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.
1281. The ERA determined gamma through the Monkhouse formula as the product of the distribution rate and utilisation rate. The distribution rate and utilisation rate are separately estimated.
1282. The distribution rate represents the proportion of imputation credits generated by a benchmark efficient entity that is expected to be distributed to investors. The ERA considered that the distribution rate is a firm-specific rather than a market-wide parameter.
1283. In estimating the distribution rate, the ERA relied on 0.9 for the distribution rate from financial reports of the 50 largest firms listed on the Australian Securities Exchange (ASX).⁵⁵⁹
1284. The utilisation rate is the weighted average of the utilisation rates of individual investors, with investors able to fully use the credits having a rate of one and those unable to use them having a rate of zero. The ERA considered that the utilisation rate is a market-wide, rather than a firm-specific, parameter.
1285. To estimate the utilisation rate, the ERA relied on the equity ownership approach to determine the percentage of domestic investors in the Australian equity market. The ERA relied on 0.60 for the utilisation rate, which was estimated for all Australian equity from the national accounts of the Australian Bureau of Statistics.
1286. Consistent with the 2018 gas rate of return guidelines, the ERA determined gamma as the product of the distribution rate and the utilisation rate to provide a gamma of 0.5.

⁵⁵⁸ It is not common to observe a Commonwealth Government Security bond with an expiry date that exactly matches that of the regulatory period end. To overcome this, two bonds are selected that fall on either side of the end day of the regulatory period. The dates on these bonds are referred to as the 'straddle' dates. Linear interpolation estimates the yields on the regulatory period end date by assuming a linear increase in yields between the straddle dates on the two bonds observed.

⁵⁵⁹ Lally, M., *Estimating the Distribution Rate for Imputation Credits for the Top 50 ASX Companies*, October 2018, p. 4.

Weighted average cost of capital

1287. Based on the 2018 gas rate of return guidelines and the above assessment, the ERA determined the point estimates for each of the parameters (Table 164). The ERA considered the estimates to be consistent with the National Gas Law, National Gas Rules and national gas objective:

- the ERA estimated that the nominal after tax cost of equity as 4.94 per cent
- the ERA estimated that the nominal cost of debt as 3.29 per cent
- the ERA's nominal rate of return estimate was 4.03 per cent.

Table 164: ERA's draft decision rate of return estimate for AA5

Component	DBP proposed	Draft decision
<i>Averaging period</i>	<i>29 October 2019</i>	<i>28 February 2020</i>
Return on debt		
5-year interest rate swap (effective yield) (%)	1.11	0.84
Debt risk premium (10-year average) (%)	2.280	2.240
Debt issuing cost + hedging cost (%)	0.214	0.214
<i>Nominal return on debt (%)</i>	<i>3.61</i>	<i>3.29</i>
Return on equity		
Nominal risk free rate (%)	0.96	0.74
Market risk premium (%)	6.00	6.00
Equity beta	0.7	0.7
<i>Nominal return on equity (%)</i>	<i>5.16</i>	<i>4.94</i>
Other parameters		
Debt proportion (%)	55	55
Inflation (%)	1.19	1.29
Corporate tax rate (%)	30	30
Franking credit	0.5	0.5
Nominal after-tax WACC (%)	4.31	4.03
Real after-tax WACC (%)	3.08	2.71

Source: DBP, January 2020, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline 2021-2025 Final Plan*, pp. 104-106.

1288. The ERA used a 20-day averaging period to 28 February 2020 as a placeholder for the five-year interest rate swap, debt risk premium, risk free rate and inflation and noted that the final decision would be updated for DBP's final nominated averaging period.

1289. The ERA further noted that, consistent with the gas rate of return guidelines, the return on debt would be updated annually, by updating the debt risk premium (which is estimated as a historical trailing average), and the reference tariff would be automatically updated.
1290. The ERA required DBP to amend its rate of return to be 4.03 per cent. The draft decision set out the following required amendment:

Draft Decision Required Amendment 12

Subject to the nomination of a final averaging period, DBP must amend its rate of return to be 4.03 per cent (vanilla nominal after-tax).

DBP's response to the draft decision

1291. In its revised proposal, DBP accepted the ERA's method for determining the rate of return estimate consistent with the binding rate of return guideline and updated only market-based rate of return parameters for the averaging period of August 2020, as a placeholder. DBP modified the ERA's draft decision required amendment 12 and used 3.66 per cent based on the averaging period of August 2020 as the rate of return to determine the total revenue and reference tariff of its revised proposal.⁵⁶⁰
1292. DBP separately and confidentially nominated an averaging period for the purpose of the ERA's final decision.⁵⁶¹

Final decision

1293. On 16 September 2020, DBP proposed the averaging period for calculating the risk free rate and debt risk premium as part of the rate of return for AA5.⁵⁶²
1294. The ERA accepted DBP's nomination of the averaging period for its market-based parameters of the rate of return, which have been applied in the final decision. For the final decision, the averaging period for the market-based parameters is the 20 trading days to 27 November 2020.
1295. In accordance with the ERA's debt risk premium process, the debt risk premium for 2021, estimated for the 20 trading days to 27 November 2020, is 1.712 per cent. The 2021 debt risk premium is used to determine the trailing average debt risk premium.
1296. The ERA determined the rate of return estimate for this final decision consistent with the binding rate of return guidelines and the assessments that were undertaken for the draft decision, using the averaging period nominated by DBP (Table 165):
- the ERA estimates the nominal after tax cost of equity as 4.49 per cent
 - the ERA estimates the nominal cost of debt as 2.77 per cent
 - the ERA's nominal rate of return estimate is 3.54 per cent.

⁵⁶⁰ DBP, *2021-2025 Revised Final Plan, Attachment 10.1, Response to Draft Decision on Financing Costs*, October 2020, p. 3.

⁵⁶¹ DBP, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement revision: averaging periods for rate of return determination (confidential)*, 16 September 2020.

⁵⁶² DBP, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement revision: averaging periods for rate of return determination (confidential)*, 16 September 2020.

Table 165: ERA's final decision rate of return estimate for AA5

Component	ERA final decision
Return on debt	
5-year interest rate swap (effective yield) (%)	0.295
Debt risk premium (10-year average) (%)	2.259
Debt issuing cost (0.100%) + hedging (0.114%) (%)	0.214
Nominal return on debt (%)	2.768
Return on equity	
Nominal risk-free rate (%)	0.29
Market risk premium (%)	6.00
Equity beta	0.7
Nominal return on equity (%)	4.49
Other parameters	
Debt proportion (%)	55
Inflation rate (%)	1.15
Corporate tax rate (%)	30
Franking credit	0.5
Nominal after-tax WACC (%)	3.54
Real after-tax WACC (%)	2.37

Required Amendment 10

The return on the capital base must reflect the weighted average cost of capital parameters in Table 165 of this final decision.

Depreciation

1297. Rule 72(1)(c)(ii) of the NGR prescribes that the access arrangement information for a full access arrangement proposal must detail the projected capital base over the access arrangement period, including “a forecast of depreciation for the period including a demonstration of how the forecast is derived on the basis of the proposed depreciation method.”
1298. Rule 76(b) of the NGR prescribes depreciation on the projected capital base as a separate building block in the determination of total revenue for each regulatory year of the access arrangement period.
1299. Under rule 88 of the NGR, pipeline assets constituting the capital base must be depreciated according to a depreciation schedule which may consist of separate schedules, each relating to a particular asset or class of assets:
- 88 Depreciation schedule**
- (1) 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.
- (2) The depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or class of assets.
1300. The depreciation schedule should be designed according to criteria specified in rule 89 of the NGR:
- 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 AER 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.
1301. Rule 90 of the NGR specifies that an access arrangement must contain provisions for the calculation of depreciation when rolling forward the capital base to the next access arrangement period:

90 Calculation of depreciation for rolling forward capital base from one access arrangement period to the next

- (1) A full access arrangement must contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period after the one to which the access arrangement currently relates.
- (2) The provisions must resolve whether depreciation of the capital base is to be based on forecast or actual capital expenditure.

1302. Rule 85 of the NGR allows for the inclusion of a mechanism to remove redundant capital from the capital base:

85 Capital redundancy

- (1) A full access arrangement may include (and the AER may require it to include) a mechanism to ensure that assets that cease to contribute in any way to the delivery of pipeline services (redundant assets) are removed from the capital base.
- (2) A reduction of the capital base in accordance with such a mechanism may only take effect from the commencement of the first access arrangement period to follow the inclusion of the mechanism in the access arrangement or the commencement of a later access arrangement period.
- (3) An applicable access arrangement may include a mechanism for sharing costs associated with a decline in demand for pipeline services between the service provider and users.
- (4) Before requiring or approving a mechanism under this rule, the AER must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

DBP's initial proposal

1303. DBP proposed a depreciation allowance for AA5 of \$671 million (Table 166). The depreciation allowance comprised approximately 41 per cent of DBP's forecast total revenue of \$1,644 million for AA5.

1304. DBP's proposed forecast depreciation increased from a total of \$516.83 million in AA4 to \$671.00 million in AA5.⁵⁶³ The \$154.17 million increase in DBP's forecast revenue over AA5 was due to DBP's proposed revised depreciation schedule.

⁵⁶³ DBNGP DBP AA5 May 2020 tariff model (confidential); ERA converted numbers into \$ million as at 31 December 2019.

Table 166: DBP's proposed forecast depreciation for AA5 (\$ million as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Pipeline	73.86	73.86	73.86	73.86	73.86	369.32
Compression	17.95	18.15	18.27	18.40	18.53	91.30
Metering*	14.64	1.51	1.55	1.60	1.64	20.95
Other	10.14	10.40	10.54	10.65	11.15	52.88
Computers and motor vehicles	6.32	7.80	8.84	9.63	10.77	43.35
Cathodic/corrosion protection	3.88	4.11	4.30	4.51	4.71	21.52
SCADA, electrical, control & instrumentation and communications	10.38	12.34	14.51	15.37	16.58	69.18
BEP lease	0.50	0.50	0.50	0.50	0.50	2.51
Forecast depreciation	137.68	128.68	132.38	134.53	137.74	671.00

Source: DBNGP DBP AA5 May 2020 tariff model (confidential); ERA converted numbers into \$ million as at 31 December 2019.

1305. DBP proposed the following amendments to its depreciation schedule in AA5:

- The introduction of three additional asset classes: 'Cathodic/corrosion protection assets', 'SCADA, electrical, control & instrumentation and communications', and 'Computers and motor vehicles'.
- The re-categorisation of existing assets to the new asset categories.
- The reduction of the economic lives of the 'Metering' and 'Other' asset categories.
- The capping of the economic life of the pipeline to 2059.

1306. Table 167 shows DBP's proposed economic lives compared to those used in AA4.

Table 167: Proposed economic lives and asset categories for AA5 (years)

Asset category	AA4 economic life	AA5 economic life
Pipeline	70	Capped at 2059
Compression	30	30
Metering	50	30
Other	30	10
Cathodic/corrosion protection	-	15
SCADA, electrical, control & instrumentation and communications	-	10
Computers and motor vehicles	-	5

Source: DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP’s proposed asset reclassifications, December 2019, pp. 5-6.*

1307. Consistent with its approved approach for AA4, DBP calculated its forecast regulatory depreciation for AA5 using the current cost accounting approach. The current cost accounting approach indexes the written-down value of the previous year’s asset base each year to account for inflation, thereby maintaining the written-down historic value in real terms. Annual depreciation is then calculated on the current cost, given the effective life of the asset.

Draft decision

1308. Rule 90(1) of the NGR requires an access arrangement to “contain provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period after the one to which the access arrangement currently relates.”

1309. DBP’s approach complied with rule 90(1) and section 9.2 of its current access arrangement as the opening capital base for AA5 (1 January 2021) used the sum of the values of depreciation used for the purpose of determining the total revenue for the AA4 period.

1310. In its final decision for AA4, the ERA required forecast regulatory depreciation to be calculated using the current cost accounting approach. The current cost accounting approach was consistent with rule 89(1) of the NGR and complied with the NGL, and in particular the national gas objective, because it:

- Promoted efficient growth in the market for reference services by allowing for efficient use of the DBP.
- Encouraged efficient production and investment decisions by the service provider, thereby contributing to efficient growth in the market for reference services.
- Avoided price shocks for consumers when major assets reached the end of their effective life and were replaced.
- Ensured outcomes that were in the long-term interest of consumers of natural gas with respect to price.

1311. In its draft decision, the ERA considered the following components of DBP's proposed forecast of depreciation for AA5:
- Introduction of additional asset categories.
 - Re-categorisation of existing assets to three new additional asset categories.
 - Reduction of the economic lives of the existing 'Metering' and 'Other' asset categories.
 - DBP's proposal to cap the economic life of the DBNGP to 2059.

Introduction of additional asset categories

1312. In the past four access arrangement periods, DBP classified its initial regulatory asset base and capital expenditure into four categories: 'Pipelines' (economic life of 70 years), 'Compression' (30 years), 'Metering' (50 years) and 'Other' (30 years).
1313. The provision of DBP's gas transmission services also required secondary or supporting assets, which have much shorter economic lives than principal assets with long technical lives such as pipelines. These secondary assets include:
- Electrical instrumentation for, and equipment to monitor and control, the principal gas transmission assets and to detect fire and gas leaks.
 - Communications infrastructure to support monitoring, control and maintenance activities.
 - Electrical equipment that supplies power to the principal gas transmission assets.
 - Corrosion protection equipment and activities.
 - Computers and software and associated implementation activities to support the operation of the key pipeline assets, maintenance activities and corporate functions.
 - Motor vehicles required for operation and maintenance activities and administration.
 - Office fittings, furniture and equipment, tools and other low value items.⁵⁶⁴
1314. In past access arrangements, DBP did not separately record these secondary assets, and instead recorded these assets in either the principal assets (that is, 'Pipeline', 'Compression' and 'Metering'), or in the 'Other' asset category. For example, DBP classified computers (including software) and motor vehicles to the 'Other' asset category, with an economic life of 30 years.⁵⁶⁵
1315. Given the different economic lives of principal and secondary assets, DBP proposed to add three new asset categories with shorter economic lives to better record its short-lived assets for AA5:
- 'Cathodic/corrosion protection assets' (economic life of 15 years).
 - 'SCADA, electrical, control & instrumentation and communications' (economic life of 10 years).
 - 'Computers and motor vehicles' (economic life of five years).

⁵⁶⁴ DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP's proposed asset reclassifications*, December 2019, p. 5.

⁵⁶⁵ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 1.

1316. DBP considered that the proposed economic lives of the three new asset categories were consistent with its technical knowledge and other regulatory decisions, including the ERA's AA4 final decision for the Goldfields Gas Pipeline.⁵⁶⁶
1317. In the draft decision, the ERA considered that the proposed economic lives for the new asset categories were either consistent with the lives of similar assets approved by the ERA or corresponded with those used and approved for other gas transmission pipelines within Australia.⁵⁶⁷
1318. Under rule 89(1)(c) of the NGR, the depreciation schedule should be designed "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." DBP's additional asset categories allow the depreciation of the DBNGP's assets to reflect their economic lives more appropriately. Assets must be depreciated only once and the same amount of capital is returned to DBP.
1319. As a result, the ERA considered that DBP's proposed additional asset categories and their associated economic lives met the requirements of rule 88 of the NGR and the criteria set by rule 89.

Re-categorisation of existing assets to additional asset categories

1320. DBP proposed to re-categorise assets from the existing four asset categories to the three new asset categories for the period of 2005 to 2020.
1321. DBP's approach did not alter the opening capital base for the AA5 period but adjusted the opening asset values in each of the seven asset categories. As a result, the new additional categories did not start from a zero balance and the existing asset categories had a matching reduction to the opening asset values for AA5.

DBP's approach to re-categorisation

1322. For the existing capital base as at December 2020, DBP used a proportional approach to re-categorise its existing capital base. DBP adjusted capital expenditure, depreciation and redundant assets by the proportion of the spending from each of the existing asset categories of capital expenditure and reallocated the proportional spending on the re-classified assets to each of the seven asset categories.⁵⁶⁸ The proportions were based upon approved actual capital expenditure from 2005 to 2015, proposed conforming actual capital expenditure from 2016 to 2018, and forecast capital expenditure for 2019 and 2020.⁵⁶⁹
1323. DBP provided a detailed mapping of the transfer of assets from existing asset categories to the three new asset categories for the period 2005 to 2020 in its 'Asset restructure model'. DBP applied the economic lives of the new categories to the written-down value of these re-categorised assets from 1 January 2021. However, the written-down value as at 1 January 2021 was based on depreciation of these assets using the economic lives from the original asset category. For example, computers in the 'Other' asset category would have a written-down value based on a 30-year life up to 31 December 2020 and then the written-down value would be

⁵⁶⁶ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 4.

⁵⁶⁷ Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, June 2020, p. 95.

⁵⁶⁸ That is, the principal assets 'Pipeline', 'Compression', 'Metering' and the 'Other' asset categories, and the three new additional asset categories for secondary assets: 'Computers and motor vehicles', 'Cathodic/corrosion protection' assets, and 'SCADA, electrical, control & instrumentation and communications'.

⁵⁶⁹ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 5.

depreciated for five years (the economic life of computers) from 1 January 2021. As a result, a computer purchased in 2005 would have been depreciated for 15 years out of 30 years up to 31 December 2020 and have half its original value remaining at the beginning of AA5 before being depreciated in full over five years.

1324. The capital base from year to year is the summation of the opening capital base and actual capital expenditure (subject to the ERA's assessment of actual capital expenditure for the AA4 period) less forecast depreciation and redundant assets. DBP submitted that in the absence of the proposed proportion approach, the whole re-categorisation process would be more complicated without additional clarity. DBP submitted that each regulatory decision would need to be reviewed to determine what forecast depreciation the ERA might have considered reasonable in its final decision if the proposed asset categorisation had been used for each of these regulatory decisions for AA2, AA3 and AA4.⁵⁷⁰
1325. DBP did not propose any changes between the existing asset categories of its capital base. For example, DBP did not review whether it would be more appropriate to allocate some existing 'Pipeline' assets to 'Compression'.⁵⁷¹
1326. As noted above, the depreciation value in aggregate from 2005 to 2020 and the total opening regulatory asset base at the start of AA5 would remain unchanged.
1327. The ERA considered that the re-categorisation process of the existing capital base as shown in DBP's 'Asset restructure model' was consistent with the description in DBP's 'Attachment 9.1: Categorisation of our Capital Base (public)' document.
1328. DBP's tariff model showed that after re-categorising past capital expenditure, there could be some assets in the new categories that had a material value in the regulatory asset base, but the actual remaining economic life of those assets were either zero (should be fully written-down as these assets no longer exist) or less than DBP's approach of applying the full economic life for the assets as if they were purchased in 2020. In other words, DBP did not apply the new economic life to the new assets from the day these assets (for example, computers) were installed. Instead, the new economic life for 'Computers and motor vehicles' was applied from 2021 to the opening asset value for these assets in 2021.

Assessment of DBP's approach to re-categorisation

1329. In the draft decision, the ERA assessed DBP's proposed approach to re-categorisation against rules 88 and 89 of the NGR.
1330. DBP's re-categorisation approach resulted in reference tariffs that would be significantly higher in AA5 than would otherwise be the case. DBP proposed that reference tariffs would increase by 9.9 per cent in 2021. The ERA considered this would not meet rule 89(1)(a) of the NGR that requires tariffs to vary over time in a way that promotes the efficient growth in the market for reference services. The ERA was also concerned that DBP's approach would distort signals for efficient investment (section 24(6) of the NGL).
1331. In the draft decision, the ERA proposed an approach, described below, that resulted in tariffs that vary over time in a way that promotes the efficient growth in the market for reference services and meets rule 89(1)(a) of the NGR, the revenue and pricing principles and the national gas objective. Taking account of the ERA's approach to

⁵⁷⁰ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 5.

⁵⁷¹ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 5.

the re-categorisation of assets alone resulted in reference tariffs that increased by 5.8 per cent in 2021, a reduction of 4.1 percentage points compared to DBP's proposal.

1332. Rule 88 of the NGR is forward-looking to apply a depreciation schedule for the access arrangement period and not for previous access arrangement periods. Rule 89(1)(b) of the NGR requires the depreciation schedule to be designed "so that each asset or group of assets is depreciated over the economic life of that asset or group of assets." While the actual economic life for the additional asset categories may be shorter than those used in previous access arrangement periods, this does not invalidate the previous depreciation schedule in aggregate. In aggregate, the historic depreciation schedule should remain the same, maintaining the written-down historic value in real terms at the commencement of AA5.
1333. Further, DBP's approach to reallocating the historic depreciation did not recognise the principle of rule 89(1)(b), as the approach included values for assets in the projected capital base for AA5, such as computers and motor vehicles, that had ceased to provide any service. Most of these assets would no longer be in service and should not be depreciated going forward as these assets have an economic life of zero.
1334. The ERA considered that the depreciation schedule for AA5 should reflect those assets that were still usefully employed in providing services. For example, computers and motor vehicles purchased in 2005, having a proposed economic life of 5 years, should no longer be reflected in the opening value of the capital base in AA5. Assets purchased between 2005 and 2020 transferred to the new asset categories would have practically been depreciated using the same economic lives as now being proposed by DBP for AA5 for those categories.⁵⁷² Rule 89(1)(c) allows adjustments going forward to reflect changes in the expected economic life.⁵⁷³
1335. The ERA did not propose that these assets be written off with no compensation for depreciation provided. In the draft decision, the ERA required DBP to apply the economic life of the new asset categories to the similar assets between 2005 and 2020 while maintaining the existing depreciation allowance over the period. Where the value of an asset category was reduced below the value that results from using the existing depreciation method, the amount of the extra reduction is reallocated to the values of the other asset categories. The ERA's approach and DBP's approach would result in the same opening asset value in aggregate for AA5, as shown in Table 168. However, the assets that were no longer in service would not continue to be depreciated. The ERA's approach would also ensure that the opening asset values for each of the proposed seven asset categories at the start of AA5 would reflect those assets that continue to contribute to the provision of services.
1336. The opening capital base of each of the existing four asset categories were adjusted to allow appropriate depreciation of the capital expenditure allocated to new asset categories between 2005 to 2015 so that in aggregate the approved total depreciation prior to 2016 remained the same. This ensured the shorter life asset categories were depreciated consistent with their shorter asset lives.

⁵⁷² The ERA approved DBP's proposed asset lives for the new categories as set out in 1419.

⁵⁷³ The proposed asset lives of five years for 'Computers and motor vehicles', 10 years for SCADA and 15 years for corrosion protection are not dissimilar for the asset lives that were accepted by the ERA or the AER during the 2005-2020 period. The Roma to Brisbane Pipeline used a 5-year asset life for computers. In the second access arrangement period for the Goldfields Gas Pipeline, 10 years was used for SCADA and 15 years for corrosion protection.

Table 168: Opening asset value by asset category on 1 January 2021 (\$ million real as at 31 December 2019)

	DBP proposal	ERA draft decision
Pipeline	2,632.81	2,657.21
Compression	314.65	342.89
Metering	48.76	52.22
Other depreciable	101.80	145.15
Computers and motor vehicles	27.62	13.49
Cathodic/corrosion protection	58.38	37.45
SCADA, electrical, control & instrumentation and communications	104.02	39.64
Non-Depreciable	20.27	20.27
Cost of raising equity	0.00	0.00
BEP lease	19.06	19.06
Opening asset value	3,327.39	3,327.39

Source: ERA, August 2020, Draft Decision tariff model

Some numbers may not add due to rounding

1337. In its initial proposal DBP considered that the whole re-categorisation process would be more complicated without additional clarity if it needed to determine what forecast depreciation the ERA might have considered reasonable at the time of the AA2, AA3 and AA4 final decisions. The ERA considered its approach of using the asset lives proposed for the new categories for AA5 better met the requirements of the rules.
1338. In the draft decision, the ERA considered that its reallocation of depreciation across the asset categories ensured that the depreciation values remained consistent with the aggregate depreciation used in the total revenue calculation for the respective access arrangement periods and therefore met the depreciation criteria of rule 89(1) of the NGR and the national gas objective.

Reduction in economic lives for 'Metering' and 'Other' asset categories

1339. From the commencement of AA5, DBP proposed to reduce the economic life of:
- 'Metering' assets from 50 years to 30 years
 - 'Other' assets from 30 years to 10 years.
1340. The opening regulatory asset base of these assets was unchanged. However, DBP proposed that the remaining economic lives of these assets be adjusted from the commencement of AA5.⁵⁷⁴

⁵⁷⁴ DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP's proposed asset reclassifications*, December 2019, p. 1.

Metering

1341. DBP noted that its proposed shorter economic life for 'Metering' was consistent with the economic life applied in the ERA's AA4 final decision on the Goldfields Gas Pipeline. DBP considered that the Goldfields Gas Pipeline was its closest comparator amongst Australian regulated pipelines. DBP noted that the assets in its 'Metering' asset category were essentially the same as the assets in the 'Receipt and Delivery Point' facilities for the Goldfields Gas Pipeline.⁵⁷⁵
1342. In the draft decision, the ERA reviewed DBP's proposed revision to the economic life of 'Metering' and the economic lives applied by other comparable pipelines (Table 169).

Table 169: DBP's proposed 'Metering' economic life and other comparable examples

Pipeline	Asset category	Economic life
Dampier to Bunbury Natural Gas Pipeline	Metering	30 years
Goldfield Gas Pipeline	Receipt and delivery point facilities	30 years
Victorian Transmission System	Meters and regulators	30 years
Non-scheme pipelines (transmission)	Metering	30-50 years

Source: ERA analysis; and Non-Scheme Pipelines – Financial Reporting Guideline version 1, Appendix 1, 23 May 2018.

1343. The Goldfields Gas Pipeline is a transmission pipeline that receives natural gas from offshore fields in the North West of Western Australia. In the AA4 final decision, Goldfields Gas Transmission Pty Ltd used an economic life of 30 years for 'Receipt and delivery point facilities'. The ERA considered that Goldfields Gas Transmission's proposed asset lives met the requirements of rule 88 of the NGR and the depreciation criteria set by rule 89.⁵⁷⁶
1344. The Victorian Transmission System is a gas transmission network that supplies the Melbourne metropolitan area, most regional areas of Victoria and the Albury and Murray regions in New South Wales.⁵⁷⁷ In the final decision on its access arrangement for 2018 to 2022, the Australian Energy Regulator (AER) considered that the proposed economic life of 30 years for the 'Meters and regulators' met the requirements of rule 89(1) of the NGR.⁵⁷⁸
1345. Under Part 23 of the NGR, service providers for non-scheme pipelines are required to publish specific information, including financial information and weighted average price information. Service providers are also required to disclose the economic life of an asset based on a range of standard lives for asset classes set out in the ERA's 'Non-Scheme Pipelines – Financial Reporting Guideline'. For a non-scheme transmission pipeline, the economic life range for 'Metering' is between 30 and 50 years.

⁵⁷⁵ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 4.

⁵⁷⁶ ERA, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, 19 December 2019, p. 157.

⁵⁷⁷ AER, *Fact Sheet – Final Decision on Victorian Gas Access Arrangement Reviews*, November 2017.

⁵⁷⁸ AER, *Attachment 5 – Regulatory Depreciation – November 2017, Final Decision on APA Victorian Transmission System – Access Arrangement 2018-2022*.

1346. In the draft decision, the ERA considered that there was a reasonable range for the economic life of metering assets of between 30 years and 50 years. As a result, the ERA considered that DBP's proposed economic life for assets in the 'Metering' asset category reflected the expected economic life of the assets and met the requirements of rule 88 of the NGR and the depreciation criteria set by rule 89. Reducing the economic life of 'Metering' assets from 50 years to 30 years is consistent with regulatory precedent.

'Other' asset category

1347. The assessment of the economic life for the 'Other' asset category was more complicated than assessing a single asset such as 'Metering' due to the range of disparate assets in the 'Other' category. In the draft decision, the ERA considered that the comparison of DBP's proposed life of the 'Other' asset category and the economic lives applied to other pipelines was not practical, as the assessment of the economic life depended on the type and function of the assets that were classified into this 'Other' asset category.
1348. The ERA reviewed DBP's 'Asset Restructure Model', which detailed the alignment of capital expenditure with the 'Other' asset category from 2005 to 2020. For AA2 and AA3 (from 2005 to 2015), DBP provided information about the assets, tools or names of projects that were categorised as 'Other' assets. For AA4, the 'Asset Restructure Model' did not have any additional information about the relevant assets in the 'Other' asset category.
1349. The ERA noted an issue identified by DBP's consultant Incenta about the suitability of assets in the existing asset categories. Incenta noted that capital expenditure in the 'Other' asset category comprised expenditure for office fit-outs, furniture, staff amenities, tools, new maintenance and administrative buildings. Incenta considered that it was reasonable to assign a 10-year economic life to these assets. Incenta's view of assigning 10-year economic life to administrative buildings was largely due to the small amount of capital expenditure on these assets, and the desirability of keeping regulatory calculations simple.⁵⁷⁹
1350. However, Incenta considered that a series of large generators and inlet scrubbers, which were categorised as 'Other' assets in 2010, should be classified as compression assets.⁵⁸⁰ As compression and other assets had been assigned an economic life of 30 years consistent with the economic life of assets in the category at the time, there was no effect on depreciation of a misallocation of assets. However, DBP has proposed that the whole 'Other' asset category should have an economic life of 10 years.
1351. EMCa provided the ERA with technical advice on whether DBP's proposed change to the economic life of the 'Other' assets' life from 30 years to 10 years was reasonable and likely to meet the requirement under the NGR. Consistent with Incenta's advice to DBP, EMCa considered that it was not reasonable to assign a 10-year economic life to large generators and inlet scrubbers, and that these assets should be assigned to an asset category with an economic life of 30 years.⁵⁸¹

⁵⁷⁹ DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP's proposed asset reclassifications*, December 2019, pp. 10-11.

⁵⁸⁰ DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP's proposed asset reclassifications*, December 2019, p. 11.

⁵⁸¹ Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 94.

1352. EMCa also considered it more reasonable to assign an economic life of at least 50 years to administrative buildings rather than 10 years. EMCa noted that an economic life of 50 years for administrative buildings was consistent with regulatory economic lives applied to buildings and depots in other regulatory decisions, such as for the Goldfields Gas Pipeline.⁵⁸²
1353. In the draft decision, the ERA considered that DBP's proposed economic life for the 'Other' asset category did not reflect the expected economic lives of assets including large generators, inlet scrubbers and administrative buildings and did not meet the requirements of rule 88 of the NGR and the criteria set by rule 89. As a result, the ERA did not accept DBP's proposed change and the economic life for the 'Other' asset category remained at 30 years.

Economic life of the pipeline

1354. DBP initially proposed to adjust the economic life of the pipeline as a whole, such that all of the component assets would be fully depreciated by 2059.
1355. DBP considered that rapid and fundamental changes in technology and government policy are creating significant uncertainty in the energy sector, such that its business model was being challenged in a way that was not contemplated when the economic lives of its assets were established, or at the previous access arrangement review (AA4).⁵⁸³
1356. DBP incorporated forecast scenarios into a Window of Opportunities Passed (WOOPS) model developed originally by Crew and Kleindorfer (1992) to derive a midpoint estimate of the year in which it expected that regulated tariffs for natural gas would achieve parity with alternative technologies.⁵⁸⁴ DBP submitted that an end date of 2059 represented an appropriate economic life of the pipeline:⁵⁸⁵

The analysis demonstrates that the current implied economic life of the DBNGP as a whole is too long, and that a life up to 2059 is more appropriate. The analysis also shows what this means in the real sense of how we compete with renewable energy in the future as we shift from a binding regulatory constraint to a competitive marketplace; the 2059 end date is not a declaration of when the pipeline will be switched off. Rather, it is a date to use in the ERA model which will allow the DBNGP to make the switch to a competitive market efficiently and at lowest cost to our customers.

1357. Under rule 89(1)(b) of the NGR, the depreciation schedule should be designed so that each asset or group of assets is depreciated over the economic life of that asset or group of assets. Rule 89(1)(c) of the NGR provides that the depreciation schedule should be designed so as to allow, as far as is reasonably practicable, adjustments to the depreciation schedule reflecting changes in the expected economic life of a particular asset or group of assets.
1358. Economic life is not defined within the NGR or NGL, so must be interpreted according to its ordinary meaning or commonly understood technical definition within the context of the NGR and the national gas objective.

⁵⁸² Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, June 2020, p. 94.

⁵⁸³ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan, Attachment 9.2, Assessment of the Economic Life of the DBNGP*, January 2020, p. 2.

⁵⁸⁴ Crew, M and Kleindorfer, P, 1992, *Economic Depreciation and the Regulated Firm under Competition and Technological Change*, *Journal of Regulatory Economics*, 4(1), 1992, 51-61.

⁵⁸⁵ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan, Attachment 9.2, Assessment of the Economic Life of the DBNGP*, January 2020, p. 1.

1359. DBP's proposal to fully depreciate the pipeline by 2059 was considered with reference to similar concepts and definitions of economic life in the following standards, law, and guidelines:

- Australian Accounting Standards
- the Income Tax Assessment Act 1997
- recent regulatory interpretations.

Australian Accounting Standards

1360. Under Australian Accounting Standard AASB 116 (Property, Plant and Equipment), the depreciable amount of an asset, determined as the difference between its cost and residual value, must be allocated systematically over its useful life. Useful life is defined as the period in which the asset is expected to be available for use by an entity, or as a cumulative number of production units obtained from the asset by an entity:⁵⁸⁶

Useful life is:

- a) the period over which an asset is expected to be available for use by an entity; or
- b) the number of production or similar units expected to be obtained from the asset by an entity.

1361. The depreciation of an asset over its useful life implies that the asset may have a residual or economic value beyond its useful life:⁵⁸⁷

The useful life of an asset is defined in terms of the asset's expected utility to the entity. The asset management policy of the entity may involve the disposal of assets after a specified time or after consumption of a specified proportion of the future economic benefits embodied in the asset. Therefore, the useful life of an asset may be shorter than its economic life. The estimation of the useful life of the asset is a matter of judgement based on the experience of the entity with similar assets.

1362. Economic life is defined in Australian Accounting Standard AASB 117 (Leases) as the period in which an asset is expected to be economically usable, or a certain number of production units expected to be obtained from the asset by any number of users:⁵⁸⁸

Economic life is either:

- a) the period over which an asset is expected to be economically usable by one or more users; or
- b) the number of production or similar units expected to be obtained from the asset by one or more users.

1363. Useful life is entity-specific and is applied for the purpose of depreciation, while economic life attaches to the asset which may have residual or economic value in alternative uses to other entities.

⁵⁸⁶ Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019.

⁵⁸⁷ Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019.

⁵⁸⁸ Australian Accounting Standards Board, *Australian Accounting Standard AASB 117 Leases*, August 2015.

1364. Depreciation of an asset ceases when the asset is held for sale, or when it is 'derecognised'. Derecognition of an asset occurs on disposal, or when no future economic benefits are expected from its use or disposal.⁵⁸⁹ Depreciation and, hence, useful life does not cease when the asset becomes idle or is retired from active use, unless the asset is fully depreciated.⁵⁹⁰
1365. To determine the useful life of an asset, an entity must consider all of the following factors that may affect the entity's ability to obtain future economic benefits from the asset:
- Expected usage of the asset, assessed by reference to the asset's expected capacity or physical output.
 - Expected physical condition and deterioration of the asset.
 - Technical or commercial obsolescence.
 - Legal or other restrictions on the use of the asset.⁵⁹¹
1366. The accounting standards recognise that, in practice, the residual value of an asset to an entity may be insignificant or immaterial.⁵⁹² In this case, the useful life of an asset may coincide with its economic life as defined under the Australian Accounting Standards.

Income Tax Assessment Act 1997

1367. The *Income Tax Assessment Act 1997* (Cth) permits a deduction of an amount equal to the decline in value of a depreciating asset held during the income year (section 40-25(1)). The Act defines a depreciating asset as one that has a limited effective life and can reasonably be expected to decline in value over the time it is used (section 40-30(1)).
1368. The effective life of an asset may be estimated by the Commissioner for Taxation (under section 40-100(5)) or self-assessed (under section 40-105(1A)) as the period the asset can be used by any entity for a taxable or other purpose specified in the Act:
- Effective life:** Generally, the effective life of a depreciating asset is how long it can be used by any entity for a taxable purpose or for the purpose of producing exempt income or non-assessable non-exempt income:
- having regard to the wear and tear from your expected circumstances of use
 - assuming it will be maintained in reasonably good order and condition, and
 - having regard to the period within which it is likely to be scrapped, sold for no more than scrap value or abandoned.⁵⁹³
1369. The Commissioner considers several factors when determining an asset's effective life, including historical information and future expectations. For instance, if an asset

⁵⁸⁹ Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019, clause 67.

⁵⁹⁰ Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019, clause 55.

⁵⁹¹ Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019, clause 56.

⁵⁹² Australian Accounting Standards Board, *Australian Accounting Standard AASB 116 Property, Plant and Equipment, Compilation No. 3*, 31 December 2019, clause 53.

⁵⁹³ Australian Taxation Office, *Guide to depreciating assets 2020*, June 2020, p. 40.

is retired from use, its effective life ends when the asset is retired even if the asset is retained by the entity for a non-specified purpose (as described within the Act):⁵⁹⁴

An effective life determination is an estimate of the period the asset can be used by any entity for a specified purpose. Often an asset is not used for a specified purpose for the whole of its physical life. For example, an asset may be retired from use for a specified purpose but be retained as a source of spare parts. In this instance, the effective life ends when the asset is retired.

1370. However, effective life does not end if the asset can be used by any taxpayer for a specified purpose, regardless of the retention period.⁵⁹⁵

The effective life of an asset is the total period it can be used by any entity for a specified purpose. The retention period is the time a particular taxpayer expects to hold a depreciating asset for any purpose. For example, it is common practice in some businesses to dispose of a car after it has been driven a pre-determined number of kilometres. That would be the retention period for that taxpayer. The effective life of the car, however, would end only when the car cannot be used by any taxpayer for a specified purpose.

1371. The Commissioner will also consider commercial or technological obsolescence of an asset, which may occur before the asset is physically retired or disposed. In considering asset obsolescence, the Commissioner will only take account of predicted obsolescence if it is expected with a high level of certainty across a majority of users. A superseded asset's effective life does not end if the asset is still in use:⁵⁹⁶

Commercial obsolescence may occur if demand for the goods produced by the asset stops because consumers choose not to buy them, or Government regulation affects market demand. It may also occur if the raw material the asset processes becomes unavailable.

Technological obsolescence may occur when technology advances and another asset becomes better suited for the relevant purpose for which an existing asset is used. Even so, an asset's effective life does not necessarily end with each technological advance. A taxpayer can still use an asset for a specified purpose even though a newer model exists.

There are two types of commercial and technological obsolescence - one can be predicted at the time the asset is first used and one is unpredictable and emerges later. Unpredictable obsolescence cannot be taken into account when estimating effective life. Predicted obsolescence would only be taken into account if it is expected with a high level of certainty across a majority of users.

1372. The Commissioner will presume that an asset that is scrapped or abandoned can no longer be used by anyone for a specified purpose:⁵⁹⁷

Once a taxpayer has scrapped or abandoned an asset, it is presumed it can no longer be used by anyone for a specified purpose. The scrapping of an asset can demonstrate that the asset is either physically exhausted or obsolete. The abandonment of an asset

⁵⁹⁴ Australian Taxation Office, *Taxation Ruling TR2020/3, Income tax: effective life of depreciating assets* (applicable from 1 July 2020), para. 25.

⁵⁹⁵ Australian Taxation Office, *Taxation Ruling TR2020/3, Income tax: effective life of depreciating assets* (applicable from 1 July 2020), para. 34.

⁵⁹⁶ Australian Taxation Office, *Taxation Ruling TR2020/3, Income tax: effective life of depreciating assets* (applicable from 1 July 2020), paras. 37-9.

⁵⁹⁷ Australian Taxation Office, *Taxation Ruling TR2020/3, Income tax: effective life of depreciating assets* (applicable from 1 July 2020), para. 41.

can demonstrate that it is too difficult or costly to remove it from its place of operation.

1373. The Commissioner's determination of the effective life of gas transmission pipelines under section 40-100 of the Act is 50 years. Under section 40-102, a depreciating asset may also be subject to a capped life, less than the effective life of the asset. Gas transmission pipelines are subject to a capped life of 20 years.

Regulatory interpretations

1374. The interpretation of economic life in a regulatory context has been previously considered in a legal judgment on capital costs of rail access infrastructure. Economic life was described as the period over which an asset is productive in the sense of delivering access services and earning access revenues.⁵⁹⁸

The concept of economic life is therefore an estimate of the period over which assets are productive, in the sense of delivering access services and earning access revenues.

1375. The legal question in issue in this case was the distinction between the economic life and technical or physical life of an asset. In the case of natural monopoly infrastructure, Edelman J. noted that the economic life of an asset may be constrained by the expected duration of the customers served by the asset:⁵⁹⁹

Technical life involves an estimate of how long the assets will be physically capable of doing the task for which they were intended. Naturally, the economic life of assets cannot exceed their technical life because an asset that is physically incapable of doing its intended task will not be economically productive.

The effect of this approach is that an economic life can be shorter than a technical life. For instance, suppose railway infrastructure has a technical life of 50 years but the mine that its exclusive purpose is to service will only be economically productive for 20 years. Although the technical life of the railway infrastructure is 50 years, its economic life will only be 20 years. In summary, the economic life required to be used by the Code will never be more than the technical life of railway infrastructure, but it might be less.

1376. In more recent guidance, the AER defined an asset's economic life in the context of asset planning to be the time at which the asset is no longer the lowest long run cost alternative to supplying services:⁶⁰⁰

The end of economic life of an asset is reached when the total cost of providing the service provided by the asset no longer represents the lowest long run cost to consumers, considering alternatives.

1377. The AER considered a service provider must demonstrate the asset to be at the end of its economic life as a principle of asset retirement. The AER considered an asset's technical end of life may trigger an assessment of the end of an asset's economic life. New or emerging technologies and innovative alternatives may also foreshorten an asset's economic life. Critical to the AER's definition and application of economic life is the actual retirement of the asset at the end of its economic life:⁶⁰¹

⁵⁹⁸ Edelman J, *Pilbara Infrastructure Pty Ltd v ERA*, [2014] WASC 346 at 13.

⁵⁹⁹ Edelman J, *Pilbara Infrastructure Pty Ltd v ERA*, [2014] WASC 346 at 13.

⁶⁰⁰ Australian Energy Regulator, *Industry practice application note, Asset replacement planning*, January 2019, p. 11.

⁶⁰¹ Australian Energy Regulator, *Industry practice application note, Asset replacement planning*, January 2019, p. 11.

An important trigger for assessing whether an asset is at the end of its economic life is an assessment that the asset is at or near the end of its technical life. However, asset retirement may be triggered by economically preferable alternatives to retaining the current asset in service. New or emerging technologies and innovative alternatives may render it economically preferable to retire an existing asset before its technical end-of-life or before a more traditional assessment would have deemed the asset to be at economic end-of-life.

DBP's interpretation and application of economic life

1378. DBP stated that, while 2059 represented the mid-point estimate at which it expected regulated tariffs would be constrained by competing alternatives, it did not expect to retire the pipeline at that time.⁶⁰²

The 2059 end date is not a declaration of when the pipeline will be switched off. Rather, it is a date to use in the ERA model which will allow the DBNGP to make the switch to a competitive market efficiently and at lowest cost to our customers.

1379. AGIG, owner of DBP, also reiterated in its submission to the ERA's issues paper that, although it had modelled the economic life of the pipeline to end in 2059, it expected to continue its operations beyond 2059.⁶⁰³

Within the model, the economic life for the asset as a whole extends to 2059. However, as a business, our main concern is the point in time at which competitive alternatives equal our regulated price, which occurs before 2059. We are not suggesting we will be out of business by 2059, but rather that we will be constrained by competitive market prices rather than regulation before that date.

1380. DBP's customers also indicated that they expect to be supplied with natural gas through the pipeline beyond 2059. WesCEF and gasTrading considered that plausible scenarios included the pipeline as a key asset in the state's future energy supply.

1381. CPM specifically stated that it expected to be supplied with natural gas "way beyond" the economic life of the pipeline proposed by DBP and that a realistic target economic life would be 2070.⁶⁰⁴

Depreciation – whilst it is accepted that an accelerated depreciation may be applicable in the general sense, CPM believe that it is too early to adopt such for AA5 on the basis that our operations are expecting a gas supply will be available from the DBNGP for the long term way beyond that proposed by AGIG, therefore CPM request the Authority to consider a 2070 timeline for depreciation to apply for AA5 and for the acceleration to again be considered in the next review in AA6.

...

CPM submits that a middle position should be taken by ERA in its opting for a depreciation regime that sees a more realistic position be taken by ERA in its review, one where a target economic life of the pipeline ending in 2070.

⁶⁰² Dampier Bunbury Pipeline, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, Attachment 9.2, Assessment of the Economic Life of the DBNGP*, January 2020, p. 1.

⁶⁰³ Australian Gas Infrastructure Group, *Submission on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Issues Paper, Attachment A – Responses to the ERA's Issues Paper*, 31 March 2020.

⁶⁰⁴ 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 2021 – 2025*.

Conclusion

1382. Given the ordinary and equivalent definitions of economic life as applied under standards and regulatory interpretations, in the draft decision the ERA considered:

- In the case of natural monopoly infrastructure, typically having limited alternative usefulness or transferability to other entities, the definitions of useful life and economic life under accounting standards and regulatory guidelines are similar in practice. In ordinary circumstances, an asset that remains in productive use will not be fully depreciated.
- Consistency with the national gas objective implies that an appropriate interpretation of economic life, for the purpose of depreciation under the NGR, includes the actual or expected retirement of the asset from productive use at the end of its economic life. An asset may be retired due to technical, economic or other obsolescence.
- DBP does not expect to retire the pipeline assets in 2059. DBP and its customers expect the pipeline to continue supplying natural gas beyond 2059.
- DBP's interpretation of the economic life of the pipeline as the time at which it will be constrained by competitive market prices, rather than regulated tariffs, does not represent the pipeline's economic life for the purpose of rules 89(1)(b) and (c) of the NGR and is inconsistent with the national gas objective.

Draft Decision Forecast depreciation

1383. Consistent with the required amendments in the draft decision, the ERA recalculated total forecast depreciation for AA5 as \$559.09 million (Table 170).

Table 170: ERA's draft decision forecast depreciation (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Pipeline	61.72	62.13	62.13	62.13	62.13	310.23
Compression	19.49	19.66	19.76	19.87	19.94	98.71
Metering	14.84	1.66	1.70	1.74	1.78	21.72
Other depreciable	6.98	7.05	7.08	7.11	7.14	35.35
Computers and motor vehicles	6.17	4.88	4.26	3.46	3.38	22.15
Cathodic/corrosion protection	4.42	4.61	4.76	4.92	5.08	23.78
SCADA, electrical, control & instrumentation and communications	9.93	7.77	8.71	9.02	9.55	44.98
Cost of raising equity	0.00	0.02	0.04	0.06	0.07	0.19
BEP lease	0.40	0.40	0.40	0.40	0.40	1.99
Forecast depreciation	123.94	108.17	108.83	108.70	109.45	559.09

Source: ERA, August 2020, Draft Decision tariff model

1384. The draft decision set out the following required amendment:

Draft Decision Required Amendment 13

DBP must amend the forecast depreciation of the capital base for AA5 to \$559.09 million (real as at 31 December 2019). The yearly values for each year of the access arrangement period are set out in Table 112 of [the] draft decision [Table 170 of the final decision].

DBP's response to draft decision

1385. DBP's response to the draft decision included the following supporting material:

- Revised Final Plan Attachment 9.6A – Asset restructure model
- Revised Final Plan Attachment 9.7 – Response to draft decision on capital base
- Revised Final Plan Attachment 9.8 – Incenta Report for AGIG: Asset Reclassification for the DBNGP
- Revised Final Plan Attachment 9.9 – Incenta Report for AGIG: Stranded asset risk and the National Gas Regime
- Revised Final Plan Attachment 9.10 – Asset restructure model and roll forward instructions.

1386. DBP rejected the ERA's Draft Decision Required Amendment 13 to the capital base, which covered various aspects of its depreciation approach.⁶⁰⁵

1387. In response to the draft decision for the capital base and depreciation, DBP made the following changes:

- DBP modified the approach to asset re-categorisation in the draft decision and proposed an approach that it considered better aligned to the principles of the NGR.⁶⁰⁶
- After removing large generators and inlet scrubbers from the 'Other' asset category, DBP modified the economic life of 'Other' asset category to 10 years.
- For the capital base and depreciation DBP adopted the ERA's definition of economic life, which gave rise to an end of economic life of 2063.⁶⁰⁷ DBP extended the economic life of the DBNGP until 2063 as DBP's model forecast that this was the year in which DBP would need to charge negative transport prices to remain competitive with alternatives. DBP supported further engagement between the ERA and stakeholders after the finalisation of its access arrangement to develop a long-term solution to address current uncertainty.⁶⁰⁸

1388. DBP revised its depreciation allowance for AA5 of \$655.9 million (Table 171).

⁶⁰⁵ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 1.

⁶⁰⁶ Dampier Bunbury Pipeline, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline 2021-2025 Revised Final Plan*, October 2020, p. 3.

⁶⁰⁷ Dampier Bunbury Pipeline, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline 2021-2025 Revised Final Plan*, October 2020, p. 3.

⁶⁰⁸ Dampier Bunbury Pipeline, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline 2021-2025 Revised Final Plan*, October 2020, p. 11.

Table 171: DBP's revised forecast depreciation for AA5 (\$ million as at 31 December 2020)

	2021	2022	2023	2024	2025	Total
Pipeline	71.5	71.5	71.5	71.5	71.5	357.7
Compression	20.5	20.7	20.8	21.0	21.1	104.1
Metering	14.9	1.6	1.6	1.6	1.7	21.4
Other	8.3	3.8	3.7	3.2	3.4	22.4
Computers and motor vehicles	18.3	6.6	6.9	6.7	7.2	45.7
Cathodic/corrosion protection	4.3	4.5	4.7	4.9	5.1	23.5
SCADA, electrical, control & instrumentation and communications	44.1	7.1	8.6	9.1	9.8	78.7
Cost of raising equity	0.0	0.0	0.1	0.1	0.1	0.3
BEP lease	0.5	0.5	0.5	0.5	0.5	2.5
Forecast depreciation	182.4	116.2	118.4	118.6	120.3	655.9

Source: Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base, October 2020, p. 1.

Asset re-categorisation

1389. DBP agreed with most of the draft decision with respect to asset re-categorisation. DBP agreed:⁶⁰⁹

- On the categories into which assets should be placed and the lives associated with each of these asset categories (with the exception of the 'other' category).
- That the total approved historical depreciation should not be modified.
- That assets with no remaining life at the commencement of AA5 should be written down and recovered by DBP in AA5.

1390. The difference for asset re-categorisation in DBP's revised plan related to the modification of the ERA's approach in the draft decision to the depreciation of existing assets in the new asset classes.⁶¹⁰

Economic life of 'Other' asset category

1391. DBP continued to propose a change in economic lives for the 'Other' asset category from 30 years to 10 years.

1392. To allow the shorter 10-year economic life DBP removed the large generators and inlet scrubbers, which were longer-lived assets, from the 'Other' asset category and

⁶⁰⁹ Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base, October 2020, p. 3.

⁶¹⁰ Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base, October 2020, p. 1.

moved them to the “Compression” category, which had an economic life of 30 years.⁶¹¹

Economic life of the pipeline

1393. In its response to the draft decision DBP reconsidered the economic life of its assets.
1394. DBP argued that, while the ERA’s approach in the draft decision to economic lives was not sustainable, applying the ERA’s approach using the information about the future of the DBNGP presented as part of DBP’s WOOPS modelling suggested an economic end life of 2063. The WOOPS model is used to estimate the year in which it expected that regulated tariffs for natural gas would achieve parity with alternative technologies. 2063 is the date that the model forecasts that DBP would need to charge a negative transport price for gas. When the DBNGP can no longer earn revenue from transporting gas, it will stop transport activities rather than earn negative revenues.⁶¹²
1395. DBP’s response to the draft decision used the ERA’s interpretation of economic life and highlighted a pathway forward for consideration of this matter. DBP supported further engagement between the ERA and stakeholders after the finalisation of its access arrangement to develop a long-term solution to address current uncertainty.⁶¹³
1396. DBP’s revised proposal for the economic life of the DBNGP is discussed in more detail in the final decision section below.

Submissions to issues paper

1397. In response to the issues paper the ERA received submissions addressing the end of the economic life of the pipeline from Wesfarmers Chemicals, Energy and Fertilisers Limited, gasTrading Australia Pty Ltd (gasTrading), CITIC Pacific Mining Management Pty Ltd (CPM), Perth Energy Pty Ltd and Australian Gas Infrastructure Group (AGIG).

Wesfarmers Chemicals, Energy and Fertilisers

1398. WesCEF agreed with AGIG that a shift towards renewable electricity sources was affecting the use and operation of the DBNGP. However, WesCEF stated that natural gas transmission and storage would have a growing role in meeting the long-term strategic energy needs of Western Australia and lower emission targets.⁶¹⁴
1399. WesCEF considered that, as the energy market continued to evolve, intra-day gas demand would become increasingly volatile, such that past demand would be an unsuitable indicator of future demand.

⁶¹¹ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 7.

⁶¹² Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 21.

⁶¹³ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 1.

⁶¹⁴ Wesfarmers Chemicals, Energy & Fertilisers, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025)*, 30 March 2020, p. 2.

1400. WesCEF considered that reducing the standard asset lives of the pipeline seemed premature.⁶¹⁵
1401. On the economic life of the pipeline, WesCEF considered that AGIG had not considered alternative scenarios in which the DBNGP would play a significant role in future energy supply.⁶¹⁶
1402. WesCEF noted that, even if AGIG was to provide forecasts supporting a shorter economic life for the DBNGP, WesCEF was still unsure whether the depreciation schedule should be set such that the pipeline should be fully depreciated in anticipation of (indirect) competition.

GasTrading Australia Pty Ltd

1403. GasTrading expressed concern with the lack of robust modelling undertaken by AGIG.
1404. GasTrading's concerns included:
- DBP's gas price assumptions were narrow and did not include current long-term contract or spot market prices.
 - DBP's comparison of forecast intermittent renewable prices against dispatchable fossil fuel prices was not valid.

CITIC Pacific Mining Management

1405. CPM submitted that its Sino Iron project was expected to require gas through the DBNGP until 2070. While it accepted that accelerating depreciation may be applicable in the general sense, CPM considered that it was too early to adopt such an arrangement for AA5 as its own operations expected a gas supply through the DBNGP well beyond the timeline of 2059 in DBP's proposal.

Perth Energy

1406. Perth Energy submitted that the risk of stranded assets was not an issue unique to the gas industry, transport assets or the DBNGP. Perth Energy noted that future domestic demand for and supply of gas in 40 years' time was not easy to forecast and therefore the usefulness of gas was uncertain. While Perth Energy did not support DBP's proposal to accelerate depreciation on its primary pipeline assets, Perth Energy noted that the 40-year transition period proposed by DBP should be sufficient for DBP to adjust or expand its operating models and adapt to changing conditions in the future.

Australian Gas Infrastructure Group

1407. AGIG, owner of DBP, noted that it reviewed the economic life of the DBNGP in the context of the requirements of the NGR. It noted that DBP's proposal would recover its investment in the DBNGP over its economic life and, more specifically, ensure adjustment for changes in its economic life.
1408. In response to the ERA's issues paper, AGIG sought to clarify several points in DBP's proposal:

⁶¹⁵ Wesfarmers Chemicals, Energy & Fertilisers, Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025), 30 March 2020, p. 4

⁶¹⁶ Wesfarmers Chemicals, Energy & Fertilisers, Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025), 30 March 2020, p. 3.

- Although its revenues would increase during AA5 because of the change to the economic life, DBP was not seeking to recover more revenue over the economic lives of its assets. DBP was merely seeking to recover the same revenue over a shorter number of years.
- AGIG noted that, the NGR did not expect the economic lives of assets to be fixed, but instead required a consideration of an asset's economic life. Since assets were recovered over their economic life, there was no transfer of risk, rather DBP's proposal ensured it would be in a position to provide the services its customers sought in the future.
- AGIG noted that within the model, the economic life for the asset as a whole extended to 2059. DBP's main concern was the point in time at which competitive alternatives would equal its regulated price, which was expected to occur before 2059.
- AGIG reiterated that the substantial changes occurring in the energy sector required a change in the approach to considering economic lives.

Submissions to draft decision

1409. Public submissions in response to the draft decision did not address asset re-categorisation or the economic life of the 'Other' asset category.
1410. In response to the draft decision, the ERA received submissions from gasTrading and CPM addressing the end of the economic life of the pipeline.

GasTrading Australia Pty Ltd

1411. GasTrading considered that it was far too early to consider accelerated depreciation in response to climate change.⁶¹⁷
1412. GasTrading raised the following concern with DBP's proposal:⁶¹⁸
- The gas price assumptions used to determine the point at which gas is displaced by alternatives. GasTrading submitted the pricing used in the ACIL Allen report bore no resemblance to historical or current gas prices in Western Australia. GasTrading detailed historic and current gas spot prices of between \$4.00 and \$4.50/GJ since 2017. GasTrading was concerned that ACIL Allen used forward prices based on LNG netback pricing (\$6.50/GJ for the low price scenario and \$8.00/GJ for the base scenario - 2018 dollars). GasTrading submitted that the LNG netback price was less relevant to the Western Australian market given its domestic gas reservation policy and increasing number of domestic gas-focussed projects.
 - The possibility that gas demand may actually grow in response to Australia's actions to address climate change. GasTrading noted that the Federal government had introduced initiatives to promote and develop gas to provide firming for renewable energy. Increased electrification, specifically electric vehicles, may also increase demand for electricity, in turn increasing demand for gas. GasTrading noted that the forecast for gas demand in response to climate change was inherently difficult to predict.

⁶¹⁷ gasTrading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Draft Decision and Revised Proposed Access Arrangement*, 4 November 2020, p. 5.

⁶¹⁸ gasTrading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Draft Decision and Revised Proposed Access Arrangement*, 4 November 2020, pp. 5-6.

1413. GasTrading submitted that for hydrogen to achieve cost competitiveness with natural gas at \$4.50/GJ, using the ACIL Allen model, this would be delayed to beyond 2050.⁶¹⁹

CITIC Pacific Mining Management

1414. CPM submitted that its Sino Iron project was expected to require gas through the DBNGP until 2070. While it accepted that accelerating depreciation may be applicable in the general sense, CPM considered that it was too early to adopt such an arrangement for AA5 because of current uncertainty. CPM suggested that the ERA consider a 2070 timeline for depreciation to apply for AA5 and for accelerated depreciation to again be considered in the next review of AA6.⁶²⁰

Final decision

1415. For its final decision on the depreciation allowance for AA5, the ERA considered DBP's response to the draft decision and stakeholder submissions.
1416. DBP accepted the majority of the positions on depreciation detailed in the draft decision, with the exception of a modified approach to the re-categorisation of existing assets and a revision to the economic life of the DBNGP.
1417. The ERA has further considered the following components of DBP's proposed forecast of depreciation for AA5:
- DBP's revised asset re-categorisation
 - DBP's proposed economic life for the 'Other' asset category
 - DBP's proposal to cap the economic life of the DBNGP to 2063.

Introduction of additional asset categories

1418. DBP initially proposed the addition of three new asset categories with shorter economic lives to better record its short-lived assets for AA5:
- 'Cathodic/corrosion protection assets' (economic life of 15 years).
 - 'SCADA, electrical, control & instrumentation and communications' (economic life of 10 years).
 - 'Computers and motor vehicles' (economic life of five years).
1419. In the final decision, the ERA maintains its support for the introduction of the additional asset categories and considers their associated economic lives meet the requirement of rule 88 of the NGR and the criteria set by rule 89. DBP's additional asset categories allow the depreciation of the DBNGP's assets to better reflect their economic lives. Depreciation is only allowed once, and the same amount of capital is returned to DBP (in present value terms).

Re-categorisation of existing assets to additional asset categories

1420. DBP's initial proposal re-categorised its existing capital base for the three new asset categories listed at paragraph 1418 which had previously been included in classes with relatively long economic lives.

⁶¹⁹ gasTrading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Draft Decision and Revised Proposed Access Arrangement*, 4 November 2020, p. 6.

⁶²⁰ Citic Pacific Mining Management Pty Ltd, *Extra ERA DBNGP Submission – AA5*, 6 November 2020, p. 6.

1421. For the existing capital base as at 31 December 2020, DBP initially proposed a proportional approach to re-categorise its existing capital base. DBP adjusted capital expenditure, depreciation and redundant assets by the proportion of the capital expenditure from each of the existing asset categories and reallocated the proportional spending on the re-classified assets to each of the seven asset categories.⁶²¹ DBP provided a detailed mapping of the transfer of assets from existing asset categories to the three new asset categories for the period 2005 to 2020 in its 'Asset restructure model'.
1422. DBP applied the economic lives of the new categories to the written-down value of these re-categorised assets from 1 January 2021. However, the written-down value as at 1 January 2021 was based on depreciation calculated for these assets from the asset category the assets were previously in. For example, computers in the 'Other' asset category would have a written-down value based on a 30-year life up to 31 December 2020 and then the written-down value would be depreciated for five years (the economic life of computers) from 1 January 2021. As a result, a computer purchased in 2005 would have been depreciated for 15 years out of 30 years up to 31 December 2020 and have half its original value remaining at the beginning of AA5 before being depreciated in full over five years.
1423. In the draft decision, the ERA assessed DBP's proposed approach to re-categorisation against rules 88 and 89 of the NGR.
1424. The ERA's draft decision accepted:
- Including the new asset classes proposed.
 - The economic lives for those classes.
 - That the relevant existing assets that would fit within the new asset categories should have their lives adjusted.
 - That the total value of the opening capital base for AA5 should remain unchanged.
1425. However, the ERA did not accept DBP's proposal as to how the opening capital base values of the new asset classes should be determined.
1426. The ERA considered that the depreciation schedule for AA5 should reflect those assets that were still usefully employed in providing services. Therefore, the draft decision proposed an alternative approach to the re-categorisation of existing assets to additional asset categories. The ERA did not propose that these assets be written off and no compensation for depreciation be provided.
1427. In the draft decision, the ERA required DBP to apply the economic life of the new asset categories to the similar assets between 2005 and 2020 while maintaining the existing depreciation allowance over the period. The ERA's approach aimed to ensure that the opening asset values for each of the proposed seven asset categories at the start of AA5 reflected those assets that continued to contribute to the provision of services. The ERA proposed an approach that it considered resulted in tariffs that vary over time in a way that promotes the efficient growth in the market for reference services and meets rule 89(1)(a) of the NGR, the revenue and pricing principles and the national gas objective.

⁶²¹ That is, the principal assets 'Pipeline', 'Compression', 'Metering' and the 'Other' asset categories, and the three new additional asset categories for secondary assets: 'Computers and motor vehicles', 'Cathodic/corrosion protection' assets, and 'SCADA, electrical, control & instrumentation and communications'.

1428. DBP's response to the draft decision on the re-categorisation of existing assets to additional asset categories proposed another approach on how best to treat existing assets which have been shifted into new asset categories. Specifically, how to treat:
- Existing assets which would have been fully depreciated under the new asset categories.
 - Existing assets which would have been partially depreciated under the new asset categories, but depreciated more than they have been under the existing categories, and will remain in service.
1429. DBP accepted that assets that cease to contribute to the provision of pipeline services should be removed from the asset base. Leaving these assets in the capital base results in a higher capital base that does not reflect the price of providing the current and future services to consumers.⁶²²
1430. DBP submitted that, to ensure out of service assets were not depreciated in this or future arrangements, the tariff model must:
- Depreciate immediately assets that cease to contribute to the provision of the services.
 - Depreciate in service assets over their remaining economic lives.
1431. DBP submitted that a balance needs to be found between ensuring assets are correctly depreciated over their economic life and ensuring price changes are reasonable.
1432. DBP's initial approach:
- Applied the depreciation that had been calculated for those assets in past periods (historic depreciation lives unchanged).
 - Applied new lives for the written down values from the start of AA5. That is, taking the value of each asset from its old category in 2020 and depreciating that value over the full asset life of the relevant new category.
1433. The ERA's approach in the draft decision was formulated to avoid the inclusion of assets that have passed their useful life in the capital base on a forwarding-looking basis and to avoid large tariff changes. The ERA's approach in the draft decision involved:
- Applying the new asset lives back at the time when the asset was first installed (that is, adjusting historic depreciation lives).
 - Moving each relevant asset into its new category from 2005 to 2015 through calculating the depreciation under its new lifespan and, where this was larger than the depreciation under the previous category, returning the difference between the two amounts to the previous category.
 - Not changing depreciation for assets invested during AA4, due to a lack of data. The ERA did not depreciate the assets that fell within the new classes and that were installed within AA4 when calculating the opening capital base values for the new classes.
 - Applying a shorter life for these assets would generate more regulatory depreciation than had been applied to reference tariffs in the past. The ERA's

⁶²² Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 4.

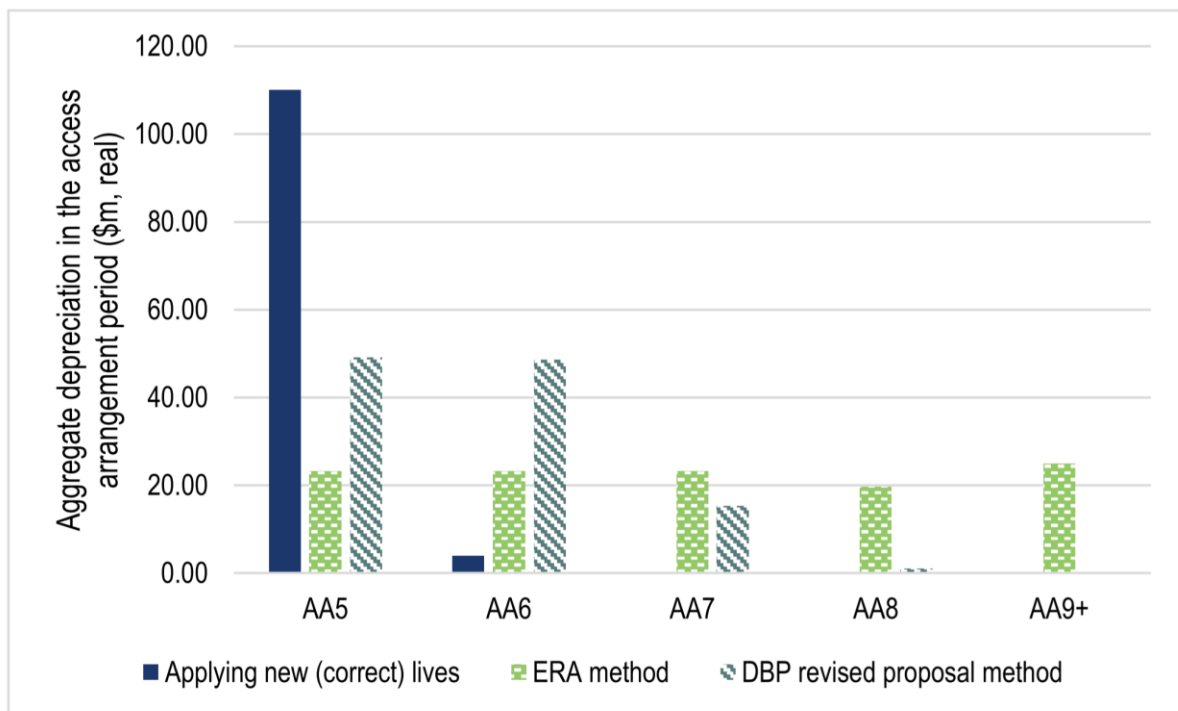
draft decision recalculated past depreciation to match historic totals by adjusting downwards the depreciation attributable to the assets that remained in the original asset classes.

1434. DBP's response to the draft decision proposed a third approach that:⁶²³

- Dealt with existing assets that would have been fully depreciated under the new asset categories. DBP did this through writing down assets which would have been fully depreciated under their new categories by 2020 over AA5.
- Deferred the recovery of existing assets which would have been partially depreciated under the new asset categories to future regulatory periods in AA6 and AA7.

1435. DBP's revised approach offers a compromise between its initial approach and the ERA's draft decision approach in terms of the speed of the recovery of the catch-up depreciation. In a report prepared for DBP and submitted in response to the draft decision, consultant Incenta detailed the distribution of the recovery of the catch-up amount across access arrangements for the different approaches, Figure 5.⁶²⁴ The figure illustrates that DBP's proposal sits between the approach of immediately recovering the catch-up amount in AA5 and the approach in the draft decision.

Figure 5 Incenta depreciation attributable to the catch-up asset value by access arrangement period



Source: Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP, October 2020, p. 15.

⁶²³ Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base, October 2020, p. 1.

⁶²⁴ Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP, October 2020, p. 15.

1436. DBP submitted its revised approach provided a better fit with regulatory precedent.⁶²⁵

- DBP and Incenta considered that the ERA's method of dealing with past depreciation was not consistent with the requirements of the NGR. In particular, the rules envisaged that assets (or classes of assets) would have their remaining lives adjusted over time to better align them with their economic lives and promote efficient growth in the market for reference services, with adjustments to lives applied on a forward-looking basis.
- DBP and Incenta also considered that the rules did not require, or authorise, a change to past depreciation of assets whose life was not to be adjusted.⁶²⁶ Incenta argued that there was no reason to question the past depreciation of the assets that were to remain in the original classes and that to do so would introduce an error into the past depreciation of those assets.⁶²⁷
- DBP argued that the ERA's approach to depreciation resulted in depreciation of assets with no economic life left under their new categories remaining in the capital base for up to 60 years. While ensuring that total historical depreciation remained unchanged, the ERA allocated the excess depreciation (difference between depreciation under the old and the new categories for a particular asset) associated with the new categories back to the annual balance of the previous asset categories from which they came.⁶²⁸
- DBP argued that the effect of the ERA's approach was to slow down the rate at which capital was recovered for existing assets, to be similar to the case without asset re-categorisation for existing assets.⁶²⁹
- DBP considered that resolving this matter of under depreciation involved increasing depreciation within AA5 to rectify past depreciation being excessively low. That is, reducing the economic lives for assets on a forward-looking basis meant that a catch-up in depreciation was required. Therefore, some form of transition in relation to this catch-up may be required to manage the effect on tariffs.
- Incenta observed that the ERA's proposal was equivalent to a transitional arrangement that spread out this catch up over the remaining life of the assets in the original classes (the long-lived assets). Incenta submitted that this would be an unreasonably long transition.⁶³⁰ Incenta detailed the distribution of asset lives for the catch-up amount under an approach that applied the new lives at the start of AA5 and the ERA's approach in the draft decision, Figure 6.

⁶²⁵ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 21.

⁶²⁶ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP*, October 2020, pp. 2-3.

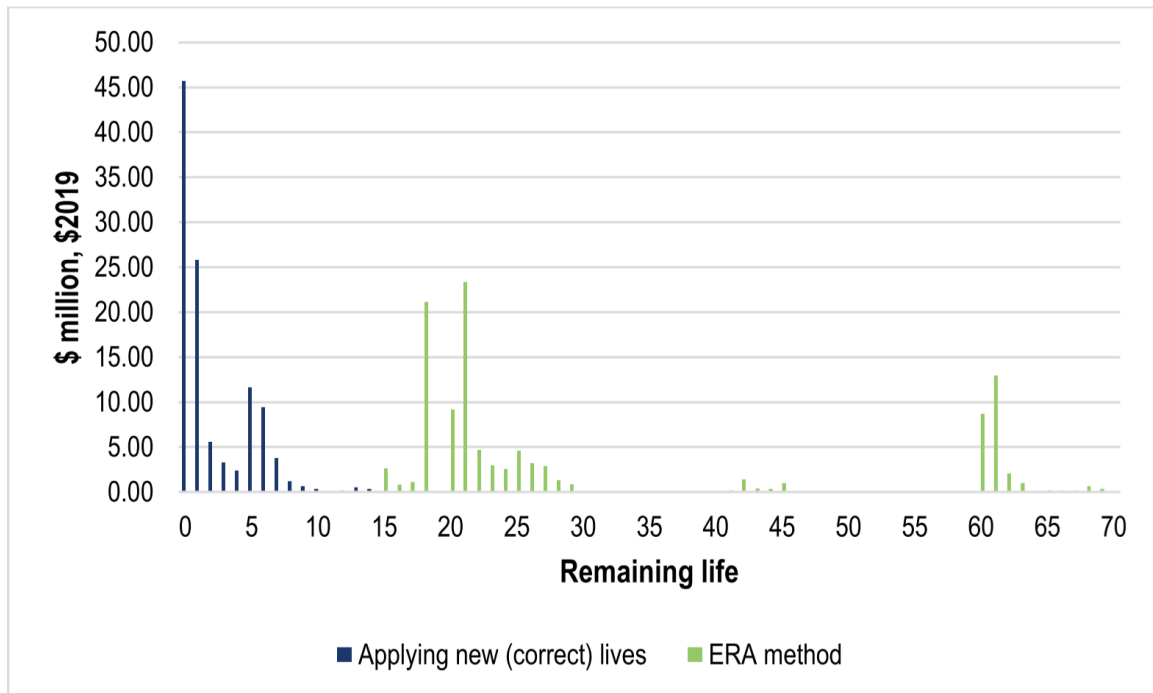
⁶²⁷ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP*, October 2020, p. 2.

⁶²⁸ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 5.

⁶²⁹ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 5.

⁶³⁰ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP*, October 2020, p. 3.

Figure 6 Incenta distribution of asset lives for the catch up amount: new lives vs ERA method



Source: *Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.8 Incenta Report for AGIG: Asset reclassification for the DBNGP, October 2020, p. 14.*

- DBP argued that the Figure 6 showed that there was a possible need for a transition as the catch-up amount was reasonably material and most of the catch-up amount would be depreciated over AA5 (weighted average remaining life of approximately two years). The ERA's method recovered the catch-up amount over a greater period, with a material share assigned a remaining life of greater than 60 years (weighted average remaining life of approximately 28.5 years). Between these two bookends there was room for judgement as to how to structure the transition.⁶³¹
1437. The ERA has further considered the treatment of historic asset depreciation for assets that are to be re-categorised and has considered DBP's revised proposal.
1438. The ERA notes that, with any of the above proposed approaches to the recovery of depreciation, the same value of depreciation would be recovered by DBP through tariffs in present value terms. What separates the approaches is the timing of the recovery of depreciation.
1439. DBP's revised approach has responded to the ERA's concern with the tariff effect in AA5 from DBP's initial proposal. DBP's revised approach aims to solve the problem of how best to treat the under-recovered depreciation while acknowledging that the immediate recovery of catch-up depreciation would be too much in a single access arrangement period. To smooth tariff effects DBP's proposal treated the recovery of catch-up depreciation for assets that were no longer in-service differently to those assets that remained in-service:

⁶³¹ *Dampier Bunbury Pipeline, Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base, October 2020, p. 14.*

- Catch-up depreciation for existing assets in the new asset categories which are no longer in service (that would have been fully depreciated) is to be recovered in AA5.
 - Catch-up depreciation for existing assets in the asset categories which are still in service is to be recovered over future access arrangement periods.
1440. DBP's revised proposal was for a transition that moderated the tariff increase by spreading the catch-up over the next few access arrangement periods. In AA5, DBP proposed to deal only with assets which have no remaining life, which increases depreciation by \$51 million. DBP proposed to defer the remaining \$84 million of under depreciation on assets still in service to future access arrangement periods.⁶³²
1441. Taking account of DBP's revised approach to the re-categorisation of assets alone results in reference tariffs that increased by 6.7 per cent in 2021 compared to using the draft decision approach which yield a 6.6 per cent increase.
1442. The ERA considers that DBP's proposed transition for the catch-up of the depreciation for existing assets in the new asset categories reduces the increase in tariffs and is consistent with the national gas objective. DBP's proposed approach:
- Ensures that the depreciation schedule is designed so that each asset or group of assets is depreciated over the economic life of the asset or group of assets by:
 - Addressing the concern that existing assets that are no longer in-service are included in the capital base.
 - Avoiding changing the depreciation profile and historic depreciation of assets that were not re-categorised.
 - Allows tariffs to vary over time in a way that promotes efficient growth in the market for reference services. The revised approach best reflects the economic lives, and associated depreciation, of each asset category while smoothing the effect on tariffs through deferring the under--depreciation of assets still in service to future access arrangements.
 - Produces a tariff effect similar to the ERA's approach in the draft decision.
1443. For the final decision the ERA supports DBP's revised method of depreciating existing assets in new asset categories, which recovers depreciation of assets with no remaining life in AA5 and defers the under-depreciation of assets still in-service to future access arrangement periods.

Reduction in economic lives for 'Metering' and 'Other' asset categories

1444. From the commencement of AA5, DBP initially proposed to reduce the economic life of:
- 'Metering' assets from 50 years to 30 years
 - 'Other' assets from 30 years to 10 years.

⁶³² Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 5.

1445. The opening regulatory asset base of these assets was unchanged. However, DBP proposed that the remaining economic lives of these assets be adjusted from the commencement of AA5.⁶³³

Metering

1446. Consistent with regulatory precedent, as detailed in paragraphs 1341 to 1346, the ERA considers that the proposed economic life of 30 years for 'Metering' assets meets the requirements of rule 89(1) of the NGR.
1447. In the final decision the ERA approves the economic life for the 'Metering' asset category of 30 years.

'Other' assets

1448. DBP has an 'Other' asset category that incorporates many disparate assets such as, for example, furniture, administrative buildings, large generators and inlet scrubbers (as shown in the mapping section of DBP's 'Asset Restructure Model').⁶³⁴
1449. The use of an 'Other' asset category with such diverse assets differs to the approach taken by other pipeline service providers where a broader range of categories are used to classify assets so that an 'Other' category is not needed.
1450. For the draft decision, EMCa provided the ERA with technical advice on DBP's proposed change to the economic life of the 'Other' assets' life from 30 years to 10 years. Consistent with Incenta's advice to DBP, EMCa considered that it was not reasonable to assign a 10-year economic life to large generators and inlet scrubbers, and that these assets should be assigned to an asset category with an economic life of 30 years.⁶³⁵
1451. In its response to the draft decision DBP agreed with Incenta and EMCa that these specific assets should sit in a category with a life of 30 years, and not a category with a life of 10 years. However, DBP disagreed with the ERA's draft decision that the best way to give effect to this was to give all assets in the 'Other' category a life of 30 years.⁶³⁶
1452. DBP continued to propose a change in economic lives for the 'Other' asset category from 30 year to 10 years. To allow the shorter 10-year economic life, DBP removed the large generators and inlet scrubbers, which were longer-lived assets, from the 'Other' asset category and transferred them to the 'Compression' category, which had an economic life of 30 years.
1453. After removing the compression assets, the 'Other' asset category included assets such as office fit-outs, furniture, staff amenities, tools, new maintenance, and administrative buildings.

⁶³³ DBP, *Final Plan Attachment 9.4 – Incenta Economic Consulting – Review of DBP's proposed asset reclassifications*, December 2019, p. 1.

⁶³⁴ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, p. 3.

⁶³⁵ Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 94.

⁶³⁶ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 7.

1454. In its initial review of the 'Other' asset category, EMCa had noted that the category included some building assets. EMCa considered it more reasonable to assign an economic life of at least 50 years to administrative buildings rather than 10 years.⁶³⁷
1455. DBP stated that the ERA had not acted on EMCa's building recommendation and therefore DBP's response to the draft decision did not remove buildings from the 'Other' asset category. DBP argued that the value of building assets was small and any buildings were associated with the provision of pipeline services (they have no alternative use, most are in remote regions) and are thus subject to the potential for economic asset stranding.⁶³⁸
1456. The draft decision had stated that DBP's proposed economic life for the 'Other' asset category did not reflect the expected economic lives of assets including large generators, inlet scrubbers and administrative buildings.⁶³⁹
1457. EMCa's subsequent review of DBP's revised plan provided further technical advice on DBP's proposal to retain building assets in the 'Other' asset category. EMCa continued to consider that DBP's proposal to reduce the depreciation life for buildings to 10 years was not reasonable. While a principles-based case could be made to apply a depreciation life of 50 years to building and related assets, there is merit in not creating a new asset depreciation category for what does appear to be a relatively small group of assets. On balance, EMCa considered that the building and related assets could be re-categorised to 'Compression' assets, which have a 30-year depreciation life.⁶⁴⁰
1458. The ERA has removed building assets from the 'Other' asset category and created a new 'Building' asset category. The ERA considers that building assets have an economic life greater than 10 years and they do not best fit in the 'Other' asset category. Creating a new 'Building' asset category in the regulatory accounts is also consistent with the requirement to separate the 'Building' category in the tax asset base.
1459. DBP's building assets largely relate to its Jandakot warehouse facilities. The Goldfields Gas Pipeline has a similar asset category for 'Maintenance bases and depots', which have an economic life of 50 years.⁶⁴¹ Given this regulatory precedent, the ERA has given the 'Building' asset category an economic life of 50 years. These building assets will be excluded from any economic life cap as the ERA considers that most of the building investment is in Jandakot, a location near Perth, and is likely to have some residual value.
1460. In the final decision the opening asset value for the 'Building' asset category on 1 January 2021 is \$4.81 million (real as at 31 December 2019).

⁶³⁷ Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, June 2020, p. 94.

⁶³⁸ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 7.

⁶³⁹ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 208.

⁶⁴⁰ Energy Market Consulting Associates, *Review of selected aspects of revised final plan for AA5 (2021 to 2025)*, June 2020, p. 70.

⁶⁴¹ ERA, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, December 2019, p. 156.

ERA, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024 – Appendix 7 – Tariff Model*, December 2019.

1461. With the removal of the longer-lived assets (inlet scrubbers, larger generators and building) from the 'Other' asset category, in the final decision the ERA approves a 10-year economic life for the 'Other' asset category applied from the time that these asset re-classifications commenced in 2005.
1462. In the final decision the opening asset value for the 'Other' asset category on 1 January 2021 is \$48.39 million (real as at 31 December 2019).

Economic life of the pipeline

DBP's initially proposed economic life of the pipeline

1463. DBP's initial proposal sought to cap the economic lives across the DBNGP to end in 2059.
1464. DBP initially proposed that the economic life of its natural gas pipeline was likely to be constrained by two factors:
- Technological change, including increased competition from renewable/battery generation and from hydrogen.
 - Policy change driving the decarbonisation of the economy.
1465. DBP noted that renewable energy sources have rapidly become cheaper and this trend was forecast to continue. Renewable sources also tended to be distributed technologies that could be deployed closer to centres of demand.
1466. DBP considered that Federal and Western Australian government carbon emissions policies would also diminish the demand for natural gas transport.
1467. DBP argued that these factors would have the effect of producing a competitive market price for energy that was lower than the regulated building block price, leading to part of its asset base being stranded.
1468. DBP's initial proposal sought to cap the remaining economic life of all assets to the year 2059. This year was based on modelling that DBP commissioned from ACIL Allen Consulting, which in turn was based on an economic framework developed by economists Crew and Kleindorfer.⁶⁴² This framework holds that there is an optimal regulatory depreciation schedule that will depreciate the regulated assets such that revenue recovered through the combination of regulatory depreciation (up to the point of competitive price cross-over) and subsequent recovery from prices limited by competition, will be sufficient (in Net Present Value terms) to recover the efficient costs of the investment.⁶⁴³

Draft decision on economic life of the pipeline

1469. In the draft decision, the ERA considered DBP's initial proposal on the economic life of the DBNGP and public submissions.
1470. EMCa also provided the ERA with technical advice on depreciation and DBP's proposed 2059 cap on the economic life of the DBNGP.

⁶⁴² Crew, M and Kleindorfer, P, 1992, *Economic Depreciation and the Regulated Firm under Competition and Technological Change*, Journal of Regulatory Economics, 4(1), 1992, 51-61.

⁶⁴³ Energy Market Consulting Associates, *DBP Transmission: Dampier Bunbury Natural Gas Pipeline (DBNGP) Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, May 2020, pp. 95-96.

- EMCa considered the framework for placing a cap conceptually sound. EMCa undertook a high-level review of the modelling that DBP had reported in its assessment and considered that the method described provided a reasonable basis for re-profiling depreciation of DBP's pipeline assets.⁶⁴⁴
 - EMCa did not consider that DBP had provided a sufficiently compelling case to cap the economic lives of its existing and new assets to the year 2059. EMCa acknowledged that, as with any forecasts, the future inputs needed for assessment under this framework would never be known with certainty. EMCa considered that DBP's proposal was weighted towards scenarios and logic that supported its proposal and provided insufficient recognition of counter-arguments.⁶⁴⁵
1471. In the draft decision, the ERA considered the definition of economic life in the context of applications in other standards and regulatory interpretations. The ERA considered that consistency with the national gas objective implied that an appropriate interpretation of economic life, for the purpose of depreciation under the NGR, included the actual or expected retirement of the asset from productive use at the end of its economic life. An asset may be retired due to technical, economic or other obsolescence.
1472. Given the ordinary and equivalent definitions of economic life as applied under other standards and regulatory interpretations, in its draft decision the ERA did not support DBP's cap on the economic life across the DBNGP at 2059. DBP did not expect to retire the pipeline assets in 2059. DBP and its customers expected the pipeline to continue supplying natural gas beyond 2059.

DBP's revised economic life of the pipeline

1473. DBP subsequently considered the ERA's draft decision and its interpretation of economic life.
1474. DBP provided a report from Incenta on stranded asset risk and the National Gas Regime.^{646 647} The report informed DBP's response to the draft decision. The Incenta report stated that:
- The depreciation schedule for an asset or group of assets was a function of decisions on: a) the remaining life for the asset; and b) the profile over which the asset was to be depreciated.
 - NGR rule 89(1)(a) required that the depreciation schedule be designed so that reference tariffs would vary over time in a way that promoted efficient growth in the market for reference services. This principle directed consideration of both the demand and supply of reference services.
 - *Demand side* – that the time path for reference tariffs implied by the depreciation profile should be the most consistent with encouraging the efficient use of the asset.

⁶⁴⁴ Energy Market Consulting Associates, *DBP Transmission: Dampier Bunbury Natural Gas Pipeline (DBNGP) Review of Technical Aspects of Proposed Access Arrangement for 2021 to 2025 (AA5)*, May 2020, p. 98.

⁶⁴⁵ Energy Market Consulting Associates, *Review of Technical Aspects of the Proposed Access Arrangement for 2021 to 2025 (AA5)*, August 2020, p. 98.

⁶⁴⁶ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.9 Incenta stranded asset risk*, October 2020.

⁶⁴⁷ Incenta use the term stranded to refer to the situation where a regulated business is unable to set and sustain prices that will allow it to recover its remaining invest costs (i.e. its capital base), for example because of technological change that exposes it to meaningful competition or a government policy measure.

- *Supply side* – that the profile of depreciation should be consistent, so far as it was relevant, with providing the capacity for the investment and operating activities required to ensure that the efficient growth in the market was served, a critical feature of which was an expectation that efficient costs would be able to be recovered.
 - Where there was a prospect that the service provider may have its revenue constrained by a competitor or some other factor below the level that would be required to recover costs, then the profile of depreciation may have a material impact on whether that emerging risk was likely to result in assets becoming stranded, and so the supply side dimension became relevant.
 - The first of the revenue and pricing principles supported the relevance of the supply side dimension through detailing that a regulator’s decision should be consistent with providing a reasonable expectation of recovering efficient cost.
 - The core proposition of DBP’s proposal was that under the existing profile of depreciation there was a material risk of future asset stranding, and so it was possible to alter the profile of depreciation to reduce that risk.
 - Incenta argued that there was a range of options for adjusting the depreciation schedule that would be able to remove the risk of asset stranding that are consistent with the NGR. One option Incenta recommended should be given consideration was a “kinked” depreciation method.⁶⁴⁸
1475. In its response to the draft decision, DBP’s revised proposal implemented the ERA’s interpretation of economic life, though DBP submitted this was not the only available interpretation.
1476. DBP advised that the WOOPS modelling led to an economic life ending in 2063. 2063 is the date at which DBP would need to charge a negative transport price for gas as the wholesale price of gas rises above the price of renewable energy. DBP advised that the use of an economic life for DBNGP capped at 2063 would lead to an under-recovery of its capital base of around \$125 million, which it believed was an acceptable risk given the time remaining to improve the model and the uncertainty that existed about the future.⁶⁴⁹
1477. DBP noted that its acceptance of the ERA’s interpretation of economic life was contingent upon broad agreement with the future scenario it set out in its proposal as being most credible. DBP advised that significant differences on that point would represent an unacceptable risk of under-recovery.⁶⁵⁰
1478. The revised proposal addressed comments made by EMCa on whether its most likely scenario was too aggressive in respect of the likely timing of any future competitive market for energy.
1479. DBP considered it did not ignore scenarios that supported a longer economic life and provided those in its model. DBP expressed concern that EMCa provided no information about which aspect of its proposal led to the conclusion that its case was not sufficiently compelling, nor what counter-arguments it believed should have been

⁶⁴⁸ Incenta defines a kinked depreciation method whereby an acceleration would be applied to a defined period in order to reduce the capital base to a level that is recoverable at the time that stranding otherwise would occur, but where it is clear that depreciation is being applied over the full anticipated service life of the pipeline.

⁶⁴⁹ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 8.

⁶⁵⁰ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 8.

considered, save for some references to what some consumers have said about lower gas prices and the use of hydrogen.⁶⁵¹

1480. DBP submitted that new information had come to light since it undertook its analysis, which supported a view that DBP has been conservative in many of its assumptions. This new information is detailed below. DBP stated that it had not changed its modelling assumptions/results in response to the new information as it believed that a degree of conservatism was appropriate when the future was this uncertain.⁶⁵²
1481. In its response to the draft decision, DBP provided new information that it considered provided further evidence on future competitive markets for energy.⁶⁵³
- New electricity market developments that were being driven by technological change lowering renewable costs and decarbonisation policies creating demand for renewable power.
 - Bloomberg New Energy Finance (BNEF) stated that not only was renewable power's cost falling rapidly, but the cost of renewable power was now lower than fossil fuels. BNEF estimated that two-thirds of the world's population lived in places where solar or wind were the lowest-cost means of generating electricity.⁶⁵⁴
 - Other studies found that renewable generation had crossed the threshold whereby it was now the lowest cost form of generation, which caused a significant step-change in the uptake of renewable power.^{655 656} The report from Goldman School of Public Policy came to this conclusion using gas prices of between US\$1.50 to US\$2.50 per GJ, which were substantially lower than DBP's lower bound of its sensitivity analysis.⁶⁵⁷
 - AEMO forecasts of demand over the course of AA5 dropped some 20 per cent between 2017 and 2021, which reflected the effect of distributed renewable power and grid-scale renewables.⁶⁵⁸
 - Many countries were now taking firm steps towards decarbonisation, which was forecast to reduce gas use.
 - AEMO (in its role in the National Electricity Market) was planning the world's most rapid transition to renewable power, with 74 per cent of power generated by renewables by 2040 in its base case and 94 per cent in its step-change scenario in its 2020 Integrated System Plan.⁶⁵⁹

⁶⁵¹ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, pp. 16-17.

⁶⁵² Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, pp. 16-17.

⁶⁵³ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, pp. 16-21.

⁶⁵⁴ BloombergNEF, Liebreich: *Peak Emissions Are Closer Than You Think – and Here's Why*, December 2019, available from [website](#).

⁶⁵⁵ Heal, G, *Economic Aspects of the Energy Transition*, NBER Working Paper 27766, September 2020, available from [website](#).

⁶⁵⁶ Goldman School of Public Policy, *2035 Report – Plummeting solar, wind and battery costs can accelerate our clean electricity future*, June 2020, available from [website](#).

⁶⁵⁷ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 17.

⁶⁵⁸ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 11.3 Response to Draft Decision on Capacity and Throughput*, October 2020, p. 13.

⁶⁵⁹ AEMO, *2020 Integrated System Plan*, July 2020.

- Larger industrial and mining customers were increasingly adopting renewable energy to minimise cost and were more commonly targeting future net zero targets.
 - Gold Fields Australia, an Australia gold miner, recently commissioned a wind/solar/battery system which delivered 23 per cent to 38 per cent cost savings for its mine, and could achieve between 50 per cent and 80 per cent penetration of renewables in its energy mix.⁶⁶⁰
 - Rio Tinto said that it would invest \$100 million in a solar/battery system at its Koodairderi mine in the Pilbara, which would meet 65 per cent of its overall electricity needs.⁶⁶¹
 - Alinta and Fortescue Metals Group were pursuing large current and future solar, wind and battery projects in the Pilbara.⁶⁶²
 - There was increasing exploration of green hydrogen from companies including BHP, Woodside, Fortescue, Anglo America and Hatch.
 - Industrial heat, which was well-suited to natural gas, was often considered the “last frontier” for renewable powers. DBP submitted that there was a considerable push globally to establish ways of bringing down the carbon content of industry, with a particular focus on industrial heat. DBP noted that, in its WOOPS modelling, hydrogen would perform this role and eventually supplant natural gas, but this was not the only technology being developed. The scope of active research is very wide. DBP noted that Alcoa was conducting research into the use of electrified mechanical vapour recompression as a decarbonisation alternative to the heat gas.

DBP’s future consideration of the role of regulatory depreciation

1482. In its response to the draft decision, DBP expanded on the role of regulatory depreciation and the need for further future consideration.
1483. DBP stated there were two elements of any depreciation schedule:⁶⁶³
- the economic life or the time taken until the asset is fully depreciated
 - the depreciation profile or the pattern of depreciation over time.
1484. Considering the possibility of future competition, DBP proposed two options for dealing with depreciation:⁶⁶⁴
- Accept the ERA’s interpretation of economic life but alter the depreciation profile to allow for kinked depreciation profiles to meet the needs of both the regulatory and the competitive life of the assets concerned. A kinked depreciation schedule consists of two straight lines and recovers different amounts of depreciation over time.

⁶⁶⁰ Energy and Mines, *Australia Virtual Summit Pandemic highlights mining’s energy transition momentum*, Issue 24, September 2020, pp. 4-5.

⁶⁶¹ GreenTechMedia, *Mining giants embrace renewables, but decarbonisation remains a steep climb*, February 2020, available from [website](#).

⁶⁶² Renew Economy, *Alinta looks to wind and more batteries to turn Pilbara into high renewables grid*, September 2020, available from [website](#).

⁶⁶³ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 10.

⁶⁶⁴ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 16.

- Maintain the straight-line depreciation profile but construe economic life (or change the depreciation rules) to allow for a positive value at the end of the regulatory part of the life of the asset concerned, where the positive value equates to the value of the asset in the future competitive market.
1485. DBP submitted that a kinked depreciation profile would meet the needs of both the regulatory and the competitive life of the regulatory assets concerned.
1486. DBP and Incenta considered that a kinked profile was consistent with NGR rule 89(1)(a), which requires the depreciation schedule be designed so that tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services.⁶⁶⁵
1487. Though DBP considered that the kinked profile was the best approach, DBP's approach in its revised proposal for AA5 was not to impose a kinked depreciation schedule but to continue the use of a conventional indexed straight-line approach.⁶⁶⁶
1488. DBP considered that the best approach was to take the debate about the depreciation schedule outside the framework of a regulatory decision and to involve all relevant stakeholders. DBP submitted that it may be that changes to regulatory practice can reasonably be accommodated within the NGR as it stands at present, or a targeted rule change, which recognised a competitive future, may be appropriate.⁶⁶⁷
1489. DBP noted that its acceptance of the ERA's economic life approach was a short-term response to a larger issue of how best to manage depreciation in a world where future competition is likely. DBP proposed to work with the ERA and its customers and stakeholders outside the AA5 process to refine the approach further.⁶⁶⁸

ERA final decision

1490. The regulatory lives of DBP's natural gas pipeline assets remain long:
- The current economic life of pipeline assets is 70 years. This means that an investment in new pipeline assets in 2021 would only be fully recovered in 2091.
 - The DBNGP commenced operation in 1984 and had major expansions through the 2000s. The existing DBNGP assets have a weighted average remaining life of approximately 44 years. Existing assets in the 'Pipeline' asset category have the longest remaining lives and a large amount of pipeline assets are set to be fully depreciated between 2077 and 2081.
1491. In its revised submission, DBP proposed to cap the economic life of the DBNGP to 2063. DBP's main reason for doing so was to address the diminishing market for gas transmission on the DBNGP caused by technological and policy change.
1492. For technological and policy reasons there is an increased level of uncertainty about the future role of natural gas pipelines. While the national gas regime has been constructed to regulate a natural monopoly asset with an ongoing life, the regime may

⁶⁶⁵ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 10-16.

⁶⁶⁶ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, pp. 13, 16.

⁶⁶⁷ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 16.

⁶⁶⁸ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 8.

not have been constructed to specifically recognise the implications of competition on the usefulness of assets and the potential for stranding assets. The ERA is aware that in the past applications for revocation of regulatory coverage have taken into account market competition to decide whether coverage should continue to apply to regulated infrastructure. Recognising current technological and policy uncertainties and their implications for the future usefulness of natural gas pipelines, the ERA considers that the current framework needs to be reviewed to recognise the possibilities of competition and of asset stranding.

1493. In considering DBP's proposed depreciation schedule, the ERA is required to assess the compliance of the proposed depreciation schedule against the rules and law as they stand.

1494. The ERA is required to assess a proposed depreciation schedule against the depreciation criteria set out in the rule 89(1) of the NGR:

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 AER 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.

1495. The NGR also requires that any forecast must be arrived at on a reasonable basis and must represent the best forecast or estimate possible in the circumstances.

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.

1496. The ERA's assessment of depreciation must have regard to the national gas objective, which is specified in section 23 of the NGL:

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.

1497. The ERA assessment must also consider the revenue and pricing principles, which include that a service provider should be provided a reasonable opportunity to recover at least efficient costs, and the principle that the ERA should have regard to

the economic costs and risks of the potential under- and over-investment in a pipeline and the utilisation of a pipeline when making its decisions. These principles are set out in section 24 of the NGL:

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 a 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) Regard should be had to the capital base with respect to a pipeline adopted—
 - (a) in any previous—
 - (i) full access arrangement decision; or
 - (ii) decision of a relevant Regulator under section 2 of the Gas Code;
 - (b) in the Rules.
- (5) 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.
- (6) 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.
- (7) 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.

1498. The inputs to determine DBP's regulatory depreciation amounts for AA5 include:

- The forecast net capital expenditure for the 2021 to 2025 period.
- The capital base indexation adjustment.
- The standard economic life for each asset class – used for calculating the depreciation of new assets associated with new capital expenditure in the 2021 to 2025 period.
- The remaining economic life for each asset class – used for calculating the depreciation of existing assets associated with the opening capital base as at 1 January 2021.

1499. DBP's proposed economic life cap affects the standard economic life for new assets and the remaining economic life of existing assets.

1500. The future of natural gas is becoming increasingly uncertain, particularly as renewable electricity and storage become more competitive and are increasingly adopted by consumers. Natural gas pipelines are facing an evolving policy and business environment with growing support for reducing carbon emissions by moving away from natural gas use.
1501. As initially proposed by pipeline businesses in their original access arrangements, the ERA's past approach has been that the estimated technical life of an asset is the best estimate of the economic (useful) life of an asset. This was because it was assumed that natural gas would continue to be an energy source, and so demand for pipeline services will exist indefinitely. However, the depreciation criteria in the NGR allow regulators to consider other relevant factors which could affect the future usefulness of an asset.⁶⁶⁹
1502. The economic life need not match the technical life of the asset. A pipeline that is technically sound may have no economic worth if no one demands its services at a price that covers its operating costs, or if upstream supply of gas is no longer available.⁶⁷⁰
1503. Given the ordinary and equivalent definitions of economic life as applied under standards and regulatory interpretations, the ERA considers:
- In the case of natural monopoly infrastructure, typically having limited alternative usefulness or transferability to other entities, the definitions of useful life and economic life under accounting standards and regulatory guidelines are similar in practice. In ordinary circumstances, an asset that remains in productive use will not be fully depreciated.
 - Consistency with the national gas objective implies that an appropriate interpretation of economic life, for the purpose of depreciation under the NGR, includes the actual or expected retirement of the asset from productive use at the end of its economic life. An asset may be retired due to technical, economic or other obsolescence.
1504. In its revised proposal DBP argued that based on the ERA's interpretation of economic life and using the information about the future that DBP presented as part of DBP's WOOPS modelling suggested an economic end life of 2063.⁶⁷¹
1505. DBP and its economic consultant ACIL Allen Consulting built an economic model to forecast the future of the DBNGP based on what they considered were the most appropriate assumptions available.^{672 673 674}
1506. To assess DBP's proposal, the ERA has considered the matters raised by DBP that affect gas usage in its network and the terminal date of the DBNGP pipeline.

⁶⁶⁹ NGR 89((1)(c)).

⁶⁷⁰ Australian Energy Regulator, *Draft Decision Evoenergy Access Arrangement 2021 to 2026 Attachment 4 Regulatory depreciation*, November 2020, p. 10.

⁶⁷¹ Dampier Bunbury Pipeline, *Revised Final Plan Attachment 9.7 Response to Draft Decision on Capital Base*, October 2020, p. 21.

⁶⁷² Dampier Bunbury Pipeline, *Final Plan 2021-25 Attachment 9.2 Assessment of the Economic Life of the DBNGP*, January 2020.

⁶⁷³ Dampier Bunbury Pipeline, *Final Plan 2021-25 Attachment 9.3 ACIL Allen Report*, January 2020.

⁶⁷⁴ Dampier Bunbury Pipeline, *Confidential Window of Opportunity Past Models*, January 2020.

1507. To help the ERA's consideration of an economic life of the DBNGP, the ERA engaged Frontier Economics to review ACIL Allen's model.
1508. The review of ACIL Allen's model found that the model results should be interpreted with caution:
- The model has certain limitations given the modelling horizon and the necessity of simplifying the modelling approach.
 - The model utilises a simple binary contracted load outcome, either 'on' when delivered gas is competitive with hydrogen, renewables and storage, or 'off' when delivered gas is more expensive. However, switching away from natural gas is likely to occur customer by customer as individual circumstances dictate. As customers reduce their natural gas consumption, volumes on the DBNGP will fall, and tariffs constructed to recover a given regulated return will need to increase. There is a feedback loop where one customer's switching decision affects all others through the regulated tariff.
 - The model does not consider detailed switching decisions, and does not consider the electrification of industrial loads. This may mean that the model produces a conservative terminal date, that is, later date.
 - There are possible improvements in the model:
 - The model uses a weighted alternative price, which is a constructed price that combines renewable/battery and hydrogen competitive prices. The use of weighted alternative price assumes that switching from natural gas to hydrogen and renewables happens at the same time for each use case. This does not recognise different competitive points in time for electricity and hydrogen.
 - There are possible concerns with internal consistency within the model. Areas of concern include the use of different electricity market modelling to determine separate input factors; and the consistency of electricity prices used across different parts of the model.
 - Frontier raised concern with the use of the LNG netback gas price and made some recommendations to update the gas forecast for the latest projects and revised assumptions. Frontier developed three scenarios that it considered reasonably represented a range for long-term gas prices in Western Australia. Frontier allows for lower priced gas and provides a wider range of gas prices than ACIL Allen's LNG netback forecast range. A lower natural gas price will push out the terminal date.
 - The adoption of net zero emissions by 2050, either as a target or an aspiration, has become more common since ACIL Allen's report. ACIL Allen has not modelled a carbon scenario that includes net zero emissions by 2050.
 - Frontier proposed an alternative approach to estimate future hydrogen prices which included higher future hydrogen prices than proposed by ACIL Allen. However, other recent hydrogen price forecasts were also provided that were more in line with ACIL Allen's forecasts.
 - Given the long modelling horizon and current technology and policy uncertainties there are generally large ranges for the model's individual input assumptions.
 - The model's assumptions about alternative prices and natural gas prices well into the future is what drives the model's results. The model is particularly sensitive to the natural gas price and hydrogen price. When uncertain inputs

are combined into scenarios this results in a broad range of potential end dates for the DBNGP.

1509. Since DBP's revised proposal other new information has become available to help the ERA's assessment of the economic life of the DBNGP:

- The Western Australian Government has published its climate policy which supports a low-carbon future and includes commitments to move towards an aspiration of net zero emissions by 2050.⁶⁷⁵
- An increasing number of large businesses in Australia and across the world have committed to net zero emissions targets between 2040 and 2050.^{676,677}
- There is increasing investment in the research and development of green hydrogen in Australia and across the world. In November 2020 the Western Australian Government announced its Western Australian Renewable Hydrogen Strategy and Roadmap and the Australian Government released its National Hydrogen Strategy. Both documents outline how the governments are supporting the development of the renewable hydrogen industry.^{678 679} In Western Australia, investigation and development of renewable hydrogen is occurring in the Pilbara, near Geraldton and in the South West.^{680 681 682 683}
- There is increasing investment in diverse research and development into emissions reductions of industrial processes, either through the electrification of processes or the adoption of green hydrogen.
- More countries and companies are aiming for carbon reductions, which may encourage Western Australian producers to further decarbonise to maintain access to world markets or access to green product markets and green premia.^{684, 685} For example, China, Western Australia's largest export market, is aiming to achieve net zero emissions by 2060 and Baowu (Group China's largest steelmaker) is aiming to achieve carbon neutrality by 2050.⁶⁸⁶ Similarly, Japan is formalising its zero-carbon plan for 2050 and South Korea is following suit.⁶⁸⁷ Europe is also progressing emissions policies including its carbon border levy.⁶⁸⁸

⁶⁷⁵ The Government of Western Australia, *Western Australian Climate Policy: A plan to position Western Australia for a prosperous and resilient low-carbon future*, November 2020, p. 5.

⁶⁷⁶ Eco-Business, 200 of world's largest corporations commit to net zero emissions by 2050, reverse biodiversity loss and fight inequality, 26 October 2020, available from [website](#).

⁶⁷⁷ Australian Financial Review, *Fortescue zeroes in on new emissions targets*, 16 June 2020.

⁶⁷⁸ Western Australian Government, *Western Australian Renewable Hydrogen Strategy and Roadmap*, November 2020, available from [website](#).

⁶⁷⁹ Australian Government, *Australia's National Hydrogen Strategy*, November 2020, available from [website](#).

⁶⁸⁰ Reneweconomy, *Call to develop 1.5GW green hydrogen hub gets "super major" response*, 22 January 2021, available from [website](#).

⁶⁸¹ FMG, *Dr Andrew Forrest AO: Boyer Lecture*, January 2021, available from [website](#).

⁶⁸² Reneweconomy, *13 hydrogen clusters secure seed funding to nurture Australia's new green industry*, 1 February 2021, available from [website](#).

⁶⁸³ Reneweconomy, *WA miner joins hydrogen rush, plans 1GW of wind and solar*, 19 February 2021, available from [website](#).

⁶⁸⁴ Australian Financial Review, *Global climate action will reshape Australia's trade*, 9 February 2021.

⁶⁸⁵ FMG, *Dr Andrew Forrest AO: Boyer Lecture*, January 2021, available from [website](#).

⁶⁸⁶ Reuters, *China's top steelmaker Baowu Group vows to achieve carbon neutrality by 2050*, 21 January 2021, available from [website](#).

⁶⁸⁷ S&P Global, *China's long march to zero carbon*, 10 December 2020, available from [website](#).

⁶⁸⁸ Euractiv, *Carbon border levy should be in place no later than 2023, EU lawmakers say*, 8 February 2021, available at [website](#).

- Standard & Poors has revised its assessment of the risk to the whole oil and gas industry to moderately high from intermediate. S&P said the energy transition was throwing up significant challenges and uncertainties because of declines in oil and gas markets due to the increased adoption of renewable energy.⁶⁸⁹
1510. The information above indicates that there is an increased level of change and uncertainty in the energy market due to technological and policy changes, and this is likely to continue. These changes could affect the future role of the DBNGP, especially in the longer term. It is now less likely that natural gas will continue to flow through the DBNGP to the end of its technical life.
1511. The ERA has reviewed DBP's proposed economic end life of 2063 and the information justifying it, Frontier Economics' review of the economic life analysis and other available information.
1512. The ERA notes that any view on the economic life of an asset, particularly one with a possibly long technical life, implies a forecast and a level of uncertainty. Uncertainty does not prohibit the possibility of a change in economic life, nor does uncertainty remove the need to update forecasts to reflect the best available information. The standard of evidence for changing the outlook is not certainty.
1513. DBP has proposed a change to its economic life consistent with the depreciation requirements in the NGR and the ERA is required to determine the expected economic life of the DBNGP.
1514. Based on the current evidence available to it, the ERA considers that there is a likelihood that the usage of the DBNGP transmission pipeline will decline over time due to technological change and policy change.
1515. Therefore, DBP faces a greater likelihood that the DBNGP's economic life will be shorter than its technical life due to the combination of technological change and environmental policies curtailing natural gas use.
1516. Given current uncertainties, the range of potential economic lives of the DBNGP is wide, and DBP's proposed economic end life of 2063 sits within a range of plausible outcomes. Determining the economic life of an asset is a matter for judgement as to what is a reasonable and best forecast in the circumstances.
1517. The ERA considers that the robustness of a single year end date produced by DBP's model may be limited. The model's underlying long-term inputs have wide ranges, and the combinations of these uncertain inputs will produce a wide range of terminal dates for the DBNGP.
1518. Notwithstanding the difficulty of forecasting the economic life so far into the future, the ERA accepts that there is a plausible argument that the economic life of the DBNGP is likely to be shorter than the currently assumed technical life of the pipeline asset category of the DBNGP capital base.
1519. DBP's nominated end of life of 2063 is a credible projection of economic life within a wide range of possibilities.
1520. Rule 89(1) provides for depreciation schedules to be adjusted where there is a change in the expected economic life of the relevant asset. The ERA accepts that

⁶⁸⁹ Australian Financial Review, *Woodside caught in S&P's climate crackdown*, 27 January 2021.

DBP has established that the expected economic life of the DBP has changed, and that adjustment of depreciation schedules to be based on a capped economic life of 2063 is consistent with rule 89(1).

1521. The ERA has also considered DBP's proposed adjustment to depreciation schedules having regard to the revenue and pricing principles, in particular the principle under clause 24(2)(a) of the NGL that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services.
1522. The relevant costs to a consideration of depreciation schedules are the capital costs of pipeline assets that:
- have been deemed to be efficient in the case of assets in existence at the time of determination of an initial capital base;
 - have been determined to be efficient at the time of regulatory consideration of subsequent investment in new assets; or
 - in the case of future investment, will be subject to a test of efficiency before being included in the capital base.
1523. An adjustment of depreciation schedules to reflect a capped economic life of 2063 provides DBP with the opportunity to recover these costs consistent with DBP's own forecast of economic life and the ERA considers that this is consistent, on its face, with the principle of clause 24(2)(a) of the NGL.
1524. Notwithstanding this, the ERA considers that the qualifying term of "reasonable opportunity" in the recovery of efficient costs implies that there will be circumstances where the recovery of costs is precluded. That is, it is not entirely clear that the provision for a reasonable opportunity to recover efficient costs necessarily extends to making adjustments to regulated prices to always ensure a service provider is able to recover the costs of sunk investment where technology and competition changes occur in the market for gas transmission at times after an initial investment decision.
1525. In this regard, and with reference to the NGO, the proposal to cap economic life at 2063 may be construed as being contrary to the long term interests of consumers. The reduction in economic lives results in an increase in regulated tariffs with no apparent consumer benefit. While generally the provision for a service provider to recover the costs of sunk investment may have a long term consumer benefit through supporting incentives for future investment – either in the specific pipeline under consideration or in the pipeline industry more generally – it is difficult to see any such benefit in the circumstances of the DBNGP, which DBP presents as being a declining business.
1526. With specific regard to DBP's proposed cap on economic life at 2063, the effect on regulated tariffs is small (3.39 per cent, all other parameters being equal). Given this, notwithstanding its concerns noted in paragraphs 1524 and 1525 above, having regard to the express provision for adjustment under rule 89(1) and the terms of clause 24(2)(a), the ERA considers that it is appropriate in all the circumstances of this case to allow adjustment of the depreciation schedules. Accordingly, the ERA finds that the adjustment of depreciation schedules to reflect economic lives capped at 2063 is consistent with the requirements of the regulatory framework.
1527. The ERA intends to raise with the Australian Energy Market Commission how the regulatory framework addresses asset stranding risk in an environment of increasing technological and policy change.

Forecast depreciation

1528. On the basis of the creation of new asset categories and asset re-categorisation approved in the final decision the opening asset values by asset category on 1 January 2021 for AA5 are provided in Table 172.

Table 172: Final decision opening asset value by asset category on 1 January 2021 (\$ million real as at 31 December 2019)

Asset category	ERA final decision
Pipeline	2,632.80
Compression	361.21
Metering	49.54
Buildings	4.81
Other depreciable	48.39
Computers and motor vehicles	32.35
Cathodic/corrosion protection	58.22
SCADA, electrical, control & instrumentation and communications	104.84
Non-Depreciable	20.27
Cost of raising equity	0.00
BEP lease	19.06
Opening asset value	3,331.50

Source: ERA, August 2020, Draft Decision tariff model

Some numbers may not add due to rounding

1529. Table 173 details the ERA's AA5 final decision economic lives compared to those used in AA4.

Table 173: Final decision economic lives and asset categories for AA5 (years)

Asset category	AA4 final decision economic life	AA5 final decision economic life
Pipeline	70	Capped at 2063
Compression	30	30
Metering	50	30
Building	-	50
Other	30	10
Cathodic/corrosion protection	-	15
SCADA, electrical, control & instrumentation and communications	-	10
Computers and motor vehicles	-	5

1530. Consistent with the required amendments in the final decision, the ERA recalculated total forecast depreciation for AA5 as \$642.57 million (Table 174).

Table 174: ERA's final decision forecast depreciation (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025	Total
Pipeline	70.58	70.58	70.58	70.58	70.58	352.90
Compression	20.29	20.46	20.54	20.63	20.73	102.64
Metering	14.68	1.54	1.58	1.63	1.67	21.11
Building	0.12	0.18	0.25	0.26	0.40	1.20
Other depreciable	8.27	3.96	3.97	3.51	3.19	22.90
Computers and motor vehicles	17.04	5.62	5.69	5.56	6.00	39.91
Cathodic/corrosion protection	4.28	4.50	4.70	4.89	5.09	23.46
SCADA, electrical, control & instrumentation and communications	43.39	6.69	8.02	8.48	9.16	75.75
Cost of raising equity	0.00	0.05	0.09	0.13	0.16	0.43
BEP lease	0.45	0.45	0.45	0.45	0.45	2.27
Forecast depreciation	179.09	114.04	115.86	116.14	117.44	642.57

Source: ERA, Final Decision tariff model

Required Amendment 11

The forecast depreciation of the capital base for AA5 must be amended to \$642.57 million (real as at 31 December 2019). The yearly values for each year of the access arrangement period are set out in Table 174 of this final decision.

Taxation

1531. Rule 76(c) of the NGR establishes the estimated cost of corporate income tax as a separate building block for the determination of total revenue:

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:

...

- (c) the estimated cost of corporate income tax for the year (See Division 5A); and...

1532. Rule 87A of the NGR sets out the formula for calculating the estimated cost of corporate income tax for each regulatory year:

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 allowed imputation credits for the regulatory year.

DBP's proposal

1533. DBP used the formula in rule 87A of the NGR to calculate the estimated cost of corporate income tax for each regulatory year in AA5.
1534. DBP applied a value for the expected statutory income tax rate of 30 per cent, equal to the statutory corporate income tax rate.⁶⁹⁰
1535. DBP applied a value for allowed imputation credits of 0.5, as required under the ERA's binding rate of return guidelines.^{691, 692}
1536. DBP calculated the estimated taxable income for each regulatory year in AA5 as the revenue that would be earned by a benchmark efficient service provider using the covered pipeline to provide reference services, less deductions for allowable taxation expenses that would be incurred by such an entity in the provision of those services.

⁶⁹⁰ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 105.

⁶⁹¹ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 105.

⁶⁹² Economic Regulation Authority, *Final Rate of Return Guidelines (2018) Meeting the requirements of the National Gas Rules*, 18 December 2018, pp. 39-40.

1537. In its submission DBP determined taxable income as total revenue (excluding the cost of tax) less operating expenditure, tax depreciation and interest expense where:
- Total revenue is the sum of all of its costs (or building blocks) aside from the cost of tax.
 - Operating expenditure is a specific building block reflecting its efficient operating expenses that is used to determine total revenue.
 - Tax depreciation is based on the calculation of the tax asset base in any particular year.
 - Interest expense is determined by multiplying the cost of debt (3.61 per cent) by 55 per cent of its capital base in each year, reflecting the debt-funded proportion of the total capital base.⁶⁹³
1538. For AA5, DBP amended its method of determining tax depreciation compared to AA4. DBP proposed to use a diminishing value method (rather than a straight-line method) to calculate tax depreciation for new assets only.⁶⁹⁴

Estimating taxable income

1539. As noted above, DBP stated that its total revenue was estimated as the sum of all of its costs (or building blocks) aside from the cost of tax.⁶⁹⁵
1540. In its proposed tariff model, DBP used smoothed tariff revenue as the basis for calculating the estimated taxable income earned by a benchmark efficient entity in each regulatory year of AA5.
1541. The method that DBP used in its proposed tariff model was:⁶⁹⁶
- Smoothed tariff revenue:
- minus** approved forecast operating expenditure
- minus** depreciation of the tax asset base, calculated using the straight-line method for assets purchased before 1 January 2021 and the diminishing value method for assets purchased on or after 1 January 2021
- minus** debt servicing costs
- add** tax losses carried forward
- equals** estimated taxable income.
1542. The use of smoothed tariff revenue as the basis for calculating the estimated taxable income that would be earned by a benchmark efficient entity in each regulatory year is consistent with the method accepted by the ERA in the AA4 final decision.⁶⁹⁷

⁶⁹³ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 105.

⁶⁹⁴ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 106.

⁶⁹⁵ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 105.

⁶⁹⁶ DBP, *Revised Tariff Model 2021-25*, May 2020.

⁶⁹⁷ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020*, June 2016, p. 237.

Tax asset lives

1543. DBP's tax asset lives had changed compared to previous access arrangements.
1544. The tax lives for asset classes proposed by DBP for the purpose of calculating the tax asset base in AA5 are set out in Table 175.

Table 175: DBP's proposed AA5 tax asset lives (years)

Asset categories	Tax lives approved by the ERA in AA4	AA5 proposed tax lives for capital assets purchased prior to 1 January 2021	AA5 proposed tax lives for capital assets purchased on or after 1 January 2021
Pipeline	20	20	20
Compression	20	20	20
Metering	15	15	15
Other depreciable	20	20	10
Computers and motor vehicles			5
Cathodic/corrosion protection			15
SCADA, electrical, control & instrumentation and communications			10
Cost of raising equity	5	5	5
BEP lease	20	20	20

Source: DBP, Revised Tariff Model 2021-25, May 2020

1545. The tax asset lives for capital assets purchased prior to 1 January 2021 were unchanged from the tax depreciation schedule approved by the ERA in the AA4 final decision.
1546. In DBP's tariff model, DBP reduced the tax lives of 'Other depreciable' capital assets purchased on or after 1 January 2020 from 20 years to 10 years. DBP had also proposed changes to economic lives for calculating regulatory depreciation. The tax lives of 'Other depreciable' capital assets purchased before 1 January 2020 remained unchanged.
1547. DBP added new asset classes in AA5 for 'Computers and motor vehicles', 'Cathodic/corrosion protection' and 'SCADA, electrical, control & instrumentation and communications'. DBP's tariff model included new tax asset classes to reflect the new asset classes. The tax asset lives for these new asset classes were consistent with their proposed economic lives.
1548. Beyond the information submitted on DBP's re-categorisation of assets in the regulatory asset base, DBP's initial proposal provided no information that would assist the ERA to assess:

- The reduction in the tax asset life for capital categorised as ‘Other depreciable’ from 20 years to 10 years.
- The tax asset lives for the new asset categories applied to capital purchased on or after 1 January 2020.

Tax depreciation method

1549. DBP amended its tax depreciation method from the straight-line method used to depreciate existing and new capital assets in the AA4 final decision.
1550. In AA5, DBP proposed to use:
- The straight-line method to depreciate capital assets purchased prior to 1 January 2021, as included in the actual tax asset base for AA4.
 - The diminishing value method to depreciate capital assets purchased on or after 1 January 2021, as included in the forecast tax asset base proposed for AA5.
1551. DBP’s proposal only changed the depreciation method for new assets. DBP noted that Australian tax law did not allow for changes in depreciation approaches mid-stream.⁶⁹⁸
1552. DBP stated that this change in depreciation method was a result of the ERA’s final decision for ATCO Gas Australia, published on 15 November 2019. In that decision, the ERA used a diminishing value method (rather than a straight-line method) to calculate tax depreciation.⁶⁹⁹
1553. In its proposed tariff model, DBP used the following formula to calculate tax depreciation on capital expenditure for each regulatory year in AA5:

$$\text{Tax Depreciation} = \text{Base value} \times (\text{days held} / 365) \times \left(\frac{200\%}{\text{asset's remaining life}} \right)$$

Tax asset base

1554. DBP used the roll forward method to establish the opening value of the tax asset base for each regulatory year in AA4.
1555. The actual tax asset base proposed by DBP for each regulatory year in AA4 is set out in Table 176.

⁶⁹⁸ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 106.

⁶⁹⁹ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 106.

Table 176: DBP's proposed actual tax asset base for AA4 (\$ million nominal)

	2016	2017	2018	2019	2020
Opening tax asset base	1,319.47	1,240.26	1,166.59	1,089.96	1,017.46
Capital expenditure	17.14	23.56	21.85	27.18	29.82
Asset disposals	-	-	-	-	-
Tax depreciation	(96.35)	(97.24)	(98.47)	(99.68)	(101.03)
Closing value	1,240.26	1,166.59	1,089.96	1,017.46	946.24

Source: DBP, Revised Tariff Model 2021-25, May 2020

1556. The opening tax asset base for the first regulatory year in AA5 (in 2021) was calculated by rolling forward the closing value of the actual tax asset base for AA4, adjusted for updates to the amounts of capital expenditure and tax depreciation that the ERA approved in its final decision for AA4.
1557. The opening tax asset base for the remaining regulatory years in AA5 (in 2021 to 2024) was calculated by rolling forward the closing value of the tax asset base in the previous regulatory year, adjusted to reflect forecast capital expenditure and depreciation proposed by DBP for each regulatory year in the AA5 period.
1558. The forecast tax asset base proposed by DBP for each regulatory year in AA5 is set out in Table 177.

Table 177: DBP's proposed forecast tax asset base for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Opening tax asset base	946.24	884.65	809.53	714.19	625.94
Capital expenditure	41.76	36.96	23.19	32.51	30.95
Asset disposals	-	-	-	-	-
Tax depreciation	(103.34)	(112.08)	(118.54)	(120.75)	(124.51)
Closing value	884.65	809.53	714.19	625.94	532.38

Source: DBP, Revised Tariff Model 2021-25, May 2020

Estimated cost of corporate income tax

1559. DBP's calculation of the estimated cost of corporate income tax for each regulatory year in AA5 is set out in Table 178.

Table 178: DBP's proposed calculation of estimated corporate income tax for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Tariff revenue	346.261	344.12	344.56	341.64	341.34
Tax expenses					
Operating expenditure, System use gas	(19.44)	(19.22)	(19.21)	(19.34)	(19.26)
Operating expenditure, Other expenses	(73.51)	(72.87)	(74.23)	(71.93)	(70.30)
Tax depreciation	(103.34)	(112.08)	(118.54)	(120.75)	(124.51)
Interest on debt	(66.62)	(65.45)	(64.33)	(62.81)	(61.38)
Total tax expenses	(262.91)	(269.62)	(276.36)	(274.83)	(275.45)
Estimated taxable income	83.35	74.50	68.20	66.80	65.88
Tax loss carried forward	-	-	-	-	-
Estimated taxable income (Net of tax loss)	83.35	74.50	68.20	66.80	65.88
Estimated cost of tax (tax rate=30 per cent)	25.00	22.35	20.46	20.04	19.76
Value of imputation credits ($\nu=0.5$)	(12.50)	(11.17)	(10.23)	(10.02)	(9.88)
DBP proposed cost of corporate income tax net of imputation credits	12.50	11.17	10.23	10.02	9.88

Source: DBP, Revised Tariff Model 2021-25, May 2020

Draft decision

1560. The ERA assessed DBP's estimated cost of corporate income tax for each regulatory year in AA5 against the requirements in rule 87A of the NGR.

1561. The ERA accepted the value that DBP used for:

- The expected statutory income tax rate for each regulatory year in AA5 of 30 per cent. This value was consistent with current expectations for the statutory company tax rate over the AA5 period.
- Allowed imputation credits of 0.50. This value conformed with the binding rate of return guidelines.⁷⁰⁰

1562. The ERA assessed DBP's calculation of the estimated taxable income to ensure that it was the best forecast of taxable income that would be earned by a benchmark efficient entity, if such an entity delivered services by means of the covered transmission pipeline.

⁷⁰⁰ Economic Regulation Authority, *Final Rate of Return Guidelines (2018) Meeting the requirements of the National Gas Rules*, 18 December 2018, pp. 39–40.

1563. For reasons outlined in the following sections, in the draft decision the ERA did not accept DBP's proposed cost of corporate income tax as being the best forecast of corporate income tax as required by rule 74 of the NGR.

Estimating taxable income

1564. As noted at paragraph 1541, the method that DBP used in the proposed tariff model was:⁷⁰¹

Smoothed tariff revenue:

minus approved forecast operating expenditure

minus depreciation of the tax asset base, calculated using the straight-line method for assets purchased before 1 January 2021 and the diminishing value method for assets purchased on or after 1 January 2021

minus debt servicing costs

add tax losses carried forward

equals estimated taxable income.

1565. In 2019, the ERA reviewed the method for calculating estimated taxable income in response to:

- The Australian Energy Regulator's (AER) review of the regulatory tax approach.⁷⁰²
- The ERA's consideration and decision on ATCO Gas Australia's proposed revisions to the Mid-West and South-West Gas Distribution Systems access arrangement for 2020 to 2024.⁷⁰³
- The ERA's consideration and decision on Goldfields Gas Transmission's proposed revisions to the Goldfields Gas Pipeline access arrangement for 2020 to 2024.⁷⁰⁴

1566. The ERA amended the method used to calculate estimated taxable income for the Mid-West and South-West Gas Distribution Systems and the Goldfields Gas Pipeline access arrangements.^{705,706} Consistent with rules 76 and 92 of the NGR, the ERA considered that the calculation of estimated taxable income should be based on total revenue (unsmoothed) rather than tariff revenue (smoothed). This is because:

- Under rule 76(c) of the NGR, the estimated cost of corporate income tax is established as a separate building block for the determination of total (unsmoothed) revenue.

⁷⁰¹ DBP, *Revised Tariff Model 2021-25*, May 2020.

⁷⁰² Australian Energy Regulator, *Final Report: Regulatory tax approach, December 2018* ([online](#)) (accessed June 2021).

⁷⁰³ Economic Regulation Authority, *Final decision on proposed revisions to the Mid-West and South-West Gas Distribution Systems access arrangement for 2020 to 2024*, November 2019.

⁷⁰⁴ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, December 2019.

⁷⁰⁵ Economic Regulation Authority, *Final decision on proposed revisions to the Mid-West and South-West Gas Distribution Systems access arrangement for 2020 to 2024*, November 2019, p. 334.

⁷⁰⁶ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, December 2019, p. 174.

- Under rule 92(2) of the NGR, the tariff variation mechanism, used to determine the reference tariff profile over the course of an access arrangement, must be designed to equalise the net present values of forecast revenue from reference services for the access arrangement period with the portion of total revenue (unsmoothed) allocated to reference services for the access arrangement period.
1567. The method the ERA used to calculate estimated taxable income in this draft decision is:

Unsmoothed tariff revenue

minus approved forecast operating expenditure

minus depreciation of the tax asset base, calculated using the straight-line method for assets purchased before 1 January 2021 and the diminishing value method for assets purchased on or after 1 January 2021

minus debt servicing costs, calculated by multiplying the debt portion of the opening regulatory asset base by the debt to equity ratio (assumed at 55 per cent) and the ERA's determined nominal cost of debt based on the rate of return chapter of this draft decision

equals estimated taxable income.

Tax asset lives

1568. The ERA reviewed DBP's proposed tax asset lives, as detailed in Table 175.
1569. The ERA accepted maintaining the existing tax asset lives for capital assets purchased prior to 1 January 2021 as they were still reasonable and consistent with Australian Taxation Office schedules.

DBP's new tax asset classes

1570. DBP proposed tax asset lives equal to their economic lives. Although DBP did not specifically justify these tax lives, DBP considered that the proposed economic lives of the three new asset categories were consistent with other regulatory decisions for other pipelines, including the ERA's regulatory decision for the Goldfields Gas Pipeline.⁷⁰⁷
1571. The ERA considered that the proposed economic lives for the new asset categories were either consistent with the lives of similar assets approved by the ERA or corresponded with those used and approved for other gas transmission pipelines within Australia. On this basis, the ERA considered that the proposed economic lives for the new categories were reasonable.
1572. The ERA further considered DBP's proposed tax asset lives for the new tax asset classes. The ERA confirmed that the tax asset lives for the tax asset classes proposed by DBP were consistent with either relevant sections in the *Income Tax Assessment Act 1997* or the Commissioner of Taxation's Ruling for the gas supply industry (TR2020/3).

⁷⁰⁷ DBP, *Final Plan Attachment 9.1 – Categorisation of our Capital Base*, January 2020, pp. 3-4.

1573. The ERA also confirmed that DBP used the 20-year statutory cap that applies to some asset classes, as identified in TR2020/3.⁷⁰⁸
1574. The ERA considered that the application of the 20-year statutory cap on asset classes, as identified in TR2020/3, would be an efficient regulatory benchmark. That is, by taking this approach, an entity would increase the net present value of depreciation deductions calculated for taxation purposes and, therefore, minimise the net present value of its corporate tax expense and maximise the net present value of its investment.
1575. DBP proposed a change to the tax asset life for 'Other depreciable' assets from 20 years to 10 years for new capital purchased on or after 1 January 2020. In its draft decision the ERA did not support the proposed change. DBP's proposed tax life for the 'Other depreciable' asset category did not reflect the tax lives of assets included in this category, such as large generators, inlet scrubbers and administrative buildings and did not meet the requirements of rule 88 of the NGR and the criteria set by rule 89. As a result, a 20-year tax asset life for DBP's 'Other depreciable' category was used in the calculation of tax depreciation.
1576. The ERA considered that the tax asset lives for the other existing asset categories ('Pipeline', 'Compression' and 'Metering') which remained the same were consistent with the *Income Tax Assessment Act 1997* or TR2020/3.
1577. The tax asset lives used by the ERA to determine tax depreciation are detailed in Table 179.

⁷⁰⁸ Australian Taxation Office, *Income tax: effective life of depreciating assets*, Taxation Ruling (TR2020/3), 1 July 2020.

Table 179: ERA's draft decision tax asset lives (years)

Asset categories	Tax lives approved by the ERA in AA4	Tax lives for capital assets purchased prior to 1 January 2021	Tax lives for capital assets purchased on or after 1 January 2021
Pipeline	20	20	20
Compression	20	20	20
Metering	15	15	15
Other depreciable	20	20	20
Computers and motor vehicles			5
Cathodic/corrosion protection			15
SCADA, electrical, control & instrumentation and communications			10
Cost of raising equity	5	5	5
BEP lease	20	20	20

Tax depreciation method

1578. In AA5, DBP proposed to use:

- The straight-line method to depreciate capital assets purchased prior to 1 January 2021, as included in the actual tax asset base for AA4.
- The diminishing value method to depreciate capital assets purchased on or after 1 January 2021, as included in the forecast tax asset base proposed for AA5.

1579. The ERA examined the reports and submissions published by the AER through its 2018 review of the regulatory tax approach, including the expert opinions of the AER's consultants Dr Martin Lally and PwC.^{709, 710, 711}

1580. The AER concluded that it would maintain the current regulatory tax depreciation method of straight-line for existing assets and apply the diminishing value method to all new assets and capital expenditure with the exception of assets qualified under section 40.72 of the *Income Tax Assessment Act 1997*, which were required to be depreciated using the straight-line method.

1581. The AER considered that it was reasonable to assume that a benchmark efficient entity would select the diminishing value tax depreciation approach because the faster depreciation under the diminishing value method meant that the regulated entity received more in net present value terms after accounting for the cost of capital. A worked example by the AER in its discussion paper showed that the net present

⁷⁰⁹ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, 31 July 2019, p. 130.

⁷¹⁰ Australian Energy Regulator, *Review of regulatory tax approach*, including stakeholder submission to Issues Paper (May 2018), Initial Report (June 2018), Discussion Paper (November 2018), and Final Report (December 2018).

⁷¹¹ Lally, M., *Tax Payments versus the AER's Allowances*, 16 June 2018.

value of the tax depreciation over the life of a hypothetical asset was higher under the diminishing value method than the straight-line method when a rate was applied to reflect inflation and the time value of money (that is, the weighted average cost of capital).

1582. Similarly, Dr Lally supported the use of the diminishing value method because it was consistent with the Net Present Value (NPV) = 0 principle. This principle requires that the present value of the revenue earned from an asset in a regulated environment in which output prices are set or capped must be equal to the initial investment to ensure that the total costs incurred are recovered:

In respect of the use of Diminishing Value (DV) depreciation by businesses rather than the Straight Line (SL) method used by the AER, the former is superior in present value terms for any asset life and discount rate because it front-loads the depreciation and this always raises the present value. So, adoption of this approach by the AER would reduce the allowed revenues of businesses to the level consistent with the NPV = 0 principle, which is in the long-term interests of consumers. Furthermore, the effect is material, there are no adverse incentive effects on businesses from doing so, and it is as simple for the AER to use DV as it is to use SL. So, there is a clear case for the AER to use DV for all firms.⁷¹²

1583. The AER also found that use of the diminishing value method was consistent with the actual practice of regulated entities that are not subject to the National Tax Equivalent Regime (known as non-NTER entities). Analysis by PwC of the tax-fixed asset registers of network service providers found that non-NTER entities used the diminishing value approach for 60 per cent of assets by value.
1584. The ERA considered that the diminishing value method should be applied as the benchmark practice in AA5 because it was consistent with the principle of setting NPV = 0 and would ensure that regulated entities cannot over-recover revenue. The ERA considered that the diminishing value method best met the long-term interests of consumers as required by the national gas objective.
1585. Sections 40 to 130 of the *Income Tax Assessment Act 1997* prevents asset owners from switching between depreciation methods for a given asset.
1586. While the ERA considered that the benchmark efficient entity would now apply the diminishing value method for tax purposes to its new assets (except for buildings which are required to be depreciated using straight-line depreciation), it did not apply this to the existing assets. This treatment was consistent with the AER's approach. It was also consistent with the ERA's final decision on the Goldfields Gas Pipeline access arrangement for 2020 to 2024.⁷¹³
1587. Under Section 40.65 of the *Income Tax Assessment Act 1997*, an entity generally has a choice between the straight-line and diminishing value method to depreciate new assets.⁷¹⁴ The ERA considered that the benchmark efficient entity would choose to adopt the straight-line method (over the diminishing value method) to:
- Maximise the benefits of the tax shield against assessable income in future years.

⁷¹² Lally, M., *Tax Payments versus the AER's Allowances*, 16 June 2018, p. 5.

⁷¹³ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, December 2019, p. 174.

⁷¹⁴ Compared to, for example, under Section 40.72 and Division 43 of the *Income Tax Assessment Act 1997*, where an entity is required to use the straight-line method to calculate tax depreciation on intangible assets and capital works.

- Reduce risks from the preservation of accrued tax losses.
1588. For the DBP draft decision, the ERA accepted:
- The straight-line method to depreciate capital assets purchased prior to 1 January 2021, as included in the actual tax asset base for AA4.
 - The diminishing value method to depreciate capital assets purchased on or after 1 January 2021, as included in the forecast tax asset base proposed for AA5 (except for buildings which are required to be depreciated using straight-line depreciation).
1589. DBP did not separately categorise building assets and therefore used the diminishing value method for all capital assets purchased on or after 1 January 2021.
1590. The ERA required that DBP separately identify any building assets from its tax assets purchased on or after 1 January 2021. Building assets purchased on or after 1 January 2021 should be depreciated using straight-line depreciation for tax purposes.
1591. When reviewing DBP's tariff model and the application of the diminishing value method, the ERA noted that the diminishing value formula used by DBP to calculate tax depreciation on capital expenditure for each regulatory year in AA5 was:

$$\text{Tax Depreciation} = \text{Base value} \times (\text{days held} / 365) \times \left(\frac{200\%}{\text{asset's remaining life}} \right)$$

1592. The ERA noted that the diminishing value method used an asset's effective life to calculate depreciation and not the asset's remaining life which reduces each year. The asset's effective life should equal the respective tax lives in Table 179 for each year regulatory year.⁷¹⁵
1593. For the draft decision, the ERA calculated depreciation using the diminishing value method through the following formula:

$$\text{Tax Depreciation} = \text{Base value} \times (\text{days held} / 365) \times \left(\frac{200\%}{\text{asset's effective life}} \right)$$

1594. The ERA required that DBP amend its formula for the diminishing value method to use an asset's effective life.

Immediate expensing of refurbishment capital expenditure

1595. In its 2018 review of the regulatory tax approach, the AER found that it may be possible for an entity to include refurbishment capital expenditure in its calculation of the tax asset base for regulatory purposes while immediately expensing this expenditure in actual tax returns.⁷¹⁶

⁷¹⁵ Australian Taxation Office, *Prime cost (straight line) and diminishing value methods*, ([online](#)) (accessed June 2020).

⁷¹⁶ Economic Regulation Authority, *Draft Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, 31 July 2019, p. 131.

1596. Further, the AER proposed to adopt immediate expensing of refurbishment capital expenditure in its regulatory models and considered that this approach would be in the long-term interests of consumers.⁷¹⁷
1597. The ERA considered the immediate expensing of refurbishment capital expenditure for the Mid-West and South-West Gas Distribution Systems and Goldfields Gas Pipeline access arrangements.^{718 719}
1598. The ERA considered that refurbishment expenditure can be immediately expensed as an operating expense, provided that the refurbishment activity does not improve the efficiency or effective life of the asset.
1599. The ERA considered that DBP would need to:
- Detail the refurbishment capital expenditure in its access arrangements that was to be included in forecast operating expenditure and, hence, immediately expensed.
 - Identify the refurbishment capital expenditure in its access arrangements and explain how refurbishment activities submitted as a capital expense improved the efficiency or effective life of the asset.

Tax asset base

1600. Consistent with DBP's proposal, the ERA used the roll forward method to establish the opening value of the forecast tax asset base for AA5.
1601. The opening tax asset base for the first regulatory year of AA5 (2021) was calculated by rolling forward the closing value of the tax asset base for AA4, adjusted for updates to capital expenditure approved by the ERA, asset disposals and actual tax depreciation for each regulatory year in AA4.
1602. The ERA calculated the roll-forward tax asset base for AA4 using the method that was determined in the final decision for AA4.
1603. Specifically:
- Opening value at 1 January 2016
- plus** actual capital expenditure (net of capital contributions) incurred in AA4
- less** depreciation based on actual capital expenditure incurred in (using the straight-line method)
- less** any asset disposals during AA4.
1604. The tax asset base calculated by the ERA for each regulatory year in AA4 is set out in Table 180.

⁷¹⁷ Australian Energy Regulator, *Final Report: Review of regulatory tax approach (Final Report)*, 17 December 2018, p. 64.

⁷¹⁸ Economic Regulation Authority, *Final decision on proposed revisions to the Mid-West and South-West Gas Distribution Systems access arrangement for 2020 to 2024*, November 2019, p. 337.

⁷¹⁹ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024*, December 2019, p. 175.

Table 180: ERA's draft decision actual tax asset base for AA4 (\$ million nominal)

	2016	2017	2018	2019	2020
Opening tax asset base	1,319.47	1,239.53	1,165.76	1,091.14	1,020.39
Capital expenditure	16.41	23.01	22.85	27.41	26.65
Asset disposals	-	-	-	-	-
Tax depreciation	(96.35)	(96.78)	(97.48)	(98.16)	(98.69)
Closing value	1,239.53	1,165.76	1,091.14	1,020.39	948.35

1605. The ERA calculated the closing value for the forecast tax asset base for each regulatory year in AA5 using the following method:

Opening value (equal to the closing value for the previous regulatory year)

plus forecast expenditure (net of capital contributions) incurred in the regulatory year

less depreciation based on forecast capital expenditure incurred in (using the straight-line method for capital purchased prior to 1 January 2021 and diminishing value on capital purchased on or after 1 January 2021)

less forecast asset disposals during AA4.

1606. The forecast tax asset base calculated by the ERA in its draft decision for each regulatory year in AA5 is set out in Table 181.

Table 181: ERA's draft decision forecast tax asset base for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Opening tax asset base	948.35	887.74	809.53	717.43	626.78
Capital expenditure	38.94	29.54	19.56	21.87	28.58
Asset disposals	-	-	-	-	-
Tax depreciation	(99.55)	(107.75)	(111.66)	(112.53)	(114.10)
Closing value	887.74	809.53	717.43	626.78	541.25

Estimated cost of corporate income tax

1607. The ERA's draft decision calculation of the estimated cost of corporate income tax (net of imputation credits) for each regulatory year in AA5 is set out in Table 182.⁷²⁰

⁷²⁰ These calculations will be revised annually as part of the tariff variation process that includes an update to the debt risk premium.

Table 182: ERA's draft decision calculation of the estimated cost of corporate income tax for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Unsmooth revenue	326.16	305.96	308.36	306.56	306.03
Tax expenses					
Operating expenditure, System use gas	24.32	25.10	25.89	26.47	26.75
Operating expenditure, Other expenses	71.75	70.88	71.81	69.55	67.81
Tax depreciation	99.55	107.75	111.66	112.53	114.10
Interest on debt	61.06	60.25	59.53	58.57	57.62
Total tax expenses	256.68	263.98	268.89	267.12	266.29
Estimated taxable income	69.48	41.98	39.47	39.45	39.74
Tax loss carried forward	0.00	0.00	0.00	0.00	0.00
Estimated taxable income (Net of tax loss)	69.48	41.98	39.47	39.45	39.74
Estimated cost of tax (tax rate=30 per cent)	20.84	12.60	11.84	11.83	11.92
Value of imputation credits ($v=0.5$)	(10.42)	(6.30)	(5.92)	(5.92)	(5.96)
Cost of corporate income tax net of imputation credits	10.42	6.30	5.92	5.92	5.96

1608. The draft decision set out the following required amendment:

Draft Decision Required Amendment 14

DBP must amend the calculation of income tax as follows:

- Amend the approach to use unsmoothed revenue to determine taxable income.
- Amend the approach to maintain a 20-year tax asset life for the tax asset class 'Other depreciable' assets.
- Separately identify any building assets from its tax assets purchased on or after 1 January 2021, which should be depreciated using straight-line depreciation for tax purposes.
- Separately identify any refurbishment capital expenditure in its access arrangements that is to be included in forecast operating expenditure and capital expenditure.
- Amend the formula for the diminishing value method to use an asset's effective life.
- Amend the estimate cost of corporate income tax in accordance with the values set out in Table 120 of this draft decision [Table 182 of this final decision].

DBP's response to the draft decision

1609. In response to the draft decision, DBP accepted all required amendments to determine the cost of tax aside from the requirement to adopt a 20-year life in respect of the 'Other depreciable' category.⁷²¹
1610. DBP accepted the income tax amendment to:⁷²²
- Use unsmoothed revenue to determine taxable income.
 - Separately identify any building assets from its tax asset purchased on or after 1 January 2021, which would be depreciated using straight-line depreciation for tax purposes. DBP noted that this should be revisited to ensure that it supported decisions relating to the economic life of the DBNGP.
 - Separately identify any refurbishment capital expenditure. DBP noted that it had no refurbishment capital expenditure proposed for AA5.
 - Amend the formula for the diminishing value method to use an asset's effective life.
1611. DBP did not accept the required amendment to adopt a 20-year tax asset life in respect of the 'Other depreciable' category. In its response to the draft decision, DBP took the approach recommended by the ERA's consultant EMCa and removed the relevant assets from the 'Other depreciable' category for the purposes of regulatory depreciation. DBP therefore also removed those same assets from the 'Other depreciable' tax asset class. As a result of this change, DBP returned the 'Other depreciable' category to 10 years consistent with the life used for regulatory depreciation.⁷²³
1612. DBP's revised calculation of the estimated cost of corporate income tax for each regulatory year in AA5 is set out in Table 183.⁷²⁴

⁷²¹ DBP, *Revised Final Plan Attachment 10.1 Response to Draft Decision on Financing Costs*, October 2020, p. 3.

⁷²² DBP, *Revised Final Plan Attachment 10.1 Response to Draft Decision on Financing Costs*, October 2020, p. 2.

⁷²³ DBP, *Revised Final Plan Attachment 10.1 Response to Draft Decision on Financing Costs*, October 2020, p. 4.

⁷²⁴ DBP, *Revised Final Plan Attachment 10.1 Response to Draft Decision on Financing Costs*, October 2020, p. 3.

Table 183: DBP's revised proposed cost of corporate income tax for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Unsmoothed revenue	391.35	307.92	311.03	303.61	303.08
Tax expenses					
Operating expenditure, System use gas	19.26	19.12	19.19	14.67	14.50
Operating expenditure, Other expenses	74.64	73.80	74.99	72.47	70.68
Tax depreciation	99.53	113.09	116.45	116.17	118.38
Interest on debt	53.18	51.64	50.86	49.78	48.84
Total tax expenses	246.62	257.65	261.49	253.09	252.40
Estimated taxable income	144.73	50.27	49.54	50.52	50.68
Tax loss carried forward	0.00	0.00	0.00	0.00	0.00
Estimated taxable income (Net of tax loss)	144.73	50.27	49.54	50.52	50.68
Estimated cost of tax (tax rate=30 per cent)	43.42	15.08	14.86	15.16	15.20
Value of imputation credits ($\gamma=0.5$)	(21.71)	(7.54)	(7.43)	(7.58)	(7.60)
Cost of corporate income tax net of imputation credits	21.71	7.54	7.43	7.58	7.60

Submissions to the ERA

1613. In response to the draft decision, the ERA received no submissions that addressed taxation.

Final decision

1614. The ERA has assessed DBP's amended proposal for the estimated cost of corporate income tax for each regulatory year in AA5 against the requirements in rule 87A of the NGR.

1615. The ERA notes that DBP accepted the majority of the ERA required changes.

Tax asset lives

1616. The ERA has reviewed DBP's proposed 10-year tax asset life for the 'Other depreciable' tax asset category.

1617. DBP has removed the longer life assets from the 'Other depreciable' tax asset category. The ERA therefore accepts DBP's 10-year tax asset life for the 'Other depreciable' tax asset category.

1618. The tax lives of asset classes approved by the ERA for the purpose of calculating the tax asset base in AA5 are listed in Table 184.

Table 184: ERA's final decision tax asset lives (years)

Asset categories	Tax lives approved by the ERA in final decision AA4	Tax lives for capital assets purchased prior to 1 January 2021	Tax lives for capital assets purchased on or after 1 January 2021
Pipeline	20	20	20
Compression	20	20	20
Metering	15	15	15
Other depreciable	20	20	10
Computers and motor vehicles	-	5	5
Cathodic/corrosion protection	-	15	15
SCADA, electrical, control & instrumentation and communications	-	10	10
Building	-	20	40
Cost of raising equity	5	5	5
BEP lease	20	20	20

Tax asset base

1619. The forecast tax asset base calculated by the ERA in its final decision for the access arrangement period is shown in Table 185 and is determined using the following (roll forward) method:

Opening value at 1 January 2021

- plus** forecast capital expenditure (net of capital contributions) to be incurred in AA5
- less** depreciation based on the forecast of capital expenditure
- less** any forecast asset disposals during AA5.

Table 185: ERA's final decision forecast tax asset base for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Opening tax asset base	947.15	887.69	804.40	705.42	618.06
Capital expenditure	50.70	36.28	22.80	33.93	22.19
Asset disposals	-	-	-	-	-
Tax depreciation	(110.16)	(119.57)	(121.78)	(121.29)	(122.91)
Closing value	887.69	804.40	705.42	618.06	517.34

Estimated cost of corporate income tax

1620. The ERA's calculation of the estimated cost of corporate income tax (net of imputation credits) for each regulatory year in AA5 is set out in Table 186.

Table 186: ERA's final decision of the estimated cost of corporate income tax for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025
Unsmoothed revenue	376.29	293.79	296.32	286.65	289.43
Expenses					
- Operating expenditure, System use gas	20.86	20.24	19.26	14.55	14.03
- Operating expenditure, Other Expenses	73.49	72.38	73.56	68.10	69.72
- Tax depreciation	110.16	119.57	121.78	121.29	122.91
- Interest on debt	51.30	49.87	49.20	48.27	47.47
Total tax expenses	255.81	262.07	263.80	252.20	254.13
Estimated taxable income	120.48	31.73	32.51	34.45	35.30
Tax loss carried forward	0.00	0.00	0.00	0.00	0.00
Estimated taxable income (Net of tax loss)	120.48	31.73	32.51	34.45	35.30
Estimated cost of tax (tax rate=30 per cent)	36.14	9.52	9.75	10.34	10.59
Value of imputation credits ($v=0.5$)	(18.07)	(4.76)	(4.88)	(5.17)	(5.30)
Cost of corporate income tax net of imputation credits	18.07	4.76	4.88	5.17	5.30

Required Amendment 12

The estimated cost of corporate income tax must reflect the values in Table 186 of this final decision.

Incentive mechanism

1622. Rule 98 of the NGR permits the ERA to approve or require the inclusion of an incentive mechanism in a full access arrangement to encourage efficiency in the provision of pipeline services by the service provider:

98 Incentive mechanism

- (1) A full access arrangement may include (and the [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 to the next.
 - (3) An incentive mechanism must be consistent with the revenue and pricing principles.
1623. The revenue and pricing principles in section 24 of the NGL require that a service provider should be provided with effective incentives to promote economic efficiency in the provision of reference services, including efficient investment in a pipeline in which reference services are provided, efficient provision of pipeline services, and efficient use of the pipeline.
1624. Increments or decrements resulting from the operation of an incentive mechanism are included as a separate building block in the determination of total revenue under rule 76(d) of the NGR.

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 (See Division 4 and 5); and
 - (b) depreciation on the projected capital base for the year (See Division 6); and
 - (c) the estimated cost of corporate income tax for the year (See Division 5A); and
 - (d) increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in efficiency (See Division 9); and
 - (e) a forecast of operating expenditure for the year (See Division 7).
1625. Rule 91(1) of the NGR requires forecast operating expenditure to be consistent with that which 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.

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 forecast of required operating expenditure of a pipeline service provider that is included in the full access arrangement must be for expenditure that is allocated between:
 - (a) reference services;
 - (b) other services provided by means of the covered pipeline; and
 - (c) other services provided by means of uncovered parts (if any) of the pipeline, in accordance with rule 93.

1626. Under rule 71 of the NGR, the ERA may infer that capital or operating expenditure is efficient and complies with other criteria prescribed in the rules from the operation of an incentive mechanism. The ERA must, however, consider and give appropriate weight to submissions and comments received on an access arrangement proposal through public consultation.

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.

1627. Rule 72(1)(l) of the NGR requires the access arrangement information for a full access arrangement proposal to include the service provider's rationale for any proposed incentive mechanism. Rule 42 requires the included information to be that which is reasonably necessary for users and prospective users to understand the background, basis and derivation of the various elements of the proposal.

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:

...

- (l) the service provider's rationale for any proposed incentive mechanism;

42 General requirements for access arrangement information

- (1) *Access arrangement information* for an access arrangement or *an access arrangement proposal* is information that is reasonably necessary for users and prospective users:
 - (a) to understand the background to the access arrangement or the *access arrangement proposal*; and
 - (b) to understand the basis and derivation of the various elements of the access arrangement or the *access arrangement proposal*.
- (2) *Access arrangement information* must include the information specifically required by the *Law*.

1628. Rule 100 of the NGR also requires the provisions of an access arrangement to be consistent with the national gas objective. The objective of the NGL is to promote efficient investment in, operation and use of natural gas services for the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply.

100 General requirement for consistency

- (1) The provisions of an access arrangement must be consistent with:
 - (a) the national gas objective; and
 - (b) these rules and the Procedures as in force when the terms and conditions of the access arrangement are determined or revised.
- (2) In deciding whether the non-tariff terms and conditions of an access arrangement are appropriate, the AER must have regard to the risk-sharing arrangements implicit in the reference tariff.

1629. The ERA is also required under section 28 of the NGL to perform its regulatory functions in a manner that will or is likely to contribute to the achievement of the national gas objective.

DBP's initial proposal

1630. DBP proposed to introduce the Efficiency Factor (E Factor) scheme as an operating expenditure efficiency carryover mechanism, commencing in AA5.⁷²⁵
1631. Under the proposed scheme, DBP would carry forward incremental operating expenditure savings (or decremental overspending) in non-excluded cost categories for five years following the year in which the efficiency gain (or loss) occurred.
1632. The amounts carried forward under the scheme would comprise a separate building block in DBP's total revenue allowance in the next access arrangement period (AA6) in accordance with rules 76(d) and 98(2) of the NGR.
1633. The operation of the E Factor scheme was described in clause 15.2 of the proposed revised access arrangement:
- 15.2 The E Factor Scheme operates in the following way:
- (a) the Operator will retain the benefit of actual operating expenditure being lower, or incur the cost of actual operating expenditure being higher, than forecast operating expenditure included in the total revenue in each year of the access arrangement period;
 - (b) the mechanism carries forward the Operator's incremental efficiency gains (or losses) relative to the E Factor benchmark approved by the ERA for five years from the year those gains (or losses) occur;
 - (c) the E Factor benchmark is the total operating expenditure forecast approved by the ERA, less the E Factor exclusions listed in clause (16.11) below;
 - (d) the incremental efficiency gains (or losses) are referred to as E Factor incentives;
 - (e) annual E Factor carryover amounts accrue in each year of the subsequent access arrangement period as the summation of the E Factor incentives in the immediately prior access arrangement period that are carried forward for five years or less into the relevant year;
 - (f) the E Factor carryover amounts are added to the Operator's total revenue in each year of the subsequent access arrangement period; and
 - (g) if necessary, the annual E Factor carryover amount is carried forward into the access arrangement period commencing 1 January 2026 until it has been retained by the Operator for a period of five years.⁷²⁶
1634. The proposed E Factor benchmark comprised the approved total annual operating expenditure forecast, less excluded expenditure categories listed in clause 15.11 of the revised proposed access arrangement:

- 15.11 The annual E Factor benchmark is the total annual operating expenditure forecast approved by the ERA, less the following E Factor exclusions:
- (a) movement in provisions;

⁷²⁵ DBP, *2021-2025 Final Plan*, January 2020, p. 116.

⁷²⁶ The ERA noted a typographical error in clause 15.2(c) of the proposed revised access arrangement. The reference to "clause (16.11)" should be a reference to "clause 15.11". This error was addressed at paragraph 1174 of the draft decision.

- (b) any operating expenditure sub-category not forecast using a top-down, revealed cost approach. These costs may include, but are not limited to, operating costs incurred by the Operator relating to:
 - (i) system use gas; and
 - (ii) non-recurrent operating expenditure;
 - (c) any operating expenditure sub-category not reasonably within the control of the Operator. These costs may include, but are not limited to, operating costs incurred by the Operator relating to:
 - (i) permits;
 - (ii) licence fees;
 - (iii) ERA costs; and
 - (iv) rates and taxes;
 - (d) any operating expenditure amount not included in the ERA approved operating expenditure forecast, but that meets the requirements of Rule 91(1) and was incurred for the purpose of reducing capital expenditure;
 - (e) any ERA approved operating expenditure amount arising from cost pass through events which apply in respect of that year; and
 - (f) any other operating expenditure amount that the Operator and the ERA agree to exclude from the E Factor benchmark.
1635. DBP also proposed to adjust the E Factor benchmark to be consistent with capitalisation policy changes that may occur during the access arrangement period, under clause 15.12 of the proposed revised access arrangement:
- 15.12 Where the Operator changes its approach to classifying costs as either capital expenditure or operating expenditure during the access arrangement period, the Operator will adjust the E Factor benchmark to be consistent with the capitalisation policy changes.
1636. DBP also proposed to index carry forward efficiency gains, consistent with forecast operating expenditure, under clause 15.9 of the proposed revised access arrangement:
- 15.9 The E Factor incentives are carried over from year to year in real dollars to ensure that these gains (or losses) are not eroded by inflation. The price index or indices used in this calculation are to be consistent with those used to forecast operating expenditure for the access arrangement period.
1637. DBP's proposed operating expenditure, E Factor exclusions and E Factor benchmarks for the AA5 period are shown in Table 187.

Table 187: DBP's initial proposed operating expenditure categories, E Factor benchmarks and excluded cost categories, 2021 to 2025 (\$million real at 31 December 2020)

Operating expenditure category	2021	2022	2023	2024	2025
Wages and salaries	27.7	27.9	28.1	28.3	28.5
Field expenses	11.2	11.2	11.2	11.2	11.2
Non-field expenses	11.9	11.9	11.9	11.9	12.0
Reactive maintenance	1.9	1.9	1.9	1.9	1.9
Capex to opex	2.3	1.9	2.2	2.2	1.9
Government charges	4.5	4.5	4.5	4.5	4.5
E Factor benchmark	59.4	59.2	59.7	60.0	59.9
<i>Excluded costs:</i>					
Government charges	4.3	4.3	4.3	4.3	4.3
System use gas	20.6	20.9	21.2	22.2	22.5
GEA/turbine overhauls	8.9	7.6	7.6	4.4	2.1
Total forecast opex	93.2	92.1	92.9	90.8	88.8

Source: DBP, 2021-2025 Final Plan – Attachment 7.1: Opex forecast model, January 2020.

Draft decision

1638. The purpose of the E Factor scheme is to provide DBP with time-neutral incentives to implement efficiency gains in each year of the access arrangement period.
1639. DBP's incentives to implement efficiency gains during the access arrangement period are distorted due to the periodic nature of the regulatory review process and the base year revealed cost method of forecasting efficient operating expenditure in the next access arrangement period.
1640. Without an efficiency carryover mechanism, DBP would retain the benefit (or bear the cost) of an efficiency gain (or loss) until it accrued to customers through a revised total revenue allowance and real tariff adjustment in the next access arrangement period. DBP could maximise the retention period of an efficiency gain by deferring discretionary savings until after its forecast efficient costs have been assessed for the next regulatory period.
1641. DBP could also influence its operating expenditure forecast in the next access arrangement period by inefficiently manipulating base year costs.
1642. Incentives that encourage a service provider to act contrary to achieving the lowest sustainable cost of providing reference services are not in the long-term interests of customers and are not consistent with the revenue and pricing principles and the national gas objective.
1643. In the draft decision, the ERA considered that the initially proposed E factor scheme complied with rules 98(1) and (2) of the NGR to the extent that it encouraged efficiency in the provision of services and provided for carrying over increments for

efficiency gains and decrements for efficiency losses from one access arrangement period to the next.

1644. The ERA considered the following matters to determine the consistency of the E Factor scheme with the revenue and pricing principles of the NGL (rule 98(3) of the NGR) and the national gas objective:
- DBP’s proposed carryover period length and proportional allocation of benefits or costs between DBP and customers.
 - The symmetrical operation of the E Factor scheme, specifically the application of carry forward decrements in the operator’s total revenue allowance.
 - The operating expenditure categories DBP proposed to exclude from the E Factor benchmark.
 - DBP’s incentives to ensure operating expenditure efficiencies do not lead to a decline in service performance.
 - DBP’s incentives to achieve efficiency gains by substituting operating expenditure for capital expenditure.
 - DBP’s proposal to index carry forward efficiency gains or losses.
1645. The ERA also considered Perth Energy’s proposal to allow DBP to allocate a portion of efficiency benefits towards an arrangement such as a network innovation scheme.

Length of proposed carryover period

1646. DBP stated that the proposed five-year carryover period would ensure that its incentive to outperform its operating expenditure benchmark was constant in each year of the access arrangement period.⁷²⁷
1647. DBP submitted that it would retain approximately 30 per cent of the total benefit (or cost) of a recurrent efficiency gain (or loss) when future benefits (or costs) were discounted at a real rate of 6.0 per cent over 30 years.⁷²⁸
1648. The ERA considered that:
- A carryover period length corresponding to the length of the access arrangement period eliminated the cyclical distortion in incentives to implement or defer efficiency gains and enabled the service provider to retain the maximum share of an efficiency gain that it could have achieved without a carryover mechanism.
 - A carryover period length less than the access arrangement period reduced but did not eliminate the cyclical distortion in incentives to implement or defer efficiency gains.
 - A carryover period length greater than the access arrangement period allocated a greater proportion of the total efficiency gain (or loss) to the service provider with no further reduction in the timing distortion of incentives to implement efficiency gains.
 - As DBP’s initially proposed access arrangement revision commencement date of 1 January 2026 was consistent with rule 50(2) of the NGR (paragraph 77), a

⁷²⁷ DBP, *2021-2025 Final Plan*, January 2020, p.118 and DBP, *2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 1.

⁷²⁸ DBP, *2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 1.

carryover period length of five years was necessary and sufficient to achieve the incentive smoothing objectives of the scheme in AA5.

1649. The ERA therefore considered the proposed five-year carryover period to be consistent with the revenue and pricing principles and the national gas objective and that it should not be adjusted to increase or decrease the proportional allocation of benefits (or costs) between DBP and customers.

Symmetry of the E Factor scheme

1650. Clause 15.2 of DBP's proposed revised access arrangement stated that DBP would retain the benefit of an efficiency gain as a carry forward increment where actual operating expenditure was less than the approved forecast, or incur a loss as a carry forward decrement where actual operating expenditure exceeded forecast operating expenditure in non-excluded cost categories.
1651. DBP previously operated under an asymmetric incentive scheme in the AA2 period, in which only efficiency gains were carried forward. The ERA noted in its draft decision for the AA3 period that the asymmetric nature of the scheme provided inappropriate incentives for DBP to shift costs across the access arrangement period and did not increase the ERA's confidence that DBP's revealed costs were efficient:⁷²⁹

Under the incentive mechanism applying under the access arrangement for the 2005 to 2010 [AA2] access arrangement period, the Authority is concerned that DBP has had an incentive to shift costs from early to later in the access arrangement period and that this may have been at least partly responsible for the trend of increasing operating costs over the period. In this case, the potential outworking of the incentive mechanism is a benefit to DBP of approximately \$20 million, but there is no obvious benefit to users of the DBNGP through sustained efficiency gains in operating costs. Moreover, the incentive mechanism has not served to increase the confidence of the Authority in interpreting the actual costs for the latter years of this period as a benchmark of efficient costs.

1652. The ERA considered in its final decision for the AA3 period that the problems with the asymmetric mechanism could be resolved by ensuring DBP was exposed to penalties for efficiency losses as well as rewards for efficiency gains:

The problems with the incentive mechanism of the current access arrangement could be resolved by changing the mechanism so that the service provider is exposed to penalties for efficiency losses (actual costs exceeding forecast costs) as well as rewards for efficiency gains.⁷³⁰

1653. DBP stated in its initial proposal for AA5 that customers had sought assurance that the E Factor scheme would be applied symmetrically.⁷³¹
1654. In the draft decision, the ERA concluded that the proposed symmetrical application of the E Factor scheme was consistent with the NGL and NGR, including the revenue and pricing principles in section 24 of the NGL, rule 98(3) of the NGR, and the national gas objective.
1655. Rule 98(3) of the NGR requires an incentive mechanism to comply with the revenue and pricing principles in section 24 of the NGL. Section 24(2) of the NGL stipulates

⁷²⁹ ERA, *Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 14 March 2011, p. 203.

⁷³⁰ ERA, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 31 October 2011, p. 168.

⁷³¹ DBP, *2021-2025 Final Plan*, January 2020, p. 119.

that a service provider should be provided with a reasonable opportunity to recover its efficient costs incurred in providing reference services and complying with regulatory obligations.

1656. Section 24(5) of the NGL states that a reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing related reference services. Regard should also be had to the economic costs and risks of potential for under or over investment (section 24(6)) and under or over use of a pipeline with which a service provider provides pipeline services (section 24(7)).
1657. Rules 76(d) (Total revenue) and 98(2) (Incentive mechanisms) of the NGR both anticipate and permit the inclusion of decrements in the service provider's total revenue allowance in each regulatory year. Since a decrement to a service provider's total revenue allowance may affect its ability to recover its forecast efficient costs (section 24(2) of the NGL) or to earn a return commensurate with the regulatory or commercial risks of providing related reference services (section 24(5) of the NGL) in a particular year, the revenue and pricing principles are interpreted to apply across a relevant but indeterminate period, rather than in each particular year.
1658. Under DBP's proposed E Factor scheme DBP would only derive a carry forward loss if it incurred operating expenditure in excess of its forecast efficient costs in non-excluded categories in a particular year, or if it failed to sustain an efficiency gain achieved in a prior year. The ERA concluded that in each case, DBP would not be deprived of the reasonable opportunity to recover at least its efficient costs, nor denied the ability to earn a return commensurate with the regulatory and commercial risks of providing reference services during the period in which relevant costs were incurred and subsequent carryover period.
1659. Regarding the economic costs and risks of under or over investment, or under or over utilisation of the pipeline, the ERA considered the risk that DBP would incur substantial or sustained carry forward losses due to the operation of the proposed E Factor scheme was low for the following reasons:
- Rule 91(1) of the NGR requires DBP's operating expenditure forecast to 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 reference services.
 - The E Factor scheme enhances pre-existing, although irregular, incentives implicit in the regulatory framework for DBP to incur efficient costs.
 - The carry forward of efficiency losses for the duration of the carryover period comprises an additional strong incentive for DBP to not incur operating expenditure in excess of its forecast efficient costs.
 - DBP has the opportunity to mitigate the risk of unforeseen costs not included in its total revenue allowance through a cost pass through variation.
1660. The ERA also considered that the symmetrical application of the proposed E Factor scheme was consistent with the operation of the Efficiency Benefit Sharing Scheme (EBSS) administered by the AER. The AER considered an appropriate penalty for overspending operating expenditure was fundamental to mitigating network service providers' (NSPs) incentives to inflate base year costs.⁷³²

⁷³² AER, *Expenditure incentives guidelines for electricity network service providers, Issues paper*, March 2013, p. 30.

E Factor exclusions – general principles

1661. As outlined in paragraph 1634, DBP proposed to include in the E Factor benchmark only those costs estimated by the top-down, roll-forward method and that were reasonably within its control as general principles:⁷³³

As a general principle, the costs that make up the opex benchmark in the E Factor are those:

- calculated using a top-down, roll-forward method; and
- reasonably within our control.

Costs not forecast using the top-down, roll-forward method

1662. DBP considered that the volatility of expenditure in cost categories estimated by bottom-up build, including gas engine alternator and turbine overhauls, insurance and system use gas, resulted in an insufficient level of forecast certainty such that DBP could earn carry forward gains (or losses) under the E Factor scheme in excess of the actual benefit (or overspend):

Cost categories estimated via bottom-up build are typically non-recurrent or simply too volatile and exogenous to forecast with sufficient certainty. As a result, any efficiency gains or losses in respect of these costs tend to be based on changes in recurrent expenditure.

It is not appropriate to carryover non-recurrent efficiency gains, as there is the risk DBP could retain more than 100% of the benefit, resulting in windfall gain. These categories are GEA and turbine overhauls, insurance and SUG.⁷³⁴

1663. Under the E Factor scheme, DBP would retain the benefit of an efficiency saving by carrying forward incremental gains for the duration of the carryover period. Customers then benefit through a lower efficient cost forecast and revenue allowance at the expiration of the carryover period.

1664. When forecasting efficient costs in the next access arrangement period, DBP typically applies a top-down roll-forward method, alternatively called the base-step-trend method. The base year revealed cost method of forecasting efficient operating expenditure relies on the following general assumptions:

- The relative consistency and predictability of operating expenditure, such that historical costs in the nominated base year are a reasonable expectation of future costs.
- The effectiveness of incentives available to the service provider to achieve the lowest sustainable cost of providing reference services, such that revealed costs are a reliable indicator of efficient costs.

1665. If costs not forecast using the base year revealed cost method are included in the E Factor benchmark, DBP could derive a carryover benefit from a non-recurrent efficiency gain, but customers would not benefit through a lower efficient cost forecast in future periods.

⁷³³ DBP, 2021-2025 Final Plan – Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 6.

⁷³⁴ DBP, 2021-2025 Final Plan – Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 6.

1666. As a general principle, the ERA considered the exclusion of costs not forecast using a base year revealed cost method from the E Factor benchmark to be consistent with the revenue and pricing principles and the national gas objective.
1667. In its review of the EBSS, the AER also considered that electricity NSPs could retain a disproportionate benefit if non-recurrent cost categories not forecast using a single (base) year revealed cost approach were not excluded from the scheme:
- The EBSS will reward the NSP as if the efficiency gains were ongoing. However, the opex forecast could treat the efficiency gain as non-recurrent. In this scenario the NSP could retain more than 100 per cent of the non-recurrent efficiency gain. For this reason, we should exclude the expenditure categories not forecast using a single year revealed cost forecasting method from the EBSS to prevent network users being worse off from a non-recurrent efficiency gain.⁷³⁵
1668. The AER subsequently implemented the revised provisions of the EBSS in the equivalent efficiency carryover mechanism applied to gas distribution and transmission networks, including Jemena Gas Networks (JGN) and APA Victorian Transmission System:
- If we subject costs to the ECM that are not forecast using a revealed cost approach, a business would in theory receive a reward for efficiency gains through the ECM (at a cost to consumers), but consumers would not benefit through a lower revealed cost forecast in the subsequent access arrangement period. Therefore, we typically exclude costs that we do not forecast using a single year revealed cost forecasting approach.⁷³⁶
- Service providers may have a number of reasons to propose alternative forecasting approaches. However, the benefit sharing allowance may not share efficiency gains consistently when a single year revealed cost approach is not used to forecast opex. If such an approach is not used, there is a risk the benefit sharing allowance may provide windfall gains or losses to a service provider. For this reason we will exclude from the actual opex amounts used to calculate the benefit sharing allowance, any cost category that is not forecast using a single year revealed cost approach in the following access arrangement period.⁷³⁷
1669. The exclusion of costs not forecast using the base year revealed cost method is also consistent with the position expressed by gasTrading in its submission to the ERA's issues paper. GasTrading considered that the scheme should apply to efficiency savings attributable to management and exclude those that result from lower than forecast utilisation of the pipeline.

Costs not reasonably within DBP's control

1670. DBP stated that the exclusion of costs not reasonably within its control from the E Factor benchmark would avoid windfall gains or losses accruing under the scheme that were driven by external factors.⁷³⁸
1671. In its review of the EBSS in 2013, the AER's decision to disallow the previously permitted exclusion of costs deemed not reasonably within electricity NSPs' control was because:

⁷³⁵ AER, *Explanatory Statement, Efficiency Benefit Sharing Scheme for Electricity Network Service Providers*, November 2013, p. 13.

⁷³⁶ AER, *DRAFT DECISION, Jemena Gas Networks (NSW) Ltd Access Arrangement 2020 to 2025, Attachment 8 Efficiency carryover mechanism*, November 2019, p. 10.

⁷³⁷ AER, *DRAFT DECISION, APA VTS Australia Gas access arrangement 2018 to 2022, Attachment 9 – Opex incentive mechanism*, July 2017, p. 9-9.

⁷³⁸ DBP, *2021-2025 Final Plan – Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 5.

- There was no compelling reason that the forecasting risk associated with uncontrollable operating expenditure should be shared differently between service providers and customers when compared with operating expenditure categories forecast using a base year revealed cost method.
- Service providers could apply for a significant cost variation due to an external event to be recognised as a pass through variation.
- Relevant provisions of the National Electricity Rules did not differentiate between controllable and uncontrollable expenditure when determining efficiency gains or losses.⁷³⁹

1672. The AER also noted that electricity NSPs usually had some degree of control in their response to costs associated with external events and that excluding those costs from the scheme would reduce the service providers' incentive to manage their response to those events:

We acknowledge the EBSS will reward or penalise NSPs for some forecasting error associated with uncontrollable events. However, on the whole, the risk of uncontrollable events presents both upside and downside risk to NSPs. Relevantly, any material risks can be managed through pass-through events and contingent projects. We do not think there is a compelling argument to share the cost of uncontrollable events differently to all other costs facing NSPs.

While some events may be uncontrollable, NSPs usually have some control over the costs associated with such events. Allowing exclusions would reduce the incentive to respond to such events efficiently.⁷⁴⁰

1673. DBP also stated that the exclusion of uncontrollable costs from the E Factor scheme was consistent with the operation of the gain sharing mechanism (GSM) applied to Western Power under the *Electricity Networks Access Code 2004*:

While elements of the E Factor are similar to the AER's EBSS, the design of the scheme, including the various inclusions and exclusions, is more akin to the ERA's GSM.

Excluding these costs is consistent with the operation of Western Power's GSM, where these uncontrollable items (such as the Energy Safety levy, ERA costs and licence fees) are adjusted for in the efficiency and innovation benchmarks.^{741, 742}

1674. The ERA considers the E Factor scheme is not comparable to the GSM as applied to Western Power under the *Electricity Networks Access Code*. Specifically, section 6.26 of the Access Code states that an above-benchmark surplus does not exist to the extent that a service provider has achieved efficiency gains by failing to maintain prescribed minimum service standards:

6.26 An above-benchmark surplus does not exist to the extent that a service provider achieved efficiency gains or innovation in excess of the efficiency and innovation benchmarks during the previous access arrangement period by failing to comply with section 11.1.

⁷³⁹ AER, *Better Regulation, Explanatory statement, Proposed Efficiency Benefit Sharing Scheme*, August 2013, p. 27.

⁷⁴⁰ AER, *Better Regulation, Explanatory statement, Efficiency Benefit Sharing Scheme*, November 2013, p. 19.

⁷⁴¹ DBP, *2021-2025 Final Plan*, January 2020, p. 117.

⁷⁴² DBP, *2021-2025 Final Plan – Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 6.

{Note: Section 11.1 requires a service provider to maintain a service standard at least equivalent to the service standard benchmarks set out in the access arrangement or access contract.}⁷⁴³

1675. DBP also stated that the E Factor scheme would more closely align its incentive framework with AGIG's other infrastructure businesses:

We are introducing the E Factor for AA5 to help sharpen our focus on improving operating practices and maximising the efficiency of our pipeline services. By operating under an efficiency scheme, DBP will also be more closely aligned with AGIG's other infrastructure businesses, as well as the continuous improvement and knowledge sharing culture across the Group.⁷⁴⁴

1676. As noted at paragraph 1671, the EBSS or equivalent efficiency carryover mechanism administered by the AER that applies to AGIG's other infrastructure businesses does not permit the exclusion of costs not reasonably within the control of the operator.
1677. Given the inconsistency in the exclusions proposed by DBP with those permitted under the schemes administered by AER, and the lack of comparability of the E Factor scheme with the gain sharing mechanism as applied to Western Power, the ERA considered DBP had provided insufficient information to support its rationale for excluding cost categories not reasonably within its control from the E Factor benchmark as a general principle. In this circumstance, the ERA considered DBP's proposal to exclude cost categories not within its control from the E Factor benchmark to be inconsistent with the national gas objective.

E Factor exclusions and adjustments – specific exclusions

1678. DBP proposed to exclude the specific cost categories from the E Factor benchmark, called E Factor exclusions, listed in clause 15.11 of the proposed revised access arrangement (reproduced at paragraph 1634).
1679. DBP also proposed to adjust the E Factor benchmark to be consistent with capitalisation policy changes during the access arrangement period (clause 15.12).

Movements in provisions

1680. DBP proposed to exclude movements in provisions from the E Factor benchmark (clause 15.11(a) of the proposed revised access arrangement).⁷⁴⁵ Provisional expenses are future liabilities having uncertain timing or amount.
1681. DBP did not propose an amount for movements in provisions to be excluded from the E Factor benchmark in the AA5 period.
1682. To the extent that carryover benefits (or costs) achieved under the E Factor scheme should be derived from actual operating expenditure savings (or costs) incurred by the service provider relative to its forecast efficient costs, the ERA considered the exclusion of movements in provisions from the E Factor benchmark to be consistent with the revenue and pricing principles and the national gas objective.

⁷⁴³ *Electricity Networks Access Code 2004.*

⁷⁴⁴ DBP, *2021-2025 Final Plan – Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 4.

⁷⁴⁵ DBP, *DBNGP Access Arrangement 2021-25*, January 2020, p. 28.

Costs not forecast using a top-down, roll-forward method – system use gas

1683. DBP proposed to exclude system use gas (SUG) from the E Factor benchmark in the AA5 period (clause 15.11(b) of the proposed revised access arrangement).⁷⁴⁶
1684. “System Use Gas” on the DBNGP is defined at clause 16 of the proposed revised access arrangement to include gas consumed, lost or vented from the pipeline during normal operations or abnormal circumstances:
- System Use Gas** means Gas used by the Operator for the following purposes:
- (a) replacing Gas consumed in the operation of the DBNGP (including, but not limited to:
 - (i) compressor fuel;
 - (ii) gas engine alternator fuel;
 - (iii) heater fuel; and
 - (iv) increases to linepack, other than:
 - (A) when caused by or for the purposes of a supply of linepack gas to a third party under a balancing or back up service arrangement; or
 - (B) repacking the linepack of the DBNGP after an Expansion which involves looping of the pipeline); and
 - (b) replacing gas which leaks or otherwise escapes from the DBNGP (whether in normal operational circumstances or due to any rupture or other abnormal leakage) and Gas vented as part of the normal operation of the DBNGP.
1685. DBP projected SUG expenditure to total \$144 million in AA4, which compares with its approved forecast of \$190 million.⁷⁴⁷
1686. DBP attributed the lower than forecast SUG costs in AA4 to a lower Full Haul throughput and a lower average actual price than forecast. DBP stated that the price variance resulted primarily from timing differences between forecast and actual SUG expenditure.⁷⁴⁸
1687. In its Final Plan for AA5, DBP forecast SUG costs of \$107 million in AA5, comprising around 24 per cent of total forecast operating expenditure.⁷⁴⁹ DBP subsequently updated its gas throughput forecast which resulted in a revised forecast SUG cost of \$93 million in AA5.⁷⁵⁰
1688. DBP forecasts SUG costs as a product of forecast quantities and forecast prices. Quantity forecasts are derived from compressor fuel and operational requirements, including in gas engine alternators and vented during normal operation and maintenance activities.⁷⁵¹
1689. Since SUG expenditure is forecast on a bottom-up basis and savings achieved in SUG costs do not reflect recurrent efficiency savings, the ERA considered the exclusion of SUG costs from the E Factor scheme to be consistent with the general

⁷⁴⁶ DBP, *DBNGP Access Arrangement 2021-25*, January 2020, p. 28.

⁷⁴⁷ DBP, *2021-2025 Final Plan*, January 2020, p. 65.

⁷⁴⁸ DBP, *2021-2025 Final Plan*, January 2020, p. 66.

⁷⁴⁹ DBP, *2021-2025 Final Plan*, January 2020, p. 62.

⁷⁵⁰ DBP, *Email – Demand and Service Update*, 22 May 2020.

⁷⁵¹ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 62.

principle that costs not forecast using a base year revealed cost approach be excluded from the scheme.

Costs not forecast using a top-down, roll-forward method – gas engine alternators and turbine overhauls

1690. DBP proposed to exclude non-recurrent expenditure on gas engine alternators and turbine overhauls from the E Factor benchmark during the AA5 period (clause 15.11(b) of the proposed revised access arrangement).⁷⁵²
1691. Gas engine alternators generate electricity for operational requirements including remote facilities and compressor stations north of Perth. Gas turbines maintain pressure in the pipeline.
1692. Gas engine alternators are serviced at regular intervals based on run hours. Since power requirements at each site include a base load component, gas engine alternator run hours are not significantly related to throughput.
1693. Gas turbines are also overhauled in line with manufacturer specifications, based on run hours and probability of failure. Gas turbine run hours are directly related to throughput.
1694. DBP forecast \$31 million in operating expenditure for gas engine alternator and turbine overhaul in AA5, covering 20 gas engine alternator overhauls at an average cost of \$1 million per year.
1695. In comparison, DBP performed 16 gas engine alternator overhauls and six turbine overhauls in the AA4 period at a total projected cost of \$28 million.⁷⁵³ DBP's forecast efficient allowance in AA4 was \$33 million.⁷⁵⁴
1696. DBP's turbine overhauls expenditure in AA4 included two premature failures and two turbine swaps. The lower expenditure in the AA4 period resulted from a managed strategy of spreading run hours between turbines at each compressor station such that individual units remained below the 30,000 hour overhaul threshold. As a result, DBP forecast seven turbine overhauls in AA5 based on unit run hours and use rates, with one contingent overhaul in the event of a premature failure. DBP's forecast includes two overhauls each year for the first three years of the AA5 period, with one each in the last two years, at an average cost of \$6 million per year.
1697. Since gas engine alternators and turbine overhaul costs are also forecast on a bottom-up basis, the ERA considered the exclusion of gas engine alternator and turbine overhauls from the E Factor scheme to be consistent with the general principle that costs not forecast using a base year revealed cost approach be excluded from the scheme.

Costs not forecast using a top-down, roll-forward method – capital expenditure to operating expenditure

1698. DBP included \$10.5 million in reclassified operating expenditure categories in AA5. This expenditure was previously classified as capital expenditure and forecast on a bottom-up basis. The 'Capex to opex' category includes works related to asset

⁷⁵² DBP, *DBNGP Access Arrangement 2021-25*, January 2020, p. 28.

⁷⁵³ DBP, *2021-2025 Final Plan*, January 2020, p. 63.

⁷⁵⁴ DBP, *2021-2025 Final Plan*, January 2020, p. 66.

inspections, minor pipeline works, and health and process safety initiatives which are ongoing and operational in nature.⁷⁵⁵

1699. DBP did not propose to exclude the 'Capex to opex' transitional category from the E Factor benchmark since those costs are reflected in the operating expenditure forecasts.
1700. The ERA required an amendment to clause 15.11(b) of the proposed revised access arrangement to clarify that recurrent 'Capex to opex' forecast on a bottom-up basis was not subject to exclusion under this clause, set out in Draft Decision Required Amendment 15:

Draft Decision Required Amendment 15

DBP must amend clause 15.11(b) of the proposed revised access arrangement to read as follows:

- (b) any operating expenditure sub-category not forecast using a top-down, revealed cost approach. These costs:
- (i) may include, but are not limited to, operating costs incurred by the Operator relating to:
 - A. system use gas; and
 - B. non-recurrent operating expenditure.
 - (ii) must not include operating expenditure previously classified as capital expenditure that was forecast on a bottom-up basis.

Costs not reasonably within DBP's control - permits, licence fees, ERA costs and taxes

1701. Within the category of costs not reasonably within its control, DBP proposed to exclude costs of permits, licence fees, ERA costs, and rates and taxes.⁷⁵⁶
1702. DBP proposed to exclude costs associated with permits, licence fees, ERA costs, and rates and taxes from the E Factor benchmark as these costs were not reasonably within its control (clause 15.11(c) of the proposed revised access arrangement):
- The only E Factor opex exclusions forecast using the top-down, roll-forward method are permits, licence fees, rates and taxes.
- We propose these costs be excluded because they are driven by external factors and are not reasonably within our control.⁷⁵⁷
1703. DBP forecast approximately \$33.1 million (nominal at December 2020) in actual expenditure on 'Government charges' in the AA4 period, including costs associated with permits, licence fees, ERA costs, and rates and taxes. This expenditure compares with its forecast efficient allowance of \$36.5 million.
1704. DBP forecast costs associated with 'Government charges' of approximately \$43.8 million (nominal at December 2020) in the AA5 period, of which \$21.5 million comprised permits, licence fees, ERA costs and rates and taxes which DBP proposed

⁷⁵⁵ DBP, 2021-2025 Final Plan, Attachment 7.4: Expenditure Reclassification Review, January 2020, p. 6.

⁷⁵⁶ DBP, 2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 6.

⁷⁵⁷ DBP, 2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 6.

to exclude from the E Factor benchmark as it considered these costs were not reasonably within its control.

1705. Consistent with matters previously considered (at paragraph 1677), the ERA considered DBP had not submitted sufficient information to explain its rationale for excluding costs of permits, licence fees, ERA costs and taxes from the E Factor scheme in accordance with rules 42(1) and 72(1)(l) of the NGR and the national gas objective. DBP was therefore required to remove clause 15.11(c) from the proposed revised access arrangement in accordance with draft decision required amendment 16:

Draft Decision Required Amendment 16

DBP must remove clause 15.11(c) from the proposed revised access arrangement.

Operating expenditure not included in the approved operating expenditure forecast incurred for the purpose of reducing capital expenditure

1706. DBP proposed to exclude from the E Factor benchmark operating expenditure not included in the approved operating expenditure forecast, but that met the requirements of Rule 91(1) and was incurred for the purpose of reducing capital expenditure (clause 15.11(d)).
1707. Under rule 91(1) of the NGR, 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.
1708. DBP stated the exclusion of operating expenditure incurred in place of capital expenditure from the E Factor benchmark would ensure that it had an ongoing incentive and flexibility to deliver the most efficient outcome:

We also propose that if during the access arrangement period we identify a more efficient opex-based solution that can be adopted in place of capex, this opex is excluded from the E Factor benchmark. This means we will have an ongoing incentive to deliver the most efficient solution – whether opex or capex – and have the flexibility in-period to substitute capex for opex (or vice versa) where efficient to do so.⁷⁵⁸

1709. DBP did not specify an amount that would be excluded from the E Factor benchmark under clause 15.11(d) of the proposed revised access arrangement for the AA5 period. Rather, DBP's proposal was that it could propose amounts to be excluded under clause 15.11(d) in retrospect at the next access arrangement review.
1710. The ERA considered the exclusion of costs not included in the operating expenditure forecast, but that meet the requirements of rule 91(1) of the NGR and which were incurred for the purpose of reducing capital expenditure, to be consistent with the revenue and pricing principles and the national gas objective.

Any approved operating expenditure amount arising from cost pass through variation

1711. DBP proposed to exclude from the E Factor benchmark any approved operating expenditure amount arising from cost pass through variation which applied in respect of that year (clause 15.11(e) of the proposed revised access arrangement).

⁷⁵⁸ DBP, 2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 4.

1712. Cost pass through variations are described in clause 11.5 of the proposed revised access arrangement as a reference tariff variation mechanism:

New Costs Pass Through Variation

11.5 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 criteria in NGR 91(1) for operating expenditure;
 - (iii) were not included in the Operators' forecast operating expenditure at the time 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.

1713. Under clauses 11.5(d) and (g) of the proposed revised access arrangement, DBP must notify the ERA of its intention to increase its operating expenditure that is used to calculate total revenue in each year of the current access arrangement period and may not vary the reference tariff unless the ERA has issued written approval of the variation.

1714. The ERA considered the following matters to determine that cost pass through variations should not be excluded from the E Factor benchmark:

- Cost pass through variations may be approved *ex ante* or *ex post*.
- If a cost pass through variation is approved *ex ante*, the approved costs should be subject to incentives to achieve efficiency gains similar to costs which have been included in the approved forecast operating expenditure.
- If a cost pass through variation is approved *ex post*, the retroactive inclusion of the associated cost in the E Factor benchmark and the approved operating expenditure forecast will result in a neutral outcome under the E Factor scheme.

1715. The ERA considered the exclusion of cost pass through variations from the E Factor scheme would not be consistent with the revenue and pricing principles and the national gas objective. DBP was therefore required to remove clause 15.11(e) from the proposed revised access arrangement in accordance with Draft Decision Required Amendment 17:

Draft Decision Required Amendment 17

DBP must remove clause 15.11(e) from the proposed revised access arrangement.

Any other operating expenditure amount

1716. DBP proposed to exclude from the E Factor benchmark any other operating expenditure amount agreed between DBP and the ERA (clause 15.11(f)).
1717. DBP did not propose any amounts or categories of expenditure that may be excluded from the E Factor scheme under clause 15.11(f) for the AA5 period.
1718. In exercising its regulatory functions or powers under the NGL, under section 24 and section 28 of the NGL the ERA is bound by the efficiency objectives of the revenue and pricing principles and the national gas objective.

1719. To the extent that DBP's commercial objectives may not align with the long term interests of consumers of natural gas, the ERA considered the pipeline operator's agreement as a condition to the exclusion of other costs from the E Factor benchmark to be inconsistent with the revenue and pricing principles and the national gas objective.
1720. DBP was required to amend clause 15.11(f) of the proposed revised access arrangement to remove the pipeline operator's agreement as a precondition to the exclusion of other costs from the E Factor benchmark in accordance with Draft Decision Required Amendment 18:

Draft Decision Required Amendment 18

DBP must amend clause 15.11(f) of the proposed revised access arrangement to read as follows:

- (f) any other operating expenditure amount that the ERA notifies the Operator is required by the ERA to exclude from the E Factor benchmark.

Capitalisation policy changes

1721. In its initial proposal DBP proposed to adjust the E Factor benchmark to be consistent with any capitalisation policy changes during the access arrangement period (clause 15.12 of the revised proposed access arrangement).
1722. The adjustment of the E Factor benchmark to reflect capitalisation policy changes was intended to ensure that DBP would not be rewarded or penalised for variances in operating expenditure attributable to capitalisation policy decisions. Such adjustments were also consistent with the approach required by the AER in its 2017 decision on the APA Victorian Transmission System:

We also require the forecast opex amounts used to calculate the benefit sharing allowance reflect any capitalisation policy changes. This will ensure that APA is not rewarded or penalised for opex changes due entirely to change in APA's capitalisation policy.⁷⁵⁹

1723. The ERA considered the adjustment of the E Factor benchmark to account for capitalisation policy changes during the access arrangement period to be consistent with the revenue and pricing principles and the national gas objective, subject to a clarifying amendment to the effect that outcomes under the efficiency mechanism will be unaffected by the change in capitalisation policy in accordance with Draft Decision Required Amendment 19:

Draft Decision Required Amendment 19

DBP must amend clause 15.12 of the proposed revised access arrangement to read as follows:

Where the Operator changes its approach to classifying costs as either capital expenditure or operating expenditure during the access arrangement period, the Operator will adjust the E Factor benchmark to be consistent with the capitalisation policy changes to the effect that outcomes under the efficiency mechanism are not affected by the change in capitalisation policy.

⁷⁵⁹ AER, DRAFT DECISION, APA VTS Australia, Gas access arrangement, 2018 to 2022, Attachment 9 – Opex incentive mechanism, July 2017, p. 9-9.

Other incentive schemes

1724. DBP identified two possible consequences of the E Factor scheme:

- Operating expenditure savings may be achieved by allowing service reliability to decline.
- Operating expenditure savings may be reported by shifting expenditure from operating to capital accounts.

1725. Perth Energy also proposed in its submission to the ERA's issues paper that DBP be allowed to spend a portion of the benefits derived from the E Factor scheme on innovation through an arrangement such as a network innovation scheme.⁷⁶⁰

Incentives to maintain service reliability

1726. DBP stated in its initial proposal that it was subject to strict conditions in shipper contracts and its operating licence, including financial penalties, such that any penalties for deterioration in service performance would be likely to offset any benefits derived under the E Factor scheme:

It is also worth noting that the current regulatory and contractual arrangements at DBP mean that opex underspends cannot be achieved at the expense of service performance.

There are strict conditions in our shipper contracts and operating licence that require us to maintain public safety, ensure a reliable supply, and to deliver a high quality of service. Deterioration in any of these conditions would result in financial penalties, which would likely offset any potential benefits to DBP under the E Factor.⁷⁶¹

1727. DBP also noted that it had a competitive incentive to ensure reliability of supply:

We also note that, unlike electricity, gas is a discretionary commodity, typically regulated under a price cap form of regulation in Western Australia. It is therefore in our interests to maintain a high level of service, safety and credibility to ensure shippers and end customers continue to choose to use natural gas (and our pipelines).⁷⁶²

1728. DBP's standard shipper contract requires it to use its best endeavours to minimise the magnitude and expected duration of any curtailment in supply (clause 17.1(a) of the Standard Shipper Contract), including *force majeure* events, major works, planned maintenance, or in circumstances where the operator, acting as a reasonable and prudent person, determines for any reason that a curtailment is desirable (clause 17.2).

1729. DBP's reference service contracts provide for a refund to curtailed shippers of the capacity reservation charge in circumstances where the curtailment was for a reason other than *force majeure* (affecting the shipper), or because the operator had a right under the contract to refuse to receive or deliver gas. The refund is payable when the permissible curtailment limit of 2 per cent in the relevant gas year (which applies to certain aggregated curtailments) is exceeded.

1730. Shippers are also entitled to direct damages if the permissible curtailment limit is exceeded or if DBP is found to have breached its contractual requirement to exercise

⁷⁶⁰ Perth Energy Pty Ltd submission in response to issues paper, 14 April 2020, p. 2.

⁷⁶¹ DBP, *2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 4.

⁷⁶² DBP, *2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor*, January 2020, p. 4.

its best endeavours to minimise the magnitude and expected duration of any type of curtailment (including *force majeure* events).

1731. DBP also noted that shippers not on a reference service contract would be entitled to similar recourse for damages for curtailment of supply, although there would be no entitlement to a refund of capacity reservation charges for curtailment due to major works.
1732. DBP also referred to its licence conditions which require it to ensure a continuous operation of the pipeline, subject to exempted circumstances and a penalty for non-compliance. Section 35 of the *Petroleum Pipelines Act 1969* states:

35. Pipelines to be operated continuously

- 1) Except with the consent in writing of the Minister and subject to compliance with such conditions, if any, as are specified in the instrument of consent, a licensee shall operate continuously the pipeline specified in his licence. Penalty: a fine of \$50 000 or imprisonment for 5 years, or both.
 - 2) It is not an offence against subsection (1) if the failure of the licensee to operate the pipeline continuously —
 - a) was in the ordinary course of operating the pipeline; or
 - b) was for the purpose of repairing or maintaining the pipeline; or
 - c) was in an emergency in which there was a likelihood of loss or injury.
1733. The ERA also took account of DBP's past performance and outlook, and shippers' expressed preferences.
1734. DBP reported in its initial proposal that it delivered near 100 per cent system reliability throughout the AA3 and AA4 periods and intended to maintain this standard of service reliability, despite challenges in the energy sector.⁷⁶³ DBP also stated that customers did not support the introduction of a customer service incentive scheme.⁷⁶⁴
1735. In its issues paper, the ERA sought submissions from customers and interested stakeholders specifically addressing the adequacy of DBP's incentives to maintain service reliability under an operating expenditure efficiency carryover mechanism.⁷⁶⁵
1736. The ERA did not receive any submissions that considered whether DBP's contractual obligations and operating licence conditions provide inadequate incentives for it to maintain service performance and supply reliability.
1737. The ERA concluded that DBP was not required to implement a service performance incentive scheme or contingency payment factor attached to E Factor incentives for the AA5 period.

Incentives to substitute capital expenditure for operating expenditure

1738. DBP did not propose to introduce a capital expenditure efficiency scheme. DBP stated that customers did not support a proposed capital expenditure scheme and the incentives under such a scheme were unlikely to be significant.⁷⁶⁶

⁷⁶³ DBP, *2021-2025 Final Plan*, January 2020, pp. 22 and 26.

⁷⁶⁴ DBP, *2021-2025 Final Plan*, January 2020, p. 120.

⁷⁶⁵ ERA, *Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline for 2021 to 2025, Issues Paper*, 17 March 2020.

⁷⁶⁶ DBP, *2021-2025 Final Plan*, January 2020, p. 116.

1739. DBP also submitted that its incentive to achieve operating expenditure efficiency gains by substituting capital expenditure was unlikely to be significant. DBP noted that its actual capital expenditure was subject to internal and regulatory review, and proposed to exclude any operating expenditure incurred as a more efficient alternative to capital expenditure from the E Factor benchmark.⁷⁶⁷
1740. The ERA did not receive any submissions that expressed concern that DBP may achieve efficiency gains under the E Factor scheme by inefficiently substituting capital expenditure for operating expenditure. The ERA also did not receive any submissions that expressed support for a capital expenditure efficiency incentive scheme or similar mechanism.
1741. The ERA concluded that DBP was not required to implement a capital expenditure efficiency incentive mechanism.

Network innovation scheme

1742. DBP did not propose to introduce a network innovation scheme in AA5. DBP stated that, although customers considered that DBP should be responsive to changing energy market needs, customers had mixed views on the introduction of a customer-funded innovation incentive scheme and considered that greater benefits would be achieved under an industry-wide approach.⁷⁶⁸
1743. In its submission to the ERA's issues paper, Perth Energy considered that a more appropriate and measured response to DBP's stranded assets risk would be to allow a small amount of regulated revenue or any incentive payments retained under its proposed E Factor Scheme to be spent on innovation through an arrangement such as proposed by DBP in its draft plan.
1744. The ERA considered there to be no regulatory impediment to DBP allocating a portion of efficiency gains or from undertaking the type of investment in innovation that may be proposed under an arrangement such as a network innovation scheme. Capital and operating expenditure are subject to prudent service provider requirements under rules 79 and 91 of the NGR and speculative capital investment may be considered under rule 84.
1745. The ERA also considered that it was not authorised under the NGR to require DBP to allocate a portion of efficiency savings achieved under the E Factor scheme towards an arrangement such as a network innovation scheme.

Indexation of carry forward efficiency gains and losses

1746. DBP proposed to index efficiency gains or losses carried forward to preserve the value of gains or losses in real amounts, consistent with the method applied to calculate forecast operating expenditure (clause 15.9 of the proposed revised access arrangement).
1747. The ERA concluded that the indexation of carry forward gains and losses under the E Factor scheme using a method consistent with forecast operating expenditure to was consistent with the revenue and pricing principles and the national gas objective.

⁷⁶⁷ DBP, 2021-2025 Final Plan, Attachment 12.2: Proposed Opex Incentive Scheme Additional Information – E Factor, January 2020, p. 4.

⁷⁶⁸ DBP, 2021-2025 Final Plan, January 2020, p. 117-8.

Conclusion

1748. In the draft decision the ERA concluded that the E Factor scheme proposed by DBP for AA5 in its initial proposal was consistent with the revenue and pricing principles and the national gas objective, subject to required amendments 15 to 19 of the draft decision.
1749. The ERA also required administrative amendments to clauses 15.2(c) and 15.8 of the proposed revised access arrangement to correct typographical errors as set out in required amendment 20 of the draft decision:⁷⁶⁹

Draft Decision Required Amendment 20

DBP must amend clauses 15.2(c) and 15.8 of the proposed revised access arrangement to correct the following typographical errors:

- In clause 15.2(c), the reference to “clause 16.11” must be changed to “clause 15.11”.
 - In clause 15.8, the reference to “(A5 in paragraph (16.7) above)” must be changed to “(A₅ in paragraph (15.7) above)”.
1750. DBP was not required to implement a service performance contingency scheme or capital expenditure efficiency scheme.

DBP’s response to the draft decision

1751. In its revised proposal, DBP accepted Draft Decision Required Amendments 15 (capital expenditure to operating expenditure exclusion), 19 (capitalisation policy changes), and 20 (typographical errors). DBP proposed modifications to Draft Decision Required Amendments 16 (exclusion of costs not reasonably within DBP’s control), 17 (cost pass through exclusion) and 18 (exclusion of any other amount).

Exclusion of costs not reasonably within DBP’s control

1752. DBP modified its proposal in response to the ERA’s Draft Decision Required Amendment 16, which did not accept DBP’s initial proposal to exclude costs from the E Factor benchmark which were not reasonably within its control.⁷⁷⁰
1753. DBP identified specific fees and levies that it proposed to exclude from the E Factor benchmark. DBP’s reasoning for these proposed exclusions was that, for the identified fees and levies:
- The costs were set externally.
 - Annual revision of the fees and levies was subject to many factors in addition to the consumer price index, including government bond rates, work volume, pass through of costs and changes to the customer base from which costs can be recovered.
 - DBP had no ability to influence the factors that were included when the fees and levies were set or revised.
 - DBP did not have access to accurate forecasts of the likely movements for AA5 in many of the factors included in the annual revision of the fees and levies.

⁷⁶⁹ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 256.

⁷⁷⁰ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 4.

1754. The specific fees and levies which DBP proposed to exclude from the E Factor benchmark were:
- Land access fees payable under the *Dampier to Bunbury Pipeline Act 1997* (WA).
 - P40 pipeline licence fees payable under the *Petroleum Pipelines Act 1969* (WA).
 - Radiocommunication licence fees under the *Radiocommunications Act 1992* (Cth) and associated determinations.
 - Costs payable to the ERA under the *Economic Regulation Authority (National Gas Access Funding) Regulation 2009* (WA).
 - Safety levies payable to the Department of Mines, Industry Regulation and Safety WA.
1755. DBP amended clause 15.11(c) of the proposed revised access agreement to reflect these exclusions as follows:
- (c) any operating expenditure sub-category not reasonably within the control of the Operator. These costs may include, but are not limited to, operating costs incurred by the Operator relating to:
- (i) ~~permits~~— land access fees;
 - (ii) licence fees;
 - (iii) ERA costs; and
 - (iv) ~~rates and taxes~~ safety levies.
1756. DBP considered that the exclusion of fees and levies from the E Factor scheme furthered the intent of the operating expenditure incentive scheme under the NGR.⁷⁷¹
1757. DBP acknowledged that the AER did not exclude costs not reasonably within the control of the operator from the EBSS or other equivalent efficiency carryover mechanisms but considered that this was not a sufficient reason for the ERA to not accept the exclusions.⁷⁷²
1758. DBP considered that the exclusion of proposed costs not within DBP's control was consistent with the approach adopted for Western Power's GSM, accepted by the ERA in its AA3 and AA4 decisions for Western Power.⁷⁷³
1759. DBP submitted that the conditions in its shipper contracts and operating licence required it to maintain public safety, ensure a reliable supply and deliver a high quality of service. Deterioration of DBP's performance on any of these conditions would result in financial penalties that would likely offset any possible benefits to DBP under the E Factor scheme. DBP also noted that the ERA did not receive any submissions to the issues paper that considered whether DBP's contractual obligations and

⁷⁷¹ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 6.

⁷⁷² DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 5.

⁷⁷³ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 5.

operating licence conditions provided inadequate incentives for DBP to maintain service performance and supply reliability.⁷⁷⁴

Table 188: DBP's revised proposed forecast AA5 operating expenditure - E Factor exclusions and E Factor benchmarks for AA5 (\$ million real as at 31 December 2019)

	2021	2022	2023	2024	2025
Total forecast operating expenditure	84.04	92.85	93.59	91.46	89.44
Less excluded costs:	0.00	0.00	0.00	0.00	0.00
Land access fees payable under the Dampier to Bunbury Pipeline Act 1997 (WA)	2.03	2.03	2.03	2.03	2.03
PL40 pipeline licence payable under the Petroleum Pipelines Act 1969 (WA)	0.37	0.37	0.37	0.37	0.37
Radiocommunication licences under the Radiocommunications Act 1992 (Cth) and associated Determinations	0.30	0.30	0.30	0.30	0.30
Costs payable to the ERA under Economic Regulation Authority (National Gas Access Funding) Regulation 2009 (WA)	1.47	1.47	1.47	1.47	1.47
Safety levies payable to the Department of Mines, Industry Regulation and Safety WA	0.27	0.27	0.27	0.27	0.27
Fuel gas	20.44	20.81	21.07	22.02	22.37
Turbine / Gas engine alternator overhauls	8.87	7.57	7.59	4.33	2.07
Operating expenditure incurred to reduce capital expenditure	0.00	0.00	0.00	0.00	0.00
Total excluded	33.74	32.81	33.10	30.78	28.87
E Factor benchmarks	50.30	60.04	60.50	60.67	60.57

Source: DBP, 2021-2025 Final Plan, Attachment 12.1A Updated Proposed E-Factor Calculation Model (Public), October 2020.

Cost pass through mechanism

1760. DBP agreed with the ERA's view, outlined in the draft decision, that the same incentives to incur efficient costs should also apply to costs related to a pass through event and that such costs should not be excluded from the E Factor benchmark.⁷⁷⁵
1761. However, DBP submitted that the inclusion of approved costs related to a pass through event in the E Factor benchmark without an offsetting adjustment to forecast operating expenditure would unfairly penalise DBP for incurring efficient costs that are recoverable from customers. DBP considered that the approval by the

⁷⁷⁴ DBP, 2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives, October 2020, p. 6.

⁷⁷⁵ DBP, 2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives, October 2020, p. 6.

ERA of a cost pass through event recognised that the costs of the event were recoverable from customers.⁷⁷⁶

1762. DBP therefore proposed that the approved operating expenditure forecast used to calculate E Factor incentives should be adjusted to reflect the forecast costs for any cost pass through event before the carryover is calculated. DBP amended clause 15.11(e) of the proposed revised access arrangement to reflect the proposed adjustment of the operating expenditure forecast used to calculate E Factor incentives as follows:⁷⁷⁷

- (e) the Operator will adjust the E Factor benchmark to include the forecast operating expenditure arising from the cost pass through event or other ERA approved expenditure arising from cost pass through events which apply in respect of that year.

Any other operating expenditure amount

1763. DBP accepted Draft Decision Required Amendment 18 to remove the pipeline operator's agreement as a precondition to the exclusion of other costs from the E Factor benchmark.⁷⁷⁸

1764. However, DBP considered that the required amendment precluded it from proposing any other operating expenditure amount that the ERA should exclude from the E Factor benchmark. DBP therefore amended clause 15.11(f) of the proposed revised access arrangement to read as follows:

- (f) any other operating expenditure amount that the ERA ~~notifies the Operator is required by the ERA~~ agrees to exclude from the E Factor benchmark.⁷⁷⁹

Submissions

1765. The ERA identified the E Factor scheme as a principal issue for consideration in its issues paper on DBP's proposed revisions to the access arrangement.⁷⁸⁰

1766. Five of the seven submissions to the issues paper referred to DBP's proposed E Factor scheme.

1767. The ERA did not receive any submissions in response to either the draft decision or DBP's revised proposal concerning the E Factor scheme.

1768. DBP's parent company AGIG considered that the E Factor scheme would strengthen its incentive to increase operating expenditure efficiencies in the long-term interests of customers and noted that stakeholders had been generally supportive of the principles of the scheme.⁷⁸¹

⁷⁷⁶ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 6.

⁷⁷⁷ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 6.

⁷⁷⁸ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 6.

⁷⁷⁹ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, pp. 6-7.

⁷⁸⁰ ERA, *Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline for 2021 to 2025, Issues Paper*, 17 March 2020, p. 23.

⁷⁸¹ DBP, *Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Issues Paper, Attachment A: Responses to the ERA Issues Paper*, 31 March 2020, p. 3.

1769. Wesfarmers Chemicals, Energy & Fertilisers (WesCEF) submitted that it was neutral on the concept of the incentive mechanism, subject to further consideration of baseline operating expenditure estimates and excluded cost categories.
- WesCEF considered that AGIG's assumption of 2019 as the base year for its operating expenditure forecast should be benchmarked to the expenditure targeted for AA5 in AGIG's acquisition model. WesCEF was concerned about a large unexplained increase in government charges that DBP had forecast for AA5 and the profile of DBP's operating expenditure forecast which, according to DBP's initial forecast, would see an increase of over \$5 million in 2021 and a slow decline of \$5 million across AA5 in real terms.⁷⁸²
 - WesCEF considered statements in DBP's initial proposal showed that DBP had control of its turbine and gas engine alternator overhaul costs and accordingly any incentive mechanism should provide for DBP's consumers to share in any efficiencies gained from control of these costs.
1770. GasTrading submitted that the mechanism should apply only to efficiency savings that were attributable to management, and the owner's use of technology, ingenuity and skill, rather than under-use of the pipeline.⁷⁸³
1771. CITIC Pacific Mining Management Pty Ltd stated that it would be comfortable with DBP's proposed incentive mechanism provided that the proposed incentive mechanism were aligned with the business drivers of shippers on the DBNGP.⁷⁸⁴
1772. Perth Energy suggested that DBP should be provided with incentives to mitigate the risk of stranded assets by investing in new technologies. Perth Energy considered that DBP should be allowed to allocate a portion of the carryover benefits derived under the E Factor scheme towards an arrangement such as a network innovation scheme and that the revised access arrangement should allow DBP to test new services and encourage it to expand its offering over AA5 and other future access arrangement periods.⁷⁸⁵

Final decision

1773. In its draft decision, the ERA approved DBP's proposal to implement the E Factor scheme as an operating expenditure efficiency carryover mechanism, subject to DBP's implementation of Draft Decision Requirement Amendments 15 to 20 in its revised proposal.
1774. In its revised proposal, DBP accepted and implemented Draft Decision Required Amendments 15, 19, and 20. The ERA received no submissions to DBP's revised proposal that considered DBP's response to Draft Decision Required Amendments 15, 19, and 20. The ERA accepts the amendments implemented by DBP in its revised proposal addressing Draft Decision Required Amendments 15, 19, and 20 as consistent with the revenue and pricing principles and the national gas objective.
1775. As outlined in paragraphs 1751 to 1764, DBP submitted modified proposals to Draft Decision Required Amendments 16, 17, and 18. These matters are considered below.

⁷⁸² Wesfarmers Chemicals, Energy & Fertilisers submission in response to issues paper, 30 March 2020, p. 11.

⁷⁸³ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 9.

⁷⁸⁴ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 7.

⁷⁸⁵ Perth Energy Pty Ltd submission in response to issues paper, April 2020, pp. 1-2.

Exclusion of costs not reasonably within DBP's control (Draft Decision Required Amendment 16)

1776. DBP modified its proposal in response to the ERA's Draft Decision Required Amendment 16 wherein the ERA did not accept DBP's initial proposal to exclude costs from the E Factor benchmark which were not reasonably within its control.⁷⁸⁶
1777. The ERA considers that the following matters are relevant to DBP's revised proposal to exclude costs not reasonably with its control from the E Factor benchmark:
- Exclusion of costs permitted under the AER's efficiency benefit sharing scheme (EBSS).
 - Comparability of the E Factor scheme with Western GSM.
 - The nature of the costs proposed to be excluded and intent of the E Factor scheme.
 - Other measures available to DBP or the ERA to mitigate the effects of uncontrollable cost variations under the E Factor scheme.

The AER's efficiency benefit sharing scheme

1778. In its revised proposal, DBP acknowledged that the AER does not exclude costs not reasonably within the control of the operator from the EBSS or equivalent efficiency carryover mechanism but considered this was not a sufficient reason for the ERA to not accept the proposed exclusions.⁷⁸⁷
1779. The EBSS was introduced in 2007 for electricity transmission NSPs in accordance with the National Electricity Rules (NER). The EBSS aims to provide service providers with continuous incentives to achieve efficiency gains throughout the regulatory period, reward efficiency and penalise inefficiency, focus on controllable costs and ensure inappropriate capitalisation is avoided.⁷⁸⁸
1780. In 2013, the AER conducted a broad review of its operating expenditure forecast approach, including the operation of the incentive schemes applied to transmission and distribution NSPs.⁷⁸⁹ This included a review of costs that the schemes allowed to be excluded from the operation of the schemes due to service providers having no control over these costs:

The existing EBSSs allow certain costs to be excluded from the operation of the scheme. In this way, increases (decreases) in those costs do not result in penalties (rewards) for the NSP. These costs include costs from pass through events and other uncontrollable costs predefined in the regulatory determination. The purpose of these exclusions is to ensure NSPs are not rewarded or penalised for costs they have no control over.⁷⁹⁰

⁷⁸⁶ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 4.

⁷⁸⁷ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 5.

⁷⁸⁸ AER, *Efficiency benefit sharing scheme, Electricity transmission network service providers, Final decision*, September 2007, p. 2.

⁷⁸⁹ AER, *Expenditure incentives guidelines for electricity network service providers, Issues paper*, March 2013, p. 2.

⁷⁹⁰ AER, *Expenditure incentives guidelines for electricity network service providers, Issues paper*, March 2013, p. 32. Abbreviation: NSPs – Network service providers

1781. In its proposed revised EBSS, the AER proposed to disallow specific *ex ante* exclusions for uncontrollable operating expenditure and proposed to allow *ex post* adjustments to carryover amounts in some circumstances:

Overall, our proposed approach aims to ensure the exclusions or adjustments we allow are more consistent with the matters we must consider under the NER. In practice these changes are expected to affect the operation of the current scheme by:

- no longer allowing specific exclusions for uncontrollable opex, or adjustments for changes in opex due to unexpected increases or decreases in network growth
- allowing *ex post* adjustments to the carryover amounts in some circumstances
- including both forecast and actual opex for pass-through events in the calculation of the carryover amounts.⁷⁹¹

1782. NSPs generally supported the exclusion of uncontrollable costs, however consumer groups did not:

Currently we allow exclusions for uncontrollable opex and adjustments to the carryover amounts where actual opex for network growth differs from forecast. Exclusions for uncontrollable costs are generally supported by NSPs. Of the submissions from consumer representative groups, MEU did not support such exclusions. COSBOA and PIAC considered there should be no default exclusions for uncontrollable costs.⁷⁹²

1783. The AER maintained its view on the exclusion of uncontrollable costs in its final decision on the design and operation of the EBSS:

Consistent with the draft EBSS, we will not exclude costs from the EBSS on the grounds of uncontrollability.⁷⁹³

1784. The AER's decision was based on finding no justification for excluding uncontrollable costs from the operation of the EBSS:

We have reconsidered our approach to adjustments for uncontrollable opex and growth. For the following reasons it is not apparent we need to make special consideration for uncontrollable opex or network growth under the EBSS.

1. We consider there is no compelling reason why the forecasting risk associated with uncontrollable opex or growth should be shared differently between NSPs and consumers when compared with how the forecasting risk associated with controllable opex is shared. For instance if there is an unexpected cost increase (such as network growth) over the period, NSPs will only pay for 30 per cent of the cost of the increase, while consumers will pay for 70 per cent of the increase. If the cost is excluded from the scheme, the sharing ratio is different. It is not apparent why an alternative ratio for sharing the benefits and costs of a relatively unexpected cost change is preferable.

2. If the cost of an uncontrollable event is significant, a NSP may apply for it to be a recognised pass-through event. If the opex is approved as a recognised pass-through event, we will make the necessary adjustment when calculating the carryover amounts.

3. In reconsidering what adjustments we should allow under the EBSS, we have closely aligned the possible adjustments with the matters we must have regard to under the NER. Under clauses 6.5.8 and 6A.6.5 of the NER an efficiency gain is where actual opex is less than forecast opex, while an efficiency loss is where actual opex is greater than forecast opex. The relevant clauses in the NER do not distinguish between

⁷⁹¹ AER, *Proposed Efficiency Benefit Sharing Scheme, Explanatory statement, August 2013*, p. 26. Abbreviation: NER – National Energy Rules.

⁷⁹² AER, *Proposed Efficiency Benefit Sharing Scheme, Explanatory statement, August 2013*, p. 26. Abbreviations: COSBOA – Council of Small Business Australia; MEU – Major energy users; PIAC – Public Interest Advocacy Centre Ltd.

⁷⁹³ AER, *Efficiency Benefit Sharing Scheme for Electricity Network Service Providers, Explanatory Statement, November 2013*, p. 19.

uncontrollable opex and controllable opex when determining efficiency gains or losses. Therefore it is not apparent that the scheme needs to make special consideration for such costs.

We note that this is a consistent approach to our proposed treatment of uncontrollable capex and growth under the CESS.⁷⁹⁴

1785. Further, the AER's reasoning for disallowing the exclusion of uncontrollable costs was that the material risks of uncontrollable events can be managed through pass through events and contingent projects and service providers usually have some control over the costs of such events, and excluding operating expenditure items would blunt incentives for service providers to ensure that these costs are efficient. Additionally, the AER considered that allowing service providers to nominate costs for exclusion would risk biased outcomes because service providers would have no incentive to nominate the costs from uncontrollable events to be excluded where exclusion of those costs would reduce the service provider's EBSS carryover.

We acknowledge the EBSS will reward or penalise NSPs for some forecasting error associated with uncontrollable events. However, on the whole, the risk of uncontrollable events presents both upside and downside risk to NSPs. Relevantly, any material risks can be managed through pass-through events and contingent projects. We do not think there is a compelling argument to share the cost of uncontrollable events differently to all other costs facing NSPs.

While some events may be uncontrollable, NSPs usually have some control over the costs associated with such events. Allowing exclusions would reduce the incentive to respond to such events efficiently. In line with this, COSBOA supported including all opex items in the EBSS on the basis that excluding them would blunt any incentive for NSPs to ensure these costs are efficient.²⁶

The ENA stated NSPs should be able to apply for pass through events to be added to the allowance for the purpose of calculating carryover amounts. It considered a NSP should be able to do this even if it chooses not to recover the pass through costs from network users.²⁷ We note the EBSS and pass through arrangements allow this. NSPs are not obligated to pass on the costs of approved pass through events. Whether the NSP wishes to pass on the additional costs of the event to its consumers is a business decision for the NSP.

Energex also stated the EBSS should allow for the exclusion of uncontrollable costs that would qualify for a pass through event but for the materiality threshold.²⁸ As above, we see no compelling argument to share forecasting error associated with uncontrollable events differently to all other costs facing NSPs. Further, NSPs nominating costs to be excluded from the scheme on an ex post basis would risk biased outcomes. NSPs would have no incentive to nominate the costs from uncontrollable events to be excluded where doing so would reduce their EBSS carryover. We note the nature of the uncontrollable event will determine whether the EBSS impact is positive or negative. For example, recurrent cost increases will result in a lower EBSS carryover but a one-off cost increase will result in a higher EBSS carryover (see Box 2.3 and Box 2.4). Thus NSPs would only have an incentive to identify uncontrollable events that increase their recurrent costs.⁷⁹⁵

1786. The AER has since implemented its position on excluding uncontrollable costs in the efficiency carryover mechanisms for APA VTS Australia and Jemena Gas Networks (NSW) Ltd. The AER's decisions for these service providers' access arrangements, which apply to the 2018 to 2022 and 2020 to 2025 periods respectively, include amendments to their efficiency carryover mechanisms which reduce the number of

⁷⁹⁴ AER, *Proposed Efficiency Benefit Sharing Scheme, Explanatory statement, August 2013*, p. 38. Abbreviation: CESS – Capital expenditure sharing scheme.

⁷⁹⁵ AER, *Efficiency Benefit Sharing Scheme for Electricity Network Service Providers, Explanatory Statement, November 2013*, p. 19-20. Abbreviations: ENA – Energy Networks Australia.

cost categories excluded from the mechanisms consistent with the AER's November 2013 decision on the EBSS.⁷⁹⁶

1787. As DBP has noted, the AER's position is not sufficient in itself for the ERA to not accept DBP's proposal.
1788. The ERA has considered DBP's proposal to exclude certain costs from its E Factor scheme through clause 15.11(c) of the proposed revised access arrangement in its revised proposal. The ERA has considered the extent to which the proposed clause contributes to encouraging efficiency in the provision of services and is consistent with the revenue and pricing principles.
1789. The proposed clause 15.11(c) is as follows:
- (c) any operating expenditure sub-category not reasonably within the control of the Operator. These costs may include, but are not limited to, operating costs incurred by the Operator relating to:
- (i) ~~permits~~— land access fees;
 - (ii) licence fees;
 - (iii) ERA costs; and
 - (iv) ~~rates and taxes~~ safety levies.
1790. The ERA considers that inclusion of the proposed clause 15.11(c) in DBP's access arrangement would decrease DBP's incentives to ensure its operating expenditure is efficient. The clause as proposed provides DBP with scope to exclude costs not reasonably within its control including, but not limited to, the costs specified in clause 15.11(c)(i) through 15.11(c)(iv) from the calculation of its E Factor carryover. The ERA considers this gives DBP a broad scope to exclude operating costs from its E factor carryover. Allowing DBP to nominate costs for exclusion as outlined in proposed clause 15.11(c) risks decreasing incentives for DBP to ensure its operating expenditure is efficient because DBP would have no incentive to nominate the costs from uncontrollable events to be excluded where such exclusion would reduce its carryovers under the E Factor scheme.
1791. Regarding the costs DBP has proposed to exclude from the calculation of its E Factor carryover specified in clause 15.11(c)(i) through 15.11(c)(iv), the ERA considers DBP retains the opportunity to request to exclude these costs from calculation of its E Factor carryovers during *ex post* review. While the ERA agrees that DBP should not be rewarded or penalised for costs outside its control, it would be contrary to the revenue and pricing principles and the efficiency objectives of the NGR to include clause 15.11(c)(i) through 15.11(c)(iv) in DBP's revised access arrangement and *ex ante* agree to the exclusion of these costs without further review at the time they are incurred. Not all the costs listed in clause 15.11(c)(i) through 15.11(c)(iv) in DBP's revised access arrangement are completely uncontrollable. For example, the ERA's costs are based on the amount of time required and complexity to review DBP's proposals and access arrangement. DBP can influence the ERA's costs. An *ex ante* exclusion of these costs from the scheme would not be consistent with the long term interests of consumers.

⁷⁹⁶ AER, *Draft Decision APA VTS Australia Gas access arrangement 2018 to 2022, Attachment 9 – Opex incentive mechanism*, July 2017, p. 9. AER, *Draft Decision Jemena Gas Networks (NSW) Ltd Access Arrangement 2020 to 2025, Attachment 8 – Efficiency carryover mechanism*, November 2019, p. 13.

Comparability with Western Power's gain sharing mechanism

1792. As outlined in paragraph 1758, DBP considered that its proposal to exclude costs as specified in clause 15.11(c) of DBP's proposed revised access arrangement was consistent with the costs excluded from Western Power's GSM for its AA3 and AA4 periods.⁷⁹⁷ DBP noted that the ERA had agreed to exclude licence fees and the energy safety levy payable by Western Power from the gain sharing mechanism.
1793. As outlined in paragraph 1674, in the draft decision the ERA concluded that the E Factor scheme was not comparable to the GSM as applied to Western Power because the GSM was subject to the requirements of the *Electricity Networks Access Code 2004*, whereas the proposed E Factor scheme is not. The ERA maintains this view.
1794. Western Power's GSM operates as an operating expenditure efficiency carryover scheme under sections 6.19 to 6.28 of the *Electricity Networks Access Code 2004*.
1795. Given that Western Power's GSM operates subject to the requirements of the Access Code and the proposed E Factor scheme does not, the exclusion of costs not within the control of the operator under Western Power's GSM is not a sufficient reason to permit the exclusions proposed by DBP for the E Factor scheme. The ERA has considered DBP's proposed exclusions on the basis of consistency with the NGR.

Nature of costs

1796. DBP stated that the exclusion of costs not within its control furthered the intent of the E Factor scheme under the NGR.⁷⁹⁸
1797. The intent of the scheme is to provide DBP with time-neutral incentives to implement operating expenditure efficiency gains in each year of the access arrangement period.
1798. The E Factor scheme would operate by permitting DBP to carry over efficiency increments or decrements for the maximum period that would have been achieved without the scheme, thereby removing the distortion in incentives that DBP would otherwise have to implement or defer efficiency savings.
1799. Without the E Factor scheme and assuming that any under/over-spending on uncontrollable costs did not meet cost pass through provisions of the access arrangement, DBP would keep any benefit of underspending on uncontrollable expenses until the next access arrangement period commences. If it spent more than the forecast uncontrollable expenses, it would incur this additional cost until the next access arrangement period.
1800. As noted in paragraph 1782, the AER considered the effects of uncontrollable costs on incentives in its review of the EBSS in 2013. Consumer groups universally supported the inclusion of uncontrollable expenses, while service providers unanimously supported the exclusion of uncontrollable expenses.⁷⁹⁹

⁷⁹⁷ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 5.

⁷⁹⁸ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 6.

⁷⁹⁹ AER, *Proposed Efficiency Benefit Sharing Scheme, Explanatory statement, August 2013*, p. 26.

1801. The E Factor scheme would operate under rule 98 of the NGR. Additionally, due to the operation of section 24 and section 28 of the NGL, the scheme must be consistent with the revenue and pricing principles and the national gas objective.
1802. DBP argued that the inclusion of uncontrollable expenses in the E Factor scheme would unfairly reward or penalise it for factors beyond its control.⁸⁰⁰
1803. The ERA acknowledges that gains or losses on uncontrollable expenses are not attributable to managerial expertise or operational improvements and cannot be affected by a prudent and efficient service provider. Including uncontrollable expenses in the E Factor scheme would therefore distort the incentives for DBP to make efficiency gains by including gains and losses on uncontrollable expenses which are not affected by the efficiency of the service provider. Such a result would be contrary to the intent of the E Factor scheme and the objective of incentive mechanisms generally under rule 98(1) of the NGR. According to rule 98(1) of the NGR, incentive mechanisms are “to encourage efficiency in the provision of services by the service provider.” Such a result would also detract from the fulfilment of the efficiency objectives of the revenue and pricing principles and the national gas objective.
1804. However, the ERA has considered the nature of the specific costs DBP proposed to exclude from the operation of the E Factor scheme in its revised proposal and considers that it is not certain that these costs are wholly outside of DBP’s control.
1805. Other than the specific costs listed in the proposed clause 15.11(c), more generally the proposed clause 15.11(c) would allow the exclusion of any operating expenditure sub-category not reasonably within the control of DBP from the calculation of E Factor carryovers, with excluded expenditure not limited to the sub-categories specifically listed in the clause.
1806. The ERA considers it is difficult to determine what costs are outside of DBP’s control and to what extent those costs are outside of DBP’s control on an ex ante basis. Clause 15.11(c) gives rise to the possibility of costs being excluded from the E Factor benchmark that the ERA would disagree are outside of DBP’s control.
1807. DBP has the opportunity to request the exclusion of costs from the E Factor benchmark ex post under clause 15.11(e) of the revised access arrangement. DBP’s request for cost exclusions will be subject to the ERA’s agreement:
- 15.11 The annual E Factor benchmark is the total annual operating expenditure forecast approved by the ERA, less the following E Factor exclusions:
- ...
- (e) any other operating expenditure amount that the ERA agrees or requires the Operator to exclude from the E Factor benchmark.
1808. Based on the conclusions in paragraphs 1804 to 1807, the ERA does not consider that the proposed clause 15.11(c) would contribute to the fulfilment of the revenue and pricing principles and the national gas objective.
1809. The ERA therefore requires that clause 15.11(c) of the proposed revised access arrangement be removed and subsequent sub-clauses renumbered accordingly.

⁸⁰⁰ DBP, *2021-2025 Revised Final Plan, Attachment 12.3: Response to Draft Decision on Incentives*, October 2020, p. 4.

Other measures

1810. As stated at paragraph 1719, according to rule 98(1) of the NGR the objective of incentive mechanisms is “to encourage efficiency in the provision of services by the service provider.” Under rule 98(3) of the NGR an incentive mechanism must be consistent with the revenue and pricing principles. The revenue and pricing principles are set out at section 24 of the NGL. Among other requirements, the revenue and pricing principles state at sections 24(2) and 24(3) of the NGL that:

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
- (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

1811. Additionally, the ERA is bound by section 28 of the NGL to ensure that the provisions of an access arrangement contribute to the achievement of the national gas objective.

1812. In addition to incentive mechanisms, the NGR provide other measures to allow service providers to recover their efficient costs and to provide effective incentives to promote economic efficiency in the provision of reference services.

1813. One such measure is a cost pass through variation of reference tariffs under rule 97(1)(c) of the NGR:

97 Mechanics of reference tariff variation

- (1) A *reference tariff variation mechanism* may provide for variation of a reference tariff:

...

- (c) as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax); or

...

1814. Rule 97(1)(c) of the NGR provides service providers with the opportunity to apply to the ERA to request cost pass throughs for defined events. Under a cost pass through, a service provider recovers its unexpected costs arising from a defined event through reference tariffs.

1815. Under clause 11.5(c) of the access arrangement, DBP may apply for a cost pass through variation of the reference tariffs for “cost pass through events” as follows:

11.5 New Costs Pass Through Variation means the following mechanism:

...

- (c) Cost Pass Through Events which can be recovered through the operation of the mechanism in clause 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) a Change in Law and costs associated with a Change in Law; 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*.
1816. Additionally, under clause 11.4 of the access arrangement, DBP may apply for cost pass through variations due to changes in tax laws:

11.4 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 for the Current Access Arrangement Period being included in the Operator's forecast operating expenditure (**Included Taxes**).
 - (b) If a Tax Change occurs during the Current Access Arrangement Period, to the extent that the Tax Change changes any expenditure incurred or to be incurred by the Operator or any of its Related Bodies Corporate in providing pipeline services, then:
 - (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 is lower than the amount for that relevant Included Tax 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 is higher than the amount for that relevant Included Tax 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.
1817. The ability of DBP to apply for reference tariff variations under rule 97(1)(c) of the NGR and clauses 11.4 and 11.5 of the access arrangement mitigates the possibility that DBP will be penalised for costs outside its control if uncontrollable costs are not excluded from the operation of the E Factor scheme.

Conclusion

1818. The ERA agrees that DBP should not be rewarded or penalised for costs outside its control.
1819. However, based on the conclusions in paragraphs 1778 to 1817, the ERA does not agree to DBP's proposed revisions to clause 15.11(c) of the proposed revised access agreement. The ERA considers that excluding the costs proposed by DBP from calculation of the E Factor benchmark on an *ex ante* basis is not in the best interests of consumers and is not consistent with achievement of the efficiency incentive objectives of the revenue and pricing principles. Further, the risk of DBP being rewarded or penalised for uncontrollable costs due to the operation of the E Factor

scheme is mitigated by the possibility for applying for cost pass through events to be recognised under rule 97(1)(c) of the NGR.

1820. The ERA therefore requires the removal of clause 15.11(c) from the proposed revised access arrangement.
1821. Notwithstanding the removal of clause 15.11(c), the ERA notes that DBP has an option to propose costs for exclusion from the E Factor benchmark during the next access arrangement period. DBP may propose to exclude costs where it considers it has been unfairly penalised and the exclusion of those costs would be consistent with the revenue and pricing principles and the national gas objective.
1822. Similarly, the ERA may require the exclusion of costs from the calculation of any carryover amounts where it considers the inclusion of those costs would not be in the long-term interests of consumers and having regard to the extent to which exclusion of those costs from the calculation of any carryover amounts would contribute to achievement of the revenue and pricing principles of the NGL.

Required Amendment 13

Clause 15.11(c) must be deleted from the revised proposed access arrangement (and subsequent sub-clauses must be re-numbered accordingly).

Cost pass through mechanism (Draft Decision Required Amendment 17)

1823. As outlined at paragraphs 1760 to 1762, DBP agreed with the ERA's view that the same incentives to incur efficient costs should also apply for costs related to an approved pass through event and should not be excluded from the E Factor benchmark. DBP amended clause 15.11(e) of the proposed revised access agreement to reflect the requirement that an adjustment must be made to the operating expenditure forecast to reflect an approved cost pass through event prior to the determination of the carryover amount of an efficiency gain or loss:

- (e) the Operator will adjust the E Factor benchmark to include the forecast operating expenditure arising from the cost pass through event or other ERA approved expenditure arising from cost pass through events which apply in respect of that year

1824. The ERA did not receive any public submissions regarding DBP's proposed revision to clause 15.11(e) of the proposed revised access agreement.
1825. The ERA considers that DBP's proposed modification is consistent with the intention of the Draft Decision Required Amendment 17, the national gas objective and the revenue and pricing principles of the NGL, and accepts the proposed revision to clause 15.11(e) of the revised proposed access arrangement.

Any other operating expenditure amount (Draft Decision Required Amendment 18)

1826. As outlined in paragraphs 1763 to 1764, DBP accepted Draft Decision Required Amendment 18 to remove the pipeline operator's agreement as a precondition to the exclusion of other costs from the E Factor benchmark. However, DBP considered that the required amendment precluded it from proposing to the ERA any other operating expenditure amount that may be excluded from the E Factor benchmark and amended clause 15.11(f) of the proposed revised access agreement as follows:

- (f) any other operating expenditure amount that the ERA ~~notifies the Operator is required by the ERA~~ agrees to exclude from the E Factor benchmark.

1827. The ERA did not receive any public submissions regarding DBP’s proposed revision to clause 15.11(f) of the proposed revised access agreement.
1828. The ERA considers that DBP’s proposed revision is consistent with the intent of Draft Decision Required Amendment 18. Clause 15.11(f), unchanged, is consistent with the existing framework for the operator to propose and the ERA to require amendments to an access arrangement under the NGR.
1829. As outlined in the draft decision, under section 24 and section 28 of the NGL, the ERA is bound by the efficiency objectives of the revenue and pricing principles and is required by section 28 of the NGL to perform its regulatory functions in a manner that will or is likely to contribute to the achievement of the national gas objective. The national gas objective is to promote efficient investment in, operation and use of natural gas services for the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply.
1830. During the operation of the access arrangement the ERA may require the exclusion of costs which have not been proposed to be excluded by DBP. This will allow the ERA to ensure that increases (decreases) in costs do not result in penalties (rewards) for DBP where inclusion of such costs in the E Factor benchmark would not contribute to the national gas objective or the efficiency objectives of the revenue and pricing principles. The ERA considers DBP’s proposed adjustment to clause 15.11(e) did not explicitly provide for the ERA to exclude costs from the E Factor scheme which have not been proposed for exclusion by DBP. The ERA therefore requires DBP to amend clause 15.11(e) of the proposed revised access agreement to read as follows:

- (e) any other operating expenditure amount that the ERA agrees or requires the Operator to exclude from the E Factor benchmark.

Required Amendment 14

DBP must amend clause 15.11(e) of the revised proposed access agreement to read: “(e) any other operating expenditure amount that the ERA agrees or requires the Operator to exclude from the E Factor benchmark.”

Conclusion

1831. The ERA’s final decision operating expenditure forecast and determinations regarding the operation of the E Factor scheme result in the E Factor benchmarks shown in Table 189. The ERA therefore requires that clause 15 of the proposed revised access arrangement must be amended to include the E Factor benchmark for AA5 shown in Table 189.

Table 189: Final decision E Factor benchmark

	2021	2022	2023	2024	2025
Total forecast operating expenditure	92.21	89.50	88.67	78.05	78.20
Less excluded costs					
System use gas	20.39	19.56	18.40	13.74	13.10
Turbine / gas engine alternator overhauls	8.57	7.01	7.01	1.01	2.03
Total excluded costs	28.95	26.57	25.41	14.75	15.13
E Factor benchmark	63.26	62.93	63.26	63.30	63.06

Source: ERA, Final decision AA5 operating expenditure model (confidential), April 2021

Required Amendment 15

Clause 15 of the proposed revised access arrangement must be amended to include the E Factor benchmarks for AA5 shown in Table 189 of the final decision.

Allocation of total revenue

1832. The NGR require total revenue to be allocated between reference services and other services on an allocation of cost basis.
1833. Rule 93 of the NGR states how costs are to be allocated between reference and other services. The rule further allows some pipeline services, other than reference services, to be classified as rebateable services, with part of the revenue from the sale of these services to be rebated or refunded to users of reference services in specified circumstances:

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].
- (3) The [ERA] may, however, permit the allocation of the costs of rebateable services, in whole or 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 reduce the reference tariff in accordance with rule 97; 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.

1834. In March 2019, the NGR were amended to provide clarity on the allocation of costs between reference services and other services. Rules 79(6) and 91(2) were added to the NGR governing the determination of conforming capital and operating expenditure:

79 New capital expenditure criteria

...

- (6) Conforming capital expenditure that is included in an access arrangement revision proposal must be for expenditure that is allocated between:
 - (a) reference services;
 - (b) other services provided by means of the covered pipeline; and
 - (c) other services provided by means of uncovered parts (if any) of the pipeline,

in accordance with rule 93.

91 Criteria governing operating expenditure

...

- (2) The forecast of required operating expenditure of a pipeline service provider that is included in the full access arrangement must be for expenditure that is allocated between:
 - (a) reference services;
 - (b) other services provided by means of the covered pipeline; and
 - (c) other services provided by means of uncovered parts (if any) of the pipeline,

in accordance with rule 93.

DBP's proposal

1835. DBP submitted that most (around 97 per cent) of its revenue would continue to be derived from services with a reference tariff and terms and conditions that form the basis of negotiations over the AA5 period.⁸⁰¹

1836. DBP did not propose any changes in the way costs were allocated between the proposed reference services, that is, the full haul (T1), part haul (P1) and back haul (B1) services. Costs will continue to be allocated using a "full haul equivalent" value. DBP submitted:⁸⁰²

In line with stakeholder feedback, we have not proposed any changes in the way our costs are allocated between the Full Haul (T1), Part Haul (P1) and Back Haul (B1) services. This is because we first convert all services into a "full haul equivalent" value (multiplying the quantity of gas in TJ by the proportion of pipeline used by the service)

⁸⁰¹ DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 54.

⁸⁰² DBP, *Five year plan for the Dampier to Bunbury Natural Gas Pipeline, 2021-2025 Final Plan*, January 2020, p. 123.

and then sum all services to determine the tariff. This has the practical effect that the P1 and B1 services are the same as the T1 on a per-km basis.

Not only does this approach align with stakeholder feedback, but it also reflects the costs of providing each service; apart from some overhead costs, a shipper transporting gas halfway down the pipeline uses roughly half the pipeline infrastructure as one transporting gas the full length of the pipeline, and is charged accordingly.

Draft decision

1837. The ERA considered DBP's proposed reference tariffs for AA5, including WesCEF's relevant submissions, elsewhere in this decision (see paragraph 1864). WesCEF's submission concerning the recovery of revenue and costs was considered as part of the ERA's draft decision considerations on the allocation of total revenue (noted below).
1838. The ERA considered DBP's proposed operating and capital costs for AA5 in the draft decision. While DBP had allocated costs between the regulated (that is, DBP) and non-regulated business entities of AGIG in accordance with its operational accounting procedures, the ERA was unable to determine the extent to which regulated costs were allocated between reference services and non-reference services.⁸⁰³ DBP submitted that where operating and capital costs for the provision of non-reference services were directly attributable to an individual shipper, these costs were allocated directly to that shipper and not included in its proposed expenditure for AA5. Such operating costs include SUG, labour and other variable costs associated with running the service.
1839. The allocation of costs between reference and other services, as set out in rule 93(2) of the NGR, is problematic in circumstances where costs cannot be separated, that is, where the costs are shared costs for the provision of reference and other (non-reference) services and/or where the allocated proportions of the costs may change over time. In these circumstances, the ERA considered that only costs which were a direct cost of providing a reference service or non-reference service should be allocated in accordance with rule 91(2) for operating expenditure and 79(6) for capital expenditure (see paragraphs 407 and 937, respectively). For all shared costs, the allocation should be made under rule 93 on a basis that reflects the ratios of the provision of the relevant services (for example, the ratio of recent actual reference and non-reference service revenue).
1840. DBP submitted that around 97 per cent of its revenue was derived from reference services:⁸⁰⁴
- The 97% refers to the revenue we receive from the provision of full haul, part haul and back haul services either by way of a reference service or a negotiated service (which are considered reference service equivalents for the purposes of NGR 47A(2)).
1841. In response to an information request, DBP provided the actual and forecast revenue from non-reference services, by service, for AA4 and AA5.⁸⁰⁵ The revenue values provided were consistent with DBP's statement that (approximately) 3 per cent of its revenue was derived from the provision of non-reference services.
1842. Given the considerations above, the ERA determined that total revenue should be allocated between reference services and other (non-reference) services. Except for

⁸⁰³ DBP, *Response to information request ERA27 and ERA29*.

⁸⁰⁴ DBP, *Response to information request ERA16*, 5 June 2020.

⁸⁰⁵ DBP, *Response to information request ERA16*, 5 June 2020.

SUG, which is an operating cost that is directly attributable to reference services, the ERA considered that all other operating and capital costs were shared costs for the provision of pipeline services on the DBNGP and should be allocated by reference to total revenue in the proportion of expected revenue from those services.⁸⁰⁶ DBP expected to continue to receive 97 per cent of its revenue from the provision of full haul, part haul and back haul services (that is, reference services or reference service equivalents), with the remaining 3 per cent from the provision of other (non-reference) services. The ERA considered this 97:3 ratio to be the best estimate and basis for allocating total revenue between reference and other (non-reference) services. On that basis, in the draft decision the ERA allocated total revenue between reference and non-reference services as set out in Table 190. The ERA considered that this allocation of total revenue satisfied the requirements of rule 93 of the NGR and was consistent with the revenue and pricing principles and the national gas objective.

Table 190: ERA draft decision allocation of total revenue between reference and other (non-reference) services for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Total revenue	326.16	305.96	308.36	306.56	306.03	1,553.08
Allocation to reference services	317.11	297.54	299.89	298.16	297.65	1,510.34
Allocation to other (non-reference) services	9.06	8.43	8.47	8.40	8.38	42.74

Source: ERA, August 2020, Draft Decision tariff model

1843. Following contract renegotiations with some shippers in May 2020, DBP advised the ERA that the Peaking Service should be classified as a rebateable service for AA5.⁸⁰⁷ The ERA considered DBP's proposal to include a rebateable service as part of its considerations of pipeline and reference services for AA5 in the draft decision. As a rebateable service, a portion of the revenue generated from the Peaking Service will be used to reduce the reference tariffs for reference services. While DBP was unable to provide a forecast of revenue from the Peaking Service for AA5 (because the service is new and demand is uncertain), DBP noted that it expected the forecast to fall between the following minimum and maximum estimates:⁸⁰⁸

- a minimum forecast revenue of roughly ██████████ per annum from the Peaking service reflects the capacity component of the tariff; and
- a maximum of roughly ██████████ per annum in revenue is expected based on the full haul reference service capacity relinquished to take up these services.

1844. Given that the costs for providing the Peaking Service are included in the total revenue calculation for AA5, a rebate mechanism is required to adjust the reference tariffs for the rebateable service.⁸⁰⁹ The ERA considered DBP's proposed rebate mechanism as part of its consideration of the reference tariff variation mechanism in the draft decision (see paragraph 1918 of this final decision).

⁸⁰⁶ Expenditure for system use gas (SUG) is calculated based on reference service throughput forecasts and does not include any non-reference service costs.

⁸⁰⁷ DBP, 'Information Requests – ERA17 to ERA20', [email] 29 May 2020.

⁸⁰⁸ DBP, *Response to information request ERA16*, 5 June 2020.

⁸⁰⁹ While the Peaking Service is a non-reference service, the non-reference service revenue used to allocate costs between reference and non-reference services excludes revenue from the Peaking Service.

1845. WesCEF noted that non-reference service revenues “have consistently been considered to be variable or uncertain in nature but that these revenues have nonetheless appeared to exist across the last two access arrangements.” WesCEF submitted that in these circumstances, “costs should be allocated to these services under rule 93(2) of the NGR, or that a rebate mechanism [should apply] to these services in accordance with rule 93(3).” The ERA considered that a fixed principle in the access arrangement prevented the revenue earned from non-reference services to be taken into account in past access arrangements.⁸¹⁰ The ERA separately considered fixed principles in the draft decision (see paragraph 1991 of this final decision). For AA5, where the costs for the provision of a certain service cannot be reasonably forecast and hence allocated, for example the Peaking Service, the service will be classified as a rebateable service and will have a rebate mechanism as provided for by rule 93(3) of the NGR.

DBP’s response to the draft decision

1846. In its response to the draft decision, DBP did not implement the ERA’s draft decision allocation of total revenue between reference and other (non-reference) services. Given its proposal to specify four non-reference services as rebateable services for AA5, DBP submitted that it was not necessary or appropriate to allocate the costs of non-reference services as determined by the ERA:

Rebateable services allow costs for non-reference services to be allocated to reference service users provided a rebate is in place which lowers the tariff in subsequent years. The rebate serves to compensate reference service users for costs which may be attributable to non-reference service use, but which are not allocated to such use.

It therefore follows that no allowance for demand for these services should be made in calculating reference tariffs (demand should not be included in the capacity and throughput forecast used to calculate reference tariffs). Providing an allowance in the capacity and throughput forecast would provide reference service users with a double benefit through a rebate to reference tariffs (lowering prices) and higher demand (lowering prices further). This would not allow for the efficient use of pipeline services generally, nor the recovery of [DBP’s] efficient costs...⁸¹¹

1847. DBP’s revised proposal specified the Peaker Service, Pilbara Service, Other Reserved Service and Ullage Service as non-reference rebateable services for AA5, which DBP identified as being the most “significant” non-reference services. DBP submitted that the remaining non-reference services, except for the Spot Capacity Service, either did not have any shared costs or had shared costs that were negligible and therefore did not need to have costs allocated:

For Pipeline Impact Agreement, Inlet Sales Agreement and Data Services, we contend there are no shared costs. Therefore, no cost or revenue allocation mechanism is required.

Finally, usage of the Storage Service is declining with the advent of standalone gas storage facilities in Western Australia. Therefore, any shared costs are likely to decrease to zero in the very near term and do not warrant any further action.⁸¹²

1848. For the Spot Capacity Service, DBP submitted that the shared costs for providing this service should continue to be done through an assumed allocation ratio.

The approach that has historically been applied to reference service equivalents (i.e. negotiated T1, P1 and B1 services, and Spot Service and overrun charges)

⁸¹⁰ See fixed principle in clause 13.1(b) of the current (AA4) access arrangement.

⁸¹¹ DBP, *2021-2025 Revised Final Plan, Attachment 13.2: Allocation of Total Revenue*, October 2020, pp. 5-6.

⁸¹² DBP, *2021-2025 Revised Final Plan, Attachment 13.2: Allocation of Total Revenue*, October 2020, p. 8.

includes both the costs and demand for these services in calculating reference tariffs. This approach is the continuing basis of costs allocation and demand for these services.⁸¹³

Submissions to the ERA

1849. In response to the ERA's issues paper, WesCEF raised two issues concerning the proposed tariff structure for the DBNGP access arrangement. The first was whether the proposed reference tariffs were compliant with the requirements of the NGR (rule 95). The second was whether total revenue and costs should continue to be recovered only from reference service tariffs.⁸¹⁴

1850. The ERA addressed WesCEF's submission on the first issue (that is, reference tariffs) as part of its consideration of reference tariffs in the draft decision (see paragraph 1874 of this decision). On the second issue, WesCEF submitted that the ERA should investigate whether the tariff structure was consistent with rule 93 of the NGR, which sets out the requirements for the allocation of total revenue and costs:

WesCEF also encourages the ERA to investigate further whether the tariff structure is consistent with Rule 93 of the NGR. This is because in the proposed AA5, [DBP] is seeking to recover all of the total revenue from reference services in circumstances where the pipeline's capacity utilisation for AA5 is forecast to be significantly less than what it has been in the past. Rule 93(1) of the NGR requires total revenue to be allocated between reference and other services in the ratio in which costs are allocated between such services. Rule 93(2) then provides that costs are to be allocated so that costs directly attributable to reference services are allocated to those services. It is not clear to WesCEF how, with capacity utilisation for AA5 being forecast to be much less, all of [DBP's] costs should continue to be allocated to the reference services.

Furthermore, [DBP] itself has recognised non-reference service revenues of two to five per cent of its total revenues in the last three years. ERA's AA4 decision reported that non-reference services represented four per cent of the service provider's revenues in FY2014/15. WesCEF holds the view that the nonreference revenues have consistently been considered to be variable or uncertain in nature but that these revenues have nonetheless appeared to exist across the last two Access Arrangements. In these circumstances, WesCEF believes costs should be allocated to these services under Rule 93(2) of the NGR, or that a rebate mechanism applies to these services in accordance with Rule 93(3) of the NGR.⁸¹⁵

1851. In response to the ERA's draft decision, Wesfarmers Energy (Gas Sales) Limited (WEGS) addressed the classification of the Peaking (or Peaker) Service and the allocation of the costs of providing the service. WEGS submitted that the Peaker Service was being distinguished from the T1 Service based on firmness (with the Peaker Service being a less firm service than the T1 Service). However, given the availability of capacity for AA5, WEGS considered that the Peaker Service could reasonably be considered a firm service for the purpose of completing the access arrangement review. On this basis, WEGS submitted that users of the Peaker Service should equally share the costs of providing pipeline services:

While the Peaking Service may not necessarily be classified yet as a Reference Service, the estimated contracted capacity under this service should be counted as if it were equivalent to the capacity and throughput for each relevant reference service on the pipeline so that the users of the Peaking Service equally share the costs of providing services on the pipeline with Reference Service users. This would ensure consistency with Rule 93 of the NGR. WEGS would however agree to [DBP's] point

⁸¹³ DBP, *2021-2025 Revised Final Plan, Attachment 13.2: Allocation of Total Revenue*, October 2020, p. 6.

⁸¹⁴ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission, p. 5.

⁸¹⁵ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission, pp. 6-7.

that, should this service be included in the forecasted demand, [DBP] should not be required to rebate the revenues derived from this service to its Reference Service customers.⁸¹⁶

1852. In a further submission in response to the ERA's position paper on pipeline and reference services, WEGS submitted that the Peaker Service should not be classified as a non-reference rebateable service and that an appropriate allocation of revenue and costs should be made to this service (and other non-reference rebateable services) when determining the tariffs for reference services. WEGS reiterated its previous submission on the Peaker Service being a service that was practically the same as the T1 Service given the amount of spare full haul capacity available for AA5. Given this, WEGS considered that the allocation of costs to the Peaker Service and T1 Service should be similar. WEGS submitted:

The fact that there are costs of providing a Peaker Service similar to the costs of providing a Reference T1 service means the ERA should ensure, pursuant to Rule 95, that the total revenue referable to the reference services is determined so that costs of the reference services are only attributable to the reference tariff and not the costs of other services such as the Peaker Service.

In other words, the allocation of costs between reference and non-reference services should not have the effect of cross-subsidising Reference T1 service customers and risking to cause an inefficient use of the pipeline by these users as a consequence.

If the ERA accepts this submission, it is suggested the allocation should be based on the proportion of capacity requirements that each service bears to the total capacity requirements across services (adjusted to Full Haul Equivalent). So, for example, if the total for Full Haul Equivalent services (reference and non-reference, non-rebateable services) is approximately 750TJ/d and the amount of Reference T1 Service forecast is approximately 600TJ/d, then the proportion of total revenue and costs to be allocated to the Reference T1 Service should be apportioned by the ratio of 600 on 750.⁸¹⁷

1853. WEGS further submitted that should the Peaker Service remain a non-reference rebateable service, DBP's proposed rebate mechanism needed to be addressed. WEGS considered that the proposed rebate mechanism did not properly reflect the cost of providing rebateable services, including the Peaker Service.

Final decision

1854. The ERA has considered the classification of pipeline services as either reference, non-reference, or non-reference rebateable services elsewhere in this decision (see paragraph 95). The ERA's final decision is to specify four non-reference services as rebateable services, being the Peaker Service, Other Reserved Service, Ullage Service and Spot Capacity Service.
1855. As required by the NGR, DBP has proposed a rebate mechanism to rebate a portion of the revenue generated from the sale of rebateable services to reduce the reference tariff. The ERA has considered the terms of DBP's proposed rebate mechanism, including the portion to be rebated (that is, the rebateable amount) as part of its considerations of the reference tariff variation mechanism (see paragraph 1903).
1856. The ERA maintains the position set out in its draft decision that, except for SUG, which is an operating cost directly attributable to the provision of reference services, all other operating and capital costs are shared costs for the provision of pipeline

⁸¹⁶ Wesfarmers Energy (Gas Sales) Limited submission in response to draft decision, 4 November 2020, pp. 9-10.

⁸¹⁷ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, pp. 7-8.

services and should be allocated by reference to total revenue in the proportion of expected revenue from those services.

1857. However, as submitted by DBP in its revised proposal, the expected revenue for some services is uncertain, which makes it difficult to allocate costs to these services on a proportional basis. The specification of such services as rebateable services removes the need to separately allocate costs for these services. That is, the NGR allow the allocation of the costs of rebateable services, in whole or part, to reference services if the ERA is satisfied that DBP will apply an appropriate portion of the revenue generated from the sale of rebateable services to reduce the reference tariff.
1858. As indicated, the ERA has separately considered and decided on the specification of the Peaker Service, Other Reserved Service, Ullage Service and Spot Capacity Service as rebateable services for AA5. The ERA has also separately considered and decided on the reference tariff variation mechanism to apply for AA5 and is satisfied that DBP will rebate an appropriate portion of the revenue from rebateable services to customers via reduced reference tariffs. As indicated by DBP, the rebate compensates reference service customers (via a reduced reference tariff) for costs that are attributable to rebateable non-reference services, but which have not been directly allocated to customers using the services. As such, no allowance for demand for rebateable non-reference services should be made in the building blocks used to determine the total revenue requirement, and hence the reference tariffs, for AA5. That is, the Peaker Service, Other Reserved Service, Ullage Service and Spot Capacity Service should be excluded from the total revenue requirement for AA5.
1859. For AA5, the following pipeline services are specified as non-reference services in the access arrangement:
- Non-reference services:
 - Park and Loan Service (Storage Service)
 - Pipeline Impact Agreement Service
 - Data Services
 - Inlet Sales Service
 - Pilbara Service
 - Non-reference ancillary services
 - Seasonal Service
 - Metering and Temperature Service
 - Odourisation Service.
1860. In its response to the draft decision, DBP considered that it was not necessary or appropriate to allocate costs to non-reference services. DBP noted that the Pipeline Impact Agreement Service, Inlet Sales Service and Data Services did not have shared costs and that use of the Storage Service was declining, with demand for the service expected to reduce to zero in 2023.⁸¹⁸
1861. While DBP considered that it was not necessary or appropriate to allocate costs to non-reference services, it had expected the Pilbara Service to be a rebateable service for AA5. However, the ERA has decided that the Pilbara Service does not meet the criteria to be defined as a rebateable service (see paragraph 267). Given the ERA's

⁸¹⁸ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25, Attachment 13.2: Allocation of total revenue*, pp. 7-8.

final decision to classify the Pilbara Service as a non-reference service (instead of a non-reference rebateable service), the ERA considers that it is necessary to allocate costs and total revenue (excluding the direct SUG for reference services) to non-reference services on the basis that the Pilbara Service uses shared assets.

1862. In response to a request for feedback on the classification of the Spot Capacity Service, DBP advised that, if the Spot Service was to be classified as a non-reference rebateable service (instead of a non-reference service), the ERA's draft decision allocation ratio would need to change to allocate only the revenue earned from the Pilbara Service. DBP submitted:

The allocation of efficient costs between reference and non-reference services for the purposes of determining reference tariffs can no longer be 97:3 but must instead represent the proportion only of Pilbara Service revenues in total revenues. This would change the proportion to slightly more than 99:1.⁸¹⁹

1863. While DBP advised that it expects demand for, and revenue to be generated from, the Storage Service to reduce to zero in 2023, the ERA considers that the service should still be considered when determining the allocation of costs to non-reference services. That is, given the nature of the Storage Service, the service uses shared assets. DBP forecasts that it will earn approximately [REDACTED] from Storage Services over the first two years of AA5. The inclusion of this revenue with the forecast revenue earned from the Pilbara Service does not alter DBP's one per cent forecast. On this basis, the ERA considers that a 99:1 ratio is the best estimate and basis for allocating total revenue (and costs) between reference services and other non-reference services that are not rebateable services.⁸²⁰ Except for SUG, which is an operating cost that is directly attributable to reference services, the ERA considers that all other operating and capital costs are shared costs for the provision of pipeline services on the DBNGP and should be allocated by reference to total revenue in the proportion of expected revenue from those services. On this basis, the ERA has allocated total revenue between reference and non-reference services as set out in Table 191. The ERA considers that this allocation of total revenue satisfies the requirements of rule 93 of the NGR and is consistent with the revenue and pricing principles and the national gas objective.

Table 191: ERA final decision allocation of total revenue between reference and non-reference services for AA5 (\$ million nominal)

	2021	2022	2023	2024	2025	Total
Total revenue	376.29	293.79	296.32	286.65	289.43	1,542.48
Allocation to reference services	372.74	291.06	293.55	283.93	286.68	1,527.95
Allocation to non-reference services (that are not rebateable services)	3.55	2.74	2.77	2.72	2.75	14.54

Source: ERA, April 2021, Final Decision tariff model

⁸¹⁹ DBP, 'Rebating of spot services', [email] 5 March 2021.

⁸²⁰ Rule 93(3) of the NGR permits the allocation of the costs of rebateable services, in whole or in part, to reference services.

Required Amendment 16

The allocation of total revenue between reference and non-reference services must reflect the values set out in Table 191 of this final decision.

Reference tariffs

1864. Rule 92 of the NGR requires that there is a reference tariff variation mechanism that is designed to equalise (in terms of present values) the portion of total revenue allocated to reference services and the forecast revenue from reference services over the access arrangement period.

1865. Rule 92(3) and rule 92(4) set out requirements when there has been a delay in the commencement of the revised access arrangement:

92 Revenue equalisation

...

(3) If there is an interval between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence (the **interval of delay**):

- (a) reference tariffs, as in force at the end of the previous *access arrangement period*, must continue without variation for the interval of delay; but
- (b) the operation of this subrule must be taken into account in fixing reference tariffs for the new *access arrangement period*, such that there may be an adjustment for any under-recovery or over-recovery by the service provider as a result of the continuation of reference tariffs from the previous *access arrangement period* during the interval of delay.

(4) For the avoidance of doubt, once the revisions to an access arrangement actually commence the access arrangement period to which the revised access arrangement applies includes the interval of delay.

1866. Rule 95 of the NGR sets out the requirements for determining 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].
1867. Rule 96 of the NGR allows the service provider to propose a discount for a particular user or prospective user, or a particular class of users or prospective users. The ERA may approve a discount only if it is necessary to respond to competition from other providers of pipeline services or other sources of energy, or to maintain the efficient use of the pipeline. The provision of the discount must also be likely to lead to reference or equivalent tariffs being lower than they would otherwise have been.

DBP's proposal

1868. DBP retained the reference services and tariffs offered under the current (AA4) access arrangement, which are:
- T1 Service and T1 Tariff for full haul services
 - P1 Service and P1 Tariff for part haul services
 - B1 Service and B1 Tariff for back haul services.⁸²¹
1869. Consistent with the current access arrangement, DBP proposed a two-part tariff structure for each reference service for AA5 that comprised:⁸²²
- A *capacity (or reservation) charge* that recovers the fixed costs of delivering reference services, calculated as the sum of the fixed cost elements of unsmoothed total revenue (determined as building block total revenue minus the cost of SUG) divided by forecast capacity demand.
 - A *commodity (or throughput) charge* that recovers the variable costs of delivering reference services, calculated as the sum of the variable cost elements of unsmoothed total revenue (determined as the cost of SUG) divided by forecast throughput.
1870. However, to reflect the reduction in the variable cost for SUG in AA5, DBP adjusted the proportion of fixed and variable components of the tariff. Specifically, in AA5, DBP reduced the commodity (or throughput) charge to 6 per cent (from 10 per cent in AA4) and so increased the capacity (or reservation) charge component of the tariff to 94 per cent (from 90 per cent in AA4).⁸²³
1871. DBP allocated costs across the full haul (T1 Service), part haul (P1 Service) and back haul (B1 Service) services using the same approach as applied in the current access arrangement, which was to sum the “full haul equivalent” value of each service (determined as the quantity in TJ multiplied by the proportion of pipeline used by the service). DBP noted that this approach had the practical effect that the tariff for the

⁸²¹ DBP, *DBP, 2021-2025 Final Plan*, January 2020, p. 123.

⁸²² DBP, *DBP, 2021-2025 Final Plan*, January 2020, p. 123.

⁸²³ DBP, *DBP, 2021-2025 Final Plan*, January 2020, p. 123.

part haul and back haul services were calculated on the same per kilometre basis as the full haul service.⁸²⁴ DBP stated:

Not only does this approach align with stakeholder feedback, but it also reflects the costs of providing each service; apart from some overhead costs, a shipper transporting gas halfway down the pipeline uses roughly half the pipeline infrastructure as one transporting gas the full length of the pipeline, and is charged accordingly.⁸²⁵

1872. DBP's proposed reference tariffs as provided in its Final Plan are set out in Table 192.

Table 192: DBP's initial proposed reference tariffs (AA5) (\$ real as at 31 December 2019)

Tariff component	Tariff
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.323657
Commodity (throughput) charge (\$/GJ/day)	0.090587
Total	1.414245
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000946
Commodity (throughput) charge (\$/GJ/km/day)	0.000065
Total	0.001011
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000946
Commodity (throughput) charge (\$/GJ/km/day)	0.000065
Total	0.001011

Source: DBP, *DBP, 2021-25 Final Plan, Proposed Tariff Model (confidential)*. ERA converted numbers into \$ as at 31 December 2019.

1873. As noted at paragraph 177, in May 2020, DBP provided the ERA with a revised tariff model to update demand forecasts for reference services following the completion of major contract renegotiations. DBP's proposed reference tariffs as set out in the revised tariff model are set out in Table 193.

⁸²⁴ DBP, *DBP, 2021-2025 Final Plan*, January 2020, p. 123.

⁸²⁵ DBP, *DBP, 2021-2025 Final Plan*, January 2020, p. 123.

Table 193: DBP's May 2020 revised proposed reference tariffs (AA5) (\$ real as at 31 December 2019)

Tariff component	Tariff
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.387300
Commodity (throughput) charge (\$/GJ/day)	0.082527
Total	1.469827
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000992
Commodity (throughput) charge (\$/GJ/km/day)	0.000059
Total	0.001051
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000992
Commodity (throughput) charge (\$/GJ/km/day)	0.000059
Total	0.001051

Source: DBP, 2021-25 Final Plan, Revised Tariff Model (confidential), May 2020. ERA converted numbers into \$ as at 31 December 2019.

Draft decision

1874. The ERA's draft decision accepted DBP's retention of the same two-part tariff structure for each of the reference services that existed for AA4. However, for AA5, DBP's initial proposal adjusted the fixed and variable components to reflect the reduction in the variable costs, which DBP considered only related to the cost of SUG. Specifically, the tariffs were calculated to recover 94 per cent of total revenue from the capacity (or reservation) charge and 6 per cent of total revenue from the commodity (or throughput) charge.
1875. Stakeholders submissions were not opposed to the fixed and variable charge, but gasTrading and WesCEF noted that there may be other variable costs based on equipment run hours, and the split of costs between the tariffs should be considered.⁸²⁶
1876. WesCEF noted DBP's assumption that SUG was the only variable cost attributable to the commodity tariff and considered that this should be reviewed, as WesCEF identified the following variable costs that could vary with the throughput in the pipeline:
- Turbine and GEA overhauls: AGIG notes that these costs are a function of unit run hours. These costs were predicted to be \$33 million in AA4. They will actually result in a total of \$24 million on the basis of lower run hours, themselves, a function of the throughput in the DBNGP.

⁸²⁶ Gas Trading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Issues Paper*, 30 March 2020, p. 9.

- Compressor stations: AGIG notes that these assets are “run based on the requirements of our customers and must be ramped up or down quickly to meet these needs”. The ERA had concluded in its technical paper on short run marginal costs in the electricity industry that “where output causes a costly deterioration of equipment, wear and tear can be thought of as a productive input, and thus can be described by an input-output curve similar to that of fuel.”⁸²⁷

1877. DBP noted that it followed the previously accepted approach for determining the fixed and variable splits of tariffs and that including other charges to determine variable charges would only have a small effect:

It may be possible to include other items, such as the turbine overhauls, into the variable cost bucket, but this would be a decision made by the ERA. To provide context around the impact of such a change, we have modelled the specific example of turbine overhauls which total \$25 million in opex over the period ... Including this as part of the variable charge would change the split from 94/6 to 92/8, raising the total tariff (fixed plus variable per GJ) slightly as the variable cost is divided by throughput, which is lower than contracted capacity.⁸²⁸

1878. The ERA considered that, while there may be some variable costs in addition to the SUG cost, the effect on the tariff split would not be material (as submitted by DBP) and that DBP’s method of determining the tariff structure was reasonable and consistent with rule 95(2) of the NGR and the revenue and pricing principles. As the ERA had determined a higher amount of SUG costs in the draft decision (see paragraph 675), the total revenue recovered from the commodity (or throughput) charge increased. The ERA’s calculated draft decision reference tariffs recovered 91.4 per cent of total revenue from the capacity (or reservation) charge and 8.6 per cent of total revenue from the commodity (or throughput) charge.

1879. WesCEF considered that there was a need to amend the tariff structure to differentiate different classes of users.⁸²⁹ WesCEF submitted that there had been a change in the cost of service provision due to electricity generators reducing their contracted capacity and consumption recently and that industrial, commercial and residential users had not changed their usage. The ERA considered that there were not two distinctly different classes of users of the service. All of these customers are seeking firm reference services. For the Peaking Service, a portion of revenue will be rebated against the reference tariff. While electricity generators may not use the DBNGP in the same manner as other customers, it is not in the long-term interests of industrial, commercial and residential customers (as referred to by WesCEF) to set higher reference tariffs for electricity customers, which may create a perverse incentive for them to reduce their consumption even more.

1880. As set out in Table 194, DBP’s proposed tariffs would have been 9.9 per cent higher than the current tariffs due to DBP’s expected decrease in forecast demand. DBP’s proposed capacity (or reservation) tariff for AA5, as revised in May 2020, was 15.3 per cent higher than the current 2020 approved tariff for the DBNGP, while the commodity (or throughput) tariff was 38.3 per cent lower. These percentage changes

⁸²⁷ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission, p. 7.

⁸²⁸ Australian Gas Infrastructure Group – Attachment C, p. 3.

⁸²⁹ Wesfarmers Chemicals, Energy & Fertilisers Ltd submission, p. 6.

reflect adjustments to the proportion of fixed and variable components of the tariff (as noted at paragraph 1874).

Table 194: Comparison of DBP's proposed May 2020 revised tariff and current tariff for the DBNGP (\$ real as at 31 December 2019)

Tariff component	Current tariff (2020)	DBP proposed May 2020 revised AA5 tariff	Change (%)
Full Haul (T1)			
Capacity (reservation) charge (\$/GJ/day)	1.203099	1.387300	15.3
Commodity (throughput) charge (\$/GJ/day)	0.133790	0.082527	(38.3)
Total	1.336889	1.469827	9.9
Part Haul (P1)			
Capacity (reservation) charge (\$/GJ/km/day)	0.000860	0.000992	15.3
Commodity (throughput) charge (\$/GJ/km/day)	0.000096	0.000059	(38.3)
Total	0.000956	0.001051	9.9
Back Haul (B1)			
Capacity (reservation) charge (\$/GJ/km/day)	0.000860	0.000992	15.3
Commodity (throughput) charge (\$/GJ/km/day)	0.000096	0.000059	(38.3)
Total	0.000956	0.001051	9.9

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 14 August 2020.

1881. The ERA assessed DBP's proposed tariffs with reference to rules 92 and 95 of the NGR and the revenue and pricing principles in the NGL. The ERA must approve an access arrangement that includes tariffs that comply with rule 92, which allows DBP to recover the portion of total revenue allocated to reference services.
1882. In response to the ERA's issues paper, gasTrading considered that there was no need to account for the overrun charge into the revenue calculations if the charge was imposed to encourage good shipper behaviour. However, if DBP engaged in systemic behaviour to promote, manipulate or maximise these charges, then the revenue for these charges should reduce the reference tariff.
1883. DBP's parent company AGIG noted that overrun services were not distinct services but included in the terms and conditions of the reference services and designed to:

Encourage shippers to contract for the firm capacity they require. Further, these charges play a role in the operational management of the pipeline by imposing a charge

on shippers nominating to take more gas than contracted, thus enabling DBP to prudently manage the pipeline for all Shippers on fair and equal basis.⁸³⁰

1884. Also, AGIG considered that the overrun service could not be forecast and that the revenue from the charges was immaterial.⁸³¹
1885. AGIG considered that incorporating the charges in the tariff calculation was likely to have a perverse incentive of encouraging more use of overruns. AGIG submitted:
- Incorporating overrun charges into the tariff calculation, is likely to have the perverse incentive of encouraging more use of overruns. This is because a shipper who overruns would also receive a benefit through their reference tariffs under such an arrangement. As a behaviour charge, we therefore do not consider overrun charges should form part of the reference tariff calculation.⁸³²
1886. The overrun charge is levied on gas users who exceed their daily contracted capacity. The overrun charge is the greater of 115 per cent of the reference tariff or the highest price bid for spot capacity and is charged on the excess capacity used. In the draft decision, the ERA noted that it had no evidence that DBP had engaged in any systemic behaviour to promote, manipulate or maximise these charges and noted DBP's submission that stated that the revenue from these overrun charges was relatively small. As a result, the ERA did not account for the revenue of these overrun charges in the calculation of reference services.
1887. Table 195 shows the reference tariffs calculated by the ERA in the draft decision for AA5, consistent with the ERA's calculation of total revenue (see paragraph 402) and the allocation of that revenue to reference services (see paragraph 1842). The calculated tariffs would vary based on the tariff variation mechanism (see paragraphs 1912 to 1922).

⁸³⁰ Australian Gas Infrastructure Group submission, p. 3.

⁸³¹ Australian Gas Infrastructure Group – Attachment B, p. 14.

⁸³² Australian Gas Infrastructure Group submission, p. 3.

Table 195: ERA's draft decision reference service tariffs for AA5 (\$ real as at 31 December 2019)

Tariff component	DBP proposed tariff	Draft decision tariff
Full Haul (T1)		
Capacity (reservation) charge (\$/GJ/day)	1.387300	0.959110
Commodity (throughput) charge (\$/GJ/day)	0.082527	0.088937
Total	1.469827	1.048047
Part Haul (P1)		
Capacity (reservation) charge (\$/GJ/km/day)	0.000992	0.000686
Commodity (throughput) charge (\$/GJ/km/day)	0.000059	0.000064
Total	0.001051	0.000749
Back Haul (B1)		
Capacity (reservation) charge (\$/GJ/km/day)	0.000992	0.000686
Commodity (throughput) charge (\$/GJ/km/day)	0.000059	0.000064
Total	0.001051	0.000749

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 14 August 2020.

1888. The draft decision set out the following required amendment:

Draft Decision Required Amendment 21

DBP must amend the proposed revised access arrangement to reflect the draft decision tariffs in Table 126 [Table 195 in this final decision].

DBP's response to the draft decision

1889. DBP's revised proposal retained the same tariff structure for the three reference services. However, DBP did not accept Draft Decision Required Amendment 21 as it updated its demand forecasts and the building block components compared to the draft decision.
1890. DBP's revised proposed reference tariffs as provided in its Revised Final Plan are set out in Table 196.

Table 196: DBP's revised proposal reference tariffs (AA5) (\$ real as at 31 December 2019)

Tariff component	Tariff
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.357918
Commodity (throughput) charge (\$/GJ/day)	0.077112
Total	1.435030
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000971
Commodity (throughput) charge (\$/GJ/km/day)	0.000055
Total	0.001026
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000971
Commodity (throughput) charge (\$/GJ/km/day)	0.000055
Total	0.001026

Source: DBP revised Final Plan, Attachment 13.1A Tariff Model, October 2020 (confidential). ERA converted numbers into \$ as at 31 December 2019.

1891. As noted at paragraph 392, in January 2021, DBP provided the ERA with an updated demand forecast for reference services. Due to the change in forecast demand, DBP's revised proposed reference tariffs were amended as set out in Table 197.

Table 197: DBP's January 2021 revised proposed reference tariffs (AA5) (\$ real as at 31 December 2019)

Tariff component	Tariff
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.385659
Commodity (throughput) charge (\$/GJ/day)	0.075504
Total	1.461163
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000990
Commodity (throughput) charge (\$/GJ/km/day)	0.000054
Total	0.001044
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/km/day)	0.000990
Commodity (throughput) charge (\$/GJ/km/day)	0.000054
Total	0.001044

Source: DBP revised Final Plan, Attachment 13.1A Tariff Model, October 2020 (confidential); DBP Tariff model amendments, January 2021. ERA converted numbers into \$ as at 31 December 2019.

Submission to the ERA

1892. The ERA received four submissions in response to the issues paper addressing DBP's initially proposed reference tariffs for AA5. These submissions from CPM, gasTrading, WesCEF and AGIG were addressed in the ERA's draft decision.
1893. In response to the draft decision, the ERA received one submission addressing DBP's reference tariffs for AA5. CPM considered that DBP's revised proposed tariffs were too high and did not account for higher tariffs that were negotiated in response a bail out of the DBNGP in 2004.⁸³³

Final decision

1894. The ERA notes CPM's concerns that the reference tariffs in AA5 do not account for higher tariffs that were negotiated in previous access arrangement periods. However, there is no provision in the setting of reference tariffs in the NGR to take account of prior tariffs negotiated by parties. Reference tariffs are set to allow the service provider a reasonable opportunity to recover the total revenue allocated to reference services determined in this decision.
1895. Table 198 shows the percentage changes of DBP's initial and revised proposals and the ERA's draft and final decisions compared to the current tariffs applying to the reference services.

⁸³³ Citic Pacific Mining, *Submission to Draft Decision*, p. 6.

Table 198: Comparison of AA5 tariff with current tariff for the DBNGP (%)

Tariff component	DBP proposal (May 2020)	Draft decision	DBP revised proposal (January 2021)	Final decision
Full Haul (T1) / Part Haul (P1) / Back Haul (B1)				
Capacity (reservation) charge (\$/GJ/day)	15.15	(20.39)	15.01	4.57
Commodity (throughput) charge (\$/GJ/day)	(38.40)	(33.62)	(43.64)	(41.67)
Total	9.79	(21.71)	9.14	(0.06)

Source: ERA, Draft decision on proposed revisions to the Dampier Bunbury Natural Gas Pipeline access arrangement 2021 to 2025, Appendix 6: Tariff Model (Public), 1 April 2021.

Note: Percentages calculated on a real basis as at 31 December 2019. The current tariff differs from that used in Draft Decision due to updated inflation numbers.

1896. The significant decrease in the commodity (throughput) charge reflects the lower SUG cost forecast in AA5 by both DBP and the ERA. The significant decrease in the capacity (reservation) charge in the draft decision compared to DBP's proposal was predominantly due of the ERA's demand forecasts which maintained 2020 levels of demand that were significantly higher than DBP forecast. The lower charges in the draft decision also reflected the lower total revenue determined.
1897. For the final decision, the ERA has set a lower total revenue for AA5 than the draft decision but has significantly lowered the forecast demand determined in the draft decision following the receipt of further information from DBP and other stakeholders. The latter change has increased tariffs from the draft decision. However, overall reference tariffs have decreased by 0.06 per cent compared to the tariff increase of 9.14 per cent requested by DBP in its revised proposal (updated for January 2021 demand). The decrease in overall tariffs in the final decision compared to DBP's revised proposal is due to the additional 18.8TJ/d of capacity and throughput forecast by the ERA during AA5 and the determined total revenue during AA5 which is \$70.68 million lower compared to DBP's revised proposal. The lower determined total revenue in the ERA's final decision is due to a lower rate of return and a lower allowance for regulatory depreciation.
1898. DBP's initial and revised proposals and the ERA's draft decision all assumed a start date for the tariffs of 1 January 2021. This was based on the intended commencement date of the AA5 period. Due to the complexity of DBP's proposal and delays caused by the COVID-19 global pandemic, which affected DBP's responsiveness to information requests, the access arrangement approval was delayed. As noted at paragraph 35, the ERA has decided that the access arrangement will commence on 1 July 2021 (a six-month delay). As a result, the ERA's final decision tariffs are calculated using a commencement of 1 July 2021.
1899. As required by rule 92(3) of the NGR, the reference tariffs that were approved at the end of the previous access arrangement period must continue without variation for the interval of delay.

Table 199: Current reference service tariffs (\$ real as at 31 December 2019)

Tariff component	Current tariff
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.204764
Commodity (throughput) charge (\$/GJ/day)	0.133975
Total	1.338739
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/day)	0.000861
Commodity (throughput) charge (\$/GJ/day)	0.000096
Total	0.000957
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/day)	0.000861
Commodity (throughput) charge (\$/GJ/day)	0.000096
Total	0.000957

Source: ERA calculations; DBP 2020 tariff variation proposal

1900. The ERA has determined that there would be an over-recovery of reference tariff revenue of \$0.03 million during the interval of delay. Consistent with previous ERA regulatory decisions when there has been an interval of delay, and rule 92(3)(b) of the NGR, the ERA considers that this over-recovery should be taken into account when calculating the reference tariffs for AA5 to commence from 1 July 2021. The amount of over-recovery of reference tariff revenue during the interval of delay is determined by calculating the difference in revenue of applying the current reference tariffs compared to the reference tariffs that would have applied in the absence of the delay. The reference tariffs used in the calculation are expressed in the same dollar values and are calculated using forecast demand for the period. The forecast demand is calculated by applying the ratio of the number of days in the interval of delay and the number of days in 2021 to the forecast demand for 2021. Forecast demand is used in the calculation to maintain the incentive properties of the regulatory regime. By taking this interval of delay revenue over-recovery into account, DBP has the opportunity to recover the total revenue determined for the full five-year period of AA5 and is no better or worse off from the interval of delay in present value terms.⁸³⁴
1901. Table 200 shows the reference tariffs calculated by the ERA for AA5, consistent with the ERA's calculation of total revenue (see paragraph 405) and the allocation of that revenue to reference services (see paragraph 1863). The calculated tariffs will vary over the AA5 period based on the tariff variation mechanism (see paragraphs 1903 to 1990).

⁸³⁴ In this decision document the fifth access arrangement period (AA5) refers to the five year period – 1 January 2021 to 31 December 2025.

Table 200: ERA's final decision reference service tariffs for AA5 to commence on 1 July 2021 (\$ real as at 31 December 2019)

Tariff component	DBP proposal (May 2020)	Draft decision	DBP revised proposed (January 2021)	Final decision
Full Haul (T1)				
Capacity (reservation) charge (\$/GJ/day)	1.387300	0.959110	1.385659	1.259781
Commodity (throughput) charge (\$/GJ/day)	0.082527	0.088937	0.075504	0.078143
Total	1.469827	1.048047	1.461163	1.337924
Part Haul (P1)				
Capacity (reservation) charge (\$/GJ/day)	0.000992	0.000686	0.000990	0.000900
Commodity (throughput) charge (\$/GJ/day)	0.000059	0.000064	0.000054	0.000056
Total	0.001051	0.000749	0.001044	0.000956
Back Haul (B1)				
Capacity (reservation) charge (\$/GJ/day)	0.000992	0.000686	0.000990	0.000900
Commodity (throughput) charge (\$/GJ/day)	0.000059	0.000064	0.000054	0.000056
Total	0.001051	0.000749	0.001044	0.000956

Source: ERA, April 2021, Final Decision tariff model

1902. Table 201 shows the ERA's final decision reference service tariffs for AA5 in nominal dollars.

Table 201: ERA's final decision reference service tariffs for AA5 to commence on 1 July 2021 (nominal)

Tariff component	1 July 2021
Full Haul (T1)	
Capacity (reservation) charge (\$/GJ/day)	1.288923
Commodity (throughput) charge (\$/GJ/day)	0.079950
Total	1.368873
Part Haul (P1)	
Capacity (reservation) charge (\$/GJ/day)	0.000921
Commodity (throughput) charge (\$/GJ/day)	0.000057
Total	0.000978
Back Haul (B1)	
Capacity (reservation) charge (\$/GJ/day)	0.000921
Commodity (throughput) charge (\$/GJ/day)	0.000057
Total	0.000978

Source: ERA, April 2021, Final Decision tariff model

Required Amendment 17

Clause 3.3, 3.4 and 3.5 of the revised proposed access arrangement must be amended to reflect the final decision tariffs for the full haul, part haul and back haul reference services in Table 201 of this final decision.

Reference tariff variation mechanism

1903. Rule 92 of the NGR requires DBP to include a reference tariff variation mechanism to vary reference tariffs over the course of the 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) Except to the extent that subrule (3) applies, the reference tariff variation mechanism must be designed to equalise (in terms of present values):
 - (a) forecast revenue from reference services for the access arrangement period; and
 - (b) the portion of total revenue allocated to reference services for the access arrangement period.
- (3) If there is an interval between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence (the interval of delay):

- (a) reference tariffs, as in force at the end of the previous access arrangement period, must continue without variation for the interval of delay; but
- (b) the operation of this subrule must be taken into account in fixing reference tariffs for the new access arrangement period, such that there may be an adjustment for any under-recovery or over-recovery by the service provider as a result of the continuation of reference tariffs from the previous access arrangement period during the interval of delay.
- (4) For the avoidance of doubt, once the revisions to an access arrangement actually commence the access arrangement period to which the revised access arrangement applies includes the interval of delay.

1904. Rule 93(3) of the NGR specifies the requirements for rebating the revenue generated from rebateable services to reduce the reference tariff:

93 Allocation of total revenue and costs

...

- (3) The [ERA] may, however, permit the allocation of the costs of rebateable services, in whole or 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 reduce the reference tariff in accordance with rule 97; and
 - (b) any other conditions determined by the [ERA] are satisfied.

1905. Rule 97 of the NGR specifies the required mechanics of reference tariff variation:

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
 - (c1) as a result of the application of a portion of the revenue generated from the sale of rebateable services to reduce the reference tariff as contemplated under rule 93(3); or
 - (d) by the combined operation of 2 or more of the above.
- (2) A formula for variation of a reference tariff may (for example) provide for:
 - (a) variable caps on the revenue to be derived from a particular combination of reference services; or
 - (b) tariff basket price control; or
 - (c) revenue yield control; or
 - (d) a combination of all or any of the above.
- (3) In deciding whether a particular reference tariff variation mechanism is appropriate to a particular access arrangement, the [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
 - (d1) the risk sharing arrangements implicit in the access arrangement; 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 initial proposal

1906. DBP proposed to amend the tariff variation mechanism for AA5 as set out in clause 11 and Annexure A (clause 18) of the proposed revised access arrangement.⁸³⁵
1907. Consistent with the current (AA4) reference tariff variation mechanism, DBP proposed that the reference tariff variation mechanism for AA5 would provide for annual updates to the reference tariff to adjust for changes in:
- inflation
 - the debt risk premium
 - tax policy
 - new costs pass through.
1908. DBP proposed to adjust inflation on 1 January for each of the years 2022, 2023, 2024 and 2025 using the formula:⁸³⁶

$$Tariff_N^{i,j} \leq Tariff_R^{i,j} \times \frac{CPI_{Sep(N-1)}}{CPI_{Sep 2019}}$$

where:

$Tariff_N^{i,j}$ is the tariff value of Reference Service i and Reference Tariff Component j as varied from 1 January of the Variation Year N ;

$Tariff_R^{i,j}$ is the tariff value in real December 2020 dollar as calculated by the Tariff Model after the Annual Update of Trailing Average Cost of Debt for Reference Service i and Reference Tariff Component j as varied from 1 January of the Variation Year N ;

R is the tariff calculated by the Tariff Model for the Variation Year N in real 31 December 2020 dollar;

N is the Variation Year 2022, 2023, 2024 and 2025;

i is the Reference Service with:

$i = 1$ being T1 service,

⁸³⁵ DBP, *DBNGP Access Arrangement 2021-25*, Clause 11 (Reference Tariff Variation Mechanism).

⁸³⁶ DBP, *DBNGP Access Arrangement 2021-25*, Annexure A, clause 18.7.

$i = 2$ being P1 service, and

$i = 3$ being B1 service;

j is the Reference Tariff Component with:

$j = 1$ being Capacity Reservation Tariff, and

$j = 2$ being Capacity Commodity Reservation Tariff;

$CPI_{Sep(N-1)}$ is the value of the CPI All Groups, Weighted Average of Eight Capital Cities as published by the Australian Bureau of Statistics for 30 September of the year (N-1) as a proxy to 31 December year N CPI for which the Reference Tariff is being adjusted; and

$CPI_{Sep 2019}$ is the value of the CPI All Groups, Weighted Average of Eight Capital Cities as published by the Australian Bureau of Statistics for quarter ending on 30 September 2019 as a proxy to 31 December 2020 CPI.

1909. DBP calculated the annual update of the trailing average debt risk premium component of the rate of return in each year of the access arrangement period using the formula:⁸³⁷

$$TA\ DRP_0 = \frac{\sum_{t=0}^{-9} DRP_t}{10}$$

where:

$TA\ DRP_0$ is the equally weighted trailing average of the DRP to apply in the following year as the annual update of the estimate used in the current year; and

DRP_t is the DRP estimated for each of the 10 regulatory years $t = 0, -1, -2, \dots, -9$.

DRP_t is the DRP estimates in each year $t = 0, -1, -2, \dots, -9$, which are either:

the forward looking DRP estimators for the calendar year 2022, 2023, 2024 or 2025, estimated during the 40 trading days averaging period, using the method of automatic formulas set out in Appendix XX of the Final Decision; or

the published DRP_t estimates, derived from the Reserve Bank of Australia 10 year BBB credit spread to swap interpolated daily data (up to the period 31 May 2015) and from the ERA's DATE estimate of the DRP, as follows, as set out in Appendix XX of the Final Decision:

calendar year 2012: DRP_{2012} : 3.168 per cent;
 calendar year 2013: DRP_{2013} : 3.043 per cent;
 calendar year 2014: DRP_{2014} : 2.251 per cent;
 calendar year 2015: DRP_{2015} : 2.070 per cent;
 calendar year 2016: DRP_{2016} : 2.612 per cent;
 calendar year 2017: DRP_{2017} : 2.274 per cent;
 calendar year 2018: DRP_{2018} : 1.756 per cent;
 calendar year 2019: DRP_{2019} : 1.712 per cent;
 calendar year 2020: DRP_{2020} : 1.995 per cent
 calendar year 2021: DRP_{2021} : XX per cent

⁸³⁷ DBP, *DBNGP Access Arrangement 2021-25*, Annexure A, clause 18.10

1910. DBP amended its approach to updating the debt risk premium to conform with the ERA's *Rate of Return Guidelines*.⁸³⁸ Specifically, as provided in revisions to Annexure A of the proposed revised access arrangement, DBP proposed that:

The Service Provider has also adopted a 'trailing average' approach to estimate the Debt Risk Premium used to determine the Reference Tariff. The trailing average approach is a method of the type referred to in the ERA Final Rate of Return Guidelines (2018).

... all annual updates of the debt risk premium should be determined consistent with the automatic formulas summarised in Appendices 6, 6 and 7 of the Explanation Statement to the ERA's December 2018 *Rate of Return Guideline* ...

The forward looking estimates of the debt risk premium (DRP) for each regulatory year will be estimated using the ERA's Revised Bond Yield Approach as described in the ERA's December 2018 *Rate of Return Guideline*.

... The method of automatic formulas applies for updating the estimates of the DRP, and will remain unchanged for the duration of the AA5 period, and hence will apply for the estimates made for DRP2022, as well as for the estimates DRP2023, DRP2024 and DRP2025. They are described in the ERA's December 2018 *Rate of Return Guideline*.⁸³⁹

1911. DBP made only minor revisions to the wording of the reference tariff variation mechanism used to adjust prices for changes in tax policy and new cost pass throughs.⁸⁴⁰ These changes predominantly reflect updates to some defined terms in the proposed access arrangement.⁸⁴¹

Draft decision

1912. DBP made minor revisions to the wording of the reference tariff variation mechanism that adjusted prices for changes in tax policy and new costs pass through as provided in clause 11 and Annexure A of the revised access arrangement. The ERA considered that these revisions were consistent with rule 92 and rule 97 of the NGR. However, there was a typographical error in clause 11.5(j) of the revised access arrangement that needed correction – the reference to "clause 0" needed to be amended to read "clause 11.5".

Inflation

1913. In response to the issues paper, CPM submitted that the reference tariff variation mechanism should adjust only for inflation of the variable costs incurred in the delivery of services. The ERA confirmed that the mechanism adjusts for inflation of all costs by setting the total revenue and not reference tariffs. The ERA uses its inflation estimate determined as part of the rate of return as its best forecast of inflation for these costs. The ERA also adjusts costs where it does not consider the costs represent the best forecast, such as, for example, real labour cost escalation.
1914. The tariff adjustment mechanism updates the ERA's forecast of inflation with a more recent actual measure of inflation through the Consumer Price Index (CPI). The ERA considered that this was a reasonable approach and was consistent with the national gas objective and rule 97 of the NGR.

⁸³⁸ Economic Regulation Authority, *Final Rate of Return Guidelines (2018) Meeting the requirements of the National Gas Rules*, 18 December 2018.

⁸³⁹ DBP, *DBNGP Access Arrangement 2021-25*, Annexure A.

⁸⁴⁰ See DBP, *DBNGP Access Arrangement 2021-25*, Clause 11 (Reference Tariff Variation Mechanism).

⁸⁴¹ See DBP, *DBNGP Access Arrangement 2021-25*, Clause 16 (Definitions).

1915. As the ERA calculates real December 2019 tariffs and not real December 2020 tariffs, the ERA required the CPI in the denominator of the formula, shown at paragraph 1908 of this decision, to be amended to refer to the CPI for 2018 and not 2019. This amendment would ensure that the tariffs reflect the appropriate amount of inflation to determine nominal tariffs.
1916. The ERA required that inflation on 1 January for each of the years 2022, 2023, 2024 and 2025 be adjusted using the formula:

$$Tariff_N^{i,j} \leq Tariff_R^{i,j} \times \frac{CPI_{Sep(N-1)}}{CPI_{Sep 2018}}$$

where:

$Tariff_N^{i,j}$ is the tariff value of Reference Service and Reference Tariff Component as varied from 1 January of the Variation Year N;

$Tariff_R^{i,j}$ is the tariff value in real 31 December 2019 dollar as calculated by the Tariff Model after the Annual Update of Trailing Average Cost of Debt for Reference Service and Reference Tariff Component j as varied from 1 January of the Variation Year N;

R is the tariff calculated by the Tariff Model for the Variation Year N in real 31 December 2019 dollars;

N is the Variation Year 2022, 2023, 2024 and 2025;

i is the Reference Service with:

$i = 1$ being T1 service

$i = 2$ being P1 service

$i = 3$ being B1 service;

j is the Reference Tariff Component with:

$j = 1$ being Capacity Reservation Tariff

$j = 2$ being [Commodity Tariff];⁸⁴²

$CPI_{Sep(N-1)}$ is the value of the CPI All Groups, Weighted Average of Eight Capital Cities as published by the Australian Bureau of Statistics for 30 September of the year (N-1) as a proxy to 31 December year N CPI for which the Reference Tariff is being adjusted; and

$CPI_{Sep 2018}$ is the value of the CPI All Groups, Weighted Average of Eight Capital Cities as published by the Australian Bureau of Statistics for quarter ending on 30 September 2018.

Debt risk premium

1917. To ensure that updates to the debt risk premium conform with the ERA's *Rate of Return Guidelines*, the ERA required the following clauses of Annexure A of the proposed revised access arrangement to be amended as follows:

- In clause 18.10:
 - Delete the words “40 trading days averaging period” and replace with “20 trading days averaging period”.
 - Delete the words “(up to the period 31 May 2015)” and replace with “(for years prior to 2015)”.

⁸⁴² The draft decision used the term “Capacity Commodity Reservation Tariff”, which does not exist in the access arrangement. The correct term is “Commodity Tariff”.

- Delete the words “ERA’s DATE estimate” and replace with “ERA’s 2015 estimate”.
- In clause 18.11, delete the words “Appendices 6, 6 and 7” and replace with “Appendix 7”.
- Delete the words in clause 18.12 and replace with:

“The ERA required that DBP nominate averaging periods for each of 2022, 2023, 2024 and 2025 consistent with Appendix 7 of the Explanatory Statement to the ERA’s December 2018 Rate of Return Guideline. The averaging period for each year’s debt risk premium estimates will be 20 consecutive trading days. This averaging period must fall within a window at least two months prior to, but no longer than six months before the regulatory period. The averaging periods must be nominated prior to the ERA’s Final Decision. The ERA does not require the nominated 20 trading day averaging period for each of the four years to be identical periods – only that they occur in the above window in each period.”
- Delete clause 18.14 by replacing the words with “[DELETED]”.
- Delete the words in clause 18.16 and replace with:

“The next DRP estimate that will be made will be based on the nominated 20 days falling in the period July to October 2021 (for DRP2022). That next DRP estimate will be incorporated in the trailing average DRP (that is, TA DRP2022), and hence the updated rate of return, which will then apply in 2022 through the annual tariff variation.”

Rebateable services revenue

1918. In May 2020, DBP advised that it had completed contract renegotiations with shippers and as a result some shippers would now use the Peaking Service during AA5 and that this service should be specified as a rebateable service.⁸⁴³ As noted at paragraphs 171 to 174 of this decision, the ERA’s draft decision approved DBP’s proposal for the Peaking Service to be a rebateable service for AA5.
1919. When considering an appropriate rebate mechanism for the Peaking Service, DBP considered that there was a “good case” for the rebate to be set at least at 70:30 (with 70 per cent of the benefit being passed through to customers).⁸⁴⁴ DBP noted that the costs associated with providing the Peaking Service were likely to be incremental costs only because the service did not require new capital expenditure. Incremental costs would “include fuel gas and the increased impact on volume driven tasks such as turbine overhauls [and would] together account for roughly a third of [DBP’s] overall operating costs.”⁸⁴⁵ However, DBP stated:

[The recovery of incremental costs] suggests a lower bound sharing ratio of 30% would be appropriate to recover incremental costs. However, a prudent mechanism would require setting the sharing ratio at some level above the expected incremental cost to reflect the risk associated with any opex or capex cost overruns that we would otherwise not be able to recover.

⁸⁴³ DBP, ‘Demand and Services Update’, [email] 22 May 2020.

⁸⁴⁴ DBP, ‘Demand and Services Update’, [email] 22 May 2020, Attachment: *Further information on our demand and services*, p. 10.

⁸⁴⁵ DBP, ‘Demand and Services Update’, [email] 22 May 2020, Attachment: *Further information on our demand and services*, p. 8.

We consider there is a good case that an appropriate rebate would be set at least at 70:30 (with 70 percent of the benefit being passed through to customers).⁸⁴⁶

1920. In support of its proposal, DBP cited the example of the AER's 2017 final decision for the Roma to Brisbane Gas Pipeline, in which the AER considered two rebateable services and applied the same sharing ratio of 70:30 (with 70 per cent of the benefit being passed through to consumers). In its final decision, the AER stated:

The NGR does not set out any rules that we must apply when determining the share of the revenue that a service provider generates from the provision of rebateable services that is to be returned to customers. However, given a service provider is likely to incur some incremental costs when providing these services, we think it is appropriate that it keep some of the revenue generated so that it has a reasonable opportunity to recover at least the efficient costs associated with providing the services. We also think it is appropriate to allow service providers to retain a share of the revenue so that it has an effective incentive to respond to customer needs.

In the draft decision, we proposed a 70:30 benefit sharing ratio for in-pipe trading and capacity trading services and a 90:10 benefit sharing ratio for park and loan services. A lower sharing ratio for shippers was proposed for in-pipe trades and capacity trading services because we thought APTPPL should receive a greater reward for developing more innovative services.

Having reflected on this further, and considering comments from APTPPL, we think that trying to draw a distinction between innovative and less innovative services and ascribing different sharing ratios to each may be somewhat artificial. We have therefore decided to apply the same sharing ratio to all of these services and to employ the same sharing ratio that we use in other incentive mechanisms, which is a 70:30 sharing ratio. Under this sharing ratio, APTPPL will be able to retain 30 per cent of the revenue it generates from the provision of rebateable services and the remaining 70 per cent will be passed through to reference service users. In our view, the adoption of this sharing ratio provides a reasonable balance between:

- promoting the efficient use of the pipeline (e.g. by ensuring the prices charged for reference services are relatively cost reflective), and
- providing effective incentives to service providers to promote economic efficiency in relation to the services it provides (e.g. by rewarding APTPPL for responding to customer needs), which will, in turn, promote the efficient provision of pipeline services and efficient investment in the pipeline over the longer term.

It should also provide APTPPL with a reasonable opportunity to recover the incremental costs it incurs when providing these services, which APTPPL has confirmed are relatively small.

We are therefore satisfied that this sharing ratio is consistent with the [revenue and pricing principles] and [national gas objective].⁸⁴⁷

1921. In accordance with rule 93(3)(a) of the NGR, the ERA must be "satisfied that the service provider will apply an appropriate portion of the revenue generated from the sale of rebateable services to reduce the reference tariff in accordance with rule 97." The ERA considered that the AER's decision for the Roma to Brisbane Gas Pipeline and the ERA's accepted sharing ratio for the E Factor incentive mechanism supported DBP's proposed allocation of 70 per cent of the benefit (that is, revenue) being passed through to customers, and met the requirements of rule 93(3)(a) and rule 97 of the NGR.

⁸⁴⁶ DBP, 'Demand and Services Update', [email] 22 May 2020, Attachment: *Further information on our demand and services*, p. 8.

⁸⁴⁷ AER, *Final decision: Roma to Brisbane Gas Pipeline Access Arrangement 2017–22, Attachment 1 – Services covered by the access arrangement*, November 2017, pp. 18-19.

1922. As DBP did not include a rebate mechanism in its initial proposal, the ERA required DBP to amend clause 11 and Annexure A of the proposed revised access arrangement to include a rebate mechanism for the rebateable Peaking Service.
1923. The draft decision set out the following required amendment:

Draft Decision Required Amendment 22

DBP must amend clause 11 (Reference Tariff Variation Mechanism) and Annexure A of the proposed revised access arrangement to:

- Include a rebate mechanism for the rebateable peaking service.
- Amend the description of the debt risk premium (in Annexure A) to ensure it conforms with the ERA's Rate of Return Guideline. The required amendments are set out at paragraph 1233 of [the] draft decision [paragraph 1917 of this final decision].
- Correct the typographical error in [clause] 11.5(j) so that the reference is identified as "clause 11.5" (and not "clause 0").

DBP's response to the draft decision

1924. DBP accepted the ERA's draft decision required amendment 22 to amend clause 11 and Annexure A of the access arrangement to:
- Insert new Annexure A5 (Adjustments for Rebateable Non-Reference Services) in Annexure A of the access arrangement to introduce a rebate mechanism for non-reference rebateable services, including the Peaker Service.⁸⁴⁸
 - Amend the description of the debt risk premium in Annexure A of the access arrangement as per the required amendments set out in the ERA's draft decision (and at paragraph 1917 of this decision).
 - Correct the typographical error in clause 11.5(j) of the access arrangement.
1925. Further to making the above required amendments, DBP amended clause 11.2 (to add the words "save that where the model is inconsistent with part A5 of Annexure A that part prevails") and Annexure A (to add a new clause 18.5 and amend renumbered clause 18.9) of the access arrangement as follows:⁸⁴⁹

11 Reference Tariff Variation Mechanism

11.1 ...

Annual Scheduled Variation of Reference Tariffs

11.2 The Annual Scheduled Variation of Reference Tariffs means the following mechanism:

The Reference Tariff calculated by DBP must be less than or equal to the Reference Tariff calculated by the model developed by the ERA, after applying the methods set out in Annexure A to the Access Arrangement [save that where the model is inconsistent with part A5 of Annexure A that part prevails](#).

⁸⁴⁸ As part of its revised proposal, DBP renamed the Peaking Service the "Peaker Service".

⁸⁴⁹ DBP's insertion of a new clause 18.5 in Annexure A has resulted in the renumbering of the remainder clauses in Annexure A.

18 Annexure A**A1 Annual Scheduled Variation of Reference Tariffs**

...

[18.5](#) [The Service Provider has also specified four Rebateable Non-Reference Services, the revenue from which in any given year is to be used to alter the reference tariff in the following year following the approach outlined in “Adjustments for Rebateable Non-Reference Services” \(Annexure A5\).](#)

~~18.5~~[18.6](#) Any annually varied Reference Tariff Component will be effective 1 January of each regulatory Year.

...

A2 CPI formula variation

...

Price Path of Tariff Variation

~~18.8~~[18.9](#) ... The resulting NPV of the Tariff Revenue will to be equal to the approved Total Revenue of the access arrangement period, which was set out in the Access Arrangement Final Decision, albeit updated for the change in debt risk premium contributing to the rate of return [and rebated revenue](#). [sic]

Submission to the ERA

1926. In its submission in response to the issues paper, CPM supported a reference tariff variation mechanism that adjusted prices for unforeseen changes in law or tax. However, CPM considered that the reference tariff variation mechanism should apply only to variable costs incurred in delivering services. CPM submitted that:

The portion of [DBP’s] costs that will actually be exposed to tariff variation mechanisms should be very low and the escalation formulae used in the Authority’s final decision should take this into consideration.⁸⁵⁰

1927. In response to the draft decision and/or DBP’s revised proposal, submissions from CPM, gasTrading and WEGS addressed matters concerning the reference tariff variation mechanism.

1928. CPM suggested the ERA reconsider the formula to be used to annually adjust tariffs for inflation and submitted the following:

CPM submits that depreciation particularly is a figure used in the development of the tariff which is recovering capital spent in the past and as such it is not appropriate to inflate again in the future, particularly it is a non-cash item, otherwise a potential over recovery on revenues in the later part of the AA5 Period may result, at the detriment of Shippers. CPM further submits that should the tariff stay as determined in the Draft Decision, then the perceived over recovery will have been suitably addressed and the Authority need not consider this item further.⁸⁵¹

1929. GasTrading submitted that DBP’s proposal to rebate the revenue earned from non-reference rebateable services, by lowering reference tariffs in subsequent years, makes it difficult for customers to forecast the tariff and associated transport costs. It suggested that a more appropriate mechanism may be a lump-sum repayment.

GasTrading accepts that using the rebate mechanism will have winners and losers, but considers that a more appropriate mechanism may be a lump sum refund paid to all

⁸⁵⁰ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 6.

⁸⁵¹ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, pp. 2-3.

shippers based on their deliveries (actual throughput) within a short period after each year (the exact year to be defined) or other shorter reasonable frequency (such as 6 months).

This allows Shippers to forecast DBP tariffs for their own budgeting purposes and separately manage any rebate.

Tax implications may need to be considered of the above, but gasTrading considers it a superior solution as it provides greater certainty for planning purposes.⁸⁵²

1930. GasTrading further noted DBP's proposal to keep 30 per cent of the revenue earned from the provision of rebateable services and stated that it was unclear as to why DBP should only rebate 70 per cent of the revenue back to shippers when some costs can be clearly attributed to the rebateable services, including the Ullage Service.⁸⁵³

1931. WEGS suggested that there were inconsistencies in DBP's approach to rebating the revenues generated from non-reference rebateable services. WEGS submitted:

- [DBP] has submitted that the revenues derived from rebateable non-reference services ... should be rebated to Reference Service shippers on a 70/30 split.
- ...
- WEGS submits that allowing [DBP] to retain 30% of the revenue earned from the sale of [rebateable non-reference] services is not consistent with the NGR. [DBP's] suggestion that 30% of the revenues of [these services] should allow it to cover its variable costs in respect of [those services] is unacceptably inconsistent with [DBP's] other submissions that, for the delivery of its Reference Services, [DBP] incurs a variable cost of only 6% of the tariff. [DBP] has consistently proposed that only its System Use Gas be used to determine its variable costs and therefore the commodity charge of Reference Services. In suggesting to retain 30% of [rebateable non-reference service revenues], [DBP] is considering that these services cause other incremental costs such as turbine overhauls which WEGS had brought to the ERA's attention in its first submission.
- WEGS holds the view that, should a rebate mechanism apply to these non-reference services revenues, it should be based on a 94% redistribution to reference service customers.⁸⁵⁴

1932. In response to the position paper on pipeline and reference services, WEGS reiterated its previous submissions made in response to the draft decision.

WEGS had indicated in its prior submission that the rebate sharing mechanism proposed by [DBP] does not properly reflect the cost of providing [rebateable] services. Each of the Ullage and the Peaker Services are primarily available because the pipeline holds available capacity. Therefore, proposing a sharing mechanism to reflect that [DBP] will require 30% of the revenues to cover only the related incremental fuel gas does not seem appropriate when considering that fuel gas only represents 6% of [DBP's] proposed Reference Services.⁸⁵⁵

⁸⁵² Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 9.

⁸⁵³ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 9.

GasTrading's submission states that DBP's proposal is "to keep 70% of the rebateable service revenues" and to "rebate 70%". This is incorrect. DBP has proposed a sharing ratio of 70:30, with 70% of the revenue to be rebated back to customers.

⁸⁵⁴ Wesfarmers Energy (Gas Sales) Limited submission in response to draft decision, 4 November 2020, p. 10.

⁸⁵⁵ Wesfarmers Energy (Gas Sales) Limited submission in response to position paper, 4 December 2020, p. 8.

Final decision

1933. DBP accepted draft decision required amendment 22 to amend the proposed revised access arrangement to:
- Introduce a rebate mechanism (new Annexure A5) to rebate a portion of the revenue generated from the sale of rebateable non-reference services, including the Peaker Service.
 - Amend the description of the debt risk premium (in Annexures A3 and A4) so that the description conforms with the ERA's *Rate of Return Guideline*.
1934. The ERA has considered the terms of DBP's proposed rebate mechanism at paragraph 1954.
1935. DBP amended the description of the debt risk premium as per the amendments set out in draft decision required amendment 22. The ERA considers that the description of the debt risk premium, in Annexures A3 (Trailing average cost of debt variation) and A4 (Automatic formulas for updating the Debt Risk Premium), is now consistent with the ERA's *Rate of Return Guideline*.⁸⁵⁶
1936. While not specified in draft decision required amendment 22, the draft decision stated that the ERA calculated real December 2019 tariffs and not real December 2020 tariffs. Hence, the ERA required DBP to adjust the inflation formula in clause 18.8 of the access arrangement so that the denominator of the formula referred to the CPI for 2018 and not 2019 (see paragraph 1915 and 1916 of this decision).⁸⁵⁷ DBP's revised proposal did not include the amendment to clause 18.8. Accordingly, the ERA requires clause 18.8 of the revised access arrangement to be amended as per the formula set out at paragraph 1916 of this decision.

Required Amendment 18

The CPI formula in clause 18.8 of the proposed revised access arrangement must be amended as per the formula set out at paragraph 1916 of this final decision.

1937. In its submission in response to the draft decision, CPM suggested that the ERA should reconsider the formula to be used to annually adjust tariffs for inflation. CPM considered that the depreciation component of the tariff calculation should not be inflated annually as it was recovering past capital and it was a non-cash item. CPM's concern was that inflating the depreciation component of the tariff would result in over-recovery of revenue. However, this is not the case. DBP's annual adjustment to tariffs for inflation simply adjusts the real dollar value of tariffs to the nominal value for the tariff year. DBP should be allowed to recover the past capital expenditure while taking into account the effect of inflation.

Additional revised amendments

1938. Further to making the required amendments set out in the draft decision, DBP made several additional amendments to the access arrangement, including:

⁸⁵⁶ The ERA notes that further administrative amendments to Annexure A3 (clause 18.11) are required to replace references to "Appendix XX of the Final Decision" and "XX per cent" with references to documents containing the information and "1.712 per cent", respectively.

⁸⁵⁷ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 273, paragraphs 1231 and 1232.

- An amendment to clause 11.2, to add the words “save that where the model is inconsistent with part A5 of Annexure A that part prevails”.
 - Amendments to Annexure A to insert a new clause 18.5 and amend renumbered clause 18.9 to add the words “and rebated revenue”.
1939. The ERA sought further information from DBP as to the reason for each of its additional amendments. The information provided by DBP is included as part of the ERA’s considerations of the additional amendments to clause 11.2 and Annexure A below.

Clause 11.2

1940. DBP confirmed that the amendment to clause 11.2 was consequential to the inclusion of Annexure A5 and submitted:

[The amendment to clause 11.2] is required in order to maintain certainty in the application of part A5 of Annexure A so that it prevails to the extent of any inconsistency with the ERA model. It was felt necessary to refer specifically to part A5 of Annexure A, as without this amendment there may be potential ambiguity in the calculation of the Annual Scheduled Variation of the Reference Tariff under part A5 of Annexure A.⁸⁵⁸

1941. DBP’s proposed amendment aimed to clarify the application of Annexure A5 and that, in the case where there were any inconsistencies with the (ERA) approved model used to calculate the reference tariffs, Annexure A5 would prevail.
1942. Clause 11 of the access arrangement sets out the reference tariff variation mechanism, which provides for the following variations to the reference tariff:
- annual scheduled variation of reference tariffs
 - tax changes variation
 - new cost pass through variation.
1943. Clause 11.2 of the access arrangement states, “the Annual Scheduled Variation of Reference Tariffs means the following mechanism” (shown with DBP’s proposed amendment):

The Reference Tariff calculated by DBP must be less than or equal to the Reference Tariff calculated by the model developed by the ERA, after applying the methods set out in Annexure A to the Access Arrangement [save that where the model is inconsistent with part A5 of Annexure A that part prevails](#).

1944. The ERA considers that DBP’s proposed amendment is unnecessary and complicates the existing (AA4) meaning. Existing clause 11.2 clearly states that the annual scheduled variation of reference tariffs must result in reference tariffs that are less than or equal to the reference tariffs calculated by the model developed (approved) by the ERA, after applying the methods set out in Annexure A of the access arrangement, which contains:
- Annexure (part) A1 – Annual scheduled variation of reference tariffs
 - Annexure (part) A2 – CPI formula variation
 - Annexure (part) A3 – Trailing average cost for debt variation
 - Annexure (part) A4 – Automatic formulas for updating the Debt Risk Premium.

⁸⁵⁸ DBP, Response to information request ERA44, 11 February 2021.

1945. The meaning of the annual scheduled variation of reference tariffs does not change with the addition of Annexure (part) A5 – Adjustments for Rebateable Non-Reference Services. Annexure A5 is part of Annexure A and is therefore captured by existing clause 11.2 – that is, Annexure A of the revised access arrangement contains Annexures (parts) A1, A2, A3, A4 and A5. DBP’s proposed amendment to make specific reference to “part A5 of Annexure A” in clause 11.2, without any references to the other parts of Annexure A, creates ambiguity in instances where there are inconsistencies. That is, there may be inconsistencies between the model used to calculate tariffs and the other parts of Annexure A. Without specific mention to these other parts (A1 to A4), it is not clear which part prevails and why part A5 is treated differently.
1946. The ERA requires DBP’s proposed amendment to clause 11.2 of the revised access arrangement, to add the words “save that where the model is inconsistent with part A5 of Annexure A that part prevails”, to be deleted.
1947. The ERA further requires clause 11.2 to be amended to reference the model developed by the ERA as the “Tariff Model” as follows. The required amendment is administrative in nature and consequential to the ERA’s consideration of the rebate mechanism for rebateable services at paragraph 1981.

11.2 ... the Reference Tariff calculated by the model developed by the ERA ([Tariff Model](#)), after applying the methods set out in **Annexure A** ...

Required Amendment 19

Clause 11.2 of the revised proposed access arrangement must be amended to:

- Delete the words “save that where the model is inconsistent with part A5 of Annexure A that part prevails”.
- Reference the model developed by the ERA as the “Tariff Model” by adding the words “([Tariff Model](#))” after the words “... the model developed by the ERA, ...” (as set out in paragraph 1947 of this final decision).

Annexure A (clauses 18.5 and 18.9)

1948. DBP amended Annexure A to insert a new clause 18.5, and add the words “and rebated revenue” to renumbered clause 18.9 as follows:

[18.5](#) [The Service Provider has also specified four Rebateable Non-Reference Services, the revenue from which in any given year is to be used to alter the reference tariff in the following year following the approach outlined in “Adjustments for Rebateable Non-Reference Services” \(Annexure A5\).](#)

...

Price Path of Tariff Variation

~~18.8~~[18.9](#) At each annual update of the tariff variation mechanism, 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 be equal to the approved Total Revenue of the access arrangement period, which was set out in the Access Arrangement Final Decision, albeit updated for the change in debt risk premium contributing to the rate of return [and rebated revenue](#). [sic]

1949. DBP submitted that the amendments were required for the following reasons:
- [The amendment to include new clause 18.5] is a consequential amendment in order to provide context and a reference to the rebate adjustment process in part A5 of Annexure A.
 - [The amendment to renumbered clause 18.9] is a consequential amendment in order to include a reference to the rebate adjustment process in part A5 of Annexure A.⁸⁵⁹
1950. With the introduction of rebateable services for AA5, the ERA considers that new clause 18.5 is a consequential and required amendment to the access arrangement.⁸⁶⁰ Clause 18.5 clarifies that there are rebateable services and that the revenue generated from these services will form part of the annual scheduled variation of reference tariffs. That is, the reference tariff will be adjusted using the approach outlined in Annexure A5 (Adjustments for Rebateable Non-Reference Services) to rebate a portion of the revenue from rebateable services. However, given that the specification of pipeline services as rebateable services may change from one access arrangement period to the next, the ERA considers that it would be preferable for clause 18.5 to refer only to the rebateable non-reference services, as specified in clause 3.1 of the access arrangement, and to not specify the actual number of rebateable services. The ERA also considers that the words “reference tariff” should be capitalised to reflect the defined term in clause 16 (Definitions) of the access arrangement.⁸⁶¹
1951. The ERA further notes DBP’s proposed definition for the term “Rebateable Non-Reference Service” in clause 16 of the access arrangement. As stated in the definition, “the revenue earned from [a rebateable non-reference service] in a given year [will be] used to reduce the Reference Tariff in the subsequent year, in accordance with NGR 93(4) and NGR 97(1), using the process described in Annexure A”. Annexure A contains several parts (that is, Annexures A1 to A5), with each part describing a specific method for the annual scheduled variation of reference tariffs. Given that Annexure A5 describes the specific tariff adjustment process for rebateable non-reference services, the ERA considers that the definition for “Rebateable Non-Reference Service” can, and should, make direct reference to this part.
1952. Based on the above considerations, the term “Rebateable Non-Reference Service” (in clause 16) and clause 18.5 of the revised access arrangement must be amended as follows (shown in mark-up against DBP’s revised proposal):

16 Definitions

...

Rebateable Non-Reference Service means a Non-Reference Service which is specified as rebateable, the revenue earned from which in a given year is used to

⁸⁵⁹ DBP, Response to information request ERA44, 11 February 2021.

⁸⁶⁰ The ERA has considered pipeline services and their classification as either reference, non-reference or rebateable services under ‘Pipeline and reference services’ (see paragraph 94 of this decision).

⁸⁶¹ In clause 16 of the access arrangement, “**Reference Tariff** means one or both, as the case requires, of the Reference Tariff Components (and/or, where the case requires the sum of those Reference Tariff Components) with respect to a particular Reference Service.”

reduce the Reference Tariff in the subsequent year, in accordance with NGR 93(4) and NGR 97(1), using the process described in Annexure A5.

18 Annexure A

...

18.5 The Service Provider has also specified ~~four~~ Rebateable Non-Reference Services in clause 3.1, the revenue from which in any given year is to be used to alter the ~~R~~Reference ~~T~~Tariff in the following year following the approach outlined in “Adjustments for Rebateable Non-Reference Services” (Annexure A5).

Required Amendment 20

The following amendments must be made to the revised proposed access arrangement:

- The term “Rebateable Non-Reference Service” in clause 16 must be amended to refer to “Annexure A5” (instead of “Annexure A”).
- Clause 18.5 in Annexure A must be amended to refer to the rebateable non-reference services in clause 3.1, and capitalise the words “reference tariff”.

The required amended drafting is set out at paragraph 1952 of this final decision.

1953. The ERA considers that the addition of the words “and rebated revenue” to the end of clause 18.9 is also a consequential amendment from the introduction of rebateable non-reference services and associated rebate mechanism for AA5. Clause 18.9 explains the price path of tariff variation during the access arrangement period. The additional words clarify that the net present value (NPV) calculation of the tariff revenue now takes into account the change in debt risk premium and rebated revenue.⁸⁶²

Rebate mechanism for rebateable services revenue

1954. Consistent with draft decision required amendment 22, DBP included a rebate mechanism for the rebateable Peaking Service (and other specified rebateable services) in its revised proposal. The proposed rebate mechanism is set out in Annexure A5 (Adjustments for Rebateable Non-Reference Services) of the proposed revised access arrangement.⁸⁶³ The ERA has separately considered the amount to be rebated to customers (that is, the “rebateable amount”) and the other terms of the rebate mechanism.

1955. In its submission in response to the draft decision, gasTrading considered that a “lump sum refund” may be a more appropriate form of rebate mechanism. GasTrading submitted:

Whilst DBP’s proposal is to rebate the revenue received under the “ullage service” (and other non-reference rebateable services) by lowering the reference tariff in the subsequent year this process makes it difficult for customers to forecast the DBP tariff and the associated gas transport costs. gasTrading accepts that using the rebate mechanism will have winners and losers, but considers that a more appropriate mechanism may be a lump sum refund paid to all shippers based on their deliveries

⁸⁶² The ERA notes a minor grammatical amendment to clause 18.9 is required to remove the word “to” as follows: “The resulting NPV of the Tariff Revenue will ~~to~~ be equal to the ...”

⁸⁶³ DBP, *Revised Final Plan, DBNGP Access Arrangement 2021-25*, Annexure A5, clauses 18.19 and 18.20.

(actual throughput) within a short period after each year (the exact year to be defined) or other shorter reasonable frequency (such as 6 months).

This allows Shippers to forecast DBP tariffs for their own budgeting purposes and separately manage any rebate.

Tax implications may need to be considered of the above, but gasTrading considers it a superior solution as it provides greater certainty for planning purposes.⁸⁶⁴

1956. While there may be benefits in having another form of rebate mechanism, as suggested by gasTrading, the NGR requires that the portion of revenue generated from the sale of rebateable services is rebated to shippers via a reduction to the reference tariff. That is:

- Rule 93(3)(a) states that “the [ERA] may, however, permit the allocation of the costs of rebateable services, in whole or part, to reference services if the [ERA] is satisfied that the service provider will apply an appropriate portion of the revenue generated from the sale of rebateable services to reduce the reference tariff in accordance with rule 97”.
- Rule 97(1)(c1) states that “a reference tariff variation mechanism may provide for variation of a reference tariff as a result of the application of a portion of the revenue generated from the sale of rebateable services to reduce the reference tariff as contemplated under rule 93(3).”

1957. Given the above requirements, the ERA considers that the rebate mechanism cannot be a “lump sum refund”, as suggested by gasTrading.

Rebateable amount

1958. Rules 93(3) and 97(1) of the NGR (set out at paragraphs 1904 and 1905 of this decision, respectively) expressly contemplate the allocation of costs of rebateable services to reference services, if the ERA is satisfied that an appropriate portion of revenue from the sale of those rebateable services is used to reduce reference tariffs.

1959. In its revised proposal, DBP maintained its proposed 70:30 sharing ratio for all rebateable services. That is, DBP will rebate back 70 per cent of the benefit (revenue) and retain 30 per cent. DBP reiterated this proposal in its submission in response to the ERA’s position paper on pipeline and reference services, where it submitted:

While we note the proportion of rebate is not discussed in the Position Paper, and consistent with our earlier submissions, we consider the ERA’s Draft Decision in respect of the Peaker Service rebate of 70% is also appropriate for the other non-reference services classified as rebateable.

As noted by the ERA in paragraph 1236 of its Draft Decision, the AER has previously made a decision in respect of the proportion of a non-reference service to be rebated for the APA owned Roma to Brisbane pipeline. In that Final Decision, the AER considered a 70:30 sharing ratio (based on the incentive mechanisms sharing ratio) is appropriate as:

“... the adoption of this sharing ratio provides a reasonable balance between:

- promoting the efficient use of the pipeline (e.g. by ensuring the prices charged for reference services are relatively cost reflective), and
- providing effective incentives to service providers to promote economic efficiency in relation to the services it provides (e.g. by rewarding APTPL for responding

⁸⁶⁴ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 9.

to customer needs), which will, in turn, promote the efficient provision of pipeline services and efficient investment in the pipeline over the longer term."⁸⁶⁵

1960. In submissions in response to the draft decision, gasTrading and WEGS both addressed DBP's proposed sharing ratio (that is, the proposed "rebateable amount").
- GasTrading submitted that it was unclear why DBP should only rebate 70 per cent of the rebateable services revenues when some costs could be clearly attributed to the rebateable services (for example, the Ullage Service).
 - WEGS submitted that DBP's proposed sharing ratio was inconsistent with DBP's other submissions about variable costs. That is, DBP submitted that only SUG be used to determine variable costs and the commodity (throughput) charge for reference tariffs, being 6 per cent. However, DBP proposed to retain 30 per cent of rebateable revenue to cover the costs of providing rebateable services, which suggested that there were other variable (incremental) costs other than system use gas. Based on this, WEGS considered a 94:6 sharing ratio to be more appropriate.
1961. As noted in the AER's 2017 final decision for the Roma to Brisbane Gas Pipeline, the NGR do not set out any requirements that must be satisfied when determining the portion of rebateable services revenue that is to be returned to customers via a reduced reference tariff. However, rule 93(3)(a) of the NGR does require the regulator to be satisfied that the service provider will return an "appropriate portion" of the revenue that is generated from the sale of rebateable services.
1962. The ERA considers that the AER's final decision considerations of the Roma to Brisbane Pipeline access arrangement are applicable to the DBNGP access arrangement. That is, like the service provider of the Roma to Brisbane Gas Pipeline, DBP will incur incremental costs when providing the rebateable services and should therefore be able to keep some of the revenue earned from these services.
1963. The ERA considers that the amount of revenue to be kept by DBP should be such to:
- Allow DBP a reasonable opportunity to recover at least the efficient costs associated with providing the rebateable services.
 - Incentivise DBP to maintain the provision of rebateable and other pipeline services and to respond to customer needs and charge efficient tariffs.
1964. As indicated in the draft decision, the ERA considers that the AER's final decision for the Roma to Brisbane Gas Pipeline and the ERA's approval of DBP's proposed E Factor incentive mechanism support DBP's proposal to retain 30 per cent of the revenue generated from the sale of rebateable services and to return 70 per cent back to customers (that is, 70 per cent being the "rebateable amount").⁸⁶⁶
1965. As noted at paragraph 1956, the NGR require the rebateable amount be applied to reduce the reference tariff. Therefore, only customers that have a contract for a reference service (that is, reference service customers) will directly receive the benefit of the rebate. Customers with services other than reference services would need to separately negotiate any reduction to their tariff.

⁸⁶⁵ Australian Gas Infrastructure Group submission in response to ERA position paper, 4 December 2020, p. 2.

⁸⁶⁶ DBP's proposed E Factor incentive scheme is considered at paragraph 1622 of this decision. The ERA's final decision approves DBP's proposal concerning the length of the carryover period which results in DBP retaining approximately 30 per cent of the efficiency gain, with the other 70 per cent returned to customers via a reference tariff adjustment in the next access arrangement period.

Terms of the rebate mechanism

1966. The terms of DBP’s proposed rebate mechanism are set out in Annexure A5 of the proposed revised access arrangement as follows:⁸⁶⁷

18 Annexure A

...

A5 Adjustments for Rebateable Non-Reference Services

18.19 Four services, Pilbara Service, Peaker Service, Other Reserved Service and Ullage Service, have been specified as Rebateable Non-Reference Services, in accordance with the requirements of NGR 93(3) and NGR 93(4). Seventy percent of the revenue (indexed by CPI as per Appendix A2) generated from the sale of those rebateable services will be applied to reduce the reference tariff.

18.20 Seventy percent of the revenue generated from the sale of the rebateable services specified in clause 18.19 (“**Rebateable Amount**”) will be applied to reduce the reference tariff as follows.

- (a) The Rebateable Amount generated in each of the periods specified in Column A below will be applied to reduce the reference tariff for the adjacent period in Column B below.

Column A	Column B
1 January 2021 until 30 September 2021	1 January 2022 until 31 December 2022
1 October 2021 until 30 September 2022	1 January 2023 until 31 December 2023
1 October 2022 until 30 September 2023	1 January 2024 until 31 December 2024
1 October 2023 until 30 September 2024	1 January 2025 until 31 December 2025

- (b) The Rebateable Amount will be applied to reduce the reference tariff by:

- (i) dividing the Rebateable Amount for the relevant period in Column A above by the number of gigajoules specified as the “Full Haul Equivalent Capacity and throughput forecast” in the Tariff Model for the adjacent period in Column B above; and then
- (ii) subtracting, from the reference tariff that would otherwise have been calculated for the relevant period in Column B (after applying all other elements of the Reference Tariff Variation Mechanism), the amount calculated for that period under (b)(i) (on a 94:6 split basis with respect to the Capacity (reservation) charge and Commodity (throughput) charge).

1967. DBP’s proposed mechanism provides for a reduction to the reference tariff by the “Rebateable Amount”, which is a set percentage of the revenue generated from the sale of rebateable services, indexed by the CPI as per the method set out in Appendix A2 (CPI formula variation) of the access arrangement. The ERA has

⁸⁶⁷ The required amendments set out in this final decision include consequential amendments to Annexure A5. These required consequential amendments are set out at paragraph 1981.

separately considered the rebateable amount and has determined it to be 70 per cent (see paragraph 1958).

1968. The ERA considers that while DBP has addressed draft decision requirement 22 to include a rebate mechanism for rebateable services, the terms of DBP's proposed rebate mechanism do not meet the requirements of the NGR for the reasons set out below.

Time periods

1969. As currently proposed, the revenue generated from the sale of rebateable non reference services during AA5 will not be fully rebated through a reduction to the reference tariff. Clause 18.20(a) states that the rebateable amount generated in each of the periods specified in Column A will be applied to reduce the reference tariff for the adjacent period in Column B. However, Column A does not cover the entire access arrangement period (that is, AA5). The last period listed in Column A is "1 October 2023 until 30 September 2024", meaning that the revenue generated from the sale of rebateable services from 1 October 2024 to 31 December 2025 (being the last 15 months of AA5) is not covered.
1970. For the revenue generated from the sale of rebateable non-reference services during AA5 to be fully rebated through a reduction to the reference tariff, it is necessary for Column A to cover the entire access arrangement period (that is, AA5, 1 January 2021 to 31 December 2025). Similarly, it is necessary for Column B to cover a further two annual periods to enable the rebateable amount from the additional periods in Column A to be applied to the reference tariff in the subsequent year.
1971. Given the above considerations and based on the periods specified in DBP's proposal, the ERA considers that clause 18.20(a) must be amended, to add additional periods (that is two additional rows) to Columns A and B as follows:

Column A

- 1 October 2024 until 30 September 2025
- 1 October 2025 until 31 December 2025

Column B

- 1 January 2026 until 31 December 2026
- 1 January 2027 until 31 December 2027

1972. Rules 92(2) and 92(3) of the NGR are as follows:

92 Revenue equalisation

...

- (2) Except to the extent that subrule (3) applies, the reference tariff variation mechanism must be designed to equalise (in terms of present values):
- (a) forecast revenue from reference services for the access arrangement period; and
 - (b) the portion of total revenue allocated to reference services for the access arrangement period.
- (3) If there is an interval between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence (the interval of delay):

- (a) reference tariffs, as in force at the end of the previous access arrangement period, must continue without variation for the interval of delay; but
- (b) the operation of this subrule must be taken into account in fixing reference tariffs for the new access arrangement period, such that there may be an adjustment for any under-recovery or over-recovery by the service provider as a result of the continuation of reference tariffs from the previous access arrangement period during the interval of delay.
1973. The provisions of rule 92(2) require the reference tariff variation mechanism to be designed to operate within an access arrangement period to enable DBP to recover its forecast revenue from reference services for that access arrangement period and, arguably, may not permit the deduction of revenue related to the sale of rebateable services in a previous access arrangement period. There is only one exception expressly contemplated in rule 92(3) that provides for an adjustment to reference tariffs to correct for any under or over recovery of revenue from the previous access arrangement period – that is, rule 92(3) allows the reference tariffs for a new access arrangement period to take into account any under/over recovery of revenue from the previous access arrangement resulting from an interval of delay.
1974. The ERA considers that, while not expressly contemplated in the NGR, the reference tariff variation mechanism that is used to rebate a portion of the revenue generated from the sale of rebateable services by reducing the reference tariff, as contemplated by rule 97(1)(c1), must be allowed to operate within *and* across access arrangement periods. A reference tariff variation mechanism that operates within and across access arrangement periods would also be consistent with the national gas objective.
1975. Rule 93(4) of the NGR sets out the criteria for rebateable services – “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.” Given that substantial demand and/or revenue uncertainty must exist, the ERA considers that the rebate mechanism, to rebate a portion of the revenue generated from the sale of rebateable services by reducing the reference tariff, needs to be based on an *ex post* assessment of actual revenue earned. An *ex ante* assessment of forecast revenue to be earned cannot be used for the following reasons.
- Rebateable services are characterised by the substantial uncertainty that exists concerning the extent of the demand for the service or of the revenue to be generated from the service. The ability to forecast the portion of rebateable revenue to be rebated is therefore also limited. Any rebate mechanism that is based on uncertain forecasts would therefore need to contain an (*ex post*) adjustment, in any case, to account for the difference between forecast and actual revenue.
 - If it were possible to forecast, with any certainty, the amount of revenue to be generated from a rebateable service and the portion of that revenue to be rebated, then that service would arguably not meet the criteria in rule 93(4) to be specified as a rebateable service.
1976. Given that an *ex post* assessment of actual rebateable revenue is required to determine the portion to be rebated, and that the rebateable portion must be rebated via a reduction to the reference tariff, it is necessary for the rebate mechanism to operate within *and* across access arrangement periods to incorporate this time delay. That is, the rebateable portion determined in one year (or other defined period), will need to be rebated back in a subsequent year. For the last year in an access

arrangement period, this would equate to the first year in the next access arrangement period.

1977. DBP has proposed to include the method used to adjust the reference tariff for rebateable revenue as a fixed principle in clause 13 of the revised access arrangement. The ERA has considered DBP's proposed fixed principle elsewhere in this decision (see paragraph 1991). Consistent with the ERA's considerations about time periods, the ERA has determined that the fixed principle concerning the rebate mechanism must explicitly allow for the mechanism to operate within and across access arrangement periods (see Required Amendment 23).

Reducing the reference tariff

1978. Proposed clause 18.20(b) provides that the Rebateable Amount, determined in clause 18.20(a), will be applied to reduce the reference tariff by:
- (i) dividing the Rebateable Amount for the relevant period in Column A [in clause 18.20(a)] by the number of gigajoules specified as the "Full Haul Equivalent Capacity and throughput forecast" in the Tariff Model for the adjacent period in Column B [in clause 18.20(a)]; and then
 - (ii) subtracting, from the reference tariff that would otherwise have been calculated for the relevant period in Column B (after applying all other elements of the Reference Tariff Variation Mechanism), the amount calculated for that period under [clause 18.20] (b)(i) (on a 94:6 split basis with respect to the Capacity (reservation) charge and Commodity (throughput) charge).
1979. DBP's proposed application of the Rebateable Amount involves calculating the Rebateable Amount on a full haul equivalent per gigajoule basis for the respective tariff year (set out in clause 18.20(a), Column B) and subtracting this from the reference tariff that would otherwise be applied if there was no rebateable services revenue to be returned. While DBP has proposed this application of the Rebateable Amount to reduce the reference tariff, the tariff model submitted with DBP's revised proposal does not implement the proposed method set out in Annexure A5.⁸⁶⁸
1980. Given the inconsistency between the methods set out in Annexure A5 of the revised access arrangement and DBP's revised tariff model, the ERA considers it necessary to determine its own rebate mechanism.

Amended rebate mechanism

1981. Having considered the rebate mechanism proposed by DBP (including the method set out in DBP's revised tariff model) the ERA requires the following amendments to Annexure A5 of the revised access arrangement (shown in mark-up against DBP's revised proposal and including other amendments required by this final decision).⁸⁶⁹ The amendments include an amendment to capitalise the words "reference tariff" to reflect the defined term in clause 16 (Definitions) of the access arrangement and other minor administrative amendments.⁸⁷⁰

⁸⁶⁸ DBP, *2021-2025 Revised Final Plan, Attachment 13.1A: AGIG Revised Final Plan Tariff Model (Confidential)*, October 2020.

⁸⁶⁹ See Required Amendment 3 and Required Amendment 4.

⁸⁷⁰ In clause 16 of the access arrangement, "**Reference Tariff** means one or both, as the case requires, of the Reference Tariff Components (and/or, where the case requires the sum of those Reference Tariff Components) with respect to a particular Reference Service."

18 Annexure A

...

A5 Adjustments for Rebateable Non-Reference Services

18.19 ~~Four services, Pilbara Service, The Spot Capacity Service,~~ Peaker Service, Other Reserved Service and Ullage Service, have been specified as Rebateable Non-Reference Services; in accordance with the requirements of NGR 93(3) and NGR 93(4). Seventy percent of the revenue ~~(indexed by CPI as per Appendix A2)~~ generated from the sale of ~~these~~these rebateable services will be applied to reduce the ~~r~~RReference ~~t~~Tariff.

18.20 Seventy percent of the revenue generated from the sale of the rebateable services specified in clause 18.19 (“**Rebateable Amount**”) will be applied to reduce the ~~r~~RReference ~~t~~Tariff as follows.

- (a) The Rebateable Amount generated in each of the periods specified in Column A below will be applied to reduce the ~~r~~RReference ~~t~~Tariff for the adjacent period in Column B below.

<u>Period</u>	Column A	Column B
<u>1</u>	1 January 2021 until 30 September 2021	1 January 2022 until 31 December 2022
<u>2</u>	1 October 2021 until 30 September 2022	1 January 2023 until 31 December 2023
<u>3</u>	1 October 2022 until 30 September 2023	1 January 2024 until 31 December 2024
<u>4</u>	1 October 2023 until 30 September 2024	1 January 2025 until 31 December 2025
<u>5</u>	<u>1 October 2024 until 30 September 2025</u>	<u>1 January 2026 until 31 December 2026</u>
<u>6</u>	<u>1 October 2025 until 31 December 2025</u>	<u>1 January 2027 until 31 December 2027</u>

- (b) Before calculating the Rebateable Amount to be used to reduce the Reference Tariff in clause 18.20(c) the revenue generated from the sale of rebateable services for the relevant period (set out in Column A) must be adjusted:
- (i) for inflation, consistent with the method set out in Annexure A2, so that the nominal value of the revenue matches the nominal year (set out in Column B) in which the revenue is to be returned via a reduction to the Reference Tariff; and
- (ii) for interest earned on the revenue, using the rate of return in the Tariff Model.

~~(b)~~(c) The Rebateable Amount will be applied to reduce the ~~r~~RReference ~~t~~Tariff by:

- (i) ~~dividing the Rebateable Amount for the relevant period in Column A above by the number of gigajoules specified as the “Full Haul Equivalent Capacity and throughput forecast” in the Tariff Model for the adjacent period in Column B above; and then~~
- (ii) ~~subtracting, from the reference tariff that would otherwise have been calculated for the relevant period in Column B (after applying all other elements of the Reference Tariff~~

~~Variation Mechanism), the amount calculated for that period under (b)(i) (on a 94:6 split basis with respect to the Capacity (reservation) charge and Commodity (throughput) charge).~~

- (i) calculating the Rebateable Amount for the relevant period on a per gigajoule (full haul equivalent) per day basis by dividing the Rebateable Amount for the relevant period in Column A by the number of days and gigajoules specified as the "Full Haul Equivalent Capacity and throughput forecast" in the Tariff Model for the adjacent period in Column B; and then
- (ii) subtracting, from the Reference Tariff that would have otherwise been calculated for the relevant period in Column B after applying all the other methods for the Annual Scheduled Variation of Reference Tariffs as set out in Annexure A, the amount calculated for that period under clause 18.20(c)(i) and split between the Capacity Reservation Tariff and Commodity Tariff on the same ratio used in the Tariff Model to determine Reference Tariffs.

1982. As set out at paragraph 1905, rule 97 of the NGR specifies the required mechanics of reference tariff variation. Pursuant to rule 97(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
- (d1) the risk sharing arrangements implicit in the access arrangement; and
- (e) any other relevant factor.

1983. The ERA considers that its required rebate mechanism (set out at paragraph 1981) meets the requirements of the NGR for the following reasons:

- The rebate mechanism maintains existing tariff structures by adjusting the reference tariff that would otherwise be charged if there was no rebateable services revenue to be returned to reference service customers. The ERA considers that this approach creates efficient tariff structures by maintaining the underlying reference tariff and reduced reference tariff so that DBP and its customers can see and/or forecast the effect of rebateable services revenue on tariffs for services provided by means of the DBNGP.
- The rebate mechanism forms part of the existing annual scheduled variation of reference tariffs, which should minimise the administrative costs of the ERA, DBP and users.
- The operation of the rebate mechanism as part of an annual scheduled tariff variation is consistent with other Australian jurisdictions. For example, the access arrangement for the Roma to Brisbane Pipeline includes a rebate mechanism for rebateable services as part of the annual tariff adjustment process.

- The proportion of rebateable services revenue (70 per cent) to be rebated back to customers via a reduced reference tariff is consistent with the proportion approved by the AER for the Roma to Brisbane Pipeline. It is also consistent with the proportion of benefits to be retained by DBP under its proposed E Factor incentive scheme, which the ERA has approved for AA5.

Required Amendment 21

The rebate mechanism, to rebate a portion of the revenue generated from the sale of rebateable services to reduce the reference tariff, in Annexure A5 of the proposed revised access arrangement must be amended as per the amendments set out at paragraph 1981 of this final decision.

1984. Further to the requirements set out in rule 97(3) of the NGR, rule 97(4) requires a reference tariff variation mechanism to give the ERA adequate oversight or powers of approval over variation of the reference tariff.

1985. Clause 11.3 of the current (AA4) access arrangement reads as follows and remains unchanged in DBP's proposed revised access arrangement:

Within 10 Business Days of effecting the Annual Scheduled Variation of Reference Tariffs, the Operator must provide a written notice (a Scheduled Reference Tariff Variation Notice) to the Regulator advising of this fact and include evidence of the correct application of the mechanism and the resultant varied Reference Tariff.

1986. While existing clause 11.3 of the access arrangement requires DBP to provide a Scheduled Reference Tariff Variation Notice to the ERA, the actual process for the annual schedule variation of reference tariffs is not detailed in the access arrangement. Despite this, the annual scheduled variation of reference tariffs during AA4 has followed the process that was described in the ERA's AA4 final decision:

Having regard to the above considerations, the [ERA] 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 [ERA] 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 [net present value] 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.
- Within 10 working days following receipt of the updated cost of debt or 10 working days following publication of the September quarter CPI [consumer price index] figures by the [Australian Bureau of Statistics], whichever is the later date, DBP

must provide the [ERA] with a written response either noting agreement with the [ERA'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 [ERA] and after applying the CPI adjustment and the annual update for the debt risk premium.
- Subject to the [ERA] approving DBP's calculation of the revised reference tariffs, the [ERA] will publish the revised tariffs on its website.⁸⁷¹

1987. Consistent with the requirement of rule 97(4), for the ERA to have adequate oversight or powers of approval over tariff variations, the ERA considers that the process for the annual scheduled variation of reference tariffs should be set out in the access arrangement. Amending the access arrangement to include this process would be consistent with the drafting of clauses 11.4 and 11.5 of the access arrangement which set out the process for amending the reference tariff for tax changes and new cost pass throughs, respectively.

1988. The ERA considers that the current process for the annual scheduled variation of reference tariffs (as set out at paragraph 1986 above) should continue for AA5, noting that the application of Annexure A5 will form part of the annual variation process for AA5. Based on the current process and the inclusion of Annexure A5 for AA5, the ERA considers that clause 11.3 of the revised access arrangement should be amended to read as follows:

Annual Scheduled Variation of Reference Tariffs

...

- 11.3 ~~Within 10 Business Days of effecting the Annual Scheduled Variation of Reference Tariffs, the Operator must provide a written notice (a **Scheduled Reference Tariff Variation Notice**) to the Regulator advising of this fact and include evidence of the correct application of the mechanism and the resultant varied Reference Tariff. The process for the Annual Scheduled Variation of Reference Tariffs is as follows:~~
- (a) Before the Reference Tariff is varied in accordance with clause 11.2, the Operator must:
- (i) provide written notice (a **Scheduled Reference Tariff Variation Notice**) to the Regulator setting out the proposed variations to the Reference Tariff, including evidence that the proposed variations have been calculated in accordance with the methods out in Annexure A to the Access Arrangement; and
- (ii) provide the Scheduled Reference Tariff Variation Notice to the Regulator at least 40 Business Days before the date on which the Reference Tariff is to be varied.
- (b) As a minimum, the Scheduled Reference Tariff Variation Notice must contain the following information:
- (i) the proposed varied Reference Tariff and varied Reference Tariff Components;
- (ii) the date on which the varied Reference Tariff is to come into effect; and

⁸⁷¹ Economic Regulation Authority, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020*, 30 June 2026, pp. 296-297, paragraph 1319.

- (iii) calculations showing the derivation of the varied Reference Tariff and Reference Tariff Components using the methods in Annexure A to the Access Arrangement, including revenue data for Rebateable Non-Reference Services to substantiate and show the effect of the adjustments made for Rebateable Non-Reference Services in accordance with Part A5 of Annexure A.
- (c) Within 7 Business Days of receipt of the Scheduled Reference Tariff Variation Notice, if the Regulator determines that it needs additional information from the Operator to assess the proposed varied Reference Tariff, it may make a written request to the Operator setting out the information it requires the Operator to provide not less than 20 Business Days before the date on which the Reference Tariff is to be varied.
- (d) The Regulator will use its reasonable endeavours to give written notice to the Operator at least 20 Business Days before the date on which the Reference Tariff is to be varied, advising whether the Regulator approves or does not approve the proposed tariff variations and the reasons for its decision.
- (e) If the Regulator:
 - (i) does not approve the Operator's proposed varied Reference Tariff, it will not take effect;
 - (ii) approves the Operator's proposed varied Reference Tariff, it will take effect:
 - A. on the date specified in the Scheduled Reference Tariff Variation Notice, or
 - B. if that date has passed on the date specified in the Regulator's notice under clause 11.3(d).
- (f) If the Regulator does not approve the Operator's proposed varied Reference Tariff, the Operator must submit a revised Scheduled Reference Tariff Variation Notice, addressing the Regulator's reasons for its decision to not approve the varied Reference Tariff.

1989. The ERA's required drafting for clause 11.3 (above) amends the current process to make it more consistent with the process followed in the access arrangements for the Mid-West and South-West Gas Distribution Systems and Goldfields Gas Pipeline. Under these access arrangements, the onus to initiate the annual variation of reference tariffs is placed on ATCO Gas Australia Pty Ltd and Goldfields Gas Transmission Pty Ltd as the respective service providers. That is, both ATCO and Goldfields Gas Transmission are required to undertake the tariff variation calculation in accordance with the reference tariff variation mechanism set out in the access arrangement and seek the ERA's approval for its calculated varied reference tariff(s) prior to the variations taking effect.

1990. In addition to placing the onus on DBP to undertake the annual scheduled variation of reference tariffs, the amended process clarifies the information that must be provided by DBP to substantiate its reference tariff variation calculation, including information to show the effect of the rebate mechanism for non-reference rebateable services on the reference tariff. That is, for AA5 the reference tariff will be reduced to rebate back a portion of the revenue generated from the sale of non-reference rebateable services. Given that the specification of non-reference services as rebateable services may change from one access arrangement period to another, the ERA considers that it would be prudent for DBP to demonstrate the effect of rebateable services on the reference tariff by reporting the 'underlying' reference tariff

(being the tariff that would otherwise be applicable if there was no rebateable services revenue) and the 'reduced' reference tariff (being the tariff that is applicable after rebating the rebateable revenue).

Required Amendment 22

Clause 11.3 of the proposed revised access arrangement must be amended as per the amendments set out in paragraph 1988 of this final decision to clarify the administrative process to be followed for the annual scheduled variation of reference tariffs.

Fixed principles

1991. 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 initial proposal

1992. Clause 13 of the proposed revised access arrangement details two fixed principles that will apply in AA5. The fixed principles cover the method for determining the capital base for each year of the access arrangement period (clause 13.1(a)), and the circumstances in which revenue earned by DBP must not be taken into account (clause 13.1(b)).

1993. DBP amended the fixed principle in clause 13.1(b) as follows:

- 13.1 The following are Fixed Principles in accordance with NGR 99:
- (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 ~~2020~~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 [for T1 Service](#); 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.

1994. Clause 13.2 states the period for which the fixed principles will apply. DBP amended this clause as follows:

13.2 For the purposes of the Fixed Principles referred to in clauses 13.1(a) and 13.1(b) of this Access Arrangement, the fixed period is until 31 December ~~2036~~²⁰³¹.

1995. DBP submitted that it had extended the application of the fixed principles to extend their application for a further access arrangement period.⁸⁷²

Draft decision

1996. The current (AA4) fixed principles were first included in the access arrangement for the second access arrangement period (AA2, 2005 to 2010) and have remained substantively the same for the third (AA3, 2011 to 2015) and fourth (2016 to 2020) access arrangement periods.

Fixed period

1997. As allowed by the NGR, fixed principles may be fixed for a stated period that extends over two or more access arrangement periods. The fixed principles that were introduced into the access arrangement for AA2 are fixed until 31 December 2031. In a submission to the ERA during the AA2 review process, DBP submitted that the fixed period reflected the period that was used in financial modelling to determine the price paid to purchase the DBNGP:

Consistent with its overall objective of providing a degree of certainty in the total (regulated and unregulated) revenue stream which provides the return on and return of the financing for pipeline acquisition, Operator has, in section 7.13(b) of the Proposed Revised Access Arrangement, set the Fixed Period as the period until 31 December 2031. This was the time horizon of the financial modelling undertaken by the consortium members to determine the price they would pay for the DBNGP.⁸⁷³

Revenue earned by operator

1998. The ERA's final decision for AA3 noted that special circumstances applied to the DBNGP, resulting from negotiations between DBP and users in 2004 when DBP purchased the pipeline.⁸⁷⁴ The ERA's final decision for AA4 provided an update to these circumstances, which changed following contract renegotiations between DBP and shippers in 2014. The AA4 final decision stated:

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) ...

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

⁸⁷² DBP, *2021-2025 Final Plan*, January 2020, p. 127.

⁸⁷³ DBP, *Submission #4 Reference Tariff Policy and Reference Tariff (Public Version)*, 27 January 2005, p. 41, paragraph 8.15.

⁸⁷⁴ ERA, *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), pp. 15-17.

reference tariff for the closest equivalent service to the service provided to the relevant customer under the SSC.

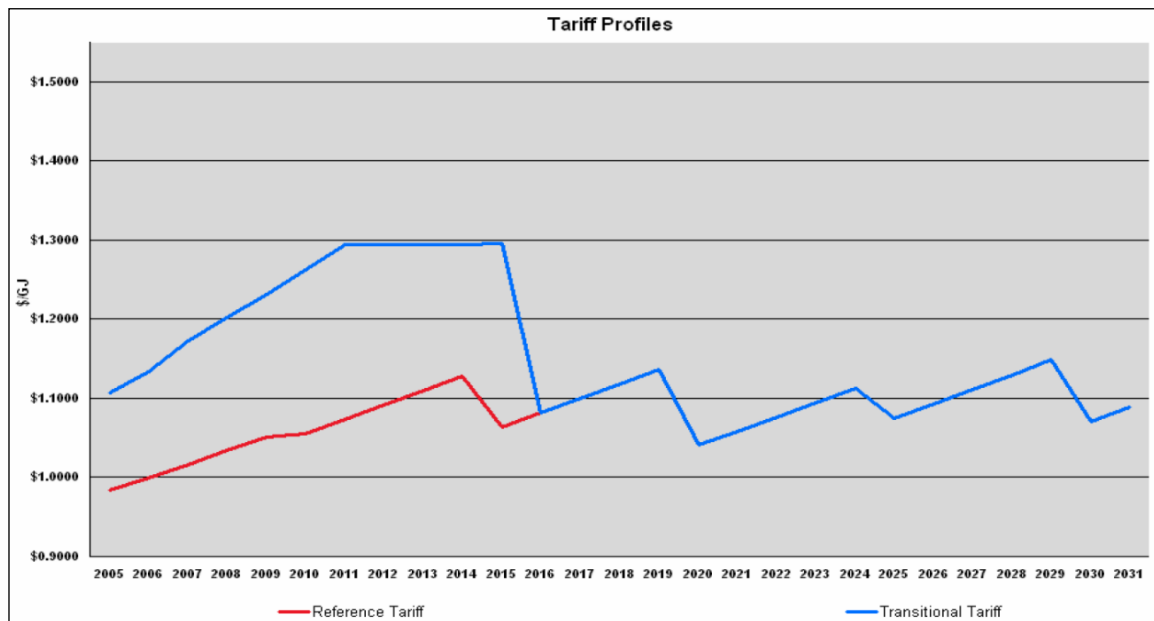
20.5 Adjustment to Base T1 Tariff

...

- d) With effect from 08:00 hours on 1 January 2016, the Base T1 Tariff must be adjusted so that the Base T1 Tariff, T1 Capacity Reservation Tariff and T1 Commodity Tariff is at any time the same as the Firm Service Reference Tariff (or equivalent) at that time.
 - e) In this clause 20.5, Firm Service Reference Tariff means the Reference Tariff for the Reference Service under the Access Arrangement that is, at 100% load factor, the closest equivalent Full-Haul Service to the T1 Service as at 1 January 2016 (T1 Equivalent Reference Service).
 - f) The Parties agree the following in relation to the Reference Tariff:
 - i) The present intention of the Parties is that, with effect from 08:00 hours on 1 January 2016, the tariff payable by the Shipper under clause 20.5 (d) will be a Reference Tariff based on the Reference Tariff Policy in clause 7 of the Access Arrangement as that clause was in force at 27 October 2004 (for the purposes of which that clause 7 is to be read as though references to "Firm Services" were replaced with "T1 Service");
 - ii) The diagram and the financial model assumptions in Schedule 9, being the forecast tariff post 2016, illustrate the Parties' current expectations as to the effect of clause 20.5(f)(i). The Parties agree that the tariff levels depicted in Schedule 9 are based on certain assumptions about the inputs and methodology for determining tariffs under the approach approved by the ERA in the Reference Tariff Policy referred to in clause 20.5(f)(i), and that the actual tariff levels payable under clause 20.5(d) may differ from the tariff levels shown in Schedule 9 if the inputs and methodology are different at 2016. The Parties acknowledge that this clause 20.5 and Schedule 9 may be provided to the Regulator in making any submission referred to in clause 20.5(f)(iii) or clause 20.5(f)(iv);
- ...
- 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.

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.

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



In a submission to the [ERA], 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:

- 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 ...
- All Participating Shippers ...⁸⁷⁵

1999. Since AA2, the fixed principles in the access arrangement have reflected the negotiations that occurred in 2004, which provided for a tariff that was higher than the reference tariff for the 10-year period from 1 July 2005 to 31 December 2015 (as shown in the figure reproduced from the ERA's AA2 final decision above). The modelling of the expected tariff path from 1 January 2016 to 31 December 2031 is consistent with DBP's reasoning in its AA2 submission to the ERA for originally setting the fixed period until 31 December 2031.

2000. Other than stating that it had extended the fixed principles to extend their application for a further access arrangement period, DBP did not provide any reasoning to explain why the extension was necessary. In the absence of such information and given the considerations above, the ERA considered that the fixed principles should remain unchanged. The existing fixed principles reflect the negotiations and modelling that secured the purchase of the DBNGP by DBP in 2004. However, the ERA considered that the proposed amendment to add the words "for T1 Service" in clause 13.1(b)(i) clarified that the "Reference Tariff" is the reference tariff for the T1 Service and should be made.

⁸⁷⁵ ERA, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020*, 30 June 2016, pp. 10-13.

2001. The draft decision set out the following required amendment:

Draft Decision Required Amendment 23

DBP must amend clause 13 of the proposed revised access arrangement to delete the proposed amendments to the fixed principles so that the fixed principles remain the same as the current (AA4) fixed principles. That is:

- Clause 13.1(b) must be amended to read: “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 ...”
- Clause 13.2 must be amended to read: “For the purposes of the Fixed Principles referred to in clauses 13.1(a) and 13.1(b) of this Access Arrangement, the fixed period is until 31 December 2031”.

However, DBP must make the proposed amendment to clause 13.1(b)(i) to insert the words “for T1 Service” to clarify that the reference tariff is for the T1 Service.

Determination of the capital base

2002. Clause 13.1(a) of the proposed revised access arrangement sets out the following fixed principle for the determination of the capital base and remains unchanged from the current (AA4) access arrangement:

13.1 The following are Fixed Principles in accordance with NGR 99:

- (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;

2003. Rule 99(4) of the NGR allows the ERA to revoke a fixed principle at any time with DBP’s consent:

99 Fixed principles

...

(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.

2004. Given that rule 77 of the NGR clearly sets out the method for determining the opening capital base, the ERA considered that the fixed principle in clause 13.1(a) of the proposed revised access arrangement should be revoked on the basis that it was redundant. That is, there is no reason for the access arrangement to contain a fixed principle that covers the determination of the capital base at the start of each access arrangement period as this is a matter that is addressed in the NGR. Having such a fixed principle in the access arrangement may confuse users as to the requirements of establishing the capital base for the DBNGP access arrangement.⁸⁷⁶

2005. Additionally, rule 99(4)(b) provides that where there are inconsistencies between a fixed principle and a rule in the NGR, the rule operates to the exclusion of the fixed principle. This means that if the requirements for determining the opening capital base in the access arrangement information differ from the requirements for determining the opening capital base in the NGR, the opening capital base for the

⁸⁷⁶ Incidentally, the fixed principle as drafted in clause 13.1(a) of the proposed revised access arrangement contains an error – the method of determining the capital base is not set out in section 7 of the access arrangement information (rather it is set out in section 9 of DBP’s Final Plan).

DBNGP access arrangement will always be determined in accordance with the requirements set out in the NGR.

2006. The draft decision set out the following required amendment:

Draft Decision Required Amendment 24

DBP must consider deleting the fixed principle for determining the capital base in clause 13.1(a) of the proposed revised access arrangement and replacing it with the words “[DELETED]”.

Subject to the fixed principle in clause 13.1(a) being deleted, a consequential amendment to clause 13.2 to delete the reference to “clause 13.1(a)” must be made so that the clause reads: “For the purposes of the Fixed Principles referred to in clause 13.1(b) of this Access Arrangement, the fixed period is until 31 December 2031”.

DBP’s response to the draft decision

2007. DBP accepted the ERA’s draft decision required amendments 23 and 24 to amend clause 13 of the access arrangement to:⁸⁷⁷

- Delete the amendments initially proposed to the fixed principles in clauses 13.1(b) and 13.2 so that the fixed principles remain the same as the current (AA4) fixed principles (with the addition of the words “for T1 Service” in clause 13.1(b)(i) to clarify that the reference tariff is for the T1 Service).
- Delete the fixed principle for determining the capital base in clause 13.1(a).

2008. Further to amending clause 13 of the access arrangement as required by draft decision required amendments 23 and 24, DBP proposed to add a new fixed principle as follows:

13.1 The following are Fixed Principles in accordance with NGR 99:

...

- (c) [The method used to adjust the Reference Tariff for Rebateable Non-Reference Service revenue, as described in Appendix A5.](#)

Submissions to the ERA

2009. No submissions to the ERA addressed DBP’s initial proposal to amend the fixed principles in the access arrangement.

2010. There were no submissions in response to the ERA’s draft decision that addressed the fixed principles.

Final decision

2011. DBP accepted draft decision required amendments 23 and 24 to amend the fixed principles in clause 13 of the access arrangement as required.

2012. There were no submissions from interested parties on DBP’s revised proposal to address draft decision required amendments 23 and 24. Given this, the ERA maintains its draft decision positions concerning the matters that needed to be addressed. The ERA considers that DBP’s revised proposal implements the required

⁸⁷⁷ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, p. 5.

amendments as intended, and that the amendments are consistent with the requirements of the NGR for fixed principles.⁸⁷⁸

2013. DBP's additional amendment to add new clause 13.1(c) (see paragraph 2008) is linked to DBP's revised proposal to include a rebate mechanism for rebateable services in Annexure A5 of the access arrangement. The ERA has considered DBP's revised amendment to include a rebate mechanism as part of its considerations of the reference tariff variation mechanism at paragraph 1903 of this decision.
2014. Consistent with the ERA's decision to include an ex-post rebate mechanism for rebateable non-reference service revenue as part of the reference tariff variation mechanism for AA5, the ERA considers that there is some merit in inserting a fixed principle as proposed by DBP in its revised proposal. For the reasons, and subject to the amendments, set out below, DBP's revised proposal to insert new clause 13.1(c) in the access arrangement is consistent with the provisions of the NGR for fixed principles.
2015. DBP's proposed new clause 13.1(c) makes the method used to adjust the reference tariff for rebateable non-reference service revenue a fixed principle for the access arrangement period. A set method for determining the "rebateable amount" to reduce the reference tariff ensures transparency and consistency across each year of the access arrangement period.⁸⁷⁹ However, the ERA considers that the fixed principle must be further amended to specify the period for which the fixed principle applies.
2016. Given that the introduction of non-reference rebateable services and the related rebate method to adjust reference tariffs is new to the access arrangement, the ERA considers that the fixed principle should only be fixed for a period that enables the rebateable non-reference service revenue earned during AA5 to be rebated in accordance with the rebate method approved for AA5. Setting the fixed period for any longer period may impede future amendments to the rebate method that become apparent and necessary after experiencing how the rebate method works in practice. For this reason, the ERA requires that the fixed principle is fixed until the date when the rebateable non-reference service revenue earned during AA5 has been fully rebated in accordance with the fixed principle in clause 13.1(c).
2017. As indicated, the ERA has considered the terms of DBP's proposed rebate mechanism as part of its considerations of the reference tariff variation mechanism (see paragraph 1954). Consistent with these considerations, the ERA considers that it is necessary for the rebate mechanism to work across access arrangement periods. That is, to enable the revenue from non-reference rebateable services earned during AA5 (1 January 2021 to 31 December 2025) to be fully rebated to shippers through reference tariffs, it is necessary for the rebate mechanism to operate and adjust reference tariffs in AA6. If the rebate mechanism did not operate and adjust reference tariffs in AA6, non-reference rebateable service revenue earned during the latter years of AA5 (for example, 2024 and 2025) would not be rebated to shippers. For this reason, the ERA considers that proposed clause 13.1(c) should be further amended to clarify that the fixed principle can apply across access arrangement periods to the extent necessary to allow rebateable non-reference service revenue to be fully rebated.
2018. Consistent with the ERA's considerations above, the required amendments to clause 13 (Fixed Principles) of the access arrangement are set out as follows:

⁸⁷⁸ Rule 99 of the NGR.

⁸⁷⁹ The "rebateable amount" is defined in Annexure A5 (clause 18.20) of the revised access arrangement.

13 FIXED PRINCIPLES

13.1 The following are Fixed Principles in accordance with NGR 99:

...

- (c) The method used to adjust the Reference Tariff for Rebateable Non-Reference Service revenue (***Rebate Mechanism***), as described in ~~Appendix~~ Annexure A5. For the avoidance of doubt, the Rebate Mechanism applies across access arrangement periods to the extent necessary to allow the rebateable non-reference service revenue earned in one access arrangement period to be fully rebated.

...

13.3 For the purpose of the Fixed Principle referred to in clause 13.1(c) of this Access Arrangement, the fixed period is until the earlier of:

- (a) 31 December 2027; and
 (b) the date when the rebateable non-reference service revenue earned during the period 1 January 2021 to 31 December 2025 has been fully rebated in accordance with the Fixed Principle in clause 13.1(c).

Required Amendment 23

Clause 13 of the revised proposed access arrangement must be amended as follows:

- Clause 13.1(c) must be amended to clarify that the rebate mechanism can apply across access arrangement periods to allow the rebateable non-reference service revenue earned in one access arrangement period to be fully rebated.
- A new clause 13.3 must be inserted to specify the fixed period for the fixed principle in clause 13.1(c), which is to be the earlier of 31 December 2027 and the date when the rebateable non-reference service revenue earned during AA5 has been fully rebated in accordance with the fixed principle.

The required amended drafting is set out at paragraph 2018 of this final decision.

Terms and conditions

2020. Modified rule 48(1)(e)(ii) of the NGR requires the access arrangement to set out, in addition to the reference tariff, the other terms and conditions on which each reference service will be provided.⁸⁸⁰
2021. Rule 100 of the NGR sets out the requirements for consistency, which must be taken into consideration when assessing any proposed amendment to the access arrangement terms and conditions:
- 100 General requirement for consistency**
- (1) The provisions of an access arrangement must be consistent with:
 - (a) the national gas objective; and
 - (b) these rules and the Procedures as in force when the terms and conditions of the access arrangement are determined or revised.
 - (2) In deciding whether the non-tariff terms and conditions of an access arrangement are appropriate, the [ERA] must have regard to the risk-sharing arrangements implicit in the reference tariff.

DBP's initial proposal

2022. Clause 4 of the proposed revised access arrangement sets out the terms and conditions for each reference service. DBP proposed to maintain the three reference services offered under the current (AA4) access arrangement, being the T1 Service, P1 Service and B1 Service (see paragraph 98). The proposed terms and conditions for each of the reference services are provided as attachments to the revised access arrangement:
- for the T1 Service – Attachment 2 of the access arrangement
 - for the P1 Service – Attachment 3 of the access arrangement
 - for the B1 Service – Attachment 4 of the access arrangement.
2023. DBP submitted that it undertook “a wholesale review of the reference service terms and conditions” with a focus on:
- correcting typographical errors and anomalies;
 - correcting references to matters that are no longer relevant (e.g. due to the passage of time and changes to legislation and standards);
 - changes arising due to changes in the ownership structure of DBP since the last Access Arrangement; and
 - aligning the Reference Contracts to the Negotiated Contracts to enhance [its] ability to administer all of [its] contracts in a consistent manner.⁸⁸¹

⁸⁸⁰ As set out in schedule 1 (rule 62) of the NGR.

⁸⁸¹ DBP, *2021-2025 Final Plan, January 2020*, pp. 126-127.

2024. Based on its review, DBP proposed amendments to the terms and conditions that will apply for AA5. DBP provided a detailed overview and justification for each of the proposed amendments in Attachment 14.1 to its proposal, with marked-up versions of the proposed terms and conditions also provided.^{882, 883}
2025. DBP submitted that the principal changes to the terms and conditions included:
- new definitions of Aggregated T1, P1 and B1 Services have been included to reflect the use of those terms in the Curtailment Plan, Reference Contracts, Negotiated Contracts and Standard Shipper Contracts;
 - amendments to align relevant curtailment provisions;
 - amendments to the fall-back rule applicable where a Shipper does not tell the Operator in which order it is to apply gas received. The amendments align allocation of gas at inlet points across all contracts with the same shipper;
 - amendments to the maintenance charge for inlet and outlet stations to better reflect the intent that these costs are recovered fairly across shippers;
 - amendments to better align the imbalance and peaking remedies across the Negotiated Contracts, the Standard Shipper Contracts and the Reference Contracts; and
 - amendments to the relocation clause to make clear a relocation is not automatically available as of right.⁸⁸⁴
2026. DBP's consultation on the terms and conditions included a shipper roundtable on 15 November 2019 where participants were provided with copies of the proposed amendments (in marked-up versions of the terms and conditions) and a summary document explaining the amendments. Given the timeframe for this consultation, DBP indicated that it would continue to engage with shippers on the proposed amendments to the terms and conditions in early 2020 and after its submission to the ERA.⁸⁸⁵

Draft decision

2027. In addition to the consistency requirements in rule 100 of the NGR, the ERA considered the following matters concerning DBP's proposed amendments to the terms and conditions for each of the proposed reference services:
- The rationale for variations to the proposed terms and conditions from those established under existing access contracts for pipeline services (that is, full haul, part haul and back haul services) negotiated with shippers.
 - Any concerns raised by existing and prospective shippers with the current (AA4) terms and conditions 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 in contracts of a similar nature.

⁸⁸² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020.

⁸⁸³ DBP, *2021-2025 Final Plan*, January 2020. Attachments 14.2 (T1 Service), 14.3 (P1 Service) and 14.4 (B1 Service).

⁸⁸⁴ DBP, *2021-2025 Final Plan*, January 2020, p. 127.

⁸⁸⁵ DBP, *2021-2025 Final Plan*, January 2020, p. 40, Table 5.7.

- Whether drafting changes to certain terms and clauses achieve DBP's expressed intention and whether these changes may have other unintended consequences.
2028. DBP's proposed amendments comprised:
- Typographical, formatting and cross-referencing corrections throughout the terms and conditions.
 - Amendments to some defined terms used in the terms and conditions, including the deletion of redundant terms.
 - Amendments to the drafting of specific clauses of the terms and conditions.
2029. The ERA considered that DBP's proposed amendments comprising typographical, formatting and cross-referencing corrections, unless otherwise stated, were administrative in nature and did not materially alter the terms and conditions. Additional amendments of this nature were required in the terms and conditions for the T1 Service, P1 Service and/or B1 Service. The ERA footnoted the instances where such further amendments were needed as part of its considerations (see for example, footnote 1038 of this decision), however, this was not an exhaustive review of amendments of this kind.
2030. The ERA considered DBP's proposed amendments to defined terms and the drafting of individual clauses in turn. Unless otherwise stated, the proposed amendments applied to the terms and conditions for the T1 Service, P1 Service and B1 Service. The ERA also considered submissions from interested parties that proposed additional amendments to the terms and conditions that remained unchanged from the current (AA4) terms and conditions.
2031. The ERA required 23 amendments to the terms and conditions.⁸⁸⁶ The ERA's draft decision considerations are summarised as part of the ERA's final decision considerations at paragraph 2036 below.

DBP's response to the draft decision

2032. DBP accepted nine of the ERA's draft decision required amendments and rejected seven. DBP addressed the remaining seven required amendments with revised proposed amendments to the terms and conditions.⁸⁸⁷
2033. Attachment 14.1A to DBP's Revised Final Plan details DBP's individual responses to the ERA's draft decision required amendments. Further to addressing the draft decision required amendments, DBP submitted that it:
- Made additional revised amendments to the terms and conditions to correct minor errors (for example, errors in punctuation, formatting and cross referencing). These amendments are shown in marked-up versions of the terms and conditions.⁸⁸⁸
 - Made an additional revised amendment to the term "AGIG" in clause 1 of the terms and conditions to reflect that, since the submission of DBP's initial

⁸⁸⁶ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020. Draft decision required amendments 25 to 47.

⁸⁸⁷ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision Terms and Conditions*, October 2020, pp. 1-2.

⁸⁸⁸ See marked-up versions of attachments 2, 3 and 4 of DBP's Revised Final Plan access arrangement document.

proposal, *DUET Investment Holdings Pty Ltd* had changed its name to *Australian Gas Infrastructure Holdings Pty Ltd*.

- Implemented the amendments suggested, but not required, by the ERA in the draft decision and made some further consequential amendments arising from these suggested amendments.
- Made additional revised amendments to the terms and conditions to address an oversight concerning the “Tp Service”.

Submissions to the ERA

2034. Several submissions addressed DBP’s initial proposed amendments to the terms and conditions for reference services.⁸⁸⁹ The ERA addressed the matters raised in these submissions as part of its draft decision considerations.

2035. In response to the ERA’s draft decision, submissions from CPM and gasTrading addressed the terms and conditions for reference services:

- CPM submitted that it supported the ERA’s draft decision required amendments to the terms and conditions and noted DBP’s revised proposal to reject several of the required amendments. Specifically, CPM noted DBP’s rejection of draft decision required amendments 45, 46 and 47, which all relate to the calculation of charges specified in schedule 2 of the reference service contracts.⁸⁹⁰ CPM submitted that DBP’s revised proposal to make the calculation of the charges in the terms and conditions for the P1 and B1 Services *not* subject to a ‘distance factor’ was discriminatory and should not be allowed.⁸⁹¹
- GasTrading submitted that, subject to the ERA’s final decision position on the inclusion of a trigger event, further amendments to the terms and conditions for reference services may be required.⁸⁹² GasTrading further submitted that DBP’s revised proposal for a new “Ullage Service” may also affect the contractual clauses in other shipper contracts given the existing definition of “Back Haul”. GasTrading submitted:

The inclusion of the “ullage service” proposed by DBP needs to carefully consider the impact on contractual clauses in other Shipper contracts as gas flow from [Compressor Station 1] to [Karratha Gas Plant] will be predominantly north in one or both of the DBP pipelines based on the announcements by Beach Energy and known gas flows north of CS1.

The current definition of Back Haul is: “Back Haul means a pipeline service where the inlet point for acceptance of gas into the DBNGP from the customer is downstream of the outlet point for delivery of gas to the customer.”

In the above definition downstream is not defined, but it could be interpreted to be a point that is “south of the inlet”. However, in the case that the “Ullage Service” proceeds ... “downstream” may well be north of the inlet.

⁸⁸⁹ Submissions from CPM, Synergy, gasTrading and AGIG.

⁸⁹⁰ In its submission CPM refer to draft decision required amendments 44, 45 and 46. Based on the specific comments made, the ERA considers that CPM had meant to refer to draft decision required amendments 45, 46 and 47.

⁸⁹¹ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, pp. 3-4.

⁸⁹² Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 3.

To address this the use of the word downstream should be defined as: *Downstream* means a point south of the inlet point; and similarly; *Upstream* means a point north of the inlet point.

Where the terms “upstream” and “downstream” (all lower case) are used will refer to actual physical flow. The capitalised terms refer to the contractual concept of back haul and forward haul used for tariff determination.

This addresses the current ambiguity associated with a bidirectional pipeline.⁸⁹³

Final decision

2036. The ERA has considered DBP’s response to the draft decision and revised proposed amendments to the terms and conditions in turn below. The matters raised in submissions received in response to the draft decision are addressed as part of these final decision considerations.

2037. Unless otherwise stated, the revised proposed amendments apply to the terms and conditions for the T1 Service, P1 Service and B1 Service.

Consistency with standard shipper contracts and negotiated contracts

2038. In its initial proposal, DBP submitted that amendments were made to the terms and conditions to, among other things, “align the Reference Contracts to the Negotiated Contracts to enhance [its] ability to administer all of [its] contracts in a consistent manner.”⁸⁹⁴

2039. DBP clarified its use of terminology when referencing contracts as follows:

- “Negotiated Contracts” means existing contracts with shippers for T1 Service, P1 Service or B1 Service which are based upon the Standard Shipper Contracts rather than the Reference Service Terms and Conditions under the current or any previous Access Arrangement.
- “Reference Contract” means the proposed Terms and Conditions for Reference Services in respect of any one of the T1 Service, P1 Service and B1 Service (and “Reference Contracts” means any two or all three of them as the case requires).
- “Standard Shipper Contracts” means the contracts for T1 Service, P1 Service and B1 Service currently published on DBP’s website.⁸⁹⁵

2040. In the draft decision, the ERA considered that business efficacy (that is, the ability to produce the intended result) for the terms and conditions under the access arrangement was likely to be better achieved in instances where the terms and conditions were:

- Generally consistent with the contracts in place with shippers (that is, the “Standard Shipper Contracts” as published on DBP’s website or a negotiated variation of them, being a “Negotiated Contract”).⁸⁹⁶
- Reflective of the usual terms being negotiated in the market.

⁸⁹³ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 8.

⁸⁹⁴ DBP, *2021-2025 Final Plan*, January 2020, pp. 126-127.

⁸⁹⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020.

⁸⁹⁶ DBP, *Standard Shipper Contract – Part Haul P1* (March 2015); *Standard Shipper Contract – Back Haul B1* (June 2015); and *Standard Shipper Contract – Full Haul T1* (February 2015) ([online](#)) (accessed May 2020).

On this basis, the ERA considered that the amendments that DBP proposed to align the terms and conditions for reference services with the contracts in place with shippers were consistent with the national gas objective (that is, the amendments promoted efficient investment in, and efficient operation and use of, the DBNGP) unless otherwise stated. Where otherwise stated, the ERA assessed the amendments to be unfair to shippers, unreasonable or inconsistent with the national gas objective for the reasons stated.

2041. The ERA did not receive any submissions on the draft decision addressing the matter of consistency between standard shipper and negotiated contracts. Given this, the ERA is satisfied that DBP's proposed amendments to align the terms and conditions for reference services with contracts in place with shippers are, unless otherwise stated, consistent with the national gas objective.

Clause 1 (Interpretation)

2042. Clause 1 details the defined terms used in the terms and conditions and their meaning. Table 202 shows DBP's initial proposed amendments to clause 1 that include amendments to:

- delete certain defined terms
- amend defined terms that reference the *Corporations Act 2001 (Cth)*
- update defined terms that reference certain legislation and standards
- insert new defined terms
- amend existing defined terms.

Table 202: DBP's initial proposed amendments to clause 1 (Interpretation) of the terms and conditions for reference services

Clause 1 (Interpretation)
Terms to be deleted
B1 Contract, DBNGP Trustee; Inlet Sales Agreement; P1 Contract; REMCO; Storage Service; T1 Contract, Tp Service
Terms defined by reference to the Corporations Act to be amended
Associate; Control; Controller; Related Body Corporate; Related Entity
Terms referencing legislation or standards to be updated
Actual Mass Flow Rate; SI Units
New terms to be inserted⁸⁹⁷
AEMO; AGIG; Aggregated Service; Aggregated B1 Service; Aggregated P1 Service; Aggregated T1 Service; Data; Outer Accumulated Imbalance Limit; Outer Hourly Peaking Limit
Existing terms to be amended⁸⁹⁸
Accumulated Imbalance; Associated; B1 Service; Contracted Capacity; Contracted Firm Capacity; Daily Nomination; DBNGP, Excess Imbalance Charge; Execution Date; Hourly Peaking Charge; Inlet Point; National Gas Access (Western Australia) Law; Notice; Other Reserved Service; Outlet Point; Overrun Gas; P1 Capacity Reservation Tariff; P1 Commodity Tariff; P1 Service; P1 Tariff; Reference Tariff Variation Mechanism; Relevant Construction Costs; Shipper; T1 Service; T1 Tariff

Source: DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020.

Terms to be deleted

2043. DBP submitted that the following terms were redundant and should be deleted from the terms and conditions:⁸⁹⁹

- “DBNGP Trustee” – This term was removed from the AA4 terms and conditions. The two references that remain in the terms and conditions (this definition and in the definition of “Party”) were an oversight.
- “Inlet Sales Agreement” – This term is not used in the terms and conditions.
- “P1 Contract”, “T1 Contract” and “B1 Contract” – These terms are not used in the respective terms and conditions for each reference service.
- “REMCo” – References to this term were replaced with the new term “AEMO”.
- “Storage Service” – This term is not used in the terms and conditions.
- “Tp Service” – This term is not used in the terms and conditions.

⁸⁹⁷ New terms “Dedicated Email Address”, “GJ” and “TJ” were also inserted into the terms and conditions. The ERA considers the addition of these new terms to be administrative in nature.

⁸⁹⁸ Amendments were also made to existing terms: “Full Haul service”, “Kwinana Junction”, “MHQ”, “Original Capacity”, “Part Haul service”, “Party”, “Period”, “Regulator”, “Reserved Capacity”, and “Share of the Distributions Networks’ IPQ”. The ERA considers the amendments made to these terms to be administrative in nature.

⁸⁹⁹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 1.2.

2044. DBP submitted that the term “Tp Service” was not used in the terms and conditions for reference services or the negotiated contracts in place with shippers. However, the term is defined and used in the current terms and conditions for each reference service (see curtailment regime provisions in clause 17.9(c)(ii) and schedule 6) and the Standard Shipper Contracts as published on DBP’s website. Provided that the Tp Service is a service that is no longer offered, the ERA considered in the draft decision that the term was redundant and that it should be deleted from the terms and conditions (including all uses of the term) and that the same amendment should be made to Standard Shipper Contracts when next reviewed.
2045. Notwithstanding the above consideration, the ERA considered DBP’s proposal to delete redundant terms was consistent with the national gas objective – the amendments correct and simplify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2046. In its revised proposal, DBP confirmed that the Tp Service was a service still offered under an existing negotiated contract with one shipper. For this reason, DBP submitted that the term “Tp Service” should be *not* be deleted from the terms and conditions.⁹⁰⁰
2047. The ERA has considered DBP’s revised proposal to reinsert the term “Tp Service” into the terms and conditions at paragraph 2715.

Terms defined by the Corporations Act 2001

2048. The terms “Associate”, “Control”, “Controller”, “Related Body Corporate” and “Related Entity” are defined in the terms and conditions by reference to the meaning given in the *Corporations Act 2001* as at the execution date. For example, “Associate has the meaning given in section 11 of the Corporations Act as at the Execution Date”.
2049. In its initial proposal, DBP amended each of the specified terms to replace the words “as at the Execution Date” with “as at 15 July 2019”. DBP submitted the following reasons for the amendments:
- It is not appropriate that the meaning ascribed to this definition may be changed by future (unknown) changes to the Corporations Act 2001 (Cth). Rather, the definition should be fixed as if the concept presently in that Act were set out in the Reference Contracts in full; and
 - 15 July 2019 was selected as the date to fix the definition as this is the latest compilation of that Act as at the time of preparing the submitted changes to the [reference service terms and conditions], containing amendments up to Act No. 50, 2019.⁹⁰¹
2050. It is not uncommon to assign a meaning to the terms identified by DBP by referencing the Corporations Act, as amended from time to time. While the ERA did not require an amendment in the draft decision, the ERA considered that, if DBP’s preference was to fix the definitions at a point in time (that is, at 15 July 2019), DBP should include a reference to the Compilation Number and Federal Register of Legislation ID of the Act in the definitions (that is, “Compilation No 95, Federal Register of Legislation ID C2019C00216”) to avoid parties having to identify the relevant version of the Act in the future.

⁹⁰⁰ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 28.

⁹⁰¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 1.3.

2051. Notwithstanding the above consideration, the ERA considered that DBP’s proposal to specify a relevant date for the Corporations Act was consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2052. In its revised proposal, DBP submitted that it had accepted the ERA’s suggestion to include a reference to the Compilation Number and Federal Register of Legislation ID of the Corporations Act in the definitions for “Associate”, “Control”, “Controller”, “Related Body Corporate” and “Related Entity”.⁹⁰²
2053. The ERA has considered DBP’s revised proposal to accept this and other suggested, but not required, amendments to the terms and conditions at paragraph 2700.

Terms referencing legislation or standards

2054. The terms “Actual Mass Flow Rate” and “SI Units” are defined by referencing specific legislation or industry standards.
2055. In its initial proposal, DBP amended these terms to update the references to current legislation or standards:⁹⁰³
- “Actual Mass Flow Rate” was amended to correctly reference in full the current American Gas Association’s report that is used to measure the thermodynamic properties of natural gas and related gases.⁹⁰⁴
 - “SI Units” was amended to delete a reference to an obsolete Australian Standard (that is, “AS1000-1979”, which has been superseded by AS ISO 1000-1998).
2056. DBP further amended clause 7.12 (Odourisation) of the terms and conditions to replace the reference to the *Gas Standards Regulations 1983 (WA)* with a reference to the *Gas Standards (Gas Supply and System Safety) Regulations 2000 (WA)*.
2057. The term “SI Units” are dealt with under the *National Measurement Act 1960 (Cth)* and are defined in the *National Measurement Regulations 1999* as: “SI, for a unit of measurement, means the system of measurement known as the International System of Units.” Given that clause 2.1(k) of the terms and conditions provides that “all units of measurement used in this Contract are SI Units as they are applied as Australian legal units of measurement under the *National Measurement Act 1960 (Cth)*”, the ERA considered in the draft decision that a definition of SI Units was not required.
2058. Notwithstanding the above consideration, the ERA considered that DBP’s proposal to update references to legislation and standards was consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

⁹⁰² DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 24.

⁹⁰³ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 1.4.

⁹⁰⁴ American Gas Association, *Report No. 8, Part 1 (Thermodynamic Properties of Natural Gas and Related Gases – DETAIL and GROSS Equations of State) and Part 2 (Thermodynamic Properties of Natural Gas and Related Gases, GERG-2008 Equation of State)*, Third Edition April 2017.

2059. In its revised proposal, DBP submitted that it had deleted the term “SI Units” from the terms and conditions based on the ERA’s draft decision consideration that the term was not required.⁹⁰⁵
2060. The ERA has considered DBP’s revised proposal to delete the term “SI Units” and accept other suggested, but not required, amendments to the terms and conditions at paragraph 2700.

Existing term “Accumulated Imbalance”

2061. In its initial proposal, DBP amended the term “Accumulated Imbalance” to update the cross-reference to “clause 9.8” to “clause 9.9”. The amendment is consequential and subject to DBP’s proposed amendment to insert new clause 9.6 (Excess Imbalance Charge), which is discussed at paragraph 2391.
2062. Consistent with the ERA’s final decision considerations of clause 9.6, the amendment to the term “Accumulated Imbalance” is required.

New term “AEMO”

2063. In its initial proposal, DBP inserted the new term “AEMO” to mean “Australian Energy Market Operator Limited ACN 072 010 327” and submitted that the new term replaced the redundant term “REMCo”, which was deleted from clause 1 (see paragraph 2043). The term “AEMO” is used in clauses 6.2, 6.3(d) and 6.3(f) of the terms and conditions.⁹⁰⁶
2064. In the draft decision, the ERA considered that DBP’s proposal to replace the term “REMCo” with “AEMO” was necessary because the functions of the Retail Energy Market Company were moved to AEMO in 2016.
2065. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to replace the term “REMCo” with “AEMO” is necessary and consistent with the national gas objective.

New term “AGIG”

2066. In its initial proposal, DBP inserted the new term “AGIG” to reflect changes of ownership following the acquisition of DBP by the CKI Group in 2017. DBP’s proposed definition of “AGIG” is reproduced in Appendix 5 (page 647) of this decision.
2067. DBP submitted that the new term replaced references to “DUET Group”, being the previous owners of the DBNGP. The term “AGIG” is used in the definition of “Data” in clause 1 and clauses 25.3(a), 28.2(i) and 28.3(a)(i) of the terms and conditions.⁹⁰⁷
2068. In the draft decision, the ERA considered that DBP’s proposal to introduce and use the term “AGIG” was required due to the change in ownership of the DBNGP since the approval of the access arrangement for AA4. However, it was noted that the term “AGIG” was:

⁹⁰⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 26.

⁹⁰⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.2.

⁹⁰⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.3 and 2.4.

- not actually used in clause 25.3(a) of the terms and conditions, despite DBP submitting that it is.
 - used in clause 28.2 to replace a reference to “DUET Trust No 2” and not a reference to “DUET Group” as submitted by DBP.
 - an addition to clause 28.3(a)(i) and not a replacement of an existing reference to “DUET Group” as submitted by DBP, although its addition in clause 28 is consistent with the intention of these provisions.
2069. Notwithstanding the above points, the ERA considered that DBP’s proposal to insert the new term “AGIG” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2070. In its revised proposal, DBP submitted that since the submission of its initial proposal in January 2020, *DUET Investment Holdings Pty Ltd (ABN 22 120 456 573)* had changed its name to *Australian Gas Infrastructure Holdings Pty Ltd (ABN 22 120 456 573)*. DBP submitted that the term “AGIG” needed to be amended in clause 1 of the terms and conditions to reflect this name change.⁹⁰⁸
2071. The ERA considers that DBP’s revised proposed amendment to the term “AGIG” is necessary to reflect the change in company name. Apart from this revised amendment, DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to insert the new term “AGIG” (as amended in DBP’s revised proposal) is consistent with the national gas objective.

New term “Aggregated Service”

2072. In its initial proposal, DBP inserted the new term “Aggregated Service” to mean “Aggregated P1 Service, Aggregated T1 Service and Aggregated B1 Service or any one or more of them (as the case may require)”.
2073. DBP submitted that the new term was inserted to improve drafting and was not a new type of service. It is used in the definition of “Other Reserved Service” in clause 1, clauses 8.17(a), 17.9(b)(vi), 17.9(c)(ii) and schedule 6 (part B) of the terms and conditions.⁹⁰⁹
2074. The current (AA4) terms and conditions use the terms Aggregated P1 Service, Aggregated T1 Service and Aggregated B1 Service (see for example schedule 6). DBP’s proposed term and definition encompasses these existing terms and, as submitted by DBP, is not a new type of service.
2075. In the draft decision, the ERA considered that DBP’s proposal to insert the new term “Aggregated Service” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2076. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s

⁹⁰⁸ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 6.

⁹⁰⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.5 to 2.7.

proposal to insert the new term “Aggregated Service” is consistent with the national gas objective.

New term “Aggregated B1 Service”

2077. In its initial proposal, DBP inserted the new term “Aggregated B1 Service”. DBP’s proposed definition for this term is reproduced in Appendix 5 (page 647) of this decision and applies to the terms and conditions for the P1 Service and T1 Service. In the terms and conditions for the B1 Service, the definition of “Aggregated B1 Service” takes the form of the proposed new term “Aggregated P1 Service” (see paragraph 2081).
2078. DBP submitted that the new term was inserted to correct a drafting anomaly. Aggregated Services, including the Aggregated B1 Service, were referred to throughout the terms and conditions (see for example, schedule 6). The new term therefore reflected the existing use of the term in the terms and conditions. DBP further submitted that the new term was consistent with the existing use of the term in negotiated contracts in place with shippers.⁹¹⁰
2079. There is no definition of “Aggregated Service” or “Aggregated B1 Service” in the current (AA4) terms and conditions, despite the terms being used. In the draft decision, the ERA considered that, consistent with DBP’s proposal to insert the term “Aggregated Service” and the ERA’s considerations of this (see paragraph 2072), DBP’s proposal to introduce the new term “Aggregated B1 Service” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2080. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to insert the new term “Aggregated B1 Service” is consistent with the national gas objective.

New term “Aggregated P1 Service”

2081. In its initial proposal, DBP inserted the new term “Aggregated P1 Service”. DBP’s proposed definition for this term is reproduced in Appendix 5 (page 648) of this decision and applies to the terms and conditions for the P1 Service. In the terms and conditions for the B1 Service and T1 Service, the definition of “Aggregated P1 Service” takes the form of proposed new term “Aggregated B1 Service” (see paragraph 2077).
2082. DBP submitted that the new term was inserted to correct a drafting anomaly. Aggregated services, including the Aggregated P1 Service, were referred to throughout the terms and conditions (see for example, schedule 6). The new term therefore reflected the existing use of the term in the terms and conditions. DBP further submitted that the new term was consistent with the existing use of the term in negotiated contracts in place with shippers.⁹¹¹
2083. There is no definition of “Aggregated Service” or “Aggregated P1 Service” in the current (AA4) terms and conditions, despite the terms being used. In the draft decision, the ERA considered that, consistent with DBP’s proposal to insert the term

⁹¹⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.9 to 2.11.

⁹¹¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.12 to 2.14.

“Aggregated Service” and ERA’s considerations of this (at paragraph 2072), DBP’s proposal to introduce the new term “Aggregated P1 Service” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2084. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to insert the new term “Aggregated P1 Service” is consistent with the national gas objective.

New term “Aggregated T1 Service”

2085. In its initial proposal, DBP inserted the new term “Aggregated T1 Service”. DBP’s proposed definition for this term is reproduced in Appendix 5 (page 648) of this decision and applies to the terms and conditions for the P1 Service and B1 Service. In the terms and conditions for the T1 Service, the definition of “Aggregated T1 Service” takes the form of proposed new term “Aggregated P1 Service” (see paragraph 2081).
2086. DBP submitted that the new term was inserted to correct a drafting anomaly. Aggregated services, including the Aggregated T1 Service, were referred to throughout the terms and conditions (see for example, schedule 6). The new term therefore reflected the existing use of the term in the terms and conditions. DBP further submitted that the new term was consistent with the existing use of the term in negotiated contracts in place with shippers.⁹¹²
2087. There is no definition of “Aggregated Service” or “Aggregated T1 Service” in the current (AA4) terms and conditions, despite the terms being used. In the draft decision, the ERA considered that, consistent with DBP’s proposal to insert the term “Aggregated Service” and ERA’s considerations of this (at paragraph 2072), DBP’s proposal to introduce the new term “Aggregated T1 Service” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2088. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to insert the new term “Aggregated T1 Service” is consistent with the national gas objective.

Existing term “Associated”

2089. In its initial proposal, DBP amended the term “Associated” to correct drafting omissions. DBP’s proposed amendment is reproduced in Appendix 5 (page 649) of this decision.
2090. DBP submitted that the inclusion of new paragraph (a) reflected the way in which the term was used in the terms and conditions (see for example, clauses 6.10(c) and 13.5(b)(ii)). The inclusion of the words “and relates and related, when used to describe such relationships, have analogous meanings” at the end of the definition

⁹¹² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.15 to 2.17.

reflected the way in which the words “relates” and “related” were used in clause 6.11 of the terms and conditions.⁹¹³

2091. In the draft decision, the ERA considered that DBP’s proposal to introduce new paragraph (a) was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP. However, the introduction of the words referring to the use of the terms “relates” and “related” may be unnecessary as these terms can be replaced in the terms and conditions with “associated”. While the ERA did not require an amendment, it considered that, if DBP deems it necessary to use the terms “relates” and “related”, the terms should be in a separate definition to ensure users can easily find the defined terms.⁹¹⁴
2092. In its revised proposal, DBP submitted that it had deleted the words “and *relates* and *related*, when used to describe such relationships, have the analogous meanings” from the definition of “Associated” based on the ERA’s draft decision considerations.⁹¹⁵
2093. The ERA has considered DBP’s revised proposal to further amend the term “Associated” and other suggested, but not required, amendments to the terms and conditions at paragraph 2700.

Existing term “B1 Service”

2094. In its initial proposal, DBP amended the term “B1 Service” to correct drafting anomalies and other administrative (typographical and referencing) errors. DBP’s proposed amendments are reproduced in Appendix 5 (page 649) of this decision and apply to the terms and conditions for the P1 Service and T1 Service. In the terms and conditions for the B1 Service, the amended definition of “B1 Service” is analogous to the proposed amendments to the term “P1 Service” (see paragraph 2176).
2095. DBP submitted the following explanation for the proposed amendments:⁹¹⁶
- The term “B1 Service” is used to identify all back haul transportation services which are named as a B1 Service and, hence, are treated in a particular (and equal) way in the Curtailment Plan and the nominations priority rule in clause 8.10(a).
 - The words “reference service provided under the terms and conditions set out in the access arrangement for the B1 Service” needed to be deleted, otherwise B1 Service could only be offered under a reference service contract. If the words remained, B1 Service would exclude all services that are not provided by way of a reference service contract despite other non-reference service contracts using the term B1 Service. B1 Service cannot have a different meaning across different contracts.
 - The words “can only be curtailed in the circumstances specified in clause 17.2” needed to be deleted because other (negotiated) contracts may allow the

⁹¹³ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.18 and 2.19.

⁹¹⁴ In a separate definition the terms “relates” and “related” would be alphabetically listed in clause 1 (Interpretation) of the terms and conditions making it intuitively easier to find.

⁹¹⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 24-25.

⁹¹⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.22 to 2.25.

operator to curtail in additional circumstances. If the words were to remain, a negotiated contract for B1 Service may not, despite what was negotiated for by the shipper, be regarded as the B1 Service as that term is used in the reference service contract because the negotiated contract can be curtailed in circumstances that are not listed in clause 17.2.

2096. In its submission in response to the issues paper, CPM did not directly address DBP's proposed amendments to delete the words "can only be curtailed in the circumstances specified in clause 17.2" from the definition of "B1 Service". However, CPM's submission did address the deletion of the same words from clause 3.2(a) of the terms and conditions, which covers provisions for the capacity service (see paragraph 2224).

2097. Consistent with the ERA's considerations of DBP's proposed amendments to clause 3.2(a) (see paragraph 2222), the ERA considered in the draft decision, that in the context of the defined term "B1 Service" in the terms and conditions for the P1 Service and T1 Service, the words "can only be curtailed in the circumstances specified in clause 17.2" can be deleted as proposed by DBP. The amended definition in this context is consistent with the amended definition of "B1 Service" in the terms and conditions of the B1 Service, which defines the B1 Service specific to the contract and in broader terms (that is, "in respect of other shippers and other contracts").

- In the terms and conditions for the B1 Service:⁹¹⁷

B1 Service in respect of the Shipper's Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Back Haul transportation service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

- In the terms and conditions for the P1 Service and T1 Service:⁹¹⁸

B1 Service means a Back Haul transportation service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

2098. In the draft decision, the ERA considered that DBP's other proposed amendments to the definition of "B1 Service" clarified the meaning of this term as it was used in the

⁹¹⁷ DBP, *DBNGP Access Arrangement 2021-25, Attachment 4 – B1 Reference Service Terms and Conditions*, January 2020.

⁹¹⁸ DBP, *DBNGP Access Arrangement 2021-25, Attachment 3 – P1 Reference Service Terms and Conditions and Attachment 2 – T1 Reference Service Terms and Conditions*, January 2020.

terms and conditions for reference services and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2099. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend the term “B1 Service” is consistent with the national gas objective.

Existing term “Contracted Capacity”

2100. In its initial proposal, DBP amended the term “Contracted Capacity” to clarify the current drafting and to fix a cross-referencing error. DBP’s proposed amendment is reproduced in Appendix 5 (page 650) of this decision and applies to the terms and conditions for the P1 Service. Analogous amendments to the term were made in the terms and conditions for the B1 Service and T1 Service.
2101. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Contracted Capacity” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2102. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Contracted Capacity” is consistent with the national gas objective.

Existing term “Contracted Firm Capacity”

2103. In its initial proposal, DBP amended the term “Contracted Firm Capacity” to mean “Alcoa’s Exempt Capacity and any contracted Capacity Service other than a Spot Transaction”. DBP’s proposed amendment is reproduced in Appendix 5 (page 650) of this decision.
2104. DBP submitted that the amendment aligned the term with the negotiated contracts in place with shippers. The term is used in clauses 5.3(g), 5.7(f), 8.9(d), 8.9(g) and 9.5(b)(ii) of the terms and conditions. In the context of each of these clauses, DBP submitted that the amended definition was fair and reasonable and in the net interest of shippers and consumers for the following reason:

The change to the definition of “Contracted Firm Capacity” is fair and reasonable, and in the net interest of shippers and consumers, as it only restricts the Shipper under a Reference Contract from using more than its Contracted Capacity at the inlet point, and only allows the Operator to impose such restriction where the excess use interferes with other shippers taking their contracted Capacity Services. If [DBP does] not make the change to the definition of “Contracted Firm Capacity” (by extending the types of Contracted Capacity that are protected from excess use by the Shipper under a Reference Contract), then all Capacity Services, other than T1 Service, P1 Service and B1 Service and Firm Service, would be subject to the whim of excess use by shippers under the Reference Services (making those other services unreliable and unpalatable).⁹¹⁹

2105. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective. The ERA noted that

⁹¹⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.32.

while the term “Contracted Firm Capacity” in the Standard Shipper Contracts (as published on DBP’s website) does not contain the words “other than a Spot Transaction”, the definitions are consistent because the Standard Shipper Contracts exclude “Spot Transactions” from the definition of the term “Capacity Service”. Consequently, Spot Transactions are excluded from the Standard Shipper Contracts’ definition of “Contracted Firm Capacity” making the provisions consistent in substance and effect.

2106. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Contracted Firm Capacity” is consistent with the national gas objective.

Existing term “Daily Nomination”

2107. In its initial proposal, DBP amended the term “Daily Nomination”. DBP’s proposed amendment is reproduced in Appendix 5 (page 650) of this decision.

2108. DBP submitted that:⁹²⁰

- The amendment to insert the word “scheduled” was to clarify that the daily nomination described what the shipper was *scheduled* to deliver and receive at the relevant point on the gas day. The amendment clarified that the definition did not, and was not intended to, create an obligation on the shipper (or operator) to deliver such amounts.
- The amendment to replace the words “set out in the Initial Nomination” with “scheduled under clause 8” was necessary because the “Daily Nomination” is not the same as the “Initial Nomination”.
- The amendment to delete the words “Type of” corrected a drafting error. The term “Type of Capacity Services” is only relevant to the determination of priority in particular circumstances and is not applicable in the context of defining a daily nomination.

2109. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Daily Nomination” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2110. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Daily Nomination” is consistent with the national gas objective.

New term “Data”

2111. In its initial proposal, DBP inserted the new term “Data”. DBP’s proposed definition of “Data” is reproduced in Appendix 5 (page 650) of this decision.

2112. DBP submitted that the new term was required because of proposed new clause 28.10 (FIRB Compliance), which is considered at paragraph 2597.

⁹²⁰ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 2.33 to 2.37.

2113. Consistent with the ERA’s final decision considerations of clause 28.10, the addition of the new term “Data” is a necessary and consequential amendment to the terms and conditions.

Existing term “DBNGP”

2114. In its initial proposal, DBP amended the term “DBNGP” to update references to dates. DBP’s proposed amendment is reproduced in Appendix 5 (page 651) of this decision.
2115. DBP submitted that the amendments updated the access arrangement period from “2016 – 2020” to “2021 – 2025” and created certainty by replacing the words “the Execution Date” with “1 January 2020”.⁹²¹
2116. DBP’s proposal to amend the definition of “DBNGP” reflects the next (AA5) access arrangement period, being the five-year period from 2021 to 2025. The replacement of the words “the Execution Date” with “1 January 2020” reflects the revisions submission date for the current (AA4) access arrangement. Given that the assessment process of proposed revisions to an access arrangement can take up to 12 months (or possibly longer in some instances), the ERA considered in the draft decision that the relevant date used in the definition of “DBNGP” should be a date that was closer to the commencement date of the revised access arrangement for the DBNGP, which was expected to be 1 January 2021.
2117. The draft decision set out the following required amendment:

Draft Decision Required Amendment 25

DBP must amend the term “DBNGP” in clause 1 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to change the date “1 January 2020” to a date that reflects the commencement date of the revised access arrangement, which is expected to be 1 January 2021.

2118. In its revised proposal, DBP accepted draft decision required amendment 25 and has amended the term “DBNGP” as required. DBP further amended the terms and conditions for the T1 Service and B1 Service to correct drafting errors – the definition in these terms and conditions referred to the approved access arrangement period being “2021 – 2026”, instead of “2021 – 2025”.⁹²²
2119. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 25.
2120. DBP’s additional revised amendments to the term “DBNGP” in the terms and conditions for the T1 and B1 Services correct drafting errors (that were not identified in the ERA’s draft decision) and are consistent the definition in the terms and conditions for the P1 Service.
2121. The ERA considers that DBP’s revised proposal implements the required amendment as intended, and that the amendment is consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

⁹²¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.40 and 2.41.

⁹²² DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

Existing term “Excess Imbalance Charge”

2122. In its initial proposal, DBP amended the term “Excess Imbalance Charge” to change the cross-reference to “clause 9.5(c)” to “clause 9.5(e)” and insert a new cross-reference to “clause 9.6(b)”.
2123. The change of the cross-reference to clause 9.5(e) is to correct an error and the insertion of the new cross-reference is consequential and subject to DBP’s proposed amendments to clause 9 (Imbalances), which are considered at paragraph 2377. Consistent with the ERA’s final decision considerations of clause 9, the consequential amendments to the term “Excess Imbalance Charge” are required.

Existing term “Execution Date”

2124. In its initial proposal, DBP amended the term “Execution Date” to replace the word “Contract” with the words “the Access Request Form” so that the term means “the date on which the Access Request Form is signed by the last of the Parties to sign it”.
2125. The term is used in the definition of “Total Physical Capacity” and clause 5.14(d) of the terms and conditions.⁹²³ DBP submitted that it amended the term Execution Date because the contract may not be signed by the parties. Rather, the contract is formed by execution of the Access Request Form in accordance with schedule 1 (item 8) of the terms and conditions.⁹²⁴
2126. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Execution Date” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2127. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Execution Date” is consistent with the national gas objective.

Existing term “Hourly Peaking Charge”

2128. In its initial proposal, DBP amended the term “Hourly Peaking Charge” to change the cross-reference to “clause 10.3(b)” to “clause 10.3(d)” and insert a new cross-reference to “clause 10.4(b)”.
2129. The amendment to insert the reference to clause 10.4(b) is consequential and subject to DBP’s proposed amendment to add new clause 10.4 (Outer Hourly Peaking Limit), which is considered at paragraph 2433. The other amendment fixed a cross-referencing error.
2130. Consistent with the ERA’s final decision considerations of clause 10.4, the amendment to add a cross-reference to clause 10.4(b) is a necessary and consequential amendment to the terms and conditions.

⁹²³ Clause 5.14 sets out provisions for ‘Shipper’s gas installations’.

⁹²⁴ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.47.

Existing term “Inlet Point”

2131. In its initial proposal, DBP amended the term “Inlet Point”. DBP’s proposed amendment is reproduced in Appendix 5 (page 651) of this decision.

2132. DBP submitted that the amendment was needed to correct a drafting error and align the terms and conditions with the negotiated contracts in place with shippers.

In the terms and conditions, the term “Inlet Point” is used to refer to any flange, joint or other point specified in clause 3.3(a) at which the shipper has contracted capacity, as well as, to refer more broadly to any inlet point on the DBNGP.⁹²⁵ If the amendment was not made (that is, the term remained confined to inlet points at which the shipper has contracted capacity), the rights otherwise granted to the shipper under the reference service contract may be undermined.⁹²⁶

2133. DBP’s amended definition is consistent with the definition of “Inlet Point” in the Standard Shipper Contracts (as published on DBP’s website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.

2134. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Inlet Point” is consistent with the national gas objective.

Existing term “National Gas Access (Western Australia) Law”

2135. In its initial proposal, DBP amended the term “National Gas Access (Western Australia) Law” to add the words “as changed from time to time, or any similar provisions specified in or made in accordance with any amendment or replacement of the *National Gas Access (WA) Act 2009 (WA)*.” DBP’s proposed amendment is reproduced in Appendix 5 (page 651) of this decision.

2136. DBP submitted that the amendment improved the drafting of the definition and better aligned the definition in the terms and conditions with the negotiated contracts in place with shippers.⁹²⁷

2137. Clause 2.1(e) of the terms and conditions states:

In the construction of this Contract, unless the context requires otherwise a reference to any statutory Law extends to and includes any regulations under that Law and any amendment of, modification of, or substitution for, that Law.

2138. In the draft decision, the ERA considered that clause 2.1(e) addresses the issue that DBP identified and as such DBP’s proposed amendment to the term “National Gas Access (Western Australia) Law” was unnecessary. However, should DBP proceed with its proposed amendment, the rights or risk allocation under the terms and conditions will not be altered, and the amended term remains consistent with the national gas objective.

⁹²⁵ In Attachment 14.1 (paragraph 2.54), DBP stated “the term “Inlet Point” is used to refer to any flange, joint or other point specified in clause 1.1(a) at which the shipper has contracted capacity...”. The terms and conditions however state “... any flange, joint or other point specified in clause 3.3(a) ...”.

⁹²⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.53 and 2.54.

⁹²⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.57.

2139. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that, while unnecessary, DBP’s proposal to amend the term “National Gas Access (Western Australia) Law” is consistent with the national gas objective.

Existing term “Notice”

2140. In its initial proposal, DBP amended the term “Notice” to replace the word “facsimile” with the words “email to a Dedicated Email Address.” DBP submitted that this amendment aligned with the provision in clause 29.4(b) of the terms and conditions, which included email as an approved form of delivery for notices.⁹²⁸
2141. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Notice” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2142. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Notice” is consistent with the national gas objective.

Existing term “Other Reserved Service”

2143. In its initial proposal, DBP amended the term “Other Reserved Service” to exclude “Aggregated Service” from the definition. DBP’s proposed amendment is reproduced in Appendix 5 (page 651) of this decision.
2144. DBP considered the amendment to be a correction of a typographical error. DBP submitted that “Aggregated Service” was not, and was never intended to be, an “Other Reserved Service”. The Aggregated Service is a different capacity service and has a separate priority (in the Curtailment Plan that is set out in schedule 6 of the terms and conditions) to Other Reserved Service.⁹²⁹
2145. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Other Reserved Service” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2146. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Other Reserved Service” is consistent with the national gas objective.

New term “Outer Accumulated Imbalance Limit”

2147. In its initial proposal, DBP inserted the new term “Outer Accumulated Imbalance Limit” that has the meaning given in proposed new clause 9.6(a). Proposed new clause 9.6(a) is considered at paragraph 2391.
2148. DBP’s proposed new term “Outer Accumulated Imbalance Limit” is consequential and subject to proposed new clause 9.6(a). Consistent with the ERA’s final decision

⁹²⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.58.

⁹²⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.7, 2.8 and 2.60.

considerations of clause 9.6(a), the addition of the new term “Outer Accumulated Imbalance Limit” is required.

New term “Outer Hourly Peaking Limit”

2149. In its initial proposal, DBP inserted the new term “Outer Hourly Peaking Limit” that has the meaning given in proposed new clause 10.4(a). Proposed new clause 10.4(a) is considered at paragraph 2433.
2150. DBP’s proposed new term “Outer Hourly Peaking Limit” is consequential and subject to proposed new clause 10.4(a). Consistent with the ERA’s final decision considerations of clause 10.4(a), the addition of the new term “Outer Hourly Peaking Limit” is required.

Existing term “Outlet Point”

2151. In its initial proposal, DBP amended the term “Outlet Point”. DBP’s proposed amendment is reproduced in Appendix 5 (page 651) of this decision.
2152. DBP submitted that the amendment was needed to correct a drafting error and aligned the terms and conditions with the negotiated contracts in place with shippers.

In the terms and conditions, the term “Outlet Point” is used to refer to any flange, joint or other point specified in clause 3.3(b) at which the shipper has contracted capacity, as well as, to refer more broadly to any outlet point on the DBNGP.⁹³⁰ If the amendment was not made (that is, the term remained confined to outlet points at which the shipper has contracted capacity), the rights otherwise granted to the shipper under the reference service contract may be undermined.⁹³¹

2153. DBP’s amended definition is consistent with the definition of “Outlet Point” in the Standard Shipper Contracts (as published on DBP’s website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2154. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Outlet Point” is consistent with the national gas objective.

Existing term “Overrun Gas”

2155. In its initial proposal, DBP amended the term “Overrun Gas”. DBP’s proposed amendment is reproduced in Appendix 5 (page 652) of this decision and applies to the terms and conditions for the P1 Service. Analogous amendments to the term were made in the terms and conditions for the T1 Service and B1 Service.
2156. DBP submitted that the amendment was to improve the drafting of the term across the reference service contracts and to better align the contracts with the negotiated contracts in place with shippers. The amendment clarifies what services were included in the shipper’s capacity services. The term “Capacity Service” incorporates

⁹³⁰ In Attachment 14.1 (paragraph 2.64), DBP stated “the term “Outlet Point” is used to refer to any flange, joint or other point specified in clause 1.1(a) at which the shipper has contracted capacity...”. The terms and conditions however state “... any flange, joint or other point specified in clause 3.3(b) ...”.

⁹³¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.63 and 2.64.

the T1 Service, B1 Service and P1 Service, hence the proposed amendment has not changed the meaning or operation of the definition.⁹³²

2157. The amended definition of “Overrun Gas” is consistent with the definition in the Standard Shipper Contracts (as published on DBP’s website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2158. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Overrun Gas” is consistent with the national gas objective.

Existing term “P1 Capacity Reservation Tariff”

2159. In its initial proposal, DBP amended the term “P1 Capacity Reservation Tariff”. DBP’s proposed amendment is reproduced in Appendix 5 (page 652) of this decision and applies to the terms and conditions for the P1 Service. Analogous amendments to the term “B1 Capacity Reservation Tariff” and “T1 Capacity Reservation Tariff” were made in the terms and conditions for the B1 Service and T1 Service, respectively. However, DBP submitted that the term “T1 Capacity Reservation Tariff” in the terms and conditions for the T1 Service did not include the reference to clause 14.7 because this clause was not relevant.⁹³³
2160. DBP submitted that the amendment improved the intent of the existing drafting.⁹³⁴ Specifically:
- The words “subject to clause 14.7” were inserted into the definition to remind that where there is a relocation of contracted capacity, as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7 (Charges for relocation).
 - The words “subject to clause 20.5(a)(iii)” were inserted into the definition to remind that the quantum of the charges may be affected by tariff resets approved by the regulator for any new access arrangement periods over the term of the contract (clause 20.5(a)(iii)).
2161. In the draft decision, the ERA considered that DBP’s proposed amendment contained the following errors:
- The proposed amendment referred to the “meaning given in clause 15 of the Access Arrangement”. However, the meanings for terms are set out in clause 16 (Definitions) of the proposed revised access arrangement.
 - Despite DBP submitting that the term “T1 Capacity Reservation Tariff” in the terms and conditions for the T1 Service did not include the reference to clause 14.7 because it was irrelevant, the reference to clause 14.7 remains. Consistent with DBP’s submission, a reference to clause 14.7 is not required in this definition because even if the relocation changes the nature of the service from full haul to part haul, the capacity remains on the same terms and

⁹³² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.66.

⁹³³ While this statement was made by DBP, the definition for the term “T1 Capacity Reservation Tariff” in the proposed terms and conditions for the T1 Service does contain the reference to clause 14.7.

⁹³⁴ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.68 to 2.72.

conditions as full haul capacity for T1 Service under the contract. Whereas, if a relocation of a P1 Service or B1 Service changes the nature of the service to full haul, the capacity so relocated is to be treated as if it were on the terms of the T1 Service.

2162. Further to correcting the above errors, the ERA considered that the amended definition should also be subject to clause 20.5(a)(ii) of the terms and conditions. Like clause 20.5(a)(iii), the quantum of the charges may also be affected by further variations that occur from time to time in accordance with the reference tariff variation mechanism (clause 20.5(a)(ii)). This is consistent with the definitions of “P1 Capacity Reservation Tariff”, “B1 Capacity Reservation Tariff” and “T1 Capacity Reservation Tariff” in the proposed revised access arrangement which all state that the respective tariff will be “varied pursuant to the Reference Tariff Variation Mechanism from time to time.”
2163. The draft decision set out the following required amendment:

Draft Decision Required Amendment 26

DBP must amend the term “P1 Capacity Reservation Tariff” in clause 1 of the proposed terms and conditions for the P1 Service to mean:

P1 Capacity Reservation Tariff, in all cases subject to clauses 14.7, 20.5(a)(ii) and 20.5(a)(iii), has the meaning given in clause 16 of the Access Arrangement.

Analogous amendments to the term “B1 Capacity Reservation Tariff” and “T1 Capacity Reservation Tariff” must also be made in the terms and conditions for the B1 Service and T1 Service, respectively. However, in the terms and conditions for the T1 Service, the cross-reference to clause 14.7 must be deleted.

2164. In its revised proposal, DBP accepted draft decision required amendment 26 and has amended the terms “P1 Capacity Reservation Tariff”, “B1 Capacity Reservation Tariff” and “T1 Capacity Reservation Tariff” in the terms and conditions for the P1 Service, B1 Service and T1 Service, respectively, as required.⁹³⁵
2165. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 26.
2166. The ERA considers that DBP’s revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Existing term “P1 Commodity Tariff”

2167. In its initial proposal, DBP amended the term “P1 Commodity Tariff”. DBP’s proposed amendment is reproduced in Appendix 5 (page 652) of this decision and applies to the terms and conditions for the P1 Service. Analogous amendments to the term “B1 Commodity Tariff” and “T1 Commodity Tariff” were made in the terms and conditions for the B1 Service and T1 Service, respectively. However, DBP submitted that:⁹³⁶
- The terms “B1 Commodity Tariff” and “T1 Commodity Tariff” in the terms and conditions for the B1 Service and T1 Service, respectively, also needed to

⁹³⁵ DBP, 2021-2025 Revised Final Plan, *Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

⁹³⁶ DBP, 2021-2025 Final Plan, *Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.73.

- include the words “as adjusted by the Reference Tariff Variation Mechanism from time to time”.⁹³⁷
- The term “T1 Commodity Tariff” in the terms and conditions for the T1 Service did not include the reference to clause 14.7 because this clause was not relevant.⁹³⁸
2168. DBP submitted that the amendment improved the intent of the existing drafting.⁹³⁹ Specifically:
- The words “subject to clause 14.7” were inserted into the definition to remind that where there was a relocation of contracted capacity, as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7 (Charges for relocation).
 - The words “subject to clause 20.5(a)(iii)” were inserted into the definition to remind that the quantum of the charges may be affected by tariff resets approved by the regulator for any new access arrangement periods over the term of the contract (clause 20.5(a)(iii)).
2169. In the draft decision, the ERA considered that, like DBP’s proposed amendment to the term “P1 Capacity Reservation Tariff”, the amendment to the term “P1 Commodity Tariff” contained similar errors.⁹⁴⁰
- The proposed amendment refers to the “meaning given in clause 15 of the Access Arrangement.” However, the meanings for terms are set out in clause 16 (Definitions) of the proposed revised access arrangement.
 - Despite DBP submitting that the term “T1 Commodity Tariff” in the terms and conditions for the T1 Service did not include the reference to clause 14.7 because it was irrelevant, the reference to clause 14.7 remains. Consistent with DBP’s submission, a reference to clause 14.7 is not required in this definition because even if the relocation changes the nature of the service from full haul to part haul, the capacity remains on the same terms and conditions as full haul capacity for T1 Service under the contract. Whereas, if a relocation of a P1 Service or B1 Service changes the nature of the service to full haul, the capacity so relocated is to be treated as if it were on the terms of the T1 Service.
2170. In addition, despite DBP submitting that the words “as adjusted by the Reference Tariff Variation Mechanism from time to time” needed to be included in the definitions for the “B1 Commodity Tariff” and “T1 Commodity Tariff”, these words were deleted from the definition for “P1 Commodity Tariff” and never included in the definitions for “B1 Commodity Tariff” and “T1 Commodity Tariff” in the respective terms and conditions. Regardless of DBP’s submission, the ERA considered that the words were not necessary and could be deleted.

⁹³⁷ While this statement was made by DBP, the words “as adjusted by the Reference Tariff Variation Mechanism from time to time” were deleted from the term “P1 Commodity Tariff” in the terms and conditions for the P1 Service. The words were never included in the definitions for the terms “B1 Commodity Tariff” and “T1 Commodity Tariff” in the proposed terms and conditions for the B1 Service or T1 Service respectively.

⁹³⁸ While this statement was made by DBP, the definition for the term “T1 Commodity Tariff” in the proposed terms and conditions for the T1 Service does contain the reference to clause 14.7.

⁹³⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.73 to 2.77.

⁹⁴⁰ The term “P1 Commodity Tariff” in the terms and conditions for the P1 Service also contains a formatting error that is visible in the unmarked (clean) version of the document – the term is bundled in with the definition for “P1 Capacity Reservation Tariff”.

2171. Further to correcting the errors identified above, the ERA considered that the amended definition should also be subject to clause 20.5(a)(ii) of the terms and conditions. Like clause 20.5(a)(iii), the quantum of the charges may also be affected by further variations that occur from time to time in accordance with the reference tariff variation mechanism (clause 20.5(a)(ii)). This is consistent with the definitions of “P1 Commodity Tariff”, “B1 Commodity Tariff” and “T1 Commodity Tariff” in the proposed revised access arrangement which all state that the respective tariff will be “varied pursuant to the Reference Tariff Variation Mechanism from time to time.”
2172. The draft decision set out the following required amendment:
- Draft Decision Required Amendment 27**
- DBP must amend the term “P1 Commodity Tariff” in clause 1 of the proposed terms and conditions for the P1 Service to mean:
- P1 Commodity Tariff**, in all cases subject to clauses 14.7, 20.5(a)(ii) and 20.5(a)(iii), has the meaning given in clause 16 of the Access Arrangement.
- Analogous amendments to the term “B1 Commodity Tariff” and “T1 Commodity Tariff” must also be made in the terms and conditions for the B1 Service and T1 Service, respectively. However, in the terms and conditions for the T1 Service, the cross reference to clause 14.7 must be deleted.
2173. In its revised proposal, DBP accepted draft decision required amendment 27 and has amended the terms “P1 Commodity Tariff”, “B1 Commodity Tariff” and “T1 Commodity Tariff” in the terms and conditions for the P1 Service, B1 Service and T1 Service, respectively, as required.⁹⁴¹
2174. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 27.
2175. The ERA considers that DBP’s revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Existing term “P1 Service”

2176. In its initial proposal, DBP amended the term “P1 Service”. DBP’s proposed amendment is reproduced in Appendix 5 (page 653) of this decision and applies to the terms and conditions for the P1 Service. In the terms and conditions for the T1 Service and B1 Service, the amended definition of “P1 Service” is analogous to the proposed amendment to the term “T1 Service” (see paragraph 2206).
2177. DBP submitted that the words used to amend the definition of “P1 Service” were substantially the same as the words used to amend the definition of “B1 Service” in the terms and conditions for the P1 Service. Therefore, DBP said that its submissions made to explain the proposed amendment to the term “B1 Service” (as set out at paragraph 2095 of this decision) were generally applicable.⁹⁴²

⁹⁴¹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

⁹⁴² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.79.

2178. DBP also submitted that:⁹⁴³

- If the reference to clause 3.4(a) of the access arrangement was retained in the definition of P1 Service the differences between the negotiated contracts in place with shippers would lead to “irreconcilable differences in the application of the Curtailment Plan and the nominations priority rule in clause 8.10”.
- The definition of P1 Service cannot refer to it being “Part Haul” (and likewise the definition of T1 Service cannot refer to it being “Full Haul”) because the terms “Part Haul” and “Full Haul” have different definitions in the reference service contracts to those corresponding terms in the negotiated contracts in place with shippers. With these different definitions a negotiated contract for P1 Service may not, despite what was negotiated for by the shipper, be regarded as a P1 Service as that term is used in the reference service contract.

2179. DBP’s proposed amendments to the term “P1 Service” are consistent with the amendments made to the terms “B1 Service” and “T1 Service” (see paragraphs 2094 and 2206, respectively). Hence, the amended definitions for each of these respective terms across the terms and conditions for each reference service are consistent and provide for a definition that either:

- Describes the service in the context of the respective contract and in broader terms (that is, “in respect of other shippers and other contracts”). For example, the definition of “P1 Service” in the terms and conditions for the P1 Service means:⁹⁴⁴

P1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Forward Haul transportation service which is named in the relevant contract as P1 Service which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

or

- Describes the service in broader terms. For example, the definition of “P1 Service” in the terms and conditions for the T1 Service and B1 Service means:⁹⁴⁵

P1 Service means a Forward Haul transportation service which is named in the relevant contract as P1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect

⁹⁴³ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.82 and 2.84.

⁹⁴⁴ DBP, *DBNGP Access Arrangement 2021-25, Attachment 3 – P1 Reference Service Terms and Conditions*.

⁹⁴⁵ DBP, *DBNGP Access Arrangement 2021-25, Attachment 2 – T1 Reference Service Terms and Conditions and Attachment 4 – B1 Reference Service Terms and Conditions*.

to other Types of Capacity Service, referred to in clause 8.10.

2180. In the draft decision, the ERA considered that the proposed amendments to the definition of “P1 Service” clarified the meaning of this term as it is used in the terms and conditions for reference services and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2181. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend the term “P1 Service” is consistent with the national gas objective.

Existing term “P1 Tariff”

2182. In its initial proposal, DBP amended the term “P1 Tariff”. DBP’s proposed amendment is reproduced in Appendix 5 (page 653) of this decision and applies to the terms and conditions for the P1 Service. Analogous amendments to the term “T1 Tariff” and “B1 Tariff” were made in the terms and conditions for the T1 Service and B1 Service, respectively.
2183. DBP submitted that the amendment clarified the intent of the existing drafting.⁹⁴⁶ Specifically:
- The words “subject to clause 14.7” were inserted into the definition to remind that where there is a relocation of contracted capacity, as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7 (Charges for relocation).
 - The words “subject to clause 20.5(a)(iii)” were inserted into the definition to remind that the quantum of the charges may be affected by tariff resets approved by the regulator for any new access arrangement periods over the term of the contract (clause 20.5(a)(iii)).
2184. DBP’s proposed amendment to the term “P1 Tariff” is similar to the amendments made to the definitions of “P1 Capacity Reservation Tariff” (see paragraph 2159) and “P1 Commodity Tariff” (see paragraph 2167), except that DBP did not make any reference to clause 14.7 being irrelevant to the term “T1 Tariff” in the terms and conditions for the T1 Service.
2185. Consistent with the ERA’s considerations of the proposed amendments to the terms “P1 Capacity Reservation Tariff” and “P1 Commodity Tariff” the ERA considered in the draft decision that:
- A reference to clause 14.7 is not required in the definition of “T1 Tariff” because even if the relocation changes the nature of the service from full haul to part haul, the capacity remains on the same terms and conditions as full haul capacity for T1 Service under the contract. Whereas, if a relocation of a P1 Service or B1 Service changes the nature of the service to full haul, the capacity so relocated is to be treated as if it were on the terms of the T1 Service.

⁹⁴⁶ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 2.87 to 2.90.

- The amended definition contains an error that must be fixed – the meanings for terms are set out in clause 16 (Definitions) of the proposed revised access arrangement and not clause 15.
- The amended definition should also be subject to clause 20.5(a)(ii) of the terms and conditions. Like clause 20.5(a)(iii), the quantum of the charges may also be affected by further variations that occur from time to time in accordance with the reference tariff variation mechanism (clause 20.5(a)(ii)). This is consistent with the definitions of “P1 Tariff”, “B1 Tariff” and “T1 Tariff” in the proposed revised access arrangement which all state that the respective tariff will be “varied pursuant to the Reference Tariff Variation Mechanism from time to time.”

2186. The draft decision set out the following required amendment:

Draft Decision Required Amendment 28

DBP must amend the term “P1 Tariff” in clause 1 of the proposed terms and conditions for the P1 Service to mean:

P1 Tariff, in all cases subject to clauses 14.7, 20.5(a)(ii) and 20.5(a)(iii), has the meaning given in clause 16 of the Access Arrangement.

Analogous amendments to the terms “B1 Tariff” and “T1 Tariff” must also be made in the terms and conditions for the B1 Service and T1 Service, respectively. However, in the terms and conditions for the T1 Service, the cross-reference to clause 14.7 must be deleted.

2187. In its revised proposal, DBP accepted draft decision required amendment 28 and has amended the terms “P1 Tariff”, “B1 Tariff” and “T1 Tariff” in the terms and conditions for the P1 Service, B1 Service and T1 Service, respectively, as required.⁹⁴⁷
2188. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 28.
2189. The ERA considers that DBP’s revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Existing term “Reference Tariff Variation Mechanism”

2190. In its initial proposal, DBP submitted that it amended the term “Reference Tariff Variation Mechanism” to mean “the mechanism for varying the “Reference Tariff” (as that term is defined in the Access Arrangement) as set out in section 11 of the Access Arrangement.” The amended definition better aligned with the actual terms of the access arrangement.⁹⁴⁸
2191. As submitted by DBP, the amended definition does align with the terms of the access arrangement. However, in the proposed terms and conditions for the reference services, the definition includes the words “from time to time” at the end. In the draft decision, the ERA considered these words to be unnecessary and that the definition should read the same as the proposed amendment set out in Attachment 14.1 to DBP’s Final Plan. Subject to deleting the words “from time to time”, DBP’s proposed

⁹⁴⁷ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 4.

⁹⁴⁸ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 2.95.

amendment to the term “Reference Tariff Variation Mechanism” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2192. The draft decision set out the following required amendment:

Draft Decision Required Amendment 29

DBP must amend the term “Reference Tariff Variation Mechanism” in clause 1 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to delete the words “from time to time”.

2193. In its revised proposal, DBP accepted draft decision required amendment 29 and has amended the term “Reference Tariff Variation Mechanism” as required.⁹⁴⁹

2194. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 29.

2195. The ERA considers that DBP’s revised proposal implements the required amendment as intended, and that the amendment is consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Existing term “Relevant Construction Costs”

2196. In its initial proposal, DBP amended the term “Relevant Construction Costs” to insert the words “Relevant Inlet Point Connection Facilities Construction Costs”, and “or Relevant Gate Station Construction Costs”. DBP’s proposed amendments are reproduced in Appendix 5 (page 653) of this decision.

2197. DBP submitted that:⁹⁵⁰

- The amendment to insert “Relevant Inlet Point Connection Facilities Construction Costs” corrected an error. Under clause 6.11(a) of the terms and conditions, “Relevant Construction Costs” may refer to costs in relation to inlet stations.
- The amendment to insert “Relevant Gate Station Construction Costs” was required because of the proposed amendments to clause 6.8 to separate the “regime for gate stations” from the “regime for other outlet stations”.

2198. As submitted by DBP, the amendments to the term “Relevant Construction Costs”:

- Correct an error, that is, construction costs can relate to inlet stations as well as outlet stations.
- Reflect the proposed amendments to clause 6.8 (Design and installation of Outlet Stations and Gate Stations), which are considered by the ERA at paragraph 2279 of this decision.

2199. In the draft decision, the ERA considered that the amendment to include the words “Relevant Inlet Point Connection Facilities Construction Costs” corrected an error and was consistent with the national gas objective – the amendment corrects and/or

⁹⁴⁹ DBP, 2021-2025 Revised Final Plan, *Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

⁹⁵⁰ DBP, 2021-2025 Final Plan, *Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 2.97 and 2.98.

clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2200. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Relevant Construction Costs” is consistent with the national gas objective.
2201. Consistent with the ERA’s final decision considerations of clause 6.8, the amendment to insert the words “Relevant Gate Station Construction Costs” is a necessary and consequential amendment to the terms and conditions.

Existing term “Shipper”

2202. In its initial proposal, DBP amended the term “Shipper” to change the definition from “the party so described where the parties to this Contract are named on its first page” to “the party described as the Prospective Shipper in the Access Request Form.”
2203. DBP submitted that the amendment was needed because the reference service contract does not actually contemplate the naming of the contracting party on the first page.⁹⁵¹
2204. In the draft decision, the ERA considered that DBP’s proposal to amend the term “Shipper” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2205. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “Shipper” is consistent with the national gas objective.

Existing term “T1 Service”

2206. In its initial proposal, DBP amended the term “T1 Service”. DBP’s proposed amendment is reproduced in Appendix 5 (page 654) of this decision and applies to the terms and conditions for the P1 Service and B1 Service. In the terms and conditions for the T1 Service, the amended definition of “T1 Service” is analogous to the proposed amendment to the term “P1 Service” (see paragraph 2176).
2207. DBP submitted that the amendment was needed to correct drafting anomalies and administrative (typographical and cross-referencing) errors and was consistent with the amendments made to the definitions of “B1 Service” and “P1 Service”. For this reason, DBP said that its submissions made to explain the proposed amendments to the terms “B1 Service” and “P1 Service” (as set out at paragraphs 2095 and 2177 of this decision, respectively) were applicable.⁹⁵²
2208. DBP’s proposed amendments to the term “T1 Service” are consistent with the amendments made to the terms “B1 Service” and “P1 Service” (see paragraphs 2094 and 2176, respectively). Hence, the amended definitions for each of these respective terms across the terms and conditions for each reference service are consistent and provide for a definition that either:

⁹⁵¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.101.

⁹⁵² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 2.79.

- Describes the service in the context of the respective contract and in broader terms (that is, “in respect of other shippers and other contracts”). For example, the definition of “T1 Service” in the terms and conditions for the T1 Service means:⁹⁵³

T1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Forward Haul transportation service which is named in the relevant contract as T1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

or

- Describes the service in broader terms. For example, the definition of “T1 Service” in the terms and conditions for the P1 Service and B1 Service means:⁹⁵⁴

T1 Service means a Forward Haul transportation service which is named in the relevant contract as T1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

2209. In the draft decision, the ERA considered that the proposed amendment to the definition of “T1 Service” clarified the meaning of this term as it was used in the terms and conditions for reference services and was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2210. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend the term “T1 Service” is consistent with the national gas objective.

Existing term “T1 Tariff”

2211. In its initial proposal, DBP amended the term “T1 Tariff” to “T1 Reference Tariff”. DBP’s proposed amendment is reproduced in Appendix 5 (page 654) of this decision and applies to the terms and conditions for the P1 Service and B1 Service.

⁹⁵³ DBP, *DBNGP Access Arrangement 2021-25, Attachment 2 – T1 Reference Service Terms and Conditions*.

⁹⁵⁴ DBP, *DBNGP Access Arrangement 2021-25, Attachment 3 – P1 Reference Service Terms and Conditions and Attachment 4 – PB Reference Service Terms and Conditions*.

2212. DBP submitted that the reference service contracts for the P1 Service and B1 Service used the term “T1 Reference Tariff” in schedule 2 of the contracts. The amendment was therefore needed to correct the use of this term in those contracts.
2213. The ERA’s draft decision required amendments 45 (see paragraph 2661) and 46 (see paragraph 2663) meant that DBP’s proposed correction to the term “T1 Tariff” was no longer needed because the required amendments amended the drafting that referenced the term “T1 Reference Tariff”.
2214. Consistent with draft decision required amendment 47 (see paragraph 2666), which required the defined terms “P1 Reference Tariff” and “B1 Reference Tariff” to be inserted into the terms and conditions for the P1 Service and B1 Service, respectively, the term “T1 Reference Tariff” could be deleted. The draft decision set out the following required amendment:

Draft Decision Required Amendment 30

DBP must delete the term “T1 Reference Tariff” from the proposed terms and conditions for the P1 Service and B1 Service.

2215. In its revised proposal, DBP has rejected draft decision required amendments 45, 46 and 47, and has hence rejected draft decision required amendment 30.⁹⁵⁵ That is, DBP has kept its initial proposed amendments whereby the term “T1 Tariff” in the terms and conditions for the P1 and B1 Services has been amended to read:

T1 Reference Tariff means the reference tariff for T1 Service set out in clause 3.3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the T1 Reference Tariff shall be re-set to reflect any replacement reference tariff for T1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

2216. The ERA’s draft decision required amendment 30 was required because of draft decision amendments 45, 46 and 47. The ERA’s consideration of DBP’s response to these required amendments is considered at paragraph 2669 of this decision. Consistent with the ERA’s considerations of draft decision required amendments 45, 46 and 47, the ERA has determined that the term “T1 Reference Tariff” (as proposed by DBP) is now required in the terms and conditions for the P1 Service and B1 Service.

Clause 2 (General)

2217. In its initial proposal, DBP amended clauses 2.4 and 2.5(e) of the terms and conditions, which set out general provisions for other contracts and the system operator, respectively. DBP’s proposed amendments are reproduced in Appendix 5 (page 655) of this decision.
2218. DBP submitted that:⁹⁵⁶
- The amendment to clause 2.4 was needed to clarify that “Aggregated Services” are not “Other Reserved Services” (as those terms are defined). The amendment also aligned the reference service contracts with the negotiated contracts in place with shippers.

⁹⁵⁵ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 6.

⁹⁵⁶ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 3.1 and 3.2.

- The amendment to clause 2.5(e) aligned the clause with the terminology used in Part 2, Chapter 4, of the *National Gas Access (Western Australia) Law*.
2219. Apart from the following differences, DBP’s proposed amendments are consistent with the drafting in the Standard Shipper Contracts (as published on DBP’s website).
- Clause 2.4 of the Standard Shipper Contracts does not reference the “Aggregated B1 Service”.
 - Clause 2.5(e) of the Standard Shipper Contracts does not specify “Part 2” of Chapter 4 of the *National Gas Access (Western Australia) Law* – reference is only made to Chapter 4 (Ring Fencing) of the Law.
2220. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective. However, the ERA considered that DBP’s proposed amendments and drafting in the terms and conditions to be a more accurate form of drafting and considered that the drafting in the Standard Shipper Contracts should, at some point, be amended accordingly. The revised drafting simplifies the interpretation and does not change the meaning of the clauses as currently the same meaning is achieved in a less direct manner.
2221. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clauses 2.4 and 2.5(e) is consistent with the national gas objective.

Clause 3 (Capacity Service)

Clause 3.2(a)

2222. In its initial proposal, DBP amended clause 3.2(a), which sets out provisions for the capacity service under the contract. DBP’s proposed amendments are reproduced in Appendix 5 (page 655) of this decision and apply to terms and conditions for the P1 Service. Analogous amendments were made to clause 3.2(a) in the terms and conditions for the T1 Service and B1 Service.
2223. DBP submitted that its reasons for amending the terms “B1 Service” and “P1 Service” were relevant to the amendments to clause 3.2(a) (see paragraphs 2094 and 2176, respectively). The amendments clarified how the reference service contract worked, decreased discrepancies between contract terms and lowered the probability for disputes.⁹⁵⁷
2224. In its submission in response to the issues paper, CPM addressed DBP’s proposed amendments to clause 3.2(a) and requested that the words “can only be Curtailed in the circumstances specified in clause 17.2” (existing clause 3.2(a)(i)) be reinstated. CPM considered the reasoning provided by DBP for the deletion of these words to be incorrect and submitted:

With the removal of “can only be Curtailed in the circumstances in clause 17.2” it is no longer clear and express that 17.2 contains the only rights of curtailment. This creates a risk that the Operator could argue that a right to curtail is implied by another part of the contract when it is not.

⁹⁵⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 4.2 to 4.6.

Having an express, clearly set out list of circumstances where curtailment is permitted is fundamental for a shipper to understand their rights in relation to the service provided.

The explanation provided by [DBP] is incorrect, as it is based on the concept that referencing 17.2 in clause 3.2 would prevent contracts which do not have the exact curtailment circumstances as set out in 17.2 from being a 'B1 Service'. However, retaining the words in clause 3.2 places no limitation on the curtailment provisions in a different contract and has no effect on whether a backhaul service under a negotiated contract is a 'B1 Service'.

This is because clause 3.2 only describes the B1 Service for the particular shipper under this contract and does not prevent a service with different curtailment rights under other contracts also being a 'B1 Service'. The definition of 'B1 Service' clearly states that clause 3.2 only describes the 'the Shipper's Capacity Service under this Contract' and goes on to give a different, much broader, meaning for other shippers and contracts – all are 'B1 Services' (the reference to cl 17.2 has been removed from the 'B1 Service' definition so will not apply to other shippers and contracts). The same is true for 'P1 Service' in the P1 Reference Contract.⁹⁵⁸

2225. Clause 17.2 (Curtailment Generally) of the terms and conditions states:⁹⁵⁹

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

- (a) if there is an event of Force Majeure where the Operator is the Affected Party;
- (b) whenever it needs to undertake any Major Works;
- (c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;
- (d) for any Planned Maintenance; and
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable.

2226. DBP did not provide a reason for the deletion of clause 3.2(a)(i) in the context of clause 3.2(a), but its reason for the deletion of the same words in the definition of B1 Service was that some B1 Services had additional operator curtailment rights and that the goal was to ensure that all B1 Services are treated as B1 Services (see paragraph 2095).

2227. As submitted by CPM, clause 3.2 is specific to the B1, P1 or T1 Service under the contract and does not prevent a service with different curtailment rights under other contracts also being a B1, P1 or T1 Service given the definitions of these services in the terms and conditions. The definitions of "B1 Service", "P1 Service" and "T1 Service" in their respective terms and conditions all use the words: "in respect of the Shipper's Capacity Service under this Contract, has the meaning given in clause 3.2, and in respect of other shippers and other contracts means ...". The definitions

⁹⁵⁸ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, pp. 10-11.

⁹⁵⁹ The terms and conditions for the B1 Service include (proposed) paragraph (f) that states: "in circumstances where actual Forward Haul gas flow is less than the B1 Service demand across all shippers with a B1 Service".

then go on to define the respective service in broader terms, which is consistent with the definition of that service in the other terms and conditions. For example:⁹⁶⁰

- In the terms and conditions for the B1 Service, “B1 Service” is defined as:

B1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Back Haul transportation service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

 - (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.
- In the terms and conditions for the P1 Service and T1 Service, “B1 Service” is defined as:

B1 Service means a Back Haul transportation service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

 - (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

2228. In the draft decision, in the context of clause 3.2(a), the ERA considered that, based on the submission made by CPM, there was no reason to delete subclause (i) and that the clause should be reinstated (with the necessary formatting amendments). The draft decision set out the following required amendment:

Draft Decision Required Amendment 31

DBP must amend clause 3.2(a) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to retain subclause (i) that reads:

- (i) can only be Curtailed in the circumstances specified in clause 17.2;

2229. Notwithstanding the above amendment, the ERA considered that DBP’s other proposed amendments to clause 3.2(a) improved the drafting of the terms and conditions and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2230. In its revised proposal, DBP rejected draft decision required amendment 31 and has maintained its initial proposal to delete clause 3.2(a)(i) from the revised proposed terms and conditions for each reference service. DBP provided the following revised information to substantiate its decision to delete the clause:⁹⁶¹

⁹⁶⁰ The definition for “B1 Service” is the definition as proposed by DBP for AA5 (that is, it is not the current (AA4) definition). DBP’s proposed amendment to the term “B1 Service” is discussed at paragraph 2094 of this decision.

⁹⁶¹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 15-16.

- “Curtailed” is defined in the terms and conditions, to mean “reduce, interrupt or stop, or any combination of them, completely or in part”. The statement in clause 3.2(a)(i) that the service “can only be Curtailed in the circumstances specified in clause 17.2” is: (1) incorrect; (2) inconsistent with the remaining terms of the contract; and (3) does not reflect the terms of clause 17.2. Hence, subclause (i) creates uncertainty, which is inconsistent with the national gas objective.
 - Clause 17.2 (Curtailed Generally) is not, and has never been, an exclusive list detailing when the operator can curtail – rather, it is a permissive and non-exclusive list.
 - There are other express provisions of the terms and conditions that allow the operator to “reduce”, “interrupt” or “stop” in circumstances not listed in clause 17.2 (see, for example, clauses 5.3, 5.7, 7.6, 6.13 and 22.4). Hence, the statement regarding clause 17.2 in clause 3.2(a) is inconsistent with, and creates uncertainty with respect to, these other express provisions. Furthermore, the other express rights are not captured in clause 17.2.
 - While clause 17.2 includes a provision to curtail “in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason ... that a Curtailment is desirable” (clause 17.2(e)), this provision is not intended to add a limit to operator’s otherwise absolute rights to refuse to receive or deliver gas as set out in other clauses (being the examples detailed above), which are not otherwise subject to such a limit.
 - Deleting subclause (i) from clause 3.2(a) does not change the contractual effect of clause 17.2 and does not detrimentally affect shippers’ rights – rather, it preserves the effect of the full set of terms and conditions under the contract.
 - The deletion of subclause (i) is also consistent with the Standard Shipper Contracts, which the ERA has recognised throughout the draft decision is consistent with the national gas objective and promotes business efficacy.
2231. There were no submissions addressing DBP’s revised proposal to reject the ERA’s draft decision required amendment 31 and retain the amendments initially proposed by DBP.
2232. The ERA considers that DBP’s concern regarding draft decision required amendment 31 can be resolved by amending clause 17.2 to expressly incorporate other rights in the terms and conditions that allow the operator to curtail or “reduce”, “interrupt” or “stop” provision of the capacity service to the shipper. That is, clause 17.2 of the terms and conditions could be amended as follows:
- In the terms and conditions for the T1 Service and P1 Service:
 - 17.2 Curtailment Generally**
 - The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:
 - ...
 - (d) for any Planned Maintenance; ~~and~~
 - (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable; and
 - (f) when otherwise expressly permitted by this Contract.

- In the terms and conditions for the B1 Service:

17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

...

- (d) for any Planned Maintenance;
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable; ~~and~~
- (f) when otherwise expressly permitted by this Contract; and
- ~~(f)~~(g) in circumstances where actual Forward Haul gas flow over the relevant area is less than the B1 Service demand over the relevant area across all shippers with a B1 Service.

2233. DBP advised that the ERA's proposed amendments to clause 17.2 (as set out above) may cause unintended consequences given clause 17.6, which requires DBP to issue a Curtailment Notice for all events in clause 17.2 for which the operator is entitled to curtail.⁹⁶² Proposed new clause 17.2(f) would require DBP to issue a Curtailment Notice for events that previously did not require such a notice, creating inconsistencies between the exercise of rights under other clauses. For example, under clauses 5.3 and 5.7 the operator may refuse to receive and deliver gas, respectively, with clauses 5.4 and 5.8 setting out the notification requirements for a refusal to receive/deliver gas under these clauses. The introduction of clause 17.2(f) would create a new requirement to issue a Curtailment Notice under clause 17.6, in addition to the notification requirements under clause 5.4 or 5.8.
2234. Noting the intent of the ERA's proposed amendment, DBP suggested that the wording of clause 3.2(a)(i), which was the subject of draft decision required amendment 31, could be amended to read "can only be Curtailed in the circumstances set out in this Contract". DBP submitted that the revised (amended) drafting to clause 3.2(a)(i) would address draft decision required amendment 31 and allow the consistent operation of other clauses within and across reference and non-reference contracts. Revised clause 3.2(a)(i) would also remove the need for any amendments to clause 17.2 (that is, proposed new clause 17.2(f) would not be required and could be deleted).
2235. The ERA considers that DBP's proposal to retain clause 3.2(a)(i) in an amended form addresses the intent of draft decision required amendment 31. That is, the capacity service to which the shipper is entitled to under the contract can only be curtailed in the circumstances specified in the contract either under clause 17.2 or when otherwise expressly permitted. For this reason, clause 3.2(a)(i) of the terms and conditions for reference services should be reinstated to read "can only be Curtailed in the circumstances set out in this Contract".

⁹⁶² DBP, 'DBP Final Decision AA5', [email] 30 March 2021.

Required Amendment 24

Clause 3.2(a) of the terms and conditions for the T1 Service, P1 Service and B1 Service must be amended to retain subclause (i), amended as follows:

“(i) can only be Curtailed in the circumstances ~~specified in clause 17.2~~[set out in this Contract](#).”

Clause 3.2(b)

2236. In its initial proposal, DBP amended clause 3.2(b), which details the operator’s acknowledgements and agreements for the capacity service. DBP’s proposed amendments are reproduced in Appendix 5 (page 656) of this decision.
2237. DBP submitted that the amendments to clause 3.2(b) aligned the reference service contracts with the negotiated contracts in place with shippers and reflected how the pipeline’s operations were required to be measured in practice.⁹⁶³
2238. DBP’s proposed amendments are consistent with the drafting in the Standard Shipper Contracts (as published on DBP’s website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2239. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 3.2(b) is consistent with the national gas objective.

Clause 3.2(c)

2240. In its initial proposal, DBP amended clause 3.2(c), which details the operator’s acknowledgements and agreements, subject to clause 14 (Relocations), for the capacity service. DBP’s proposed amendments are reproduced in Appendix 5 (page 656) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the B1 Service and T1 Service, clause 3.2(c) was amended to align the clauses with the same approach.
2241. DBP submitted that the clause was amended in the terms and conditions for the P1 Service and B1 Service to refer to the respective services and the characteristics of those services, rather than describing the T1 Service. The amendment to include the words “under this Contract” was to clarify that the P1 Service, B1 Service and T1 Service are those services as defined in the respective reference service contracts.⁹⁶⁴
2242. DBP’s proposed amendments to clause 3.2(c) simplify and clarify the drafting by describing the capacity service relative to the contract. For this reason, in the draft decision, the ERA considered that the amendments were consistent with the national gas objective – the amendments simplify and/or clarify the terms and conditions for

⁹⁶³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 4.7.

⁹⁶⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 4.9 and 4.10.

reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2243. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 3.2(c) is consistent with the national gas objective.

Clause 3.3

2244. In its initial proposal, DBP amended clause 3.3, which confirms the shipper's contract capacity under the contract. DBP's proposed amendments are reproduced in Appendix 5 (page 657) of this decision.
2245. DBP submitted that the amendments to clause 3.3 aligned the reference service contracts with the negotiated contracts in place with shippers. Given that the Access Request Form may include multiple inlet/outlet points, the amendments also clarified that the contracted capacity for the respective service was set out in the Access Request Form "adjacent to" the inlet/outlet point.⁹⁶⁵
2246. DBP's proposed amendments are consistent with the drafting in the Standard Shipper Contracts (as published on DBP's website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2247. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 3.3 is consistent with the national gas objective.

Clause 4 (Duration of the Contract)

2248. In its initial proposal, DBP amended clause 4.8(a), which sets out provisions for the put and call of options that are available to shippers, to insert the words "or prospective shipper" as follows:

If the Operator receives a duly completed access request form from a shipper or prospective shipper (Third Party Access Request) ...

2249. DBP submitted that the amendment clarified that notice to existing shippers under the clause must be provided where both existing and new shippers submit a Third Party Access Request. Further amendments to clause 4.8(b) clarified that it is "the" shipper (as opposed to "a" shipper) who wishes to exercise its options that needs to notify the operator of this.⁹⁶⁶
2250. In its submission in response to the issues paper, CPM addressed DBP's proposed amendment to clause 4.8(a) to insert the words "or prospective shipper" and requested that the start of the clause be amended to read: "If the Operator receives a duly completed access request form from a shipper or prospective shipper in the form of a lodged Access Request (Third Party Access Request)..." CPM submitted:

With abundant spare capacity in the northern part of the DBNGP, and the expected decline on throughputs over the coming 30 years, the ambiguity on what the additional

⁹⁶⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 4.12.

⁹⁶⁶ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 5.1 and 5.2.

words of “or prospective shipper” have created needs to be removed, and can be done by simply making sure the Third Party Access Request stems from a formally submitted Access Request where fees are paid and a contract (where capacity is available) will be the eventual outcome.⁹⁶⁷

2251. While there is no definition for “prospective shipper” in the terms and conditions, the access arrangement defines the term as meaning “an entity who wishes to be a Shipper on the DBNGP”.⁹⁶⁸ This definition is consistent with the meaning of “prospective user”, as set out in Section 5 of the NGL:

5. Meaning of prospective user

- (1) A prospective user is a person who seeks or wishes to be provided with a pipeline service by means of a scheme pipeline.
- (2) To avoid doubt, a user is also a prospective user if the user seeks or wishes to be provided with a pipeline service by means of a scheme pipeline other than a pipeline service already provided to them under—
 - (a) a contract; or
 - (b) an access determination.

2252. In the context of the above definitions, DBP’s proposed amendment reflects the actual operation of clause 4.8(a). As submitted by DBP, the proposed amendment clarifies that the operator must give notice for the put and call of options to the shipper when it receives an access request form from either an *existing* shipper or *prospective* shipper (and in both cases being a “Third Party Access Request”).

2253. However in the draft decision, the ERA considered that the words “access request form” may be ambiguous and that this ambiguity could be addressed by capitalising the words to make it a defined term, meaning: “the access request form in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.” Such an amendment would address CPM’s submission by clarifying that the “Third Party Access Request” is a formal request using the prescribed form, being the “Access Request Form”.

2254. The draft decision set out the following required amendment:

Draft Decision Required Amendment 32

DBP must amend clause 4.8(a) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to capitalise the words “access request form” (in the first line) so that the words become the defined term: “Access Request Form”.

2255. Notwithstanding the above required amendment, the ERA considered that DBP’s other proposed amendment to clause 4.8(b) to change the words “a shipper” to “the shipper” was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2256. In response to the draft decision, DBP submitted that it supported draft decision required amendment 32 in principle. However, further amendments to the required drafting were needed as follows (shown in mark-up against the ERA’s required drafting):⁹⁶⁹

⁹⁶⁷ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 12.

⁹⁶⁸ Clause 16 (Definitions) in the proposed revised access arrangement.

⁹⁶⁹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 16-17.

4.8 Put and call of Options

- (a) If the Operator receives a duly completed [Access Request \(as defined in the Access Arrangement\) in accordance with clause 5.2 of the Access Arrangement](#)~~Access Request Form~~ from a shipper or prospective shipper (Third Party Access Request) which specifies a start date for the requested service occurring more than 12 months prior to the Shipper's Capacity End Date, and at the time when the service requested in the Third Party Access Request will ...

2257. DBP submitted:

We appreciate the desire to clarify the use of the term "access request form" in the former drafting. However, we disagree with the use of the defined term "Access Request Form" in this instance as that term is defined as "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." and so only applies to the form entered into between the Operator and this particular Shipper to create this particular contract between them, whereas in this clause we need to capture an equivalent form submitted by another shipper.⁹⁷⁰

2258. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 32 with revised amendments.
2259. The ERA considers that DBP's revised proposed amendment addresses the initial matter raised by CPM and is substantively consistent with draft decision required amendment 32. The amendment is also consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 5 (Receiving and Delivering Gas)

New clause 5.7(f)

2260. In its initial proposal, DBP amended clause 5.7, which details the cases where the operator may refuse to deliver gas to the shipper, to insert new clause 5.7(f). DBP's proposed amendment is reproduced in Appendix 5 (page 657) of this decision.
2261. DBP submitted that "the purpose of [the amendment] is to fix an anomaly whereby the equivalent of clause 5.3(g)(ii) (which applies to Inlet Points) has not been replicated in [clause] 5.7 (which applies to Outlet Points)."⁹⁷¹ Proposed clause 5.7(f) gives the operator an express right to refuse to deliver to the shipper more than the shipper's contracted capacity at a particular outlet point, if doing so would interfere with any other shipper's contracted firm capacity at that outlet point, which is consistent with the existing provisions of clause 5.3(g)(ii), applying to inlet points.
2262. As submitted by DBP, the proposed new clause 5.7(f) is consistent with the provisions of clause 5.3(g)(ii), which applies to inlet points. However, clause 5.3(g) outlines two conditions that may apply:

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

⁹⁷⁰ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 17.

⁹⁷¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 6.11.

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 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.

2263. Given DBP's reasons for the proposed new clause, it is not clear why the proposed drafting for clause 5.7(f) does not match the drafting in clause 5.3(g) to include the condition about the shipper's MHQ.⁹⁷² While it is not necessary for the respective clauses to match for the provisions to operate effectively, in the draft decision the ERA considered that, if the reason for the amendment is to replicate provisions that apply equally to inlet and outlet points, DBP may wish to reconsider the drafting of the clauses to make the drafting the same. While the ERA did not require any drafting amendments, it considered that drafting amendments of this nature would further simplify the terms and conditions.
2264. Notwithstanding the above considerations, the ERA considered that DBP's proposed amendment to insert new clause 5.7(f) was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2265. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to insert new clause 5.7(f) is consistent with the national gas objective.

Clause 5.14(b)

2266. In its initial proposal, DBP amended clause 5.14(b), which sets out provisions for the inspection of gas installations. DBP's proposed amendments are reproduced in Appendix 5 (page 658) of this decision.
2267. DBP submitted that the amendments aligned the reference service contracts with the negotiated contracts in place with shippers and removed unnecessary drafting.⁹⁷³
2268. DBP's proposed amendments to clause 5.14(b) are consistent with the drafting in the equivalent clause in the Standard Shipper Contracts (as published on DBP's website).⁹⁷⁴ In the draft decision, for the reasons stated at paragraph 2040, the ERA

⁹⁷² In the terms and conditions, **MHQ** [maximum hourly quantity] means: "(a) for an Outlet Point on a particular Gas Day in respect of a shipper, (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 (b) for an Inlet Point on a particular Gas Day in respect of a shipper, 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".

⁹⁷³ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 6.14 and 6.15.

⁹⁷⁴ Standard Shipper Contracts, clause 5.15(b).

considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.

2269. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 5.14(b) is consistent with the national gas objective.

Clause 6 (Inlet Points and Outlet Points)

Clause 6.4(c)

2270. In its initial proposal, DBP amended clause 6.4(c), which sets out provisions for the allocation of gas at inlet points, to change the time for the shipper to procure the delivery of written confirmation to the operator from 11:30 hours to 10:00 hours.
2271. DBP submitted that the amendment reflected current practice. While there is some variation from 10:00 hours in the negotiated contracts in place with shippers, DBP submitted that most of these contracts did reference 10:00 hours and there would be a move to align all contracts to this time.⁹⁷⁵
2272. No submissions in response to the issues paper addressed DBP's proposed amendment to clause 6.4(c). In the draft decision, the ERA considered that, in the absence of any submissions that dispute the current practice, DBP's proposed amendment was consistent with the national gas objective – the amendment reflects current operational practices for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2273. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 6.4(c) is consistent with the national gas objective.

Clauses 6.4(d) and 6.5(d)

2274. In its initial proposal, DBP amended clauses 6.4(d) and 6.5(d), which set out provisions for the allocation of gas at inlet points and outlet points, respectively. DBP's proposed amendments are reproduced in Appendix 5 (page 658) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the T1 Service and B1 Service, amendments to clauses 6.4(d) and 6.5(d) were made to use the same amended drafting.
2275. DBP submitted that the amendments to these clauses provided a "fall-back rule" that could be applied if the shipper does not tell the operator in which order it is to apply gas received (in the case of clause 6.4(d)), or gas delivered (in the case of clause 6.5(d)). The amendments were required to provide consistency across the operation of the DBNGP for gas allocation if a shipper does not instruct the operator.⁹⁷⁶
2276. As submitted by DBP, clauses 6.4(d) and 6.5(d) set out the order for the allocation of gas at inlet points and outlet points, respectively. The amended clauses set out a pre-determined order (which is consistent across the terms and conditions for all reference services) in which gas is deemed to be received by the operator under clause 6.4(d), or shipper under clause 6.5(d), in instances where the shipper fails to specify the order. The ability for shippers to specify the order in which gas is deemed

⁹⁷⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.2.

⁹⁷⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 7.4 to 7.10.

to be received is unchanged – shippers can still, in effect, unilaterally change the order set out in clauses 6.4(d) and 6.5(d).

2277. In the draft decision, the ERA considered that DBP’s proposal to amend clauses 6.4(d) and 6.5(d), to apply a consistent rule of order for the allocation of gas at inlet and outlet points in instances where the shipper does not specify the order itself, was consistent with the national gas objective – drafting amendments that standardised, where possible and appropriate, the terms and conditions for reference services promote efficient investment in, and efficient operation and use of, the DBNGP.
2278. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clauses 6.4(d) and 6.5(d) is consistent with the national gas objective.

Clause 6.8

2279. In its initial proposal, DBP amended clause 6.8, which sets out provisions for the design and installation of outlet stations. DBP’s proposed amendments are reproduced in Appendix 5 (page 659) of this decision.
2280. The amendments removed “Gate Stations” from clause 6.8(a), which are now covered in new clauses 6.8(e) and 6.8(f) and added the words “(and in such case, for the purpose of clause 6.11(e), such costs are deemed to be associated with an Operator Owned Point)” to the end of clause 6.8(a)(ii).
2281. DBP submitted that gate stations needed to be removed from clause 6.8(a) because such points were notional points used by many shippers and it was unreasonable for one shipper to be able to request works and pass on the charges payable to other shippers using that point. The amendments also aligned the reference service contracts with the negotiated contracts in place with shippers.⁹⁷⁷
2282. The Standard Shipper Contracts (as published on DBP’s website) separately deal with the design and installation of outlet stations (under clause 6.7) and gate stations (under clause 6.10). Proposed new clauses 6.8(e) and 6.8(f) are consistent with the provisions in the Standard Shipper Contracts for gate stations. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2283. DBP further submitted that the amendment at the end of clause 6.8(a)(ii) was required to clarify that, consistent with the intent of the clause, Relevant Outlet Station Construction Costs were to be included in the Maintenance Charge which must be paid by shippers pursuant to clause 6.11(e).⁹⁷⁸ The ERA considered that DBP’s proposed amendment to clause 6.8(a)(ii) clarified the costs that are included in the Maintenance Charge and was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

⁹⁷⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 7.12 and 7.13.

⁹⁷⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.15.

2284. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 6.8 is consistent with the national gas objective.

Clause 6.11

2285. In its initial proposal, DBP amended clause 6.11, which sets out provisions for the charging of a maintenance charge for inlet and outlet stations. DBP's proposed amendments are reproduced in Appendix 5 (page 660) of this decision.
2286. DBP submitted that the amendments to clause 6.11 were made to better reflect the intent that relevant construction costs, and the costs of maintaining, operating, refurbishing, upgrading and replacing inlet and outlet stations were recovered fairly across shippers, and were neither over-recovered nor under-recovered by the operator.⁹⁷⁹
2287. Submissions in response to the issues paper from CPM and Synergy addressed DBP's proposed amendments to clause 6.11.
2288. CPM considered the proposed amendments to be unnecessary and submitted:

Separating Inlet Station and Outlet Station Maintenance charges is silly and make [the] contracts unnecessarily complex. A gas distribution network cannot distribute gas without Inlet Stations and Outlet Stations. It stands to reason then that Inlet Stations and Outlet Stations are part of the pipeline, just as much as the pipe is. The costs of maintaining the [pipeline] are included in the tariffs and are regulated. Why then can't the Station maintenance costs be included in the Tariffs also? Such would be a standard in a "normal" market and changing now will take us a step closer to a "normal" market.

Extending on the normal market concepts; it is considered un-fair that Maintenance Charges are recoverable from Shippers only. Producers gain significant benefits from connecting their projects to the DBNGP and yet it appears that they pay nothing for the maintenance of their Inlet Station connection point.

...

[CPM] request a change to make P1 and B1 contracts structure generally such that the provisions for O&M charges get bundled into tariffs where Producers get charged for Inlet Station O&M costs based on their delivered gas volumes and Shippers for Outlet Stations based on consumption.⁹⁸⁰

2289. CPM further submitted that if its requested change to the structure of station maintenance costs was not implemented, other amendments to clause 6.11 were needed. CPM's other requested amendments to clause 6.11 are outlined and considered below at paragraph 2294.
2290. Synergy noted DBP's proposed changes to the apportionment of the maintenance charge for existing inlet, outlet and gate stations and submitted that "it would be more appropriate for rebates to be given to Shippers in proportion to the respective amounts charged to each Shipper in the first instance (excluding any rebate), rather than only in proportion to the Shipper's Contracted Capacity."⁹⁸¹ Synergy's suggested amendments are outlined and considered below at paragraph 2308.

⁹⁷⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.17.

⁹⁸⁰ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, pp. 12-13.

⁹⁸¹ Synergy submission in response to issues paper, 31 March 2020, Annexure A, pp. 3-4.

Clause 6.11 generally

2291. DBP's proposed amendments to clause 6.11 aim to clarify the provisions concerning the maintenance charge applying for an inlet station, outlet station and gate station by separating out the charge for each type of station in clauses 6.11(d), 6.11(e) and 6.11(f), respectively. DBP submitted that:

The changes to [clause 6.11 were] made so that clause 6.11 better reflects the intent that the Relevant Construction Costs and costs of maintaining, operating, refurbishing, upgrading and replacing Inlet Stations and Outlet Stations are recovered fairly across shippers (and so that the relevant costs are neither over-recovered nor under-recovered by the Operator).⁹⁸²

2292. For the purpose of clause 6.11, the meaning of "maintenance charge" is set out in clause 6.11(a) as follows:⁹⁸³

With respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who pay a charge for substantially the same purpose in respect of the Inlet Station or Outlet Station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:

- (i) maintaining;
- (ii) operating;
- (iii) refurbishing;
- (iv) upgrading;
- (v) replacing; and
- (vi) decommissioning,

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

2293. CPM submitted that the amendments to clause 6.11 were unnecessary and that the provisions for operations and maintenance charges for inlet, outlet and gate stations should be bundled into tariffs. In the draft decision, the ERA considered that while such an approach could be adopted, clause 6.11 was currently operating effectively in accordance with the set provisions. Given this, there was no clear need to amend the current charging method for maintenance charges. Additionally, on the matter concerning gas producers contributing to the costs of maintaining the inlet points used to connect gas supplies to the DBNGP, the ERA considered that this could affect competition upstream and discourage efficient investment in, and efficient operation and use of, the DBNGP. If such costs were required to be paid by producers, it is likely that these costs would be passed on to and recovered from shippers and/or end users in any case.

Clause 6.11(a)

2294. CPM submitted that DBP's proposed amendments to clause 6.11(a):⁹⁸⁴

⁹⁸² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.17.

⁹⁸³ Clause 6.11(a) of the terms and conditions for reference services as proposed to be amended by DBP.

⁹⁸⁴ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 13.

- Were confusing and could lead to operations and maintenance costs for multiple inlet points being charged to shippers that do not use them (under aggregation), but who have the inlet points listed in a schedule to the contract for possible use (that is, a “just in case” basis).
- Needed to clarify that there is no amortisation of costs where such costs have been paid by others.
- Needed to be transparent on the life of the inlet or outlet station.

2295. CPM requested the following changes to clause 6.11(a) (shown in mark-up against DBP’s initial proposal):

For the purposes of this clause... as being sufficient to allow the Operator (across all shippers who [use, have Contracted Capacity and](#) pay a charge for substantially the same purpose in respect of the Inlet Station or Outlet Station) ... the Relevant Construction Costs ~~as~~[which](#) are not already paid by any shipper under clauses 6.6, or 6.8(a)(i) [or paid for by others excluding the Operator](#), or (or the material equivalent in any other contract), and the costs of:

(i) ...

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life ([life periods provided in Schedule \[??\]](#)) of the Inlet Station or Outlet Station.⁹⁸⁵

2296. In the draft decision, the ERA considered that, while DBP’s proposed amendments to clause 6.11(a) were sufficiently detailed for the provisions of the clause to operate effectively, additional amendments (including those requested by CPM) could be made to further clarify the provisions. The ERA outlined the following additional amendments:

- The criteria for the allocation of maintenance charges across shippers in clause 6.11(a) should include “usage” or “contracted capacity”. This is consistent with DBP’s reasoning for the amendment to the clause, where it stated that “the reason for the change is that, under clauses 6.11(d) to (f), Maintenance Charges are recovered from shippers if they **have Contracted Capacity** at the relevant inlet point / outlet point **or** if they **use** the relevant inlet point / outlet point” (**emphasis** added).⁹⁸⁶ Further, the use of the words “use or have Contracted Capacity” is consistent with DBP’s proposed amendments to clause 6.12 (Provisions relating both to Relevant Construction Costs and Maintenance Charge) to allow the operator “to impose charges on the shipper and other shippers who have Contracted Capacity at, or use [an] existing station” (see paragraph 2318 of this decision).
- The words “as are not” should be amended to read “which are not” to be grammatically correct. Also, the (first) additional word “or” should be deleted from the words “or (or the material equivalent in any other contract)”.
- Relevant construction costs that are paid by a shipper under clauses 6.6 or 6.8(a)(i) may include amounts paid by third parties to the shipper under some separate arrangement. For this reason, clause 6.11(a) should make clear that there is no amortisation of relevant construction costs where those costs are already paid for by the shipper or another third party (excluding the operator).

⁹⁸⁵ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, Appendix 2: CPM Requested Amendments to B1 and P1 T&Cs, pp. 43-44.

⁹⁸⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.18.

2297. The ERA did not consider it necessary for the terms and conditions to include a schedule that details the lives of inlet and outlet stations and for clause 6.11(a) to refer to such a schedule. However, as submitted by CPM, there should be transparency concerning the asset lives of inlet and outlet stations given that the maintenance charge is amortised over the life of such assets. Clause 6.11(c) provides that, at the shipper's request, the operator must provide a statement of the calculations used to determine the maintenance charge. The ERA considered that this existing provision provided for adequate transparency in the calculation of the maintenance charge, including the asset life used in the calculation.

2298. The draft decision set out the following required amendment:

Draft Decision Required Amendment 33

DBP must amend clause 6.11(a) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to:

- Clarify the criteria for the allocation of maintenance charges across shippers.
- Correct grammatical and typographical errors.
- Make clear that there is no amortisation of relevant construction costs where those costs are already paid for by the shipper or another third party.

The required drafting amendments are set out at paragraph 1458 of [the] draft decision [paragraph 2299 of this final decision].

2299. The ERA set out the required drafting amendments to clause 6.11(a) as follows:

6.11 Maintenance Charge for Inlet Stations and Outlet Stations

(a) For the purposes of this clause 6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who use or have Contracted Capacity and pay a charge for substantially the same purpose in respect of the Inlet Station or Outlet Station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs ~~as~~which are not already paid by any shipper under clauses 6.6, or 6.8(a)(i) or paid for by another third party excluding the Operator, ~~or~~ (or the material equivalent in any other contract), and the costs of:

(i) ...

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

2300. In response to the draft decision, DBP submitted that it supported draft decision required amendment 33 in principle. However, further amendments to the required drafting were needed as follows (shown in mark-up against the ERA's required drafting):⁹⁸⁷

6.11 Maintenance Charge for Inlet Stations and Outlet Stations

(a) For the purposes of this clause 6.11 and subject to clause 6.11(b), Maintenance Charge means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all

⁹⁸⁷ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 17.

shippers who use or have Contracted Capacity at the Inlet Point Associated with that Inlet Station or at the Outlet Point Associated with that Outlet Station (as the case may be) and pay a charge for substantially the same purpose in respect of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs which are not already paid by any shipper under clauses 6.6, or 6.8(a)(i) (or the material equivalent in any other contract) or ~~paid for~~ ultimately borne by another third party excluding the Operator, ~~(or the material equivalent in any other contract)~~, and the costs of:

2301. DBP submitted:

The first change is to clarify what the ERA's new phrase "use or have Contracted Capacity" is referring to (as there is no Contracted Capacity at an Inlet Station or Outlet Station).

The second change is to move the pre-existing phrase "or the material equivalent in any other contract", which was intended to refer to the references to clauses 6.6 and 6.8(a)(i) of this contract.

The third change is to cover off any circumstances in which a cost may be initially paid for by a third party but reimbursed by the Operator.⁹⁸⁸

2302. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 33 with revised amendments.

2303. The ERA considers that DBP's revised proposed amendments address the initial matter raised by CPM and are substantively consistent with draft decision required amendment 33. The amendments are also consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clauses 6.11(d), (e) and (f)

2304. Clauses 6.11(d), (e) and (f) cover provisions relating to the maintenance charge for an existing inlet station, outlet station and gate station, respectively. DBP's proposed amendments apply the same cost recovery rules to each of the clauses.⁹⁸⁹

2305. CPM submitted that:

Whilst amendments to clauses 6.11(e) & (f) clarify the wording so that both clauses provide that [the] Shipper pays a proportion of the relevant Maintenance Charge for a month equal to the proportion that its Contracted Capacity bears to the sum of all shippers' Contracted Capacity, except where the Shipper either does not have Contracted Capacity or it takes Gas in excess of its Contracted Capacity in which case it pays a proportion in relation to the amount it has taken against the amount taken by all other shippers ... the [maintenance charge] should reflect the capacity utilised and not be strictly set on Contracted Capacity.⁹⁹⁰

2306. CPM requested the following amendment to clause 6.11(e)(i) to insert the word "used" as follows (shown in mark-up against DBP's initial proposal):

- (e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station

⁹⁸⁸ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 17.

⁹⁸⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.18.

⁹⁹⁰ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 14.

associated with an Operator Owned Point (but no other Outlet Stations) that is the greater of the amount that:

- (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the sum of the Shipper's Contracted Capacity used (across all Capacity Services but prior to any reduction under the Curtailment Plan) at that Outlet Point during the previous calendar month bears to the aggregate Contracted Capacity used (across all Capacity Services but prior to any reduction under the Curtailment Plan) ...⁹⁹¹

2307. In response to CPM's submission to amend clause 6.11(e)(i), the ERA noted the drafting amendments required to clause 6.11(a). The required amendments as set out in draft decision required amendment 33 (see paragraphs 2298 and 2299 above) results in clause 6.11(a) reflecting the position in the current (and unamended) clause 6.11(e)(i) – that maintenance charges are to be recovered from shippers who use or have contracted capacity at the inlet or outlet station and who pay a charge for substantially the same purpose in respect of the relevant inlet or outlet station. CPM's requested amendment to clause 6.11(e)(i) would be inconsistent with the amended clause 6.11(a).

2308. Synergy noted DBP's proposed changes to the apportionment of the maintenance charge for existing inlet, outlet and gate stations in clauses 6.11(d), (e) and (f), respectively, so that the apportionment was made based on the greater of:

- the proportion of the Shipper's Contracted Capacity at that Inlet Point/Outlet Station/Gate Station to the aggregate Contracted Capacity for all Shippers at that Inlet Point during the previous calendar month; and
- where the Shipper does not have Contracted Capacity at that Inlet Point/Outlet Station/Gate Station or delivers a quantity of Gas at that Inlet Point/Outlet Station/Gate Station which is greater than its Contracted Capacity during the previous calendar month, the proportion that the sum of the Shipper's deliveries of gas bears to the sum of all shipper's delivery of Gas at that Inlet Point/Outlet Station/Gate Station during the previous calendar month,

provided that if that would result in the Operator recovering from all shippers an amount greater than the Maintenance Charge for the relevant month, the Operator must rebate a proportion of the excess to the Shipper in proportion to its Contracted Capacity at that Inlet Point/Outlet Station/Gate Station.⁹⁹²

2309. Synergy submitted that "it would be more appropriate for rebates to be given to Shippers in proportion to the respective amounts charged to each Shipper in the first instance (excluding any rebate), rather than only in proportion to the Shipper's Contracted Capacity". Synergy further noted that:

DBP's proposed apportionment and rebate methodology may still ultimately result in the Operator retaining more than the Maintenance Charge. The rebate mechanism is only contained in the proposed Access Contract Terms and Conditions, and not under the Operator's Non Reference contracts (including the "standard shipper contracts" published on DBP's website). Accordingly, if the Operator only provides rebates to those Shippers who have Reference Services by reference to their proportion of the Contracted Capacity held by all Shippers (including Shippers who do not have Reference Services), then the Operator will still ultimately retain some of the excess amount, which is not appropriate. Given this issue, it would be preferable if the

⁹⁹¹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, Appendix 2: CPM Requested Amendments to B1 and P1 T&Cs, pp. 44-45.

⁹⁹² Synergy submission in response to issues paper, 31 March 2020, Annexure A, p. 3.

apportionment mechanism did not allow the Operator to recover more than the Maintenance Charge from all shippers in the first place.⁹⁹³

2310. Synergy's position that the rebate should be given to shippers in proportion to the respective amounts charged to each shipper in the first instance is consistent with the terms of clause 6.11, as amended by draft decision required amendment 33, and DBP's proposed drafting in clauses 6.11(d), (e) and (f). However in the draft decision, the ERA required further amendments to each of clauses 6.11(d), (e) and (f) to clarify that the rebate is a proportion of the excess, which is the same proportion as the greater of the amount determined by the respective subclauses (i) and (ii).

2311. The draft decision set out the following required amendment:

Draft Decision Required Amendment 34

DBP must amend clauses 6.11(d), 6.11(e) and 6.11(f) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to clarify that the rebate given is a proportion of the excess which is the same proportion as the greater of the amount determined by the respective subclauses (i) and (ii).

The required drafting amendments are set out at paragraph 1467 of [the] draft decision. [paragraph 2312 of this final decision].

2312. The ERA set out the required drafting amendments to clauses 6.11(d), (e) and (f) as follows:⁹⁹⁴

6.11 Maintenance Charge for Inlet Stations and Outlet Stations

...

- (d) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Inlet Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion ~~described in~~ the greater of the amount determined by clause 6.11(d)(i) and clause 6.11(d)(ii) in respect to that month.
- (e) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an [Outlet] Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion ~~described in~~ the greater of the amount determined by clause 6.11(e)(i) and clause 6.11(e)(ii) in respect to that month.
- (f) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an [Gate] Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion ~~described in~~ the greater of the amount determined by clause 6.11(f)(i) and clause 6.11(f)(ii) in respect to that month.

2313. Synergy also noted that there may still be over-recovery under the Standard Shipper Contracts (and other non-reference contracts) because the rebate mechanism is not included in these contracts. While this may occur, the ERA considered in the draft decision that any over-recovery under the Standard Shipper Contracts was not something that could be addressed through the terms and conditions for reference services.

2314. In response to the draft decision, DBP submitted that it supported draft decision required amendment 34 in principle. However, further amendments to the required

⁹⁹³ Synergy submission in response to issues paper, 31 March 2020, Annexure A, p. 4.

⁹⁹⁴ The ERA incorrectly quoted clauses 6.11(e) and 6.11(f) in the draft decision. In these clauses the reference to "Inlet Station" should have been a reference to "Outlet Station" and "Gate Station", respectively.

drafting were needed as follows (shown in mark-up against the ERA's required drafting):⁹⁹⁵

6.11 Maintenance Charge for Inlet Stations and Outlet Stations

...

- (d) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Inlet Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion as the amount paid by the Shipper under ~~greater of the amount determined by~~ clause 6.11(d)(i) and/or clause 6.11(d)(ii) in respect to that Inlet Station and that month bears to the amount the Operator recovers across all shippers in respect to that Inlet Station and that month under such clauses (or the material equivalent in any other contract).
- (e) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Outlet Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion as the amount paid by the Shipper under ~~greater of the amount determined by~~ clause 6.11(e)(i) and/or clause 6.11(e)(ii) in respect to that Outlet Station and that month bears to the amount the Operator recovers across all shippers in respect to that Outlet Station and that month under such clauses (or the material equivalent in any other contract).
- (f) ... save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Gate Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion as the amount paid by the Shipper under ~~greater of the amount determined by~~ clause 6.11(f)(i) and/or clause 6.11(f)(ii) in respect to that Gate Station and that month bears to the amount the Operator recovers across all shippers in respect to that Gate Station and that month under such clauses (or the material equivalent in any other contract).

2315. DBP submitted:

We are comfortable with the suggestion to have the rebate proportionate to the amounts charged to the Shipper in the first instance but believe that position is better achieved by the above drafting which provides that the rebate is in the proportion that the amount actually paid by the Shipper bears to the total of the amounts paid by all shippers - rather than using the "greater of" test. We are concerned that the "greater of" test would operate under the different contracts to result in different denominators for the fraction of the rebate applying to different shippers, which may, mathematically, not work out to a 100% rebate overall. We are also keen to ensure that the mechanics do not become overly burdensome for billing purposes.

For completeness, we note that our original suggestion for this Access Arrangement Period was to have the rebate equal to the Contracted Capacity proportions because the reason for the rebate – that is, the circumstance giving rise to the potential over-recovery - is that some shippers pay more than the proportion that would have applied by reference to their Contracted Capacity because they are using the relevant point for amounts in excess of their Contracted Capacity and, given that circumstance, it seemed fair to have the rebate paid to the shippers that had reserved capacity at the point as 'compensation' for the fact that other shippers were using that point for amounts they

⁹⁹⁵ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 18.

had not reserved. That simple (and relatively stable) proportionate sharing was also easier to manage, from a practical perspective, for monthly billing purposes.⁹⁹⁶

2316. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 34 with revised amendments.
2317. The ERA considers that DBP's revised proposed amendments address the initial matters raised by Synergy and are substantively consistent with draft decision required amendment 34. The amendments are also consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 6.12(b)

2318. In its initial proposal, DBP amended clause 6.12(b), which sets out provisions relating to both relevant construction costs and the maintenance charge. DBP's proposed amendments are reproduced in Appendix 5 (page 662) of this decision.
2319. DBP submitted that the amendments clarified the drafting intent and reflected the other amendments made to clause 6.⁹⁹⁷ In particular:
- Amended clauses 6.11(e) and 6.11(f) calculate the maintenance charge by reference to both “contracted capacity” and “use”, hence the amended words “have Contracted Capacity at, or use” in clause 6.12(b).
 - There are no existing stations that are inlet stations, hence the replacement of the words “clause 6.11(d)” (which applies to inlet stations) with “clause 6.11(e) or 6.11(f)” (which apply to outlet stations and gate stations, respectively).
2320. DBP's proposal to use the words “have Contracted Capacity at, or use” in clause 6.12(b) is consistent with the drafting used in clause 6.11. The replacement of the words “clause 6.11(d)” with “clause 6.11(e) or 6.11(f)” reflects the current list of existing stations (in schedule 5 of the terms and conditions), which does not include any inlet stations. In the draft decision, the ERA considered that DBP's proposed amendments to clause 6.12(b) were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2321. Synergy stated that its submission in response to the issues paper concerning clauses 6.11(d), (e) and (f) was also relevant to clause 6.12(b), which apportioned certain incremental costs on the same basis. The ERA addressed Synergy's submission on clause 6.11 above (see paragraph 2310). In the context of clause 6.12(b), the ERA considered in the draft decision that clauses 6.11(e) and 6.11(f) apply (once the necessary required amendments have been made) to the charges under clause 6.12(b) and hence the amendments to clauses 6.11(e) and 6.11(f) addressed Synergy's submission.
2322. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 6.12(b) is consistent with the national gas objective.

⁹⁹⁶ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 18-19.

⁹⁹⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 7.20 and 7.21.

Clause 6.13(b)

2323. In its initial proposal, DBP amended clause 6.13, which sets out provisions for a Contribution Agreement between the operator and shipper in respect of an outlet point. DBP's proposed amendments are reproduced in Appendix 5 (page 662) of this decision and were required to reflect the amendments made to clause 6.11, and in particular the insertion of new clauses 6.11(e) and 6.11(f).⁹⁹⁸
2324. DBP's proposed amendments to clause 6.13(b) are consequential and subject to the amendments made to clause 6.11 to separate the maintenance charge provisions for inlet stations (clause 6.11(d)), outlet stations (clause 6.11(e)) and gate stations (clause 6.11(f)). The ERA has considered these amendments at paragraph 2285 and consistent with the ERA's final decision considerations of clause 6.11, the amendments to clause 6.13(b) are required.

Clause 6.14

2325. In its initial proposal, DBP amended clause 6.14, which details the provisions for a Shipper Specific Facility Agreement, to correct cross-referencing errors. The amendments apply only to the terms and conditions for the P1 Service.⁹⁹⁹
2326. The cross-referencing errors that DBP proposes to correct exist because of a formatting issue. The current (AA4) drafting of clause 6.14 in the terms and conditions for the T1 Service and B1 Service is the same as the drafting in the terms and conditions for the P1 Service, however, the formatting is different (that is, the numbering of the subclauses is different). It is this difference in formatting that causes the cross-referencing errors.
2327. While the ERA did not require an amendment, it noted in the draft decision that DBP may wish to reformat clause 6.14 in the terms and conditions for the P1 Service (rather than correcting the cross-references). Reformatting clause 6.14 in the terms and conditions for the P1 Service would make the clause consistent in drafting (and formatting) across the terms and conditions for each reference service.
2328. In its revised proposal, DBP submitted that it had accepted the ERA's suggestion to reformat clause 6.14 in the terms and conditions for the P1 Service.¹⁰⁰⁰
2329. The ERA has considered DBP's revised proposal to accept this and other suggested, but not required, amendments to the terms and conditions at paragraph 2700.

Clause 8 (Nominations)**Clause 8.5(b)**

2330. In its initial proposal, DBP amended clause 8.5(b), which clarifies the consequences of providing information about available capacity in bulletins. DBP's proposed amendment, to add the words "and Aggregated P1 Service", is reproduced in Appendix 5 (page 663) of this decision and applies to the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made.

⁹⁹⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 7.22 and 7.23.

⁹⁹⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 7.24.

¹⁰⁰⁰ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 26.

2331. DBP submitted that the amendment was needed to fix an error. All the shipper's capacity services under the contract, including the aggregated service, should be referred to in clause 8.5(b).¹⁰⁰¹
2332. In the draft decision, the ERA considered that DBP's proposed amendment clarified that the aggregated service is relevant to clause 8.5(b) and was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2333. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 8.5(b) is consistent with the national gas objective.

Clause 8.8

2334. In its initial proposal, DBP amended clause 8.8, which sets out provisions for the priority of nominations. DBP's proposed amendments are reproduced in Appendix 5 (page 663) of this decision.
2335. DBP submitted that the amendments reflected the commercial understanding of shippers and the terms of clause 17 (Curtailment) that all capacity services within a row in the Curtailment Plan rank equally upon a relevant curtailment (that is, the T1 Service, P1 Service and B1 Service each rank equally upon a relevant curtailment).¹⁰⁰²
2336. In the draft decision, the ERA considered that DBP's proposed amendments clarified how the different rows in the table of schedule 6 (Curtailment Plan) were interpreted and so were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2337. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 8.8 is consistent with the national gas objective.

Clause 8.9

2338. In its initial proposal, DBP amended clause 8.9, which sets out provisions for the scheduling of daily nominations. DBP's proposed amendments are reproduced in Appendix 5 (page 663) of this decision and apply to the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made.
2339. DBP submitted that the amendments to clause 8.9 were needed for the following reasons:¹⁰⁰³
- Spot capacity is not offered under the reference service contracts, hence the reference to spot capacity in clause 8.9(a) needed to be deleted.

¹⁰⁰¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 8.1.

¹⁰⁰² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 8.3.

¹⁰⁰³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 8.4 to 8.11.

- The clause did not properly deal with the aggregated service. The amendments to clauses 8.9(c), (d), (f) and (g) were needed so that the P1 Service and Aggregated P1 Service were dealt with in aggregate.
 - The clause contained several typographical errors that needed correcting.
2340. DBP’s proposed amendments clarify the provisions for the scheduling of daily nominations. With the exception of the amendments made to the terms “Inlet Point” and “Outlet Point” in clauses 8.9(c)(i) and 8.9(f)(i), respectively, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2341. As part of the proposed amendments, DBP removed capitalisation of the term “Inlet Point” in clause 8.9(c)(i) and submitted that:

The reason for this change is to make it clearer that the Aggregated Service being offered to the Shipper under the Reference Contract is not limited to Inlet Points referred to in the second limb of the defined term “Inlet Point” (that is “a flange, joint or other point specified in clause 1.1(a) at which the Shipper has Contracted Capacity from time to time”) (as otherwise there may be uncertainty as to whether this is a circumstance “where the context requires” as that phrase is used in the definition of “Inlet Point”).¹⁰⁰⁴

2342. DBP also removed capitalisation of the term “Outlet Point” in clause 8.9(f)(i) for the same reason as set out above, and further indicated that the proposed change aligned with the proposed drafting of clause 8.16 (see paragraph 2361).¹⁰⁰⁵
2343. Given the definitions for the terms “Inlet Point” and “Outlet Point” in clause 1 (Interpretation) of the terms and conditions, the current (AA4) use of the defined terms in clauses 8.9(c)(i) and 8.9(f)(i) may, as submitted by DBP, create uncertainty. In the draft decision, the ERA considered that to address this uncertainty it was preferable to specify that for the purposes of clauses 8.9(c) and 8.9(f) *inlet point* means an inlet point on the DBNGP and *outlet point* means an outlet point on the DBNGP.¹⁰⁰⁶ That is:

- In clause 8.9(c):
Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper’s Daily Nominations for P1 Service and Aggregated P1 Service:
 - (i) across all inlet points exceed the Shipper’s Total Contracted Capacity for P1 Service across all Inlet Points; or
 - (ii) at and upstream of any particular inlet point, exceed the Shipper’s Contracted Capacity for P1 Service at Inlet Points at or upstream of that inlet point,
[where, for the purpose of this clause *inlet point* means an inlet point on the DBNGP.](#)

¹⁰⁰⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 8.7(b).

¹⁰⁰⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 8.10 and footnote 11.

¹⁰⁰⁶ Given DBP’s submission that the changes to clauses 8.9(c) and 8.9(f) aligned with the proposed drafting of clause 8.16, the ERA’s consideration should equally apply to clause 8.16.

- In clause 8.9(f):
Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service and Aggregated P1 Service:
 - (i) across all outlet points, exceed the Shipper's Total Contracted Capacity for P1 Service across all Outlet Points; or
 - (ii) at and downstream of any particular outlet point, exceed the Contracted Capacity for P1 Service at Outlet Points at or downstream of that outlet point,
[where, for the purpose of this clause outlet point means an outlet point on the DBNGP.](#)

2344. The draft decision set out the following required amendment:

Draft Decision Required Amendment 35

DBP must amend clauses 8.9(c) and 8.9(f) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to specify that:

- For the purpose clause 8.9(c), inlet point means an inlet point on the DBNGP.
- For the purpose of clause 8.9(f), outlet point means an outlet point on the DBNGP.

The required drafting amendments are set out at paragraph 1489 of [the] draft decision [paragraph 2343 of this final decision].

2345. In its revised proposal, DBP accepted draft decision required amendment 35 and has amended clauses 8.9(c) and (f) as required.¹⁰⁰⁷
2346. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 35.
2347. The ERA considers that DBP's revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 8.10(b)

2348. In its initial proposal, DBP amended clause 8.10(b), which sets out provisions for the scheduling of services where there is insufficient available capacity. DBP's proposed amendments are reproduced in Appendix 5 (page 664) of this decision and apply to the P1 Service. In the terms and conditions for the T1 Service and B1 Service, analogous amendments were made.
2349. DBP submitted that the amendments to clause 8.10(b) clarified the drafting to better account for the aggregated service and took into consideration the provisions in clause 8.9.

The key reason for the changes is that, as per clause 8.9, the Operator is allowed to schedule less P1 Service at a point than the amount of the Shipper's Contracted Capacity for P1 Service at that point if the Shipper has already used that Contracted Capacity to request Aggregated P1 Service at a different point. So for this reason we have inserted the words "and except where, and to the extent, permitted or required pursuant to clause [8.9]". Further, clause 8.9 expressly on its terms allows the Operator to schedule Capacity Service which is less than the Shipper's Initial Nomination for P1 Service at a point, in the circumstances described in clauses 8.9(c) and 8.9(f) (see

¹⁰⁰⁷ DBP, 2021-2025 Revised Final Plan, *Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

also the “subject to” wording in clauses 8.9(b)(ii) and 8.9(e)(ii)), so the added phrase provides improved clarity for consistency with that position.¹⁰⁰⁸

2350. While CPM’s submission in response to the issues paper did not directly address DBP’s proposed amendments to clause 8.10(b), CPM submitted that, given the penalty regime for exceeding imbalance limits, it was necessary that formal notice be given (from the operator to the shipper) when the operator triggered an outlet curtailment. CPM suggested that the words “the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service” (which remains unchanged from AA4) be changed to “the Operator must issue a Curtailment Notice at the time it schedules that Capacity Service.”¹⁰⁰⁹
2351. In the draft decision, the ERA considered that CPM’s proposed amendment to the current (AA4) drafting of clause 8.10(b) accurately reflected the obligations of the operator to issue a Curtailment Notice and required the amendment to be made. Subject to addressing CPM’s proposed amendment, DBP’s proposed amendments clarified how the provisions in clause 8.10(b) worked and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2352. The draft decision set out the following required amendment:

Draft Decision Required Amendment 36

DBP must amend clause 8.10(b) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to replace the words “the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service” with the words “the Operator must issue a Curtailment Notice at the time it schedules that Capacity Service”.

2353. In its revised proposal, DBP rejected draft decision required amendment 36 and has maintained its initial proposal to use the words “the Operator ***is taken to have issued*** a Curtailment Notice at the time it schedules that Capacity Service”, instead of “the Operator ***must issue*** a Curtailment Notice at the time it schedules that Capacity Service” (***emphasis*** added).
2354. DBP submitted:¹⁰¹⁰

The change requested by CPM is inconsistent with historical and current practice, the existing Reference Contracts, Negotiated Contracts and Standard Shipper Contracts and would impose an additional unnecessary administrative step. ... In particular, the alignment of the notice requirements where scheduled capacity is below nominated capacity across the various shipper contracts is part of the efficient operation of the DBNGP, as DBP uses the same system and process with respect to daily scheduling across all shippers.

Clause 8.10(b) addresses the daily scheduling process. DBP schedules capacity by way of the CRS [customer reporting system] and the shippers receive notice of their scheduled quantities, in advance of the day, in this manner. There is no information gap to be addressed by an additional notice and it would place an inappropriate administrative burden on DBP to have to issue an additional written notice in these

¹⁰⁰⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 8.13 to 8.17.

¹⁰⁰⁹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 14.

¹⁰¹⁰ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 20.

circumstances, which would be inconsistent with efficient investment in and the efficient operation of the DBP.

CPM's submission provided that the reason for requiring the amendment to the deemed notice under clause 8.10(b) was because of the penalty regime for exceeding imbalance limits. However, the imbalance provisions already contain a requirement for notice to be issued in relation to an imbalance - see clauses 9.5(b)(iii) and the cross reference to that clause in clause 9.5(e). Furthermore, the Operator provides a daily notice to shippers notifying their Accumulated Imbalance, and shippers are in control of their daily nominations used for scheduling purposes, so shippers already have sufficient information and control to be able to manage their risk of incurring imbalance charges (which do not arise until after an 8% tolerance).

2355. There were no submissions addressing DBP's revised proposal to reject the ERA's draft decision required amendment 36 and retain the amendments initially proposed.
2356. On balance, after considering DBP's submission regarding the potential inconsistency with historical and current practice under existing contracts and the associated administrative cost, the ERA considers that CPM's concern about the penalty regime for exceeding imbalance limits is adequately addressed by existing notice requirements in the imbalance provisions. Given this, the ERA considers that draft decision required amendment 36 can be withdrawn and that clause 8.10(b) of the terms and conditions should, as submitted by DBP, read (**emphasis** added):

Subject to clause 17.9 and except where, and to the extent, permitted or required pursuant to clause 8.9, if the Operator schedules a Capacity Service for P1 Service to the Shipper which is less than the Shipper's Initial Nomination for P1 Service at an Inlet Point or an Outlet Point, the Operator **is taken to have issued** a Curtailment Notice at the time it schedules ...

Clause 8.15

2357. In its initial proposal, DBP amended clause 8.15, which sets out the shipper's default provision for the renomination process, to delete the words "from the previous Gas Day's nomination." DBP's proposed amendment is reproduced in Appendix 5 (page 665) of this decision.
2358. DBP submitted that these words were deleted because it was preferable for the shipper's most recent nomination to remain unchanged when a subsequent renomination was not effective, rather than having to go back to the previous gas day's nomination. The proposed amendment also aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰¹¹
2359. DBP's proposed amendment is consistent with the drafting in the Standard Shipper Contracts (as published on DBP's website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2360. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 8.15 is consistent with the national gas objective.

¹⁰¹¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 8.18 and 8.19.

Clause 8.16

2361. In its initial proposal, DBP amended clause 8.16, which sets out provisions for nominations at inlet and outlet points where the shipper does not have sufficient contracted capacity. DBP's proposed amendments are reproduced in Appendix 5 (page 665) of this decision and apply to the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made with the following exceptions:

- In the terms and conditions for the T1 Service, there is no equivalent new clause 8.16(d).
- In the terms and conditions for the B1 Service, the words "provided that such nomination does not result in any service under this Contract becoming Forward Haul" are included in clauses 8.16(a) and 8.16(b).

2362. DBP submitted that the amendments clarified the terms on which the aggregated service was offered and in the context of the P1 Service:

Clause 8.16(c): Aggregated P1 Service is derived from the Shipper's P1 Service, so it is fair and reasonable, and intended, that the Aggregated P1 Service is a Forward Haul Service.

Clause 8.16(d): Aggregated P1 Service cannot be used so as to facilitate the Shipper delivering Gas upstream of the Inlet Point, or receiving Gas downstream of the Outlet Point, from which the Aggregated P1 Service is derived (i.e. the point at which the Shipper holds the relevant Contracted Capacity).

Clause 8.16(e): the new clause reminds the reader of clause 6.13 (... which helps to ensure that users of the Contract do not get caught out by this requirement if they do not read the whole Contract at the relevant time they consider this clause).¹⁰¹²

2363. CPM's submission in response to the issues paper addressed DBP's proposed amendment to clause 8.16. CPM submitted that:

The new conditions must all be satisfied in order for Aggregated P1 Service to be provided at either an inlet point or outlet point (above CS9). However, clause 6.13 provides that agreements may be made in respect of not only outlet points but also inlet points, and, in certain circumstances, no agreement will be required. Accordingly, the last condition relating to "an agreement in relation to the relevant outlet point" may not be able to be satisfied if Aggregated P1 Service is required in respect of an inlet point.¹⁰¹³

2364. As submitted by CPM, clause 6.13 (Contributions Agreement) provides for agreements in respect of inlet points and outlet points. Given this, and DBP's reasons for including this clause (that is, to "remind the reader of clause 6.13"), the ERA required in the draft decision that new clause 8.16(e) to be amended to read: "the Shipper has complied with its obligations under clause 6.13 in respect of the relevant inlet point or outlet point".

2365. The draft decision set out the following required amendment:

¹⁰¹² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 8.21 to 8.24.

¹⁰¹³ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 14.

Draft Decision Required Amendment 37

DBP must amend clause 8.16(e) of the proposed terms and conditions for the P1 Service and B1 Service to read:

- (e) the Shipper has complied with its obligations under clause 6.13 in respect of the relevant inlet point or outlet point.

The same amendment must also be made to clause 8.16(d) of the proposed terms and conditions for the T1 Service (which is the equivalent clause).

2366. Subject to amending clause 8.16(e), the ERA considered that DBP's proposed amendments to clause 8.16 clarified the criteria for nominations and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2367. In response to the draft decision, DBP submitted that it accepted draft decision required amendment 37. However, DBP submitted that an additional related amendment to clause 6.13(a) of the terms and conditions was needed to delete the following words:¹⁰¹⁴

6.13 Contribution Agreement

- (a) The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point, ~~to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date~~ if:
- (i) the Inlet Point or Outlet Point ...

2368. DBP submitted that:

While DBP may be required to enter into a Reference Contract prior to the Shipper having entered into the relevant Contribution Agreement, the entitlement to Deliver or Receive Gas at any point is preconditioned on the contribution requirements under clause 6.13. The existing drafting lacks clarity on this matter and therefore gives rise to uncertainty and increases the probability of disputes. DBP seeks [the above] clarifying amendment, consistent with the national gas objective (and intends to make the same change to the Standard Shipper Contracts).¹⁰¹⁵

2369. DBP accepted draft decision required amendment 37 and has amended clause 8.16(e) in the terms and conditions for the P1 and B1 Services, and the equivalent clause in the terms and conditions for the T1 Service (clause 8.16(d)), as required.
2370. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 37, and/or to make an additional related amendment to clause 6.13(a).
2371. DBP's additional related amendment to clause 6.13(a) of the terms and conditions, to delete the words "to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date" clarifies that the Capacity Start Date is not a relevant consideration to the application of the Contribution Agreement.
2372. The ERA considers that DBP's revised proposal implements draft decision required amendment 37 as intended, and that the amendment, including the additional amendment to clause 6.13(a), is consistent with the national gas objective – the

¹⁰¹⁴ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 4-5.

¹⁰¹⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 5.

amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 8.17

2373. In its initial proposal, DBP amended clause 8.17, which sets out provisions for nominations for the aggregated service. DBP's proposed amendments are reproduced in Appendix 5 (page 666) of this decision and apply to the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made.
2374. DBP submitted that the amendments were made to clarify, and not change, the terms on which the aggregated service is offered:¹⁰¹⁶
- The amendment to clause 8.17(a) clarified that all aggregated services have equal priority in the Curtailment Plan, regardless of whether the aggregated service is derived from T1 Service, P1 Service or B1 Service.
 - The amendment to clause 8.17(c) was consistent with clause 8.16, which provides that the aggregated service is derived from the right to make certain nominations for P1 Service.
 - The amendment to clause 8.17(d) reminded the reader that the commodity charge applies to the aggregated service P1 Service.
2375. In the draft decision, the ERA considered that DBP's proposed amendments to clause 8.17 reflected and clarified existing provisions for the aggregated service and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2376. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 8.17 is consistent with the national gas objective.

Clause 9 (Imbalances)

Clause 9.3

2377. In its initial proposal, DBP amended clause 9.3, which confirms what the shipper's accumulated imbalance is, to delete the statement: "The Accumulated Imbalance at the Capacity Start Date is zero."
2378. DBP submitted that the amendment was needed to fix a drafting error. The shipper's accumulated imbalance is calculated as a single figure across all the shipper's capacity services (contracts). That is, if a shipper has another capacity service (contract) in place at the time it enters into a reference service contract, then the accumulated imbalance on the capacity start date under the reference service contract should be same figure as the accumulated imbalance under all of the shippers' existing contracts at that date, not zero. The amendment also aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰¹⁷

¹⁰¹⁶ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 8.26 to 8.29.

¹⁰¹⁷ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 9.1 to 9.3.

2379. DBP’s proposed amendment is consistent with the Standard Shipper Contracts (as published on DBP’s website), which state: “At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus the Shipper’s Daily Imbalance on the Gas Day.” In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2380. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 9.3 is consistent with the national gas objective.

Clause 9.4

2381. In its initial proposal, DBP amended clause 9.4, which requires the operator to provide notice of the shipper’s imbalances. DBP’s proposed amendments are reproduced in Appendix 5 (page 666) of this decision.
2382. DBP submitted that the amendment to change the time from 13:30 hours to 13:00 hours aligned the reference service contracts with the negotiated contracts in place with shippers. The amendment to use the term “Capacity Start Date”, instead of “Contract Commencement Date” was to fix a drafting error (the latter term is not a defined term in the terms and conditions).¹⁰¹⁸
2383. DBP’s proposed amended time of 13:00 hours was consistent with the time in the Standard Shipper Contracts (as published on DBP’s website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2384. The ERA further considered the other amendment to use the defined term “Capacity Start Date” was an administrative amendment that was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2385. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 9.4 is consistent with the national gas objective.

Clause 9.5

2386. In its initial proposal, DBP amended clause 9.5, which sets out provisions for the accumulated imbalance limit. DBP’s proposed amendments are reproduced in Appendix 5 (page 667) of this decision.
2387. DBP submitted that:¹⁰¹⁹
- The amendment to clause 9.5(a) was needed to remove the reference to spot transactions because spot transactions are already captured by the words “Contracted Capacity across all of the Shipper’s Capacity Services” and must

¹⁰¹⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 9.4 and 9.5.

¹⁰¹⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 9.6 to 9.18.

not be double counted. The inclusion of “P1 Service and B1 Service” clarified the inclusion of these services.

- The amendment to clause 9.5(b) to use the words “either or both” (instead of “and/or”) was more certain in its meaning and the addition of the word “immediate” clarified that the timeframe for the shipper to procure compliance was the same as if it were complying itself.
- The amendment to clause 9.5(e), to insert the words “up to the Outer Accumulated Imbalance Limit” was needed to accommodate the addition of new clauses 9.6(a) and 9.6(b) – that is, the amendment was consequential to the creation of new clause 9.6 (Excess Imbalance Charge).

2388. In the draft decision, the ERA considered that DBP’s proposed amendments to clauses 9.5(a) and 9.5(b) reflected and clarified existing provisions for the accumulated imbalance limit and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2389. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clauses 9.5(a) and 9.5(b) is consistent with the national gas objective.
2390. The amendment to clause 9.5(e) is consequential and subject to DBP’s proposed amendment to insert new clause 9.6, which is discussed below. Consistent with the ERA’s final decision considerations of clause 9.6, the amendment to insert the words “up to the Outer Accumulated Imbalance Limit” is required.

New clause 9.6

2391. In its initial proposal, DBP amended existing clause 9.5(g) to create new clause 9.6 (Excess Imbalance Charge), which sets out provisions for an excess imbalance charge. DBP’s proposed amendments are reproduced in Appendix 5 (page 667) of this decision.
2392. DBP submitted that the amendments aligned the reference service contracts with the negotiated contracts in place with shippers. In particular:¹⁰²⁰
- New clauses 9.6(a) and 9.6(b) added a separate remedial approach for instances where the shipper exceeded its outer accumulated imbalance limit of 20 per cent of the sum of contracted capacity across all of its capacity services. This approach was an agreed outcome from arms’ length negotiations with shippers in 2004.
 - The amendment of clause 9.6(c) to include a reference to clause 9.6(b) was needed, and consequential to, the amendment to separate the application of the excess imbalance charge between the regime in clause 9.5(e) (for imbalances above 8 per cent and up to 20 per cent) and the regime in clause 9.6(b) (for imbalances above 20 per cent). Clause 9.6(c) applies to the entire imbalance charge, so references to clauses 9.5(e) and 9.6(b) are needed.
2393. CPM’s submission in response to the issues paper addressed DBP’s proposal to insert new clause 9.6 into the terms and conditions. CPM submitted:

¹⁰²⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 9.19 to 9.31.

New clause 9.6 appears to introduce a new concept of an “Outer Accumulated Imbalance Limit” by locking in a 20% accumulated limit and provides that if the Shipper’s Accumulated Imbalance exceeds this limit then the Shipper must pay the Excess Imbalance Charge regardless of whether that Shipper has agreed a different Imbalance Limit under a separate and valid contract for that Gas Day. This could be a reduction of the rights of a Shipper which should be considered as unfair to apply where an existing contract sets a separately agreed limit.

Whilst [CPM] consider the changes reasonable, it is concerned that some Shippers existing rights may be reduced if the change proceeds unaltered.¹⁰²¹

2394. DBP’s proposal to introduce provisions for an excess imbalance charge (new clause 9.6) is consistent with the Standard Shipper Contracts (as published on DBP’s website). While the drafting of the provisions in the terms and conditions for reference services is different in places, the proposed provisions are substantively consistent with the provisions in the Standard Shipper Contracts. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2395. However, given the submission made by CPM, the ERA considered that clause 9.6 should be subject to any other imbalance limit that has been agreed. For example, clause 9.7 (previously clause 9.6) provides for agreements to increase the imbalance limit in particular circumstances.¹⁰²² In such circumstances, where an agreement has been made to increase the imbalance limit, the provisions of clause 9.6 should be subject to this agreement. The ERA further considered that clause 9.5, which sets out provisions for the accumulated imbalance limit, should also be subject to any other imbalance limit that has been agreed.
2396. The draft decision set out the following required amendment:

Draft Decision Required Amendment 38

DBP must amend clause 9.6(a) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to make the clause subject to any other agreement to change the imbalance limit by inserting the following words at the beginning of the clause: “Except where the Shipper has contracted with the Operator for a different Outer Accumulated Imbalance Limit, ...”.

DBP must also amend clause 9.5(a) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to make the clause subject to any other agreement to change the imbalance limit by inserting the following words at the beginning of the clause: “Except where the Shipper has contracted with the Operator for a different Accumulated Imbalance Limit, ...”.

2397. In response to the draft decision, DBP submitted that it supported draft decision required amendment 38 in principle. However, further amendments to the required drafting were needed as follows (shown in mark-up against the ERA’s required drafting):¹⁰²³

¹⁰²¹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, pp. 14-15.

¹⁰²² DBP has proposed amendments to clause 9.7 to include the words “or the Outer Accumulated Imbalance Limit (or both)” so that the clause applies to both the accumulated imbalance limit (clause 9.5) and outer accumulated imbalance limit (clause 9.6).

¹⁰²³ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 5.

9.5 Accumulated Imbalance Limit

- (a) Except where the ~~Shipper has contracted with the Operator for~~ Parties have agreed a different Accumulated Imbalance Limit under clause 9.7, the Shipper's Accumulated Imbalance Limit for a Gas Day is ...

9.6 Excess Imbalance Charge

- (a) Except where the ~~Shipper has contracted with the Operator for~~ Parties have agreed a different Outer Accumulated Imbalance Limit under clause 9.7, the Shipper's Outer Accumulated Imbalance Limit for a Gas Day is ...

2398. DBP submitted that:

DBP accepts the changes required by the ERA in clauses 9.5(a) and 9.6(a), however requests that the new drafting specifically refers to the contractual mechanism in clause 9.7 for the Parties to agree to a different limit on the basis that aside from that mechanism, it is not intended that separately negotiated changes apply to the Reference Contract. Of course, any provision may be amended by separately negotiated agreements, and so DBP is concerned that a widely phrased exception in relation only to imbalance introduces ambiguity into the Reference Contracts. Limiting the new exception to the specified contractual mechanisms promotes certainty. DBP proposes that clauses 9.5(a) and 9.6(a) include the [amendments as set out above].

2399. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 38 with revised amendments.

2400. The ERA considers that DBP's revised amendments address the initial matter raised by CPM and are substantively consistent with draft decision required amendment 38. The amendments are also consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 9.7 (previously clause 9.6)

2401. In its initial proposal, DBP amended clause 9.7, which sets out provisions for the balancing of a shipper's gas supply in particular circumstances, to include a reference to "the Outer Accumulated Imbalance Limit" and update several cross-references.

2402. DBP submitted that the amendments were required as a result of new clauses 9.6(a) and 9.6(b).¹⁰²⁴

2403. The amendments to clause 9.7 are consequential and subject to DBP's proposed amendment to insert new clause 9.6 (Excess Imbalance Charge), which is discussed at paragraph 2391. Consistent with the ERA's final decision considerations of clause 9.6, the amendments to clause 9.7 are required.

Clause 9.8 (previously clause 9.7)

2404. In its initial proposal, DBP amended clause 9.8, which sets out remedies for breach of imbalance limits. DBP's proposed amendments are reproduced in Appendix 5 (page 668) of this decision.

2405. DBP submitted that new clause 9.8(a) aligned the express imbalance remedies across the reference service contracts and negotiated contracts in place with shippers and reflected an agreed outcome from arms' length negotiations with

¹⁰²⁴ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 9.32.

shippers in 2004. The amendments to cross-references resulted from the amendments to add new clauses.¹⁰²⁵

2406. CPM's submission in response to the issues paper addressed DBP's proposal to insert new clause 9.8(a). CPM requested that the clause be deleted on the basis that it was confusing and increased the potential for disputes. CPM submitted:

New clause 9.8(a) provides additional remedy for the Operator to take against the Shipper for exceeding the Accumulated Imbalance Limit and in doing it turns a certain, well understood and easily calculated remedy (payment of the Excess Imbalance Charge) into an uncertain claim for damages, which has the potential to give rise to disputes. Excess Imbalance Charge act as, essentially, liquidated damages for the imbalance. Even though the damages claim is reduced by the Excess Imbalance Charges paid, having a separate damages claim defeats the utility of having the Excess Imbalance Charge at all. Leaving it as it was allows both the Operator and Shippers easily understood remedy provisions that can easily move forward with no dispute.¹⁰²⁶

2407. CPM further submitted that if new clause 9.8(a) was to remain in the terms and conditions, other amendments were needed. In particular, the reference to "clause 9.2" should be removed.¹⁰²⁷
2408. DBP's proposed amendment to insert new clause 9.8(a) is consistent with the Standard Shipper Contracts (as published on DBP's website), except for a reference to "clause 9.2" in the first line (the Standard Shipper Contracts only make reference to "clause 9.5(b)(iii)").
2409. Based on DBP's reason for the introduction of the clause (that is, to align the express imbalance remedies across the reference service contracts and negotiated contracts in place with shippers) and CPM's submission on the drafting of clause 9.8(a) (if it is to remain in the terms and conditions) the ERA considered in the draft decision that the drafting should be materially consistent with the drafting in the Standard Shipper Contracts. That is, clause 9.8(a) should only apply in respect of "an action for breach of clause 9.5(b)(iii)".
2410. In any case, CPM submitted that new clause 9.8(a) was an additional and unwarranted remedy for the operator and should not be included in the terms and conditions. CPM further suggested that the existing provisions for remedies for the breach of imbalance limits was the normal and accepted practice for pipeline services in Western Australia.
2411. The current (AA4) provisions for remedies for breach of imbalance limits, as set out in clauses 9.7(a), (b) and (c), provide for:
- The recovery of the excess imbalance charge or excess imbalance charges where permitted by and in accordance with the clause.
 - The refusal to receive gas from the shipper at an inlet point or refuse to deliver gas to the shipper at an outlet point, to bring the shipper's accumulated imbalance within the accumulated imbalance limit.
 - Any combination of the rights and remedies set out above.

¹⁰²⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 9.33 to 9.36.

¹⁰²⁶ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 15.

¹⁰²⁷ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, pp. 15-16.

2412. In the draft decision, the ERA considered CPM's reasoning for deleting proposed clause 9.8(a) to be reasonable. The existing remedies for breach of imbalance limits are well established and, in the case of the excess imbalance charge, can be easily calculated under and in accordance with the relevant clause.¹⁰²⁸ A provision that provides for a separate damages claim (under clause 23) may create uncertainty as to the remedy being sought and increase the level of disputes.
2413. Given that DBP's proposed drafting of new clause 9.8(a) is materially different to the drafting in the Standard Shipper Contracts, and the matters raised by CPM, the ERA considered that on balance the existing remedies for breach of imbalance limits were likely to better meet the national gas objective – the existing provisions are sufficiently clear in their drafting and provide objective remedies to efficiently address breaches of imbalance limits.
2414. The draft decision set out the following required amendment:
- Draft Decision Required Amendment 39**
- DBP must amend clause 9.8 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to delete proposed new clause 9.8(a).
2415. In its revised proposal, DBP accepted draft decision required amendment 39 and has deleted new clause 9.8(a), as required.¹⁰²⁹
2416. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 39.
2417. The ERA considers that DBP's revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 9.9 (previously clause 9.8)

2418. In its initial proposal, DBP amended clause 9.9(b), which details provisions for trading in imbalances, to amend the timeframe for giving notice. DBP's proposed amendments are reproduced in Appendix 5 (page 669) of this decision.
2419. DBP submitted that the amendments to the drafting reflected current operational practice and aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰³⁰
2420. DBP's proposed drafting is consistent with the drafting in the Standard Shipper Contracts (as published on DBP's website). No submissions in response to the issues paper addressed DBP's proposed amendment to clause 9.9(b).
2421. In the draft decision, the ERA considered that, in the absence of any submissions that dispute the current practice, DBP's proposed amendments were consistent with the national gas objective – the amendments reflect current operational practices for

¹⁰²⁸ Clauses 9.5(e) and 9.6(b) detail the calculation of the excess imbalance charge when the shipper exceeds the accumulated imbalance limit and outer accumulated imbalance limit, respectively.

¹⁰²⁹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 5.

¹⁰³⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 9.38.

reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2422. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 9.9(b) is consistent with the national gas objective.

Clause 9.10 (previously clause 9.9)

2423. In its initial proposal, DBP amended clause 9.10, which confirms the timing and effect of cashing out imbalances, to amend the heading to read: “Cashing out imbalances at end of Contract” (instead of “Cashing out imbalances at end of each Gas Month”).
2424. DBP submitted that the amended heading, together with minor wording changes, better reflected the substance of the clause and aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰³¹
2425. While clause 2.2 of the terms and conditions provides that headings are inserted for convenience and do not affect the interpretation of the contract, the ERA considered in the draft decision that it was preferable to amend headings where they are potentially misleading. DBP’s other amendments to wording were administrative in nature (grammatical) and did not materially alter the provisions of the clause.
2426. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 9.10 is consistent with the national gas objective.

Clause 10 (Peaking)

Clause 10.3(a)

2427. In its initial proposal, DBP amended clause 10.3(a), which sets out the consequences of exceeding the hourly peaking limit. DBP’s proposed amendments are reproduced in Appendix 5 (page 669) of this decision.
2428. DBP submitted that:¹⁰³²
- The amendment to clause 10.3(a)(ii) to replace the words “will adversely impact ... on any other Capacity, or any Other Reserved Service” with “will adversely impact ... on any other Capacity Service” improved the drafting and aligned with the intended purpose of the clause, which is to set, as one of the preconditions to the operator exercising certain rights where peaking limits are breached, that there be an actual or likely adverse effect on other services on the pipeline. The amended drafting also aligned the reference service contracts with the position in the negotiated contracts in place with shippers.
 - The amendment to clause 10.3(a)(iii) to insert the word “immediate” clarified the timeframe for the shipper to procure compliance with a notice to cease exceeding the hourly peaking limit. That is, the shipper is to immediately comply itself or immediately procure compliance.
2429. DBP’s proposed amendments clarify the provisions of the clause and are consistent with the Standard Shipper Contracts (as published on DBP’s website). In the draft

¹⁰³¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 9.39 to 9.41.

¹⁰³² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 10.1, 10.2, 10.7 and 10.12.

decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective. Additionally, the amendments corrected and/or clarified the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2430. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 10.3(a) is consistent with the national gas objective.

Clauses 10.3(d), 10.3(e) and 10.3(g)

2431. In its initial proposal, DBP amended cross-references in clauses 10.3(d), (e) and (g), which set out consequences for exceeding the hourly peaking limit. DBP submitted that the amendments were consequential to the proposed amendment to insert new clause 10.4 (Outer Hourly Peaking Limit), which is discussed below.¹⁰³³
2432. Consistent with the ERA's final decision considerations of clause 10.4 (below), the consequential amendments to clauses 10.3(d), (e) and (g) are required.

New clause 10.4

2433. In its initial proposal, DBP inserted new clause 10.4 (Outer Hourly Peaking Limit) into the terms and conditions to introduce provisions for an outer hourly peaking limit. DBP's proposed new clause is reproduced in Appendix 5 (page 669) of this decision.
2434. DBP submitted that new clause 10.4 was inserted to create a separate remedial approach where the shipper exceeded its outer hourly peaking limit of 140 per cent of the aggregate MHQ calculated across relevant outlet points across all the shipper's capacity services.¹⁰³⁴ The new clause aligned the reference service contracts with the negotiated contracts in place with shippers, which included the outer threshold remedy as an agreed outcome from arms' length negotiations in 2004.¹⁰³⁵
2435. DBP further explained the workings of proposed clause 10.4 as follows:¹⁰³⁶
- The charge under clause 10.4 for exceeding the 140% limit is levied at the same rate as the charge under clause 10.3 for exceeding the 125% limit. The charge under clause 10.4 only applies to gigajoules above the 140% figure and only if a separate notice, under new clause 10.4(e), is first issued. If the notice under clause 10.4(e) is issued then, between the 125% Hourly Peaking Limit and up to the 140% Outer Hourly Peaking Limit, the provisions of clause 10.3 continue to apply in their existing form. If no notice is issued under clause

¹⁰³³ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 10.16 to 10.18.

¹⁰³⁴ In the terms and conditions, "MHQ" [maximum hourly quantity] means: "(a) for an Outlet Point on a particular Gas Day in respect of a shipper, (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 (b) for an Inlet Point on a particular Gas Day in respect of a shipper, 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."

¹⁰³⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 10.21.

¹⁰³⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 10.19 and 10.20.

10.4(e), then the entire amount above the 125% Hourly Peaking Limit is subject to the application of the provisions of clause 10.3 in their existing form.

- There is no duplication of charges in respect of exceeding the 125% Hourly Peaking Limit and the 140% Outer Hourly Peaking Limit, as a result of the words “up to the Outer Hourly Peaking Limit” in the charging provision in clause 10.3(d)(ii), which applies where a notice is given under clause 10.4(e) (being a precondition to levying the charge for exceeding the Outer Hourly Peaking Limit). That is, if a notice is given under clause 10.4(e) enlivening the charging regime in clause 10.4, then above 125% and up to 140%, the Shipper is charged under clause 10.3(d)(ii) (if the relevant preconditions in clause 10.3 are met) and then, above 140%, the Shipper is charged under clause 10.4(b). The rate of the charge is the same in each case, it is merely the preconditions to charging that differ.

2436. DBP’s proposal to insert new clause 10.4 is consistent with the Standard Shipper Contracts. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.

2437. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to insert new clause 10.4 is consistent with the national gas objective.

Clause 10.6

2438. In its initial proposal, DBP amended clause 10.6, which details the remedies for breach of peaking limits, to insert a reference to clause 10.2 as follows:

10.6 Remedies for breach of peaking limits

The Operator must not exercise any rights or remedies against the Shipper for exceeding an Hourly Peaking Limit, other than:

- (a) for breach of clause [10.2](#) or 10.3(a)(iii) limited to the recovery of Direct Damages in accordance with clause 23 ...

2439. DBP submitted that both clauses 10.2 and 10.3(a)(iii) contained obligations where a breach by the shipper should result in damages if any are suffered by the operator. Specifically, the obligation in clause 10.2 is an obligation to do all things expected of a reasonable and prudent person to ensure that the shipper’s hourly quantity for each gas hour does not exceed the relevant hourly peaking limits.¹⁰³⁷

2440. In the draft decision, the ERA considered that DBP’s proposed amendment to clause 10.6 reflected existing provisions for remedies for breach of peaking limits and were consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP. However, the ERA noted further administrative amendments were required to the terms and conditions for the B1 Service to correct duplicate references.¹⁰³⁸

¹⁰³⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 10.27 and 10.28.

¹⁰³⁸ For example, in clause 10.6(a) the words read: “for breach of clause 10.2 or **10.310.3(a)(iii)** limited to ...” [emphasis added].

2441. DBP’s revised proposal retains the amendment initially proposed.¹⁰³⁹ There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 10.6 is consistent with the national gas objective.

Clause 11 (Overrun)

2442. In its initial proposal, DBP amended clause 11.2, which contains provisions for the operator to give an unavailability notice to the shipper to advise of the unavailability or limited availability of overrun gas. DBP’s proposed amendments are reproduced in Appendix 5 (page 670) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made.

2443. DBP submitted that:¹⁰⁴⁰

- The amendment to clause 11.2(a) was needed to correct a drafting error and aligned the reference service contracts with the negotiated contracts in place with shippers. Clause 11 concerns the taking of overrun gas by the shipper, where “overrun gas” is defined as “gas in excess of the quantities of contracted capacity across all that shipper’s capacity services.”
- The amendment to clause 11.2(b) was needed to correct a drafting error – overrun gas can only be received at an outlet point (and not an inlet point).

2444. DBP acknowledged that the amendment to clause 11.2(a) arguably broadened the scheduled services that the operator could consider when determining whether to give an unavailability notice. Despite this, DBP submitted that the amendment was sensible and reasonable for the following reasons:¹⁰⁴¹

- A shipper’s right to overrun gas was always intended to be tempered by it not interfering with other shippers taking their capacity services.
- Overrun gas is calculated as a single figure across all the shipper’s capacity services.
- If a shipper is taking overrun gas, it is taking gas in excess of its express contractual rights and it is therefore appropriate that, where such excess will, or is likely to, affect any other shipper’s entitlement to its scheduled nomination, the operator should be able to issue an unavailability notice.

2445. DBP’s proposed amendment to clause 11.2(a) is substantially consistent with the Standard Shipper Contracts. In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective. Additionally, the amendment corrected and/or clarified the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2446. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 11.2 is consistent with the national gas objective.

¹⁰³⁹ In the terms and conditions for the B1 Service, DBP has corrected the administrative amendments that were noted by the ERA.

¹⁰⁴⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 11.2, 11.3 and 11.9.

¹⁰⁴¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 11.4 and 11.5.

Clause 14 (Relocation)

Clause 14.2

2447. In its initial proposal, DBP amended clause 14.2, which sets out provisions for the assessment of a requested relocation. DBP's proposed amendments are reproduced in Appendix 5 (page 671) of this decision and apply to the terms and conditions for the P1 Service and T1 Service. In the terms and conditions for the B1 Service analogous amendments were made, with additional amendments to make the clause applicable to a back haul service.
2448. DBP submitted that:
- The amendments to clause 14.2(b) corrected a drafting error by clarifying that a relocation was not automatically available in circumstances where the relocation, if made, would cause a notional change in the direction of the capacity service even if there was no resulting physical change in the direction of gas flows on the DBNGP. There are no reference service contracts or negotiated contracts that allow the relevant terms of service to change from forward haul to back haul (or vice versa) where the notional direction of gas flow changes pursuant to a relocation. The amendments further clarified that the inlet point and outlet point were those points at which the shipper has contracted capacity under the contract.¹⁰⁴²
 - The amendments to clause 14.2(c) clarified that if a relocation was “not an authorised relocation” pursuant to clause 14.2(b), the relocation cannot be an “authorised relocation” under clause 14.2(c). The amendments further simplified the drafting by removing duplicated requirements.¹⁰⁴³
 - The amendments to clause 14.2(d) were the same as the amendments made to clause 14.2(c), except that clause 14.2(d) applied to outlet points (whereas clause 14.2(c) applied to inlet points).¹⁰⁴⁴
 - Additional amendments were needed to clauses 14.2(b)(iii), 14.2(c)(i) and 14.2(d)(i) in the terms and conditions for the B1 Service to correct drafting errors to make the clauses applicable to the back haul service.^{1045, 1046}
2449. CPM's submission in response to the issues paper addressed the provisions of clause 14.2(b)(iii). While CPM did not request that the existing drafting be retained, its submission indirectly suggested that this should be the case. CPM submitted:

[DBP's proposed] amendment provides that a Requested Relocation will not be an Authorised Relocation if the proposed relocation would result in an Inlet Point at which there is Contracted Capacity being downstream of an Outlet Point at which there was Contracted Capacity under the Contract. Formerly, a Requested Relocation would have to change the normal direction of Gas Flow in the DBNGP before it would be considered “not an Authorised Relocation”.

¹⁰⁴² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 12.2 to 12.5.

¹⁰⁴³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 12.9 to 12.12.

¹⁰⁴⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 12.16.

¹⁰⁴⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 12.7, 12.14 and 12.18.

¹⁰⁴⁶ In clauses 14.2(b)(iii) and 14.2(c)(i) the reference to “downstream” was replaced with “upstream”, and in clause 14(d)(i) the reference to “downstream” was replaced with “upstream”.

[CPM] suggest the entire B1 and P1 agreements be reviewed on the basis that forward haul and back haul may become obsolete within the AA5 period with the generally understood position that the north part of the DBNGP will become bidirectional in 2020 when / if [the North West Shelf] delivered volumes decrease.¹⁰⁴⁷

2450. In the draft decision, the ERA considered the matter concerning the North West Shelf as part of its consideration of pipeline and reference services (see paragraph 112). Consistent with these considerations, the ERA considered that until there was certainty on any significant changes in the operations of the DBNGP (including, for example, a change in the direction of gas flow), DBP's proposed amendment to clause 14.2(b)(iii) must be considered based on actual and expected operations. DBP did not make any proposed amendments to the terms and conditions based on expected changes to the nature of the reference services resulting from changes to gas flows in the north-west.
2451. In any case, DBP's proposed amendments to clause 14.2(b), which remove the words "and it would change the normal direction of Gas flow in the DBNGP", are not directed to a particular gas flow. Rather, the amendment is directed to removing an '*as of right relocation*' in circumstances where the relocation (if made) would cause a notional change in direction of the capacity service under that contract. DBP further noted that the original formulation of the clause was a drafting mistake and was inconsistent with other terms of the contracts for reference services. In this context, and as there have not been any DBP proposed amendments to the terms and conditions based on expected changes to the nature of the reference services resulting from changes to gas flows in the north-west, the ERA considered in the draft decision that the amendments to clause 14.2(b) were consistent with the national gas objective – drafting amendments that correct and/or clarify the terms and conditions for reference services promotes efficient investment in, and efficient operation and use of, the DBNGP.
2452. DBP's proposed amendments to clauses 14.2(c) and 14.2(d) further clarified that where a relocation was "not an authorised relocation" pursuant to clause 14.2(b), the relocation could not be an "authorised relocation" under clause 14.2(c) which applied to inlet points, or clause 14.2(d) which applied to outlet points. The deletion of the requirement to satisfy the operator's technical and operational requirements from the clauses further simplified the drafting by removing a requirement that is already covered by clause 14.2(b). The ERA considered these amendments were consistent with the national gas objective – the amendments clarify and/or simplify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2453. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 14.2 is consistent with the national gas objective.

Clause 14.7(a)

2454. In its initial proposal, DBP amended clause 14.7(a), which sets out the charges for relocation and provides that, unless agreed in writing, such charges will not be reduced in certain circumstances. DBP's proposed amendments are reproduced in Appendix 5 (page 672) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the B1 Service and T1 Service analogous amendments were made where applicable.

¹⁰⁴⁷ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 17.

2455. For the terms and conditions for the P1 Service and B1 Service, DBP submitted that the amendments were needed to reflect the way in which the P1 and B1 Commodity Tariffs and P1 and B1 Capacity Reservation Tariffs were calculated under the respective reference service contract.¹⁰⁴⁸
2456. For the terms and conditions for the T1 Service, DBP submitted that the amendments clarified that the T1 Capacity Reservation Tariff did not reduce because of any reduction in the distance between the inlet point(s) and outlet point(s) at which the shipper had contracted capacity.¹⁰⁴⁹
2457. DBP's proposed amendments clarified how each of the tariffs for reference services were calculated under the respective terms and conditions that applied. For this reason, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2458. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 14.7(a) is consistent with the national gas objective.

Clause 14.7(b)

2459. In its initial proposal, DBP amended clause 14.7(b), which sets out the charges for relocation to a point downstream of the southern-most point of the DBNGP. The amendment only applies to the terms and conditions for the B1 Service and is as follows:

If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to, or from, or Received from the Shipper at, 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 ...

2460. DBP submitted that the amendment was needed to correct a drafting error – under a B1 Service, if a relocation occurred the transportation of gas would most likely commence from a southerly point on the DBNGP and be transported northwards.¹⁰⁵⁰
2461. The “Back Haul B1” Standard Shipper Contract states the following:

If a relocation of Capacity under this clause results in Gas being transported to the Shipper from, or Received from the Shipper at, 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 ...¹⁰⁵¹

2462. While the proposed drafting in the terms and conditions for B1 Service is substantially consistent with the drafting of the same clause in the Standard Shipper Contract, the ERA considered in the draft decision that the drafting in the Standard Shipper Contract was preferable and more accurate, and was consistent with the national gas objective – drafting amendments that correct and/or clarify the terms and conditions

¹⁰⁴⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 12.20.

¹⁰⁴⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 12.26.

¹⁰⁵⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 12.28.

¹⁰⁵¹ DBP, *Standard Shipper Contract – Back Haul B1 (June 2015)*, clause 14.7(b) ([online](#)) (accessed May 2020).

for reference services promotes efficient investment in, and efficient operation and use of, the DBNGP.

2463. The draft decision set out the following required amendment:

Draft Decision Required Amendment 40

DBP must amend clause 14.7(b) of the proposed terms and conditions for the B1 Service to make the clause read:

- (b) Except where the Shipper has contracted with the Operator for a different Outer Accumulated Imbalance Limit, if a relocation of Capacity under this clause results in Gas being transported to the Shipper from, or Received from the Shipper at, 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 ...

2464. In its revised proposal, DBP accepted draft decision required amendment 40. However, DBP submitted that an amendment to the ERA's required drafting was needed to delete words that the ERA had included in error.¹⁰⁵² DBP submitted:

DBP is comfortable with the changes to clause 14.7(b) in Required Amendment 40 except that the deleted words set out below (that formed part of the drafting set out in Required Amendment 40) are clearly a mistake by the ERA and should not be included in this clause.

Clause 14.7(b):

~~Except where the Shipper has contracted with the Operator for a different Outer Accumulated Imbalance Limit, i~~ If a relocation of Capacity under this clause results in Gas being transported to the Shipper from, or Received from the Shipper at, 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 ...

2465. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 40, with a further amendment to delete words that were identified as an error.

2466. The ERA confirms that the words "Except where the Shipper has contracted with the Operator for a different Outer Accumulated Imbalance Limit," in draft decision required amendment 40 were included in error. The ERA considers that DBP's revised proposal implements the required amendment as intended, and that the amendment is consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 14.7(c)

2467. In its initial proposal, DBP amended clause 14.7(c), which sets out the charges for relocation from an inlet point upstream of Main Line Valve 31 (MLV31) to an outlet point downstream of Compressor Station 9 (CS9). DBP's proposed amendments are reproduced in Appendix 5 (page 673) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the B1 Service analogous amendments were made to align with the P1 Service amendments. Separate amendments were made to clause 14.7 in the terms and conditions for the

¹⁰⁵² DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, pp. 5-6.

T1 Service, which sets out the charges for relocation to an outlet point upstream of CS9.

- For the terms and conditions of the P1 Service and B1 Service, DBP submitted that the amendments better reflected the intent of the clause – the existing drafting does not inform of the exact terms and conditions that apply to the relocated capacity.¹⁰⁵³
- For the terms and conditions for the T1 Service, DBP submitted that the amendments were drafting improvements that clarified the terms for the capacity service did not change.¹⁰⁵⁴

2468. DBP’s proposed changes to clause 14.7 in the terms and conditions for the P1 and B1 Services clarify how a part haul service and back haul service, respectively, are to be treated in instances where they become a full haul service following a relocation of capacity. The proposed changes to clause 14.7 in the terms and conditions for the T1 Service, clarify that the terms for the service do not change in instances where a full haul service becomes a part haul service. For these reasons, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2469. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 14.7(c) is consistent with the national gas objective.

Clause 14.9

2470. In its initial proposal, DBP amended clause 14.9, which provides for the contract to be amended to reflect the requested relocation, to add the words “but without prejudice to clause 14.7(a) or 14.7(c)” to the end of the clause.
2471. DBP submitted that the amendment provided a reminder of the provisions in clause 14.7(a) and 14.7(c) and clarified the effect of such changes to the Access Request Form.¹⁰⁵⁵
2472. Clause 14.7 sets out provisions dealing with the charges for relocation. DBP’s proposed amendment clarifies that where an agreement for relocation is reached, the requested relocation and related terms and conditions must be given effect by amending the Access Request Form in accordance with clause 38 (Revocation, Substitution and Amendment), but without prejudice to clause 14.7(a) or 14.7(c). For this reason, the ERA considered in the draft decision that DBP’s proposed amendment was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2473. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 14.9 is consistent with the national gas objective.

¹⁰⁵³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 12.30.

¹⁰⁵⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 12.34.

¹⁰⁵⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 12.36.

Clause 15 (Metering)

Clause 15.3

2474. DBP amended clause 15.3, which sets out provisions for metering uncertainty. DBP's proposed amendments are reproduced in Appendix 5 (page 674) of this decision.
2475. DBP submitted that the amendments were made for consistency with the negotiated contracts in place with shippers and to distinguish between levels of accuracy required for primary metering equipment and alternative metering equipment.¹⁰⁵⁶
- The amendments to clause 15.3(a)(i) to change the words “plus or minus 0.75% of Actual Mass Flow Rate” to “plus or minus 1% of Actual Mass Flow Rate” reflected the uncertainty level for measuring in line with the negotiated contracts.
 - The amendments to clauses 15.3(a)(i) and 15.3(c) to make the clauses “subject to clause 15.3(b)” reflected the insertion of a new clause for metering certainty measures in connection with alternative metering equipment.
 - New clause 15.3(b) sets out the metering certainty measures for alternative metering equipment, which is equipment incorporated into metering stations as a failsafe if the uncertainty regime differs from primary metering equipment. Metering equipment is only “alternative” metering equipment if it meets the criteria in clause 15.3(b), being that it is not used or likely to be used for more than 72 hours in any gas year and that it is designed, adjusted and operated so as to achieve measurement to within a maximum uncertainty of plus or minus two per cent of actual mass flow rate.
2476. DBP's proposed amendments are consistent with the drafting of the Standard Shipper Contracts (as published on DBP's website). In the draft decision, for the reasons stated at paragraph 2040, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2477. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 15.3 is consistent with the national gas objective.

Clause 15.4(c)

2478. In its initial proposal, DBP amended clause 15.4(c), which details the primary measurements and derived variables associated with gas quality and quantity for inlet metering equipment. DBP's proposed amendment is reproduced in Appendix 5 (page 675) of this decision.
2479. DBP submitted that clause 15.4(c) listed the gas quality and quantity information that inlet metering equipment must measure and record. This information benefits the shipper as it allows the shipper to ensure the gas received from producers meet their requirements under their Gas Supply Agreements. The amendment to add “LPG content in tonnes per TJ of Gas” corrected an omission and reflected what occurred in practice.¹⁰⁵⁷

¹⁰⁵⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 13.1 to 13.5.

¹⁰⁵⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 13.6.

2480. The proposed amendment to include “LPG content in tonnes per TJ of Gas” is consistent with the Standard Shipper Contracts (as published on DBP’s website). No submissions in response to the issues paper addressed DBP’s proposed amendment to clause 15.4(c). In the draft decision, the ERA considered that in the absence of any submissions that dispute the current practice DBP’s proposed amendment was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2481. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 15.4(c) is consistent with the national gas objective.

Clauses 15.5(e) and 15.5(g)

2482. In its initial proposal, DBP deleted clause 15.5(e) from the terms and conditions and made consequential amendments to clause 15.5(g) to correct cross-references. DBP’s amendments are reproduced in Appendix 5 (page 675) of this decision.
2483. Clause 15.5(e) contained provisions concerning the provision of information under the Operating Agreement between ATCO and DBP. DBP submitted that the Operating Agreement had ended and was no longer in effect, hence the clause was not needed.¹⁰⁵⁸
2484. DBP further submitted that the term “Networks”, which is defined as “ATCO Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd and before that AlintaGas Networks Pty Ltd)”, could also be deleted from clause 1 of the terms and conditions and the term “Distribution Network” amended as follows:¹⁰⁵⁹
- Distribution Network** means any Gas distribution system which receives Gas from the DBNGP ~~and includes any Gas distribution system owned or operated by Networks which receives Gas from the DBNGP.~~
2485. DBP’s proposal to delete clause 15.5(e) removes a provision from the terms and conditions that is no longer relevant and the amendments to clause 15.5(g) are consequential to the deletion of clause 15.5(e). In the draft decision, ERA considered that DBP’s proposed amendments to remove the redundant provision was consistent with the national gas objective – the amendments correct and/or simplify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2486. Consistent with the above reasoning, the ERA further considered that DBP’s suggested amendment to delete the term “Networks” from clause 1 (Interpretation) of the terms and conditions and to amend the term “Distribution Network” should be implemented.¹⁰⁶⁰
2487. The draft decision set out the following required amendment:

Draft Decision Required Amendment 41

DBP must amend clause 1 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to:

¹⁰⁵⁸ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 13.7.

¹⁰⁵⁹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 13.8.

¹⁰⁶⁰ These suggested amendments were not incorporated in DBP’s proposed terms and conditions.

- Delete the term “Networks”.
 - Amend the term “Distribution Network” to mean “any Gas distribution system which receives Gas from the DBNGP”.
2488. In its revised proposal, DBP accepted draft decision required amendment 41 to delete the term “Networks” and amend the term “Distribution Network”, as required.¹⁰⁶¹
2489. There were no submissions from interested parties on DBP’s revised proposal to implement draft decision required amendment 41.
2490. The ERA considers that DBP’s revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 17 (Curtailment)

New clause 17.2(f)

2491. In its initial proposal, DBP amended clause 17.2, which details the general provisions for curtailment, to insert new clause 17.2(f). DBP’s proposed new clause is reproduced in Appendix 5 (page 675) of this decision and applies to the terms and conditions for the B1 Service only.
2492. DBP submitted that, in the terms and conditions for the B1 Service, “Back Haul” means “a Gas transportation service on the DBNGP where the Inlet Point is downstream of the Outlet Point”. New clause 17.2(f) was an application of the definition and reflected operational reality – the back haul service can only be provided where there is sufficient actual forward haul gas flow to accommodate the provision of a notional back haul service. The new clause also aligned with the negotiated contracts in place with shippers for B1 Service.¹⁰⁶²
2493. CPM’s submission in response to the issues paper addressed DBP’s proposal to insert new clause 17.2(f). CPM submitted:

New clause 17.2(f) provides that Operator may Curtail the provision of Contract Services in circumstances where actual Forward Haul gas flow is less than the B1 service demands across all shippers with a B1 Service. [CPM] is concerned with these amendments as they essentially mean that curtailment of B1 Shippers is allowed with no liability to the Operator (see 17.3(b)). Two key implications are:

- curtailment of any Forward Haul gas for any reason would mean that a B1 Service could be curtailed with no liability (regardless of whether the Forward Haul curtailment meant there was sufficient gas flow from other forward hauls. So, even if there was negligence or misconduct that would entitle compensation for the Forward-Haul shippers, there would be none for B1 shippers; and
- it removes the incentive to not over-contract the pipeline capacity.

This, as with other amendments which are advised by AGIG to assist in ‘alignment’ across contracts, again means reducing rights of Shippers under the reference agreements.

¹⁰⁶¹ DBP, 2021-2025 Revised Final Plan, *Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

¹⁰⁶² DBP, 2021-2025 Final Plan, *Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 14.1 to 14.3.

[CPM] requests that clause 17.2(f) (B1 agreement only) be deleted in entirety and take into consideration how the B1 and P1 reference services will be impacted by the bidirectional flow of the DBNGP in the north part of the pipe and whether this clause will need further modification to address bidirectional outcomes. Alternatively, if ERA accept the new B1 clause 17(f); [CPM] request provisions be added such that the Operator will not contract additional B1 Services unless it reasonably considers there will be sufficient Forward Haul gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services).¹⁰⁶³

2494. Like the ERA's draft decision considerations of proposed amendments to clause 14.2(b) (see paragraph 2447), until there is certainty on any significant changes in the operations of the DBNGP (including, for example, a change in the direction of gas flow), DBP's proposed amendment to clause 17.2(f) must be considered based on actual and expected operations. DBP did not make any proposed amendments to the terms and conditions for reference services based on expected changes to the nature of the reference services resulting from changes to gas flows in the north-west.
2495. DBP's proposed new clause 17.2(f) is consistent with the equivalent clause in the "Back Haul B1" Standard Shipper Contract.¹⁰⁶⁴ However, as submitted by CPM, clause 17.2(f) may allow B1 Services to be curtailed with no liability for the operator and may also affect incentives to not over contract pipeline capacity.
2496. In the circumstances, the ERA considered in the draft decision that it would be reasonable and consistent with the national gas objective to require the operator to not contract additional B1 Services unless it reasonably considers that there will be sufficient forward haul gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services). On this basis, the ERA required DBP to insert a new clause 3.5 into the terms and conditions for the B1 Service, with a consequential amendment made to clause 17.3(b)(ii).
2497. The draft decision set out the following required amendment:

Draft Decision Required Amendment 42

DBP must amend the proposed terms and conditions for the B1 Service to insert a new clause 3.5 (Need for sufficient Forward Haul Gas) which requires the operator to not contract additional B1 Services unless it considers as a reasonable and prudent person that there will be sufficient forward haul gas under normal operating conditions to provide all B1 Services on a firm basis.

The required drafting for new clause 3.5, including a consequential drafting change to clause 17.3(b)(ii), is set out at paragraph 1600 of [the] draft decision [paragraph 2498 of this final decision].

2498. The ERA set out the required drafting for new clause 3.5, and the consequential amendment to clause 17.3(b)(ii), as follows:

3.5 Need for sufficient Forward Haul Gas

The Operator must not agree to provide a B1 Service unless it considers, as a Reasonable and Prudent Person, that there will be sufficient Forward Haul Gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services).

¹⁰⁶³ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, pp. 17-18.

¹⁰⁶⁴ DBP, *Standard Shipper Contract – Back Haul B1 (June 2015)*, clause 17.2(d) ([online](#)) (accessed May 2020).

[Consequential amendment to clause 17.3(b)(ii) as shown in mark-up:]

- (ii) where the Curtailment is in accordance with any of clauses 17.2(a), 17.2(b) or [subject to clauses 3.5](#), 17.2(f); or

2499. In response to the draft decision, DBP submitted that it supported draft decision required amendment 42 in principle. However, further amendments to the required drafting were needed as follows (shown in mark-up against the ERA's required drafting):¹⁰⁶⁵

3.5 Need for sufficient Forward Haul Gas

~~Except to the extent otherwise required by law, the~~ The Operator must not agree to provide a B1 Service unless ~~it considers, as a Reasonable and Prudent Person, that there will be sufficient Forward Haul Gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services) at the time of so~~ [agreeing \(Contract Entry Time\), the aggregate of:](#)

- (a) [the amount of Contracted Capacity for B1 Service under that new agreement; plus](#)
- (b) [quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for B1 Service entered into prior to the Contract Entry Time which, on their terms at the Contract Entry Time \(for the avoidance of doubt, without regard to rights of relinquishment or forecast use\), will be in effect during the period of that new agreement,](#)

[is no greater than the aggregate of the quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for T1 Service and all contracts for P1 Service entered into prior to the Contract Entry Time which, on their terms at the Contract Entry Time \(for the avoidance of doubt, without regard to rights of relinquishment or forecast use\), will be in effect during the period of that new agreement.](#)

2500. Given its revised proposed amendments, DBP submitted that it had not implemented the consequential amendment to clause 17.3(b)(ii) as set out in draft decision required amendment 42. However, the consideration of required clause 3.5 highlighted an additional related amendment to clause 17.2(f) of the terms and conditions for the B1 Service as follows (shown in mark-up to DBP's initial proposal):

17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

...

- (f) in circumstances where actual Forward Haul gas flow [over the relevant area](#) is less than the B1 Service demand [over the relevant area](#) across all shippers with a B1 Service.

2501. DBP submitted:

DBP has strict procedures in place to ensure that a technical assessment is undertaken prior to agreeing to provide a pipeline service in response to a request, and that capacity is not contracted unless and until approved pursuant to such procedure. Further, DBP is required to make available information in relation to capacity and to address requests for capacity in accordance with the Access Arrangement and the NGR and NGA. Accordingly, DBP does not consider there is any need for a provision in the nature of that suggested by CPM and by the ERA in paragraph 1600 of the Draft

¹⁰⁶⁵ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, pp. 21-22.

Decision. However, DBP is comfortable accepting such a provision if the relevant test is made clearer, to provide greater certainty.

We have specified that the test requires, in effect, that the aggregate of B1 Service be no greater than the aggregate of T1 Service and P1 Service. This is, in some senses, perhaps more restrictive on DBP than the test suggested by the Draft Decision but, given these are the relevant equivalent services for the purpose of the Curtailment Plan, it is consistent with DBP's technical requirements and promotes certainty, thereby promoting efficient investment in, and efficient operation and use of, the DBNGP.¹⁰⁶⁶

2502. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 42 with additional amendments, and/or make additional related amendments to clause 17.2(f) in the terms and conditions for the B1 Service.
2503. The ERA considers that DBP's additional proposed amendments:
- to clause 3.5, address the initial matter raised by CPM and are substantively consistent with draft decision required amendment 42.
 - to clause 17.2(f), are related to, and consistent with, the drafting proposed by DBP to address draft decision required amendment 42.
2504. Further, the additional proposed amendments are also consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2505. However, the ERA considers that, for added clarity, the consequential amendment to clause 17.3(b)(ii) should be maintained. That is, clause 17.3(b)(ii) should be amended to read (**emphasis** added):
- where the Curtailment is in accordance with any of clauses 17.2(a), 17.2(b) or **subject to clauses 3.5**, 17.2(f); or
2506. While DBP submitted that its revised proposal did not implement the consequential amendment to clause 17.3(b)(ii), as set out in draft decision required amendment 42, the ERA notes that the revised terms and conditions for the B1 Service (provided as Attachment 14.4A to DBP's Revised Final Plan) incorporate the consequential amendment.¹⁰⁶⁷
2507. In addition to the above considerations, the ERA considers that further amendments are required to DBP's proposed drafting of clause 3.5 to correct grammar and further clarify the intent of the clause, which is to ensure that additional B1 Services are not contracted unless there is sufficient forward haul gas to provide those B1 Services on a firm basis. The additional required amendments are set out as follows (shown in mark-up against DBP's proposed revised drafting):

3.5 Need for sufficient Forward Haul Gas

Except to the extent otherwise required by law, the Operator must not agree to provide a B1 Service unless, if at the time of ~~so agreeing~~ the proposed agreement (Proposed Contract Entry Time), the aggregate of:

- (a) the amount of Contracted Capacity for B1 Service under that new agreement; plus

¹⁰⁶⁶ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 21.

¹⁰⁶⁷ In Attachment 14.4A, the amended drafting uses the word "clause" instead of "clauses". The ERA considers this to be a minor grammatical error that the ERA will correct in the ERA approved access arrangement.

- (b) quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for B1 Service entered into prior to the Contract Entry Time which, on their terms at the [Proposed](#) Contract Entry Time (for the avoidance of doubt, without regard to rights of relinquishment or forecast use), will be in effect during the period of that new agreement,

is ~~not~~ greater than the aggregate of the quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for T1 Service and all contracts for P1 Service entered into prior to the Contract Entry Time which, on their terms at the [Proposed](#) Contract Entry Time (for the avoidance of doubt, without regard to rights of relinquishment or forecast use), will be in effect during the period of that new agreement.

Required Amendment 25

Clause 3.5 of the terms and conditions for the B1 Service must be amended to further clarify the intent of the clause.

The required amended drafting is set out at paragraph 2507 of this final decision.

Clause 17.3

2508. In its initial proposal, DBP amended clause 17.3, which sets out provisions for curtailment without liability, to insert additional cross-references. DBP's proposed amendments are reproduced in Appendix 5 (page 676) of this decision.
2509. DBP submitted that:¹⁰⁶⁸
- In clause 17.3(b)(ii) and clause 17.3(c)(i) of the terms and conditions for the B1 Service, a cross-reference to clause "17.2(f)" was inserted. The amendments reflected the addition of new clause 17.2(f), which was consistent with and implemented the definition of "Back Haul" (see paragraph 2492 of this decision).
 - In clause 17.3(c)(i) of the terms and conditions for the P1 Service, a cross-reference to clause "17.2(b)" was inserted to correct an error and align the drafting with the negotiated contracts in place with shippers. Analogous amendments were made to the terms and conditions for the T1 Service and B1 Service.
2510. Clause 17.3(b) of the terms and conditions details the circumstances where the operator has no liability to the shipper. Clause 17.3(c) details exceptions to the curtailments that are to be aggregated when determining whether the accumulated duration of curtailments in a gas year cause the permissible curtailment limit to be exceeded.
2511. For the terms and conditions for the B1 Service, DBP's proposed amendments to clauses 17.3(b)(ii) and 17.3(c)(i) to insert references to clause "17.2(f)" are consistent with the drafting in the Back Haul B1 Standard Shipper Contract.¹⁰⁶⁹ In the draft decision, for the reasons stated at paragraph 2040 of this final decision, the ERA

¹⁰⁶⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 14.4 to 14.11.

¹⁰⁶⁹ DBP, *Standard Shipper Contract – Back Haul B1 (June 2015)*, clause 17.2(d) ([online](#)) (accessed May 2020). Clause 17.2(d) in the Standard Shipper Contract is the equivalent clause of clause 17.2(f) in the terms and conditions for the B1 Service.

considered DBP's proposed amendments to these clauses were consistent with the national gas objective.

2512. The ERA further considered that DBP's proposal to insert a reference to clause "17.2(b)", which allows the operator to curtail "whenever it needs to undertake any Major Works, in clause 17.3(c)(i) of the terms and conditions for each of the reference services was also materially consistent with the Standard Shipper Contracts.
2513. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 17.3 is consistent with the national gas objective.

Clause 17.7(c)

2514. In its initial proposal, DBP amended clause 17.7(c)(vi), which applies to a Curtailment Notice, to add a reference to "Outer Hourly Peaking Limits". DBP's proposed amendment is reproduced in Appendix 5 (page 677) of this decision.
2515. DBP submitted that the amendment was consequential to the addition of new clause 10.4 (Outer Hourly Peaking Limit), which is discussed at paragraph 2433 of this decision.¹⁰⁷⁰
2516. Consistent with the ERA's final decision considerations of clause 10.4, the amendment to clause 17.7(c)(vi) is required.

Clause 17.8(c)

2517. In its initial proposal, DBP amended clause 17.8(c), which allows the operator to take action following the shipper's failure to comply with a curtailment notice, to insert a reference to clause "17.8(b)".
2518. DBP submitted that the amendment was needed to correct an error – clause 17.8(c) is intended to cover the shipper's failure to comply with any curtailment notice, whether such notice is given in relation to a "point specific curtailment" under clause 17.8(a) or a curtailment that is "not a point specific curtailment notice" under clause 17.8(b).¹⁰⁷¹
2519. Clause 17.8(c) of the terms and conditions currently states:¹⁰⁷²

If the Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a), the Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from the Shipper at an Inlet Point or refusing to Deliver Gas to the Shipper at an Outlet Point.

2520. As submitted by DBP, clause 17.8(a) concerns a curtailment notice for a point specific curtailment.¹⁰⁷³ Clause 17.8(b) concerns a curtailment notice for a curtailment that is not a point specific curtailment. The provisions of clause 17.8(c) should apply to curtailment notices in both instances. For these reasons, the ERA considered in the draft decision that DBP's proposed amendment to clause 17.8(c) was consistent with

¹⁰⁷⁰ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 14.12.

¹⁰⁷¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 14.13.

¹⁰⁷² Terms and conditions for applying for AA4.

¹⁰⁷³ Clause 1 (Interpretation) of the terms and conditions defines "Point Specific Curtailment" as "a Curtailment as it affects or applies to a particular Inlet Point or Outlet Point".

the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2521. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 17.8(c) is consistent with the national gas objective.

Clause 17.9

2522. In its initial proposal, DBP amended clause 17.9, which sets out provisions concerning the priority of curtailment. DBP’s proposed amendments are reproduced in Appendix 5 (page 677) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made. Further to these amendments, additional amendments were made to clause 17.9(c)(i) that only apply to the terms and conditions for the P1 Service and B1 Service.

2523. DBP submitted that:

- The amendment to clause 17.9(b)(i) to delete the words “for the purposes of this clause” corrected a drafting error. The definition of “Capacity Service” in the terms and conditions includes capacity under a “Spot Transaction”, so it was incorrect to state that the inclusion is only “for the purposes of [that] clause”.¹⁰⁷⁴
- The amendment to clause 17.9(b)(iii)(A) to capitalise the words “inlet points” and “outlet points” clarified that drafting was referring to the terms “Inlet Points” and “Outlet Points” as the terms were defined in the terms and conditions.¹⁰⁷⁵
- The amendment to clause 17.9(b)(vi) was made to improve and clarify the application of the Curtailment Plan. In a curtailment, the operator must be able to apply the Curtailment Plan consistently across all contracts (including reference service contracts and negotiated contracts) and across all capacity services without breaching any particular contract by virtue of consistencies.¹⁰⁷⁶
- The amendment to clause 17.9(c)(ii) to delete the words “(other than a Tp Service)” and insert the words “or Aggregated Service” were drafting improvements and clarified the operator’s obligations where there was a relevant curtailment of an aggregated service.¹⁰⁷⁷
- The term “Tp Service” is not used in the terms and conditions.
- The inclusion of the words “or Aggregated Service” clarified that Aggregated Service is subject to the operator’s obligation that is imposed by clause 17.9(c)(ii).

2524. DBP submitted that the additional amendments made to clause 17.9(c)(i) in the terms and conditions for the P1 Service and B1 Service were required to make the allocation mechanism the same across all the reference service contracts. The T1 Service, P1 Service and B1 Service are all treated as a single “Type of Capacity Service” for

¹⁰⁷⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 14.14.

¹⁰⁷⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 14.16.

¹⁰⁷⁶ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 14.19 to 14.21.

¹⁰⁷⁷ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 14.25 to 14.27.

the purpose of applying the Curtailment Plan, with equal priority. Therefore, the formula in clause 17.9(c)(i) needs to be the same across the contracts for each service. The amendments also aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰⁷⁸

2525. In the draft decision, the ERA considered that DBP's proposed amendments to clause 17.9 clarified the provisions for the priority of curtailment – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP. Additionally, the proposed amendments were consistent with the Standard Shipper Contracts (as published on DBP's website) and for the reasons stated at paragraph 2040, were consistent with the national gas objective.
2526. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 17.9 is consistent with the national gas objective.

Clause 17.10(a)

2527. In its initial proposal, DBP amended clause 17.10(a), which details how the operator must apportion a shipper's curtailments. DBP's proposed amendments are reproduced in Appendix 5 (page 679) of this decision.
2528. DBP submitted that the amendments to the words "Deliver" and "Received" corrected drafting errors, which also existed (and would be corrected) in the Standard Shipper Contracts published on its website. The addition of the words "in a manner required by the Shipper" corrected omissions.¹⁰⁷⁹
2529. DBP's proposed amendments to clause 17.10(a)(i) and (ii) correct drafting errors – where the shipper delivers gas at an inlet point, the operator is *receiving* that gas. Similarly, where the shipper receives gas at an outlet point, the operator is *delivering* that gas. The addition of the words "in the manner required by the Shipper" in clauses 17.10(a)(ii) and (iii) is consistent with the existing drafting in clause 17.10(a)(i) and should also apply to subclauses (ii) and (iii). For these reasons, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2530. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 17.10(a) is consistent with the national gas objective.

Clause 18 (Maintenance and Major Works)

2531. In its initial proposal, DBP amended clause 18, which sets out provisions that cover maintenance and major works. DBP's proposed amendments are reproduced in Appendix 5 (page 679) of this decision.
2532. DBP submitted that the amendments to the referenced dates assisted it (as the operator of the DBNGP) with its budget setting process and streamlined the

¹⁰⁷⁸ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 14.22 to 14.24.

¹⁰⁷⁹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 14.28 and 14.29.

maintenance programming process. DBP now operates on a calendar year basis, rather than a financial year basis, and so sets the budget and maintenance plans for the following year in November. The amendments also aligned the reference service contracts with the negotiated contracts in place with shippers.¹⁰⁸⁰

2533. DBP's proposed amendments are consistent with the Standard Shipper Contracts (as published on DBP's website) and reflect DBP's actual operations, which are now calendar year based. In the draft decision, for the reasons stated at paragraph 2040 of this final decision, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.
2534. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 18 is consistent with the national gas objective.

Clause 20 (Charges)

Clauses 20.2(a) and 20.3

2535. In its initial proposal, DBP amended clauses 20.2(a) and 20.3, which sets out provisions for the Capacity Reservation Charge and Commodity Charge, respectively, to make the clauses "subject to clause 14.7". The amendments apply to the terms and conditions for the P1 Service and B1 Service are reproduced in Appendix 5 (page 680) of this decision.
2536. DBP submitted that the amendments reminded that where there was a relocation of contracted capacity, as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7.¹⁰⁸¹
2537. Further amendments to clause 20.2(a) were made in the terms and conditions for the P1 Service and B1 Service to change the reference to "T1 Capacity Reservation Tariff" to "P1 Capacity Reservation Tariff" and "B1 Capacity Reservation Tariff", respectively. DBP submitted that these amendments corrected an error to ensure that:¹⁰⁸²
- For the P1 Service, the P1 Capacity Reservation Charge was calculated by reference to the "P1 Capacity Reservation Tariff".
 - For the B1 Service, the B1 Capacity Reservation Charge was calculated by reference to the "B1 Capacity Reservation Tariff".
2538. Clause 14.7 of the terms and conditions concerns the charges for relocation. As submitted by DBP, the Capacity Reservation Charge (clause 20.2(a)) and Commodity Charge (clause 20.3) may be affected by these provisions. DBP's proposal to insert the words "subject to clause 14.7" in the terms and conditions for the P1 Service and B1 Service clarifies this. An equivalent amendment to the terms and conditions for the T1 Service is not required because, in this context, even if a relocation changes

¹⁰⁸⁰ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 15.1.

¹⁰⁸¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 16.1 and 16.4.

¹⁰⁸² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 16.3.

the nature of the service from full haul to part haul, the capacity remains on the same terms and conditions as full haul capacity for T1 Service under the contract.¹⁰⁸³

2539. Similarly, DBP's other amendments to clause 20.2(a) clarify that the P1 and B1 Capacity Reservation Charges are calculated by reference to the P1 and B1 Capacity Reservation Tariffs, respectively (and not the T1 Capacity Reservation Tariff, as is currently drafted).
2540. For the above reasons, the ERA considered in the draft decision that DBP's proposed amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2541. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clauses 20.2(a) and 20.3 is consistent with the national gas objective.

Clause 20.4(a)

2542. In its initial proposal, DBP amended clause 20.4(a), which confirms the other charges that apply, to amend cross-references as follows:

20.4 Other Charges

- (a) The following charges apply to this Contract:
- (i) Excess Imbalance Charge (clauses ~~9.5(e)~~ [9.5\(e\)](#) and [9.6\(b\)](#));
 - (ii) Hourly Peaking Charge (clauses ~~10.3(d)~~ [10.3\(d\)](#) and [10.4\(b\)](#));

2543. DBP submitted that the amendments to delete and replace cross-references corrected errors. The amendments to add cross-references were consequential to new clauses 9.6 (Excess Imbalance Charge) and 10.4 (Outer Hourly Peaking Limit).¹⁰⁸⁴
2544. In the draft decision, the ERA considered that DBP's amendments to correct errors were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2545. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 20.4(a) is consistent with the national gas objective.
2546. The amendments to add additional cross-references are consequential and subject to DBP's proposed amendments to insert new clauses 9.6 and 10.4, which are discussed at paragraphs 2391 and 2433, respectively. Consistent with the ERA's final decision considerations of these clauses, the additional cross-references are required.

¹⁰⁸³ Whereas, if a relocation of a P1 Service or B1 Service changes the nature of the service to full haul, the capacity so relocated is to be treated as if it were on the terms of the T1 Service.

¹⁰⁸⁴ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 16.5 to 16.7.

Clause 20.5(a)

2547. In its initial proposal, DBP amended clause 20.5(a), which sets out how the tariff will be adjusted. DBP's proposed amendments are reproduced in Appendix 5 (page 680) of this decision and apply to the terms and conditions for the P1 Service. In the terms and conditions for the T1 Service and B1 Service analogous amendments were made.
2548. DBP submitted that the amendments clarified and aligned with the way in which the access arrangement document described the make-up of, and variations to, the respective tariff.¹⁰⁸⁵
2549. DBP's proposed amendments reflect the description of the respective tariffs in the access arrangement. That is, each tariff consists of a capacity reservation tariff and commodity tariff (for example, for the P1 Service, the "P1 Tariff" consists of the "P1 Capacity Reservation Tariff" and "P1 Commodity Tariff"). Each of these tariff components can be varied either:
- In accordance with the Reference Tariff Variation Mechanism (as set out in clause 11 of the access arrangement).
 - As part of the approval of a revised access arrangement for a new access arrangement period.
2550. For the above reasons, the ERA considered in the draft decision that DBP's proposed amendments to clause 20.5(a) were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2551. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 20.5(a) is consistent with the national gas objective.

Clause 22 (Default and Termination)**Clauses 22.2 and 22.3(c)**

2552. In its initial proposal, DBP amended clause 22.2, which provides for the operator to issue the shipper with a Shipper Default Notice, and clause 22.3(c), which details the circumstances when the operator may exercise remedy. DBP's proposed amendments are reproduced in Appendix 5 (page 681) of this decision.
2553. DBP submitted that the amendments were to clarify and reflect the fact that the occurrence of an event that may give rise to a shipper default was not necessarily a default until expiry of the time stipulated for remedy of the relevant event in clause 22.3(b).¹⁰⁸⁶
2554. DBP's proposed amendments clarify the events that constitute a default by the shipper and when those events become actual defaults. Clause 22.1 sets out the events where the shipper is in default. However, as submitted by DBP, clause 22.3(b) provides that the shipper is not in default until the expiry of the time specified in clauses 22.3(b)(i), (ii) or (iii) and the event has not been remedied. For these reasons, the ERA considered in the draft decision that DBP's proposed amendments were

¹⁰⁸⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 16.8.

¹⁰⁸⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 17.1 and 17.2.

consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2555. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 22.2 is consistent with the national gas objective.

Clauses 22.6 and 22.7(c)

2556. In its initial proposal, DBP amended clause 22.6, which provides for the shipper to issue the operator with an Operator Default Notice, and clause 22.7(c), which details the circumstances when the shipper may exercise remedy. DBP’s proposed amendments are reproduced in Appendix 5 (page 681) of this decision.
2557. DBP submitted that the amendments were to clarify and reflect the fact that the occurrence of an event that may give rise to an operator default was not necessarily a default until expiry of the time stipulated for remedy of the relevant event in clause 22.7(b).¹⁰⁸⁷
2558. DBP’s proposed amendments clarify the events that constitute a default by the operator and when those events become actual defaults. Clause 22.5 sets out the events where the operator is in default, however, as submitted by DBP, clause 22.7(b) provides that the operator is not in default until the expiry of the time specified in clauses 22.7(b)(i) or (ii) and the event has not been remedied. For these reasons, the ERA considered in the draft decision that DBP’s proposed amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2559. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 22.6 is consistent with the national gas objective.

Clause 25 (Assignment)

Clause 25.2(a)

2560. In its initial proposal, DBP amended clause 25.2(a), which sets out provisions for the assignment of charges, to add the words “and chargee”. DBP’s proposed amendment is reproduced in Appendix 5 (page 681) of this decision.
2561. DBP submitted that the amendment reflected the intended purpose of the clause. The purpose of entry into the tripartite agreement (deed) is to protect the non-charging party by ensuring that, regardless of a default by the charging party under its financial arrangements, the financial institution (the “chargee”) is bound to continue to comply with the terms of the reference service contract for so long as the non-charging party complies with its obligations under the contract. To ensure the tripartite agreement is effective, the chargee must enter into the agreement with the non-charging party.¹⁰⁸⁸

¹⁰⁸⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 17.3 and 17.4.

¹⁰⁸⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 18.1.

2562. DBP's proposed amendment to add the words "chargee" clarifies that both the chargor and chargee must enter into a tripartite deed with the other party for the provisions to be effective. In the draft decision, the ERA considered the amendment to be consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2563. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 25.2(a) is consistent with the national gas objective.

Clause 25.5(f)

2564. In its initial proposal, DBP amended clause 25.5(f), which sets out provisions concerning the acknowledgements and undertakings of the Pipeline Trustee, to delete redundant wording. DBP's proposed amendment is reproduced in Appendix 5 (page 682) of this decision.
2565. DBP submitted that the words "Other than to the extent ... Capacity Start Date" referred to documentation from 2004, which was no longer relevant to the operation of the DBNGP and the corporate structure of AGIG. The words were therefore irrelevant and deleted.¹⁰⁸⁹
2566. In the draft decision, the ERA considered that DBP's proposal to delete redundant drafting was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2567. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 25.5(f) is consistent with the national gas objective.

New clause 25.7

2568. In its initial proposal, DBP inserted new clause 25.7 into the terms and conditions to create a provision for non-complying assignment. The proposed amendment is reproduced in Appendix 5 (page 682) of this decision.
2569. DBP submitted that clause 25.7 was inserted to clarify drafting and was consistent with the negotiated contracts in place with shippers. The stipulation that a purported sale, transfer or assignment is compliant with the protections offered to the non-selling/non-transferring/non-assigning party is fundamental to the security of each party in understanding who they are contracting with and what the creditworthiness of their counter party is.¹⁰⁹⁰
2570. DBP's proposed new clause for non-complying assignment is consistent with the Standard Shipper Contracts (as published on DBP's website). In the draft decision, for the reasons stated at paragraph 2040 of this final decision, the ERA considered that amendments made to the terms and conditions to align with contracts in place with shippers were consistent with the national gas objective.

¹⁰⁸⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 18.2.

¹⁰⁹⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 18.4.

2571. DBP’s revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP’s proposal to amend clause 25.7 is consistent with the national gas objective.

Clause 28 (Confidentiality)

Clause 28.2(i)

2572. In its initial proposal, DBP amended clause 28.2(i), which sets out provisions for exceptions to confidentiality. DBP’s proposed amendments are reproduced in Appendix 5 (page 682) of this decision.

2573. DBP submitted that the amendments to clause 28.2(i) were needed to reflect the changes to the corporate structure of DBP and its holding companies since the approval of the access arrangement for the period 2016 to 2020.¹⁰⁹¹

2574. The corporate structure of DBP and its holding companies changed following the acquisition of DBP by the CKI Group in 2017. DBP’s proposed amendments updated the terms and conditions to reflect the changes in corporate structure. For this reason, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2575. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend clause 28.2(i) is consistent with the national gas objective.

Clause 28.3

2576. Clause 28.3 sets out provisions for permitted disclosure. In its initial proposal, DBP amended clauses 28.3(a) and 28.3(b), which allows and restricts the permitted disclosure of confidential information to certain persons, respectively. DBP’s proposed amendments are reproduced in Appendix 5 (page 682) of this decision.

Clause 28.3(a)

2577. DBP submitted that amendments to clause 28.3(a) were needed:¹⁰⁹²

- To correct grammatical and drafting errors.
- To enable the provision of information about the operations of the DBNGP to financiers of AGIG in circumstances where the borrowing entity is not DBNGP Finance Co Pty Ltd, but another member of AGIG that is able to borrow at better rates and then provide inter-company loans to the operator.
- To deem, for the purpose of clause 28.3, all members of AGIG to be “related bodies corporate” of the operator.

2578. In the draft decision, the ERA considered that DBP’s proposed amendments clarified the persons who may receive confidential information and were consistent with the national gas objective – the amendments correct and/or clarify the terms and

¹⁰⁹¹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 20.1.

¹⁰⁹² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 20.2.

conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

2579. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 28.3(a) is consistent with the national gas objective.

Clause 28.3(b)

2580. DBP submitted that the intent of clause 28.3(b)(i) is to restrict the provision of confidential information by the operator, or the system operator, to any person that may be in competition with the shippers of gas on the DBNGP. The amendments to clause 28.3(b)(i)(A) and 28.3(b)(i)(C) were required:¹⁰⁹³

- To update the description of the entities involved in gas distribution networks.
- To ensure that members of AGIG were not prevented from tendering for, owning, constructing, operating or maintaining electricity generation operations where those operations were not connected to the South West Interconnected System.

2581. DBP further submitted that the amendments to clause 28.3(b)(iv) and the deletion of clause 28.3(b)(v) were made to reflect current arrangements for the disclosure of information to Alcoa. Specifically, DBP stated:

[Redacted text block]

¹⁰⁹⁴

2582. With the deletion of clause 28.3(b)(v), a consequential amendment was made to clause 28.4(b) to remove the reference to the now deleted clause "28.3(b)(v)".

2583. Synergy's submission in response to the issues paper addressed DBP's proposed amendment to clause 28.3(b)(i)(C). Synergy submitted:

DBP are seeking to amend Clause 28.3(b)(i)(C) so that rather than being restricted from disclosing Confidential Information to any person directly involved in the generation or sale of electricity in Western Australia, the restriction only applies to disclosure to a person directly involved in the generation or sale of electricity in the South West Interconnected System (SWIS) of Western Australia.

DBP has stated that one of the reasons it is seeking this amendment is that the Operator's operations provide it no advantage in terms of electricity generation operations that are isolated from the SWIS. Synergy does not agree with this assertion. The DBNGP transports gas to locations which are outside the SWIS and it would be

¹⁰⁹³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 20.5 to 20.7.

¹⁰⁹⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 20.8 and 20.9.

entirely possible for power stations outside the SWIS to be supplied with gas which is transported (whether partly or entirely) on the DBNGP. Accordingly, the Operator may have information which provide it with advantages in respect of electricity generation options that are outside the SWIS.

Synergy therefore does not support the proposed amendment.¹⁰⁹⁵

2584. Synergy suggested that DBP had information that would provide it with advantages in respect of electricity generation options outside the South West Interconnected System and therefore the amendment to clause 28.3(b)(i)(C) should not be made. The ERA sought additional information from Synergy concerning its submission, where Synergy clarified that it did not understand why the drafting change was necessary if DBP saw no advantage in terms of electricity generation operations outside of the South West Interconnected System.¹⁰⁹⁶
2585. The ERA considered in the draft decision that there was potential for power stations outside the South West Interconnected System to be supplied with gas transported on the DBNGP and, consequently, that DBP may have confidential information that may be used to its advantage in respect of generation options outside of the South West Interconnected System. Given this, the proposed amendment to clause 28.3(b)(i)(C) must not be made as it is inconsistent with the national gas objective – the ability to disclose such information could adversely affect decisions concerning investment in natural gas services.
2586. The draft decision set out the following required amendment:

Draft Decision Required Amendment 43

DBP must amend clause 28.3(b)(i)(C) of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to delete the proposed amendments so that the clause prohibits the permitted disclosure of confidential information to any person who is directly involved in the generation or sale of electricity in Western Australia (rather than the generation or sale of electricity in the South West Interconnected System of Western Australia).

2587. Concerning DBP's other amendments to clause 28.3(b), the ERA considered in the draft decision that the amendments clarified the persons who cannot receive confidential information (that is, the situations where permitted disclosure is restricted) and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2588. In its revised proposal, DBP accepted draft decision required amendment 43 and has amended clause 28.3(b)(i)(C), as required.¹⁰⁹⁷
2589. There were no submissions from interested parties on DBP's revised proposal to implement draft decision required amendment 43.
2590. The ERA considers that DBP's revised proposal implements the required amendments as intended, and that the amendments are consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for

¹⁰⁹⁵ Synergy submission in response to issues paper, 31 March 2020, Annexure A, pp. 4-5.

¹⁰⁹⁶ Synergy, 'Re: Follow up on Synergy's submission on the proposed access arrangement for the DBNGP (2012-2025)', [email] 26 May 2020.

¹⁰⁹⁷ DBP, 2021-2025 Revised Final Plan, *Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 4.

reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.

Clause 28.6(a)

2591. In its initial proposal, DBP amended clause 28.6(a), which sets out provisions for information received by the operator. DBP's proposed amendment is reproduced in Appendix 5 (page 684) of this decision.
2592. DBP submitted that clause 28.6 solely governed how the operator must ensure that it actively enforced its confidentiality obligations under clauses 28.3, 28.4 and 28.5. The amendment to add the words "in relation to disclosure of Confidential Information" clarified the operation of clause 28.6(a)(ii) and sought to ensure that the clause was not taken to mean that the operator must develop, implement and enforce policies and procedures to ensure that all shippers are treated equally and fairly in all respects.¹⁰⁹⁸
2593. As submitted by DBP, the amendment to clause 28.6(a)(ii) clarified that the operator's obligation to ensure that all shippers were treated equally and fairly was in relation to provisions for confidential information that were established under clause 28. For this reason, the ERA considered in the draft decision that the amendment was consistent with the national gas objective – the amendment corrects and/or clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2594. DBP's revised proposal retains the amendment initially proposed. There were no submissions addressing the amendment. Given this, the ERA is satisfied that DBP's proposal to amend clause 28.6(a) is consistent with the national gas objective.

Clause 28.7(j)

2595. In its initial proposal, DBP amended clause 28.7(j), which concerns provisions for breaches by the operator, to change the cross-reference to clause "28.10" to "28.11".¹⁰⁹⁹
2596. The amendment is consequential and subject to DBP's proposed amendment to insert new clause 28.10 (FIRB Compliance), which is considered below. Consistent with the ERA's final decision considerations of clause 28.10 (below), the consequential amendment to clause 28.7(j) is required.

New clause 28.10

2597. In its initial proposal, DBP inserted new clause 28.10 (FIRB Compliance) into the terms and conditions to create a provision for compliance with the Foreign Investments Review Board (FIRB). DBP's proposed new clause is reproduced in Appendix 5 (page 684) of this decision.
2598. DBP submitted that clause 28.10 was inserted to comply with certain conditions imposed upon the CKI Group by FIRB when it acquired the DUET Group. The conditions restrict access to and storage of bulk personal information. Unless otherwise agreed with the Commonwealth, AGIG must ensure that all data is stored

¹⁰⁹⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 20.11.

¹⁰⁹⁹ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 20.13.

only in Australia, is accessible and maintained only from within Australia and may not be taken outside of Australia, except in specified circumstances.¹¹⁰⁰

2599. In the draft decision, the ERA considered that DBP's proposed amendment to insert new clause 28.10 reflected the conditions set by FIRB and was consistent with the national gas objective – drafting amendments that correct and/or clarify the terms and conditions for reference services promotes efficient investment in, and efficient operation and use of, the DBNGP. While the ERA did not require an amendment in the draft decision, the ERA considered that it would be preferable to use the heading “Foreign Investments Review Board Compliance” rather than the acronym “FIRB”. Given clause 2.2, which states that “headings are inserted for convenience and do not affect the interpretation of [the] contract”, such an amendment would be administrative in nature.
2600. In its revised proposal, DBP submitted that it had accepted the ERA's suggestion to use the heading “Foreign Investments Review Board Compliance” rather than the acronym “FIRB”.¹¹⁰¹
2601. The ERA has considered DBP's revised proposal to accept this and other suggested, but not required, amendments to the terms and conditions at paragraph 2700.

Clause 29 (Notices)

2602. In its initial proposal, DBP amended clause 29, which sets out provisions for notices, to remove the requirement for notices to be served by facsimile. DBP's proposed amendments to subclauses 29.1, 29.3 and 29.4 are reproduced in Appendix 5 (page 684) of this decision.
2603. The requirement for notices to be served by facsimile was replaced with the requirement for notices to be served by electronic mail (email). DBP submitted that the amendments were in line with current practices of the operator and its commercial counterparts given that fax machines were all but obsolete.¹¹⁰²
2604. DBP's proposed amendments reflect the transition away from facsimile to electronic mail and is consistent with the current practices of most commercial businesses and workplaces. For this reason, the ERA considered in the draft decision that the amendments were consistent with the national gas objective – the amendments reflect operational practice and promote efficient investment in, and efficient operation and use of, the DBNGP.
2605. DBP's revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP's proposal to amend clause 29 is consistent with the national gas objective.

¹¹⁰⁰ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 20.15 and 20.16.

¹¹⁰¹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 27.

¹¹⁰² DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 21.1.

Clause 44 (General)

2606. Clause 44.1 requires the operator to treat the shipper fairly and reasonably in circumstances where it has discretion to act under the contract. DBP amended this clause to change the cross-reference to “clause 9.7” to “clause 9.8”.¹¹⁰³
2607. The amendment to clause 44.1 is consequential and subject to DBP’s proposed amendment to insert new clause 9.6 (Excess Imbalance Charge), which is discussed at paragraph 2391. Consistent with the ERA’s final decision considerations of clause 9.6, the amendment to clause 44.1 is required.

Schedules

Schedule 1 (Access Request Form)

2608. Schedule 1 of the terms and conditions contains the Access Request Form. DBP amended sections 1 (Prospective Shipper Details), 2 (Operator Details), 6 (Terms and Conditions) and 8 (Agreement) of the Form as follows:¹¹⁰⁴
- DBP deleted the requirement in sections 1 and 2 of the form for the prospective shipper and operator, respectively, to provide a “facsimile number”. DBP submitted that the amendment was consequential to the proposed amendments to clause 29 of the terms and conditions to replace the provision of notices by facsimile with the provision of notices by electronic mail (see paragraph 2602 of this decision).
 - DBP amended section 6 of the form to correct errors in the terms and conditions for the P1 Service and B1 Service to clarify the terms and conditions that are applicable.
 - In the terms and conditions for the P1 Service, the P1 Service Access Request Form now references “the P1 Reference Service Terms and Conditions” (instead of “the Terms and Conditions of the T1 Shipper Contract”).
 - In the terms and conditions for the B1 Service, the B1 Service Access Request Form now references “the B1 Reference Service Terms and Conditions” (instead of “the Terms and Conditions of the T1 Shipper Contract”).
 - In the terms and conditions for the T1 Service, the T1 Service Access Request Form now references “the T1 Reference Service Terms and Conditions” (instead of “the Terms and Conditions of the T1 Shipper Contract”).
 - DBP amended section 8 of the form to correct errors in the terms and conditions for the P1 Service and B1 Service to clarify that: “In accordance with the Access Arrangement, this Access Request when executed by the Operator and Pipeline Trustee and attached to the [x] forms the Contract between the parties”, where [x]:
 - In the terms and conditions for the P1 Service is a reference to “P1 Reference Service Terms and Conditions”.
 - In the terms and conditions for the B1 Service is a reference to “B1 Reference Service Terms and Conditions”.

¹¹⁰³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 22.1.

¹¹⁰⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 23.1 to 23.4.

- In the terms and conditions for the T1 Service is a reference to “T1 Reference Service Terms and Conditions”.
2609. In the draft decision, the ERA considered that DBP’s proposed amendments to schedule 1 (Access Request Form) of the terms and conditions corrected and/or clarified the information within the schedule and were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2610. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend schedule 1 is consistent with the national gas objective.

Schedule 2 (Charges)

2611. Schedule 2 of the terms and conditions sets out a table of charges that includes the Excess Imbalance Charge, Hourly Peaking Charge, Overrun Charge and Unavailable Overrun Charge. DBP amended the table of charges as follows:
- Table row 1 – Excess Imbalance Charge – was amended to change the cross-reference to clause “9.5(c)” to “9.5(e)” and insert a reference to “clause 9.6(b)”.
 - Table row 2 – Hourly Peaking Charge – was amended to insert a reference to “clause 10.4(b)”.
2612. DBP submitted that:¹¹⁰⁵
- The amendment to row 1 was made to correct a cross-referencing error and to insert a reference to new clause 9.6(b), and its submissions on its proposal to insert new clause 9.6 were relevant (see paragraph 2392 of this decision).
 - The amendment to row 2 was made to insert a reference to new clause 10.4(b), and its submissions on its proposal to insert new clause 10.4 were relevant (see paragraph 2434 of this decision).
2613. DBP’s proposed amendments to schedule 2 of the terms and conditions to correct and/or insert new cross-referencing are consequential and subject to DBP’s proposed amendments to insert new clauses 9.6 and 10.4(b) into the terms and conditions, which are discussed at paragraphs 2391 and 2433, respectively. Consistent with the ERA’s final decision considerations of these new clauses, the amendments to schedule 2 are required.
2614. While Synergy’s submission in response to the issues paper did not address DBP’s proposed amendments to insert new clauses 9.6 or 10.4 into the terms and conditions to provide for an excess imbalance charge and outer hourly peaking limit, respectively, it did address the associated charges specified in schedule 2. Synergy submitted:

The Excess Imbalance Charge, Hourly Peaking Charge and Unavailable Overrun Charge in Schedule 2 of the P1 and B1 Reference Contracts are each determined by reference to a multiple of the T1 Reference Tariff.

Synergy submits that it would be more appropriate for these charges to be determined by reference to multiples of the P1 Tariff or B1 Tariff (as applicable), which apply a distance factor to the T1 Reference Tariff reflecting the nature of the service being

¹¹⁰⁵ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 24.1 and 24.2.

provided. Where Gas is being transported over relatively short distances, imposing Excess Imbalance Charges, Hourly Peaking Charges and Unavailable Overrun Charges on the basis of the T1 Reference Tariff produces an entirely disproportionate result and is onerous.

Amending the charges so that they are based on a multiple of the P1 Tariff or B1 Tariff would also align with the position under Clause 11.1(b)(i) which charges an Overrun Rate by reference to the P1 Tariff or B1 Tariff (as applicable).¹¹⁰⁶

2615. Schedule 2 of the terms and conditions for the P1 Service and B1 Service currently state that the Excess Imbalance Charge, Hourly Peaking Charge and Unavailable Overrun Charge are determined at a rate based on the T1 Reference Tariff (see Table 203 below), whereas the Overrun Charge is determined at the rate specified in clause 11.1(b), which states:

The Overrun Rate is the greater of:

- (i) 115% of the [x]¹¹⁰⁷ Tariff; and
- (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,

(Overrun Rate).

Table 203: DBP's terms and conditions for the P1 Service and B1 Service – schedule 2 (Charges)

Row	Description of charge	Rate at which charge is determined ¹¹⁰⁸
1	Excess Imbalance Charge (clause 9.5(e) and 9.6(b))	200% of the T1 Reference Tariff from time to time
2	Hourly Peaking Charge (clause 10.3(d) and 10.4(b))	200% of the T1 Reference Tariff from time to time
3	Overrun Charge (clause 11.1(a))	At the rate specified in clause 11.1(b)
4	Unavailable Overrun Charge (clause 11.6 and clause 17.8(e))	The greater of: (a) 250% of the T1 Reference Tariff from time to time; and (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

Source: DBP, *Reference Services Terms and Conditions – P1 Part Haul and B1 Back Haul, Schedule 2 (Charges)*, January 2020.

2616. In the draft decision, the ERA addressed Synergy's comments on the determination of the Excess Imbalance Charge, Hourly Peaking Charge and Unavailable Overrun Charge as set out in schedule 2 of the terms and conditions for the P1 Service and B1 Service as part of its considerations of additional amendments to clause 11.1 (see

¹¹⁰⁶ Synergy submission in response to issues paper, 31 March 2020, Annexure A, p. 5.

¹¹⁰⁷ Where [x] is a reference to the "T1 Tariff", "P1 Tariff" and "B1 Tariff" in the terms and conditions for the T1 Service, P1 Service and B1 Service, respectively.

¹¹⁰⁸ In the terms and conditions for the T1 Service, references to "T1 Reference Tariff" are references to "T1 Tariff" (as noted at 2211 of this decision).

paragraph 2652). As set out in these considerations, the draft decision required these charges to be amended in line with Synergy’s submission.

Schedule 6 (Curtailment Plan)

2617. Schedule 6 of the terms and conditions sets out the Curtailment Plan, comprising:
- Part A that contains a table listing the order of priority for “system curtailment” (columns 1 and 2) and “point specific curtailment” (columns 3 and 4).
 - Part B that sets out how the amount of capacity available, after allowing for items in Part A, must be apportioned.
2618. In its initial proposal, DBP proposed several amendments to part A and part B of the Curtailment Plan (schedule 6). These amendments are reproduced in Appendix 5 (page 686) of this decision.
2619. For the amendments to the order of priority for *system curtailments* in part A (columns 1 and 2), DBP submitted that:
- The amendments to row 3, corrected errors and improved drafting clarity. In particular, the inclusion of references to “P1 Service (including Aggregated P1 Service)” and “B1 Service (including Aggregated B1 Service)” corrected an oversight. As noted in submissions concerning the definitions of “T1 Service”, “P1 Service” and “B1 Service”, and clause 3.2 (Capacity Service), these three services are intended to be treated the same in a curtailment scenario. This is consistent with market expectations (as reflected in the negotiated contracts in place with shippers) that capacity under contracts for T1 Service, P1 Service and B1 Service will be treated the same in a curtailment, regardless of which of the three capacity services the capacity is for and regardless of whether such capacity was granted under a negotiated contract or reference service contract.¹¹⁰⁹
 - The amendments to row 4 to include the words “(including Aggregated P1 Service)” and “(including Aggregate B1 Service)” corrected an oversight and were consistent with the equal priority afforded to Aggregated P1 Service and Aggregated B1 Service vis-à-vis Aggregated T1 Service.¹¹¹⁰
 - The amendment to row 6 to include “Other Reserved Service” and delete “(other than Tp Service)” corrected an error. Prior to the amendment, “Other Reserved Service” was not addressed in the Curtailment Plan for a system curtailment (unlike the Curtailment Plan for a point specific curtailment). Given that Tp Service is not described in any row of the Curtailment Plan and is not addressed in the reference service contracts, it was not appropriate to carve it out from Other Reserved Service in row 6.¹¹¹¹
2620. For the amendments to the order of priority for *point specific curtailments* in part A (columns 3 and 4), DBP submitted that:
- The amendment to include an asterisk (*), which “denotes amounts that are net of such quantities delivered at other inlet points or outlet points (as the case requires) on the relevant Gas Day” to the table for point specific curtailments,

¹¹⁰⁹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 26.1 to 26.7.

¹¹¹⁰ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 26.8 to 26.11.

¹¹¹¹ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 26.12.

clarified that when determining the allocation in the relevant categories (that is, the categories with respect to which the asterisk has been added), amounts delivered within these categories at other points must be taken into account. That is, amounts delivered at other points are not included in the amount that attracts the relevant priority at the curtailed point in question.¹¹¹²

- The amendments to rows 1 and 2 to include the asterisk (*) clarified that, when determining the allocation in these categories at a particular point, amounts delivered within these categories at other points must be taken into account.¹¹¹³
- The amendments to row 3:¹¹¹⁴
- To include the asterisk (*) clarified that, when determining the allocation in the “Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)” category at a particular point, amounts delivered within this category at other points must be taken into account.
- To include references to the “P1 Service (excluding Aggregate P1 Service)” and “B1 Service (excluding Aggregate B1 Service)” corrected an oversight, similar to the oversight identified in row 3 for a system curtailment (columns 1 and 2).
- To change the word “including” to “excluding” corrected an error. It has always been intended (and understood by the market), and the reference service contracts otherwise make it clear (see clause 8.17(b)), that in a point specific curtailment “Aggregated Service” at a point has a lower priority than T1/P1/B1 Service with contracted capacity at that point.
- The amendments to row 4:¹¹¹⁵
- To include the asterisk (*) clarified that, when determining the allocation in the “Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)” category at a particular point, amounts delivered within this category at other points must be taken into account.
- To include the words “(excluding Aggregated P1 Service)” and “(excluding Aggregate B1 Service)” corrected a drafting error and was consistent with the equal priority afforded to Aggregated P1 Service and Aggregated B1 Service vis-à-vis Aggregated T1 Service.
- To change the word “including” to “excluding” corrected an error. It has always been intended (and understood by the market), and the reference service contracts otherwise make it clear (see clause 8.17(b)), that in a point specific curtailment “Aggregated Service” at a point has a lower priority than T1/P1/B1 Service with contracted capacity at that point.
- The amendment to row 6 to delete “(other than Tp Service)” was made to reflect the reference service contracts – the Tp Service is not addressed in the reference service contracts nor is it described in any row of the Curtailment

¹¹¹² DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraph 26.38.

¹¹¹³ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 26.14 and 26.15.

¹¹¹⁴ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 26.17 and 26.22.

¹¹¹⁵ DBP, 2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information, January 2020, paragraphs 26.26 to 26.33.

Plan hence it is not appropriate to carve it out from Other Reserved Service in row 6.¹¹¹⁶

- The amendment to insert a new row 7 to include the category “Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point” aligned with the negotiated contracts in place with shippers and was consistent with market expectations, and the reference service contracts otherwise make it clear, that in a point specific curtailment, “Aggregated Service” at a point has a lower priority than “T1/P1/B1 Service” with contracted capacity at that point. The omission of a separate row addressing the separate priority status of “Aggregated Service” in a point specific curtailment was a drafting error that needed correction.¹¹¹⁷
2621. For the amendments made to part B of the Curtailment Plan to insert the words “(including, in a relevant System Curtailment, Aggregated Service)” in parts (a)(ii) and (b)(ii), DBP submitted that the amendments clarified the existing drafting and did not change the priority order. In particular, the amendments articulated how clause 17.9(b)(vi) was to be applied in a curtailment.¹¹¹⁸
2622. The proposed amendments to schedule 6 of the terms and conditions correct and/or clarify the application of the Curtailment Plan and are consistent with the provisions of the terms and conditions. For these reasons, the ERA considered in the draft decision that the amendments to schedule 6 were consistent with the national gas objective – the amendments correct and/or clarify the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2623. DBP’s revised proposal retains the amendments initially proposed. There were no submissions addressing the amendments. Given this, the ERA is satisfied that DBP’s proposal to amend schedule 6 is consistent with the national gas objective.
2624. While CPM’s submission in response to the issues paper did not specifically address DBP’s proposed amendments to schedule 6, it did address the provisions of schedule 6 generally. CPM submitted:
- With the DBNGP receiving gas in multiple locations along its entire length there is a risk that P1 & B1 Shippers may be subject to curtailment unnecessarily and therefore unfairly. Take a situation where North West Shelf are shut down and such may potentially cause a Curtailment Notice, triggering the Curtailment Plan which may see a Shipper like CITIC curtailed at its sole used Outlet Point even though it has its suppliers deliver the gas it requires into the pipe at multiple inlet points along the pipe to meet its operational needs.¹¹¹⁹
2625. CPM further suggested that the terms and conditions should be amended to expressly state that the Curtailment Plan, as well as the general allocation of capacity by the operator, must take into consideration the specific location of the shipper’s outlet on the DBNGP and the available capacity in that section of the pipeline.

Schedule 6, and generally throughout the contract, the T&Cs, including the definition of Gas Transmission Capacity, should expressly state that the Curtailment Plan and

¹¹¹⁶ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraph 26.34.

¹¹¹⁷ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 26.35 to 26.37.

¹¹¹⁸ DBP, *2021-2025 Final Plan, Attachment 14.1: Proposed Changes to Reference Service Terms and Conditions – Further Information*, January 2020, paragraphs 26.40 and 26.42.

¹¹¹⁹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 18.

generally Capacity allocation by the Operator must take into consideration the available Capacity in the specific section of the DBNGP where the Shippers Outlet is located, as such may be vastly different to the available Capacity at the southern part of the DBNGP (where the Alcoa capacity is key) where T1 Capacity relates. Such should not restrict or impact on Alcoa's Priority Quantity or Alcoa's Exempt Delivery Entitlement under their T1 services and it will be acceptable for Alcoa's priority services to remain the priority for the sake of the T&C's.¹¹²⁰

2626. In the draft decision, the ERA considered that it was not clear that unnecessary curtailment was currently occurring as a result of a failure by the operator to take into account available capacity in the specific location of the shipper's outlet on the DBNGP and available capacity in that section of the pipeline. In the circumstances, and without evidence of unnecessary curtailment occurring, the ERA did not consider an amendment was required to address this matter.
2627. There were no submissions in response to the ERA's draft decision that addressed this matter further. Given this, the ERA is satisfied that no further amendments to schedule 6 are required.

Additional amendments to the terms and conditions

2628. In submissions in response to the issues paper, both CPM and Synergy submitted that additional amendments to the terms and conditions were required. Table 204 summarises the additional amendments proposed by CPM and Synergy. CPM's submissions were made following a review of the terms and conditions for the P1 Service and B1 Service (that is, CPM did not review the terms and conditions for the T1 Service as it is not a T1 Shipper).¹¹²¹ Where relevant, the ERA considered CPM's submissions in the context of the terms and conditions for reference services and, unless otherwise specified, the ERA's considerations apply equally to the terms and conditions for the P1 Service, B1 Service and T1 Service.

¹¹²⁰ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 18.

¹¹²¹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 6, paragraph 8.1.

Table 204: Additional proposed amendments to the terms and conditions for reference services submitted by interested parties

Clause	Proposed additional amendment
1 (Interpretation)	CPM submitted that the definition of “Gas Transmission Capacity” should be amended to take into consideration the location of outlet points on the DBNGP and good gas industry practice when determining shipper outlet curtailments.
4.3 (Option to renew Contract)	CPM submitted that this clause should be amended to change the period for renewal to a period that is chosen by the shipper, which does not exceed one year.
4.5 (Notice exercising an Option)	CPM submitted that this clause should be amended to change the notification period from 12 months to 6 months and to allow the operator to give express approval to exercise an option where no notice has been given.
11.1 (Overrun Charge)	CPM submitted that this clause should be amended so that the Overrun Charge for P1 Service and B1 Service is determined by reference to a distance factor. Synergy submitted that this clause should include a provision to avoid the shipper effectively bidding against itself for Spot Capacity.

Clause 1 (Interpretation – “Gas Transmission Capacity”)

2629. In its submission in response to the issues paper, CPM submitted that the existing term “Gas Transmission Capacity” in clause 1 of the terms and conditions should be amended to make the location of an outlet point a consideration of the operator when determining shipper outlet curtailments. Specifically:

With DBNGP northern looping expanding the Capacity in the northern section of the pipe and new production now delivering large amounts of gas further south, the northern part of the pipe has much more capacity to transport gas in that section without impacting T1 Shippers transporting gas to the southern end of the pipe.

[CPM request an amendment of] the definition to expressly bring Outlet location into the Operators deliberations and Good Gas Industry Practice when determining Shipper Outlet curtailments.¹¹²²

2630. CPM further submitted that “consideration should also be given to enhancing the definition of ‘T1 Capacity’ in [clause] 3.2(b)(iv)) to capture [the same] concept.”

2631. The term “Gas Transmission Capacity” means “the capacity of the DBNGP to transport Gas” and remains unchanged from the definition in the current (AA4) terms and conditions. It is also consistent with the Standard Shipper Contracts (as published on DBP’s website). CPM submitted the that the term should be amended as follows:¹¹²³

Gas Transmission Capacity means the capacity of the DBNGP to transport Gas, [taking into consideration the specific sections of the DBNGP and the location of a Shippers Outlet Point to which gas is to be transported.](#)

2632. The term “Gas Transmission Capacity” is used throughout the access arrangement and not just in relation to the curtailment regime. The ERA noted in the draft decision

¹¹²² CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 10.

¹¹²³ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, Appendix 2 (Attachment of marked-up amendments to DBP’s P1 Reference Service Terms and Conditions).

that it was not clear what the practical effect of CPM's proposed amendment would be. If a local definition were inserted for the purposes of the curtailment regime, this may address the matters raised by CPM, but as there was no evidence that curtailments are currently occurring unnecessarily without such an amendment, the ERA did not consider an amendment was necessary.

2633. There were no submissions in response to the ERA's draft decision that addressed this matter further. Given this, the ERA is satisfied that no further amendments to the term "Gas Transmission Capacity" are required.

Clause 4.3 (Option to renew Contract)

2634. In its submission in response to the issues paper, CPM submitted that clause 4.3 of the terms and conditions should be amended to allow the shipper to specify the period for renewal, subject to the period not exceeding one year. CPM submitted:

Why should Shippers have to contract capacity for periods it does not need capacity. Why does a pipeline owner seek to take cash from shippers through a period when they will not be using the contracted capacity? As an example – a shipper contracts for the supply of gas under a contract with a set term of 30 months. The shipper puts in place a P1 or B1 reference contract to cover the fixed 30 month supply, the Shipper subsequently extends to the term of supply by 3 months. The shipper should be able to extend the term of the P1 or B1 service for 3 months and NOT be forced to take capacity for 12 months because capacity will be payable when that shipper will not use that capacity.¹¹²⁴

2635. CPM requested that clause 4.3 be amended to conclude with the words "for a period chosen by the Shipper but not exceeding 1 year (**Option**)."
2636. Clause 4.3 of the terms and conditions provides for two, one-year options, to extend and remains unchanged from the current (AA4) terms and conditions.

4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, 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**).

2637. Clause 4.3 of the terms and conditions differs to the Standard Shipper Contracts (as published on DBP's website) in that the Standard Shipper Contracts provide for two, five-year options to extend. Contracts for other Australian covered pipelines (for example, contracts provided by APA and Jemena) do not contain any such extension options.¹¹²⁵
2638. Based on a comparison between the provisions of the terms and conditions for reference services, the Standard Shipper Contracts and contracts for other covered Australian pipelines, the existing provisions in the terms and conditions appear to be reasonable. However, given CPM's submission, the ERA considered in the draft decision that clauses 4.3 and 4.5 should be amended to provide for options to extend that are less than one year if required by the shipper, but should also be subject to a minimum period (for example, one month) to minimise administrative costs for the operator. Such an amendment would provide for shorter term options to extend that may otherwise be lost in circumstances where the shipper is unwilling or unable to pay for capacity that is not actually needed and is consistent with the national gas

¹¹²⁴ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 11.

¹¹²⁵ APA, *Standard Gas Transportation Agreements*, ([online](#)) [accessed June 2020] and Jemena, *Northern Gas Pipeline Gas Transportation Agreement*, ([online](#)) [accessed June 2020].

objective as it promotes efficient investment in, and efficient operation and use of, the DBNGP. The ERA set out the following amendments to clauses 4.3 and 4.5:

4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, 4.7 and 4.8, Shipper has two options (each an Option) to extend the Capacity End Date:

- (a) 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);~~ and
- (b) for a period of not less than 1 month and not greater than 1 year (Option Period), specified in the written notice given to the Operator in accordance with clause 4.5.

...

4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option for the Option Period. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

2639. Further to amending clauses 4.3 and 4.5 (as set out above), the ERA noted and set out the following consequential amendments to clauses 4.6 and 4.7:

- Clause 4.6:

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 the Option Period ~~a period of 1 year~~ and: ...

- Clause 4.7:

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 the Option Period ~~a period of another year~~ and: ...

2640. The draft decision set out the following required amendment:

Draft Decision Required Amendment 44

DBP must amend clauses 4.3 and 4.5 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service to provide for options to extend that are more than one month and less than one year. The required drafting for these amendments is set out at paragraph 1708 of [the] draft decision [paragraph 2638 of this final decision].

Consequential amendments must also be made to clauses 4.6 and 4.7 of the proposed terms and conditions for the T1 Service, P1 Service and B1 Service. The required drafting for these amendments is set out at paragraph 1709 of [the] draft decision [paragraph 2639 of this final decision].

2641. In its revised proposal, DBP rejected draft decision required amendment 44 and has maintained its initial proposal, which did not include any amendments to clause 4.3 (Option to renew Contract) and clause 4.5 (Notice exercising an Option) in the terms and conditions. DBP submitted that:

As noted in ... the Draft Decision, the existing provisions for Shipper's option – whereby Operator is compelled to provide the services for one year beyond the agreed term if the Shipper so elects – are reasonable, particularly when viewed in the context that contracts for other Australian covered pipelines do not contain any such extension options and the Standard Shipper Contract requires that options be exercised for 5 years at a time.

For DBP to compromise further by accommodating extensions that are shorter than 1 year becomes administratively burdensome.

Accordingly, the change proposed to allow extensions of term for less than 12 months is inconsistent with the national gas objective as it results in inefficiencies for the Operator.¹¹²⁶

2642. While DBP made the above submissions, it further stated that:

If the ERA disagrees with DBP that the current “as of right” extension period of 1 year strikes the right balance for the purpose of the national gas objective, then DBP submits that providing for anything shorter than 6 months is too administratively burdensome and not justified by the short term of the extension and, accordingly, is inconsistent with the national gas objective as it would not promote efficient investment in, nor efficient operation and use of, the DBNGP. Accordingly, if the ERA insists on changes to shorten the period of the forced extension, DBP asks that the drafting proposed by the ERA be amended as [set out in DBP’s submission].¹¹²⁷

2643. DBP set out its alternative revised proposed amendments to clauses 4.3(b), 4.5, 4.6, 4.7 and 4.8(b) as follows (shown in mark-up against the ERA’s draft decision required drafting):

4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, 4.7 and 4.8, Shipper has two options (each an **Option**) to extend the Capacity End Date:

- (a) in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (**Original Capacity**); and
- (b) for a period of not less than 6 months~~1-month~~ and not greater than 1 year (**Option Period**), specified in the written notice given to the Operator in accordance with clause 4.5.

...

4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option for the Option Period specified in that notice. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

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 the Option Period specified in that notice and: ...

4.7 Second Option Period

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 the Option Period specified in that notice and: ...

4.8 Put and call of Options

...

- (b) No later than 45 days after receipt of the Operator’s notice issued under clause 4.8(a) and notwithstanding clause 4.5, Shipper may give written notice to the Operator that it wishes to exercise its available Options for the Option

¹¹²⁶ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 23.

¹¹²⁷ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, pp. 23-24.

[Period specified in that notice](#). 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.

2644. There were no submissions from interested parties on DBP's revised proposal to reject draft decision required amendment 44, and/or DBP's alternative revised amendments to clauses 4.3(b), 4.5, 4.6, 4.7 and 4.8(b).
2645. While DBP expressed a preference to leave the provisions that provide for options to extend unamended from the current (AA4) provisions, DBP detailed alternative revised amendments that provide for options to extend that are more than six months and less than one year.
2646. The ERA considers that DBP's alternative amendments address the initial matter raised by CPM and the intent of draft decision required amendment 44, which is to provide for options to extend that are less than one year if required by the shipper, subject to a minimum period to minimise administrative costs for the operator (DBP has submitted that this minimum period is six months). For these reasons, the ERA considers that DBP's alternative revised amendments should be made to the terms and conditions.

Required Amendment 26

Clause 4 of the terms and conditions for the T1 Service, P1 Service and B1 Service must be amended to provide for options to extend that are more than six months and less than one year.

The required amended drafting is set out at paragraph 2643 of this final decision.

Clause 4.5 (Notice exercising an Option)

2647. In its submission in response to the issues paper, CPM submitted that clause 4.5 of the terms and conditions should be amended to change the notification period for exercising an option from 12 months to six months and provide for the operator's approval to exercise an option where no notice has been given before such time. CPM submitted:

With abundant spare capacity in the northern part of the DBNGP, and the Operator's other rights in the contract (see clause 4.8) there is no reasonable explanation of why a shipper should have to provide more than 6 months notice to exercise an Option on their P1 or B1 service, particularly where they may not have decided they need to extend the term of a gas supply agreement 12 months prior (as they may not need to recover inventory gas at that time (inventory gas is generally delivered in the months after [Gas Service Agreement] term has ended) and if it's not an issue to agree to exercise after the 6 month curfew, why then should a shipper lose that right, they "own" the pipe as they pay for it in their fees, notwithstanding it should still be the Operators choice but they should act reasonably in making that decision. No one wants to pay for capacity that they will not utilise and if they have to establish another contract for a short term then they may be forced to take term longer then their gas supply runs when they shouldn't have to, they pay their application fee they should be entitled to a term of their choice (being reasonable to the Operators capacity management position).¹¹²⁸

2648. Clause 4.5 of the terms and conditions is reproduced below and remains unchanged from the current (AA4) terms and conditions.

¹¹²⁸ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 12.

4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

2649. Clause 4.5 of the terms and conditions differs to the Standard Shipper Contracts (as published on DBP's website) in that the Shipper Contracts require written notice to exercise an option 30 months before the capacity end date. Based on a comparison between the provisions of the terms and conditions for reference services and the Standard Shipper Contracts, the provisions in the terms and conditions to provide at least 12 months' notice appear to be reasonable.
2650. CPM submitted that clause 4.5 should be amended to provide for a shorter notification period of six months and to clarify the position in circumstances where notification is not provided within the timeframe. While such amendments would provide additional time for shippers to assess their operational requirements and decide on whether to exercise their options to extend their contracts, the amendments may affect the operator's ability to efficiently manage all its contracts. Given that the option to renew is an *as of right* option, that is, DBP must provide the capacity, the ERA considered, in the draft decision, that it was reasonable for DBP to be given at least 12 months' notice by a shipper who wishes to exercise its option to renew.
2651. There were no submissions in response to the ERA's draft decision that addressed this matter further. Given this, the ERA is satisfied that no further amendments to clause 4.5 are required.

Clause 11.1 (Overrun Charge)

2652. In their submissions in response to the issues paper, CPM and Synergy each submitted that clause 11.1 of the terms and conditions, which sets out provisions for the Overrun Charge, should be amended.
2653. CPM submitted that the Overrun Charge for part haul shippers needed to be determined by reference to a "distance factor" so that these shippers were not discriminated against.

Part haul Shippers are being discriminated against in respect to paying full haul shipper penalties for part haul overruns resulting in an unfair calculation of Overrun Charges for what is supposedly designed to be "behaviour modifying provisions" (as stated by AGIG) to commercially incentivise Shippers not to overrun.

With Producers injecting large volumes of gas up and down the DBNGP in multiple locations and inference today that the north part of the pipe will flow bi-directionally there is an apparent abundance of spare un-used capacity on the northern section of the DBNGP which results in zero impact to full haul capacity availability in the southern part of the pipe. Add to this the fact that there is no economically viable part haul daily spot capacity market, the Spot Capacity market is being utilised by full haulers (requiring 11.1(b)(ii) to apply to part haul over runs) the Overrun Charges payable by part haulers go materially beyond a behaviour modifier, they become an unfair penalty applying a 3000% + penalty on part haul Shippers compared to a 15% penalty to full haul Shippers and such is considered grossly unfair and inconsistent with ERA's stated principles for allocating costs and the National Gas Objective.¹¹²⁹

¹¹²⁹ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020, p. 16.

2654. In support of its submission, CPM provided an external memorandum prepared by Allen & Overy on the application of a distance factor to P1 and B1 Overrun Charges that advised:

The purpose of overrun charges is obvious – to economically incentivise parties to limit their overrun, to assist in the consistent operation of the pipeline. This purpose would be achieved by a percentage mark-up on the shipper's tariff (and increasing that percentage where the shipper has been notified that overrun gas is not available). This is the approach for the T1 service. So arguably a fair basis for the P1 and B1 Overrun Rate and Unavailable Overrun Rate is the greater of:

- **[115 / 250] %** of the **[P1 / B1] Tariff** from time to time; and
- the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid, **multiplied by the Distance Factor**.

The current formulation goes well beyond this fair allocation. By referencing the full-haul tariff (or full-haul spot market) an extraordinary mark-up to the P1 or B1 tariff is produced. This is applied even to the 'innocent' use of overrun (that is, where there is no notice that overrun is not available). This amounts to a significant (and discriminatory) penalty against P1 and B1 shippers.

A significant penalty limits any flexibility of shippers in pipeline use, which in turn will limit flexibility / tolerance in their operations and inflict a disproportionate financial burden on them. This financial and operational burden is inconsistent with the goal of providing cost-effective and reliable supply of gas to consumers (and so is contrary to the National Gas Objective).¹¹³⁰

2655. Synergy submitted that:

Under clause 11.1(b), the Overrun Rate is the greater of:

- the 115% of the T1/P1/B1 Tariff (as applicable); and
- the highest price bid for Spot Capacity which was accepted for that Gas Day, other than where the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

Synergy submits that where the Shipper has made the highest price bid for Spot Capacity, Clause 11.1(b)(ii) should refer to the highest price bona fide bid by a party other than the Shipper to avoid the Shipper effectively bidding against itself.¹¹³¹

2656. Clause 11 of the current (AA4) terms and conditions provide for an Overrun Charge (clause 11.1) and an Unavailable Overrun Charge (clause 11.6).

- Overrun Charge
 - The Overrun Charge is payable for each gigajoule of overrun gas received by the shipper on a gas day and is calculated by applying the Overrun Rate to the total of overrun gas received.
 - The Overrun Rate is the greater of: (i) 115 per cent of the T1, P1 or B1 Tariff (as the case may be); and (ii) the highest price bid for spot capacity which was accepted for that gas day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.¹¹³²

¹¹³⁰ CITIC Pacific Mining Management Pty Ltd submission in response to issues paper, 31 March 2020 – *Memorandum from Allen & Overy, 'Application of Distance Factor to DBP P1 and B1 Overrun Charges', 9 March 2020.*

¹¹³¹ Synergy submission in response to issues paper, 31 March 2020, Annexure A, p. 4.

¹¹³² The T1 Tariff is used to determine the Overrun Rate in the terms and conditions for the T1 Service. Likewise, the P1 Tariff and B1 Tariff are used to determine the Overrun Rate in the terms and conditions for the P1 Service and B1 Service, respectively.

- Unavailable Overrun Charge
 - The Unavailable Overrun Charge is applicable in instances where the operator has given notice (Unavailability Notice) to the shipper that overrun gas is unavailable or only available to a limited extent and the shipper does not comply with the notice.
 - The Unavailable Overrun Charge is payable, in addition to the Overrun Charge, for each gigajoule of overrun gas taken by the shipper in excess of the quantity specified in the Unavailability Notice and is calculated by applying the Unavailable Overrun Rate to each gigajoule of overrun gas taken.
 - The Unavailable Overrun Rate is specified in schedule 2 of the terms and conditions as the greater of: (a) 250 per cent of the T1 Reference Tariff from time to time; and (b) the highest price bid for spot capacity which was accepted for that gas day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

2657. As noted in the Allen & Overy memorandum, the charges for overruns in the terms and conditions for part haul and back haul reference services did historically take into consideration a distance factor. Specifically, in the ERA approved access arrangement for 2005 to 2010 (that is, the second access arrangement period or AA2) the terms and conditions for the P1 Service and B1 Service contained the following provisions:¹¹³³

In the terms and conditions for the P1 Service:

- Clause 1 (Interpretation)

Distance Factor means for each Outlet Point at which Shipper has Part Haul Contracted Capacity the distance in kilometres between the Inlet Point and the Outlet Point divided by 1399 kilometres.

- Schedule 2 (Charges)

Unavailable Overrun Charge [being] the greater of:

- (a) 250% of the P1 Reference Tariff from time to time; and
- (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid, multiplied by the Distance Factor.

In the terms and conditions for the B1 Service:

- Clause 1 (Interpretation)

Distance Factor means for each Outlet Point at which Shipper has Back Haul Contracted Capacity the distance in kilometres between the Inlet Point and the Outlet Point divided by 1399 kilometres.

- Schedule 2 (Charges)

Unavailable Overrun Charge [being] the greater of:

- (a) 250% of the B1 Reference Tariff from time to time; and
- (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid, multiplied by the Distance Factor.

¹¹³³ ERA, *Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Appendix 1 Part A, Part B and Part C Terms and Conditions For Reference Services*, 15 December 2005.

2658. DBP's proposed revisions to the access arrangement for the third access arrangement period (AA3, 2011 to 2015) included significant changes to the reference services. For AA3, DBP proposed to replace the three existing reference services (the full haul T1 Service, part haul P1 Service and back haul B1 Service) with one new reference service – the Full Haul R1 Service. The proposed terms and conditions for the R1 Service were based on the terms and conditions for the T1 Service, amended as required to provide for the new reference service.
2659. The ERA did not approve DBP's proposed changes to the reference services for AA3 and required the existing (AA2) reference services to be reinstated. Following its final decision for AA3, which refused to approve DBP's proposed revised access arrangement, the ERA published its own access arrangement, including terms and conditions for the reinstated reference services. However, in constructing the terms and conditions for the P1 Service and B1 Service, the required changes to the overrun charges to account for the nature of the services, being part haul and back haul, respectively, were overlooked. That is, instead of the respective provisions being based on the T1 Service and amended as required, the provisions of the T1 Service were simply replicated (with no further amendment) for the P1 Service and B1 Service. Additionally, the schedules to the terms and conditions for the P1 and B1 Services were not published (that is, schedules were only published in the terms and conditions for the T1 Service).¹¹³⁴
2660. For the above reasons, the ERA considered in the draft decision that its process for proposing and giving effect to its own revised access arrangement for AA3 resulted in the omission of required changes that applied a distance factor when determining the charges for overruns from the terms and conditions for the P1 Service and B1 Service. Notwithstanding this, the ERA considered that the submission made by CPM, including the information provided by Allen & Overy, clearly demonstrated that the historical AA2 provisions (as outlined at paragraph 2657) were consistent with the national gas objective and should apply to the terms and conditions for the P1 Service and B1 Service.
2661. The draft decision set out the following required amendment:

Draft Decision Required Amendment 45

DBP must amend clause 1 and schedule 2 (row 4) of the proposed terms and conditions for the P1 Service and B1 Service to reinstate the provisions that applied in the second access arrangement period (AA2) for determining the Unavailable Overrun Charge. The required drafting for these provisions is set out at paragraph 1719 of [the] draft decision [paragraph 2657 of this final decision].

DBP must also amend clause 11.1(b)(ii) of the proposed terms and conditions for the P1 Service and B1 Service to add the words "multiplied by the Distance Factor" at the end of the clause.

2662. In reviewing its decisions for AA2 and AA3, the ERA further considered in the draft decision that the rates at which the Excess Imbalance Charge and Hourly Peaking Charge are determined were also omissions from the AA3 process that need to be reinstated. In schedule 2 of the ERA's terms and conditions for the P1 Service and B1 Service for AA2 the charges are determined by reference to the respective tariff. That is:¹¹³⁵

¹¹³⁴ ERA, *Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Appendix 1 – Terms and Conditions for reference services*, 22 December 2011.

¹¹³⁵ ERA, *Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Appendix 1 Part A, Part B and Part C Terms and Conditions For Reference Services*, 15 December 2005.

In the terms and conditions for the P1 Service:

Excess Imbalance Charge [being] 200% of the P1 Reference Tariff from time to time.

Hourly Peaking Charge [being] 200% of the P1 Reference Tariff from time to time.

In the terms and conditions for the B1 Service:

Excess Imbalance Charge [being] 200% of the B1 Reference Tariff from time to time.

Hourly Peaking Charge [being] 200% of the B1 Reference Tariff from time to time.

2663. The draft decision set out the following required amendment:

Draft Decision Required Amendment 46

DBP must amend rows 1 and 2 in schedule 2 of the proposed terms and conditions for the P1 Service and B1 Service to reinstate the provisions that applied in the second access arrangement period (AA2) for determining the Excess Imbalance Charge and Hourly Peaking Charge, respectively.

The required drafting for these provisions is set out in paragraph 1723 of [the] draft decision [paragraph 2662 of this final decision].

2664. Draft decision required amendments 45 and 46 both required the reinstatement of provisions from the AA2 terms and conditions that include references to the terms “P1 Reference Tariff” and “B1 Reference Tariff”, which must consequentially be defined in the respective terms and conditions. Based on DBP’s proposed amendment to the term “T1 Tariff” (see paragraph 2211 of this decision), which is no longer required, the ERA set out the following definitions:

P1 Reference Tariff means the reference tariff for P1 Service set out in clause 3.4 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the P1 Reference Tariff shall be re-set to reflect any replacement reference tariff for P1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

B1 Reference Tariff means the reference tariff for B1 Service set out in clause 3.5 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the B1 Reference Tariff shall be re-set to reflect any replacement reference tariff for B1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

2665. As there is currently no definition of “Access Arrangement Period” in the respective terms and conditions, the ERA also set out the following additional definition to be included in each of the terms and conditions:

Access Arrangement Period has the meaning given in the Rules.

2666. The draft decision set out the following required amendment:

Draft Decision Required Amendment 47

DBP must include definitions for the terms “P1 Reference Tariff” and “B1 Reference Tariff” in the terms and conditions for the P1 Service and B1 Service, respectively. A definition for the term “Access Arrangement Period” must also be included in both the terms and conditions for the P1 Service and B1 Service.

The required meanings for these terms are set out at paragraphs 1724 and 1725 of [the] draft decision [paragraphs 2664 and 2665 of this final decision].

2667. Notwithstanding the historical omissions outlined above, the ERA considered in the draft decision that, to be consistent with the national gas objective, each of the charges set out in schedule 2 of the terms and conditions must reflect the nature of the reference service to which the terms and conditions apply. That is, the terms and

conditions for the P1 Service and B1 Service must reflect the nature of the part haul service and back haul service, respectively, with charges allocated on a dollar per kilometre basis (as opposed to a charge that reflects the full haul service). References to the “P1 Tariff” and “B1 Tariff” (instead of “T1 Reference Tariff”) in schedule 2 of the terms and conditions for the P1 Service and B1 Service, respectively, ensures this dollar per kilometre allocation. The ERA considered that provided the identified omissions were corrected, no further amendments were required.

2668. Synergy’s submission further suggested that clause 11.1(b)(ii) should include a provision to avoid the shipper bidding against itself for spot capacity. In the draft decision, the ERA considered that this was not required because the calculation under clause 11.1(b) was tied to the highest spot price and was neutral on who bid that price.

DBP’s response to draft decision required amendments 45, 46 and 47

2669. In its revised proposal, DBP rejected draft decision required amendments 45, 46 and 47 and maintained its initial proposal. That is, in the terms and conditions for the P1 Service and B1 Service:

- The Unavailable Overrun Charge in schedule 2 (row 4) is *not* determined by reference to the “P1 Reference Tariff” and “B1 Reference Tariff”, in the terms and conditions for the P1 Service and B1 Service respectively, or the “Distance Factor”. Rather the Unavailable Overrun Charge is:

The greater of:

- (a) 250% of the T1 Reference Tariff from time to time; and
 - (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.
- The Excess Imbalance Charge and Hourly Peaking Charge in schedule 2 (rows 1 and 2) are *not* determined by reference to the “P1 Reference Tariff” and “B1 Reference Tariff” in the terms and conditions for the P1 Service and B1 Service, respectively. Rather each of the charges in the terms and conditions are:

200% of the T1 Reference tariff from time to time.

- Given how the Unavailable Overrun, Excess Imbalance and Hourly Peaking Charges are determined (as detailed above), there is no defined term “Distance Factor” or “P1 Reference Tariff” and “B1 Reference Tariff” in the terms and conditions for the P1 Service and B1 Service, respectively.
- The Overrun Charge in schedule 2 (row 3) is determined at the rate specified in clause 11.1(b), without applying a distance factor. That is, clause 11.1(b) reads as follows, where [x] is a reference to “P1” and “B1” in the terms and conditions for the P1 Service and B1 Service, respectively:

The Overrun Rate is the greater of:

- (i) 115% of the [x] Tariff; and
- (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

2670. DBP’s reasoning for rejecting the ERA’s draft decision requirements and maintaining its initial proposal is set out in Attachment 14.1A of DBP’s revised proposal and covers:¹¹³⁶

- The application of the “Distance Factor” to calculate the Overrun Charge and Unavailable Overrun Charge in the terms and conditions for the P1 and B1 Services, which is discussed at paragraph 2674 of this decision.
- The use of the ‘T1 Reference Tariff’ to calculate the charges in schedule 2 of the terms and conditions for the T1, P1 and B1 Services, which is discussed at paragraph 2686 of this decision.

Submissions in response to draft decision required amendments 45, 46 and 47

2671. CPM’s submission in response to the ERA’s draft decision and DBP’s revised proposal addresses draft decision required amendments 45, 46 and 47. CPM submitted:

[DBP] have ignored the facts in the Draft Decision on the missing words in clause 11.1 and Schedule 2, and how such came about. Instead [DBP] have chosen an aggressive position that purports to support non-discriminative behaviour when in fact leaving the words out does the opposite.... The T&Cs have always contemplated what happens when an over run occurs, as is in the normal operation of a pipeline. For many years [DBP] comfortably collected charges that applied a 15% premium on the price payable per GJ (from full haul and part haul customers alike with no discrimination) for overruns, it worked as intended, to be a behaviour modifier and an extra revenue source. CPM submits that both full haulers and part haulers have the same T&C’s in their contracts, each suffers a penalty for over running and so they should. The discrimination occurs where full haulers are treated differently to part hauler in the outcomes of over running, one party continues to pay a 15% premium on the tariff they normally pay and the other must pay around a 1000% premium (but only if Spot has been bid otherwise its 15% premium). With abundant spare capacity in the north and for full haul capacity to the south on the DBNGP this “penalty” is a gross over charge.

... CPM submits that only Spot transport services are viable for full haulers which is another discrimination. Overrunning remains part of the day to day running of a pipeline but part haulers are grossly discriminated against. [DBP’s] many arguments sound convincing, but when placed against the back drop of an error in drafting, inadvertently occurring years in the past, the arguments become completely flawed and could be considered somewhat mischievous. CPM submits that the [ERA’s] Draft Decision is the right and fair decision and should be upheld.

...

... CPM further submit that [DBP] ... is expected to be fully aware of where gas flows are going in the DBNGP and with the increasing volumes being drawn from the DBNGP in the north and decreasing volumes being delivered by [North West Shelf], together with large volume producer deliveries now coming into all parts of the DBNGP (top, bottom and multiple scattered through the middle), [DBP] are able to see the opportunity this creates as full haulers capacity is diminishing and shippers are rightly relinquishing capacity they no longer need or can replace with bespoke capacity to match their supply contracts. [DBP] need to look for opportunities for alternative services ... That opportunity perhaps may not be regulated.... CPM submits that should the [ERA] revise its Required Amendments 45, 46 and 47 CPM respectfully request the [ERA] consider regulation of the Pilbara Service and any Pilbara Spot Service and other services offered, such that the pricing for such services be delivered on an adjusted full haul tariff multiplied by the distance factor so that pricing links specifically to the distance gas must travel in the DBNGP thus aligning new Pilbara designed services

¹¹³⁶ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 6-15.

with all other part haul and back haul services where distance factors drive tariff outcomes.¹¹³⁷

ERA considerations

2672. The ERA has considered DBP's revised proposal and the submissions made by CPM in response to the ERA's draft decision and DBP's revised proposal below, under the subheadings:

- Application of the "Distance Factor" (at paragraph 2674)
- Use of the 'T1 Reference Tariff' (at paragraph 2686).

2673. In response to CPM's submission on the "regulation of the Pilbara Service and any Pilbara Spot Service and other services offered", the ERA has separately considered which pipeline services are to be specified in the access arrangement as reference services as part of its considerations of pipeline and reference services (see paragraph 94). Consistent with these considerations, the ERA's final decision is that the Pilbara Service should not be specified as a reference service for AA5.

"One pipeline, one charge" – application of the "Distance Factor"

2674. DBP rejected the ERA's draft decision required amendment to apply a distance factor to calculate the Overrun Charge and Unavailable Overrun Charge in the terms and conditions for the P1 and B1 Services, with "Distance Factor" meaning, where "[x]" is a reference to "Part Haul" and "Back Haul" in the terms and conditions for the P1 Service and B1 Service, respectively:

Distance Factor means for each Outlet Point at which Shipper has [x] Contracted Capacity the distance in kilometres between the Inlet Point and the Outlet Point divided by 1399 kilometres.

2675. DBP submitted that:

The application of the Distance Factor to reduce the Spot Price for the purpose of calculating the Overrun Charge and Unavailable Overrun Charge is contrary to the efficient investment in, and 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.

For the reasons [outlined], it does not make sense to say that Overrun Gas taken under a contract for P1 Service or B1 Service is different from, or has a different effect from, and thus should be subject to a different and lower charge to, Overrun Gas taken under a contract for T1 Service. The Overrun regime is part of a holistic pipeline management tool which exists to benefit shippers as a whole, without preferential treatment to any particular category of shipper. The [ERA's] proposed change appears to benefit shippers who only have contracts for P1 Service and/or B1 Service (and no other services) to the potential detriment of all other shippers using the DBNGP (in particular, discriminating against shippers who have contracts for T1 Service).¹¹³⁸

2676. DBP further submitted that:

- There was "one shared pipeline, one overrun calculation and one charge."¹¹³⁹

¹¹³⁷ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, pp. 3-4.

¹¹³⁸ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 8.

¹¹³⁹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 8-10.

- The ERA's required application of the Distance Factor to calculate the Overrun Charge and Unavailable Overrun Charge in the terms and conditions for the P1 and B1 Services appears to presume that overrun gas for the T1, P1 and B1 Services are separately calculated. This is not the case.
- Overrun gas was gas that was taken in excess of contracted capacity across all of a shipper's capacity services. That is, in the terms and conditions for each of the reference services:¹¹⁴⁰

Overrun Gas means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including T1 Service, P1 Service and B1 Service and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

- Clause 11.7(e) was consistent with the concept of 'aggregation' across all of a shipper's capacity services, whereby overrun rights and remedies apply in aggregate too. That is, clause 11.7(e) in the terms and conditions for each of the reference services states:

11.7 Saving and damages

- (e) The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances.
- The concept of "one overrun calculation, one charge" was requested and negotiated by shippers in 2004 and formed an important element of the contractual matrix governing shared access to the capacity of the pipeline.
- The definition of "Overrun Gas" did not distinguish between an excess of gas above contracted capacity for T1, P1 or B1 Services, rather overrun gas was the same irrespective of what contract it was calculated under (that is, it was gas in excess of the aggregated contracted capacity across all contracts held by the shipper). Given this, the definition was generous with respect to each shipper's aggregate service because it prevented gas being classified as overrun up to the quantity aggregated across all contracts, plus spot capacity, regardless of whether the shipper could fully exercise those aggregate service rights.
- The approach of calculating relevant amounts and charges across all of a shipper's contracts in aggregate was applied under clauses 9 (Imbalances), 10 (Peaking) and 11 (Overrun) of the terms and conditions.
- Overrun was taking spot capacity, which would otherwise be available to other shippers:¹¹⁴¹
 - When a shipper takes overrun gas, the shipper is taking gas above its contacted capacity. In practice this is the same as taking spot capacity, except that overrun gas is taken by the shipper without 'asking' and in priority to other shippers bidding for spot capacity.

¹¹⁴⁰ The definition of "Overrun Gas" as amended by DBP in its initial proposal (see paragraph 2155 of this decision).

¹¹⁴¹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 10.

- A shipper should not receive a discount on the bid price for spot capacity when it takes overrun gas, when it does not request and bid for spot capacity.
 - The application of a discount (by applying the Distance Factor to calculate the Overrun Charge and Unavailable Overrun Charge) would unfairly favour a limited category of shippers (that is, shippers with contracts for P1 Service and/or B1 Service only) above all other shippers using the pipeline, and in particular shippers with contracts for T1 Service, or shippers who bid for spot capacity rather than taking overrun gas.
 - Taking overrun gas, instead of contracting for appropriate quantities, was detrimental to the pipeline and other users:¹¹⁴²
 - The Overrun Charge and Unavailable Overrun Charge are not intended to serve as a charge for a ‘service’ offered by the operator – overrun gas is not available ‘as of right’. In the terms and conditions, clauses 5.1 and 5.2 limit a shipper’s rights to the amount of the shipper’s contracted capacity, and clause 8.9(f) limits scheduled capacity services to the shipper’s total contracted capacity.
 - Where a shipper takes overrun gas, it is taking gas in excess of its expressed contractual rights. The charges applying to overrun gas are there to incentivise shippers to contract appropriately for the amount of capacity they require.
2677. Having considered DBP’s response to the draft decision, the ERA considers that aspects of the overrun penalty regime provide support for DBP’s position that a contract for a P1 Service or B1 Service should not be treated differently from a contract for a T1 Service for the purpose of overrun gas charges.
2678. As submitted by DBP, overrun gas is gas that is taken in excess of contracted capacity across all of a shipper’s capacity services. The definition (and calculation) of “overrun gas” does not distinguish between an excess of gas above contracted capacity for a T1, P1 or B1 Service, rather overrun gas is the same irrespective of the contract that it is calculated under (that is, it is gas in excess of the aggregated contracted capacity across all contracts held by the shipper). Furthermore, pipeline capacity to transport overrun gas is capacity that would otherwise be available as spot capacity, with the price for spot capacity determined by the market for the given gas day (that is, spot capacity is made available to shippers through a day-ahead auction).
2679. The ERA sought information from DBP to confirm the extent of overrun and other charges for AA4 and the use of spot capacity for the period 1 July 2019 to 30 June 2020.¹¹⁴³ The value of all charges invoiced by DBP to shippers during AA4 was \$7.70 million. For the period 1 July 2019 to 30 June 2020, spot capacity was bid for and allocated to shippers with successful bids (as determined by the Spot Capacity Rules) on each gas day where spot capacity was available. The prices paid for spot capacity during this period were between \$1.20 (being the minimum spot price) and \$1.25.
2680. Apart from CPM’s submission, the ERA did not receive other submissions that raised concerns about the overrun penalty regime and the way overrun charges are calculated. The limited number of submissions addressing this matter and the total

¹¹⁴² DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 10-11.

¹¹⁴³ DBP, Response to information request ERA35 and ERA36, 7 January 2021.

value of overrun charges paid by shippers during AA4 suggest that the charging regime has been effective in its operation. That is, the overall purpose of the regime is to discourage the use of overrun and, in instances where overrun is used, to charge and further discourage those shippers who overrun. However, the ERA acknowledges that, due to the way in which the overrun charges are currently calculated under the terms and conditions for the P1 Service and B1 Service (with no distance factor applied), shippers with only part and back haul contracts pay disproportionately more in overrun charges compared to shippers with full haul contracts.

2681. The current calculation of the Overrun Charge (and Unavailable Overrun Charge) takes into account the highest accepted bid price for spot capacity, without the use of a distance factor to reflect actual haulage distances (that is part and back haul distances). As submitted by DBP, “overrun was taking spot capacity, which would otherwise be available to other shippers”, with the price for spot capacity determined by the market (via a day-ahead auction) for the given gas day.¹¹⁴⁴ The price for overrun gas should therefore reflect this opportunity cost.
2682. The ERA considers that, given the bidding and allocation process for spot capacity, overrun gas should be charged at the highest accepted bid price for spot capacity for the given gas day regardless of the overrunning shipper’s contract for services. However, in instances where spot capacity was not bid for and allocated to shippers, the cost for overrun gas need not reflect the spot capacity price. Rather, the capacity used to transport overrun gas, that was not allocated via the spot capacity market and would otherwise go unused, should be charged at a price that reflects the shipper’s contract for services and minimum spot price, if one has been set by the operator. The existing way in which the Overrun Charge is calculated applies this approach by calculating the Overrun Rate as being the greater of 115 per cent of the T1, P1 or B1 Tariff (depending on the shipper’s contract) *and* the highest price bid for spot capacity which was accepted for the given gas day.¹¹⁴⁵ The 115 per cent mark-up (penalty rate) is consistent with the minimum spot price that has been set by DBP, as detailed in the Spot Market Rules and clause 3.6(b)(iv) of the access arrangement.
2683. In its submission in response to the draft decision, CPM suggested that spot capacity was only a viable option for full-haul shippers.¹¹⁴⁶ The Spot Market Rules state that any shipper wanting to bid for spot capacity must have a gas transportation agreement that is, or contains, a spot capacity service.¹¹⁴⁷ Each of the reference service contracts (offered as part of the access arrangement for the DBNGP) and standard shipper contracts for full, part and back haul services contain provisions for a spot capacity service. The Spot Market Rules further state that spot capacity is granted to shippers on a non-discriminatory basis. On this basis, provided shippers have an eligible gas transportation agreement, spot capacity is available to shippers who want to bid for spot capacity, but will only be provided to those shippers with an accepted bid. In any case, if spot capacity is not a viable option for some shippers based on their operational circumstances these shippers can seek a non-reference service or contract for additional firm capacity to meet their operational needs and mitigate the need for overrun gas or spot capacity. Based on demand forecasts for

¹¹⁴⁴ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 10.

¹¹⁴⁵ Terms and conditions for T1, P1 and B1 Services, clause 11.1(b).

¹¹⁴⁶ CITIC Pacific Mining Management Pty Ltd submission in response to draft decision, 4 November 2020, p. 4, paragraph 5.5.

¹¹⁴⁷ DBP, *Governing Rules for the market for the Spot Capacity* ([online](#)) (accessed January 2021).

AA5 (see paragraph 297 of this decision) there will be spare capacity available to all shippers during AA5 for this to occur.

2684. Given the above considerations, the ERA considers that draft decision required amendment 45 should be withdrawn and DBP's revised proposal, to maintain the way in which overrun charges are calculated, implemented. That is, in schedule 2 of the terms and conditions for the P1 and B1 Services, the Overrun Charge and Unavailable Overrun Charge are calculated without the application of a distance factor as follows:

Overrun Charge

At the rate specified in clause 11.1(b).

[Where clause 11.1(b) states:]

The Overrun Rate is the greater of:

- (i) 115% of the [P1/B1]¹¹⁴⁸ Tariff; and
- (ii) the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid,

(**Overrun Rate**).

Unavailable Overrun Charge

The greater of:

- (a) 250% of the T1 Reference Tariff from time to time; and
- (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

2685. The ERA has separately considered the use of the T1 Reference Tariff as the basis to calculate the Unavailable Overrun Charge and other charges (that is, the Excess Imbalance Charge and Hourly Peaking Charge) in schedule 2 of the terms and conditions below.

Use of the 'T1 Reference Tariff'

2686. DBP rejected the ERA's draft decision required amendment to use the P1 and B1 Reference Tariffs to calculate the other charges in schedule 2 of the terms and conditions for the P1 and B1 Services, respectively.¹¹⁴⁹ DBP submitted that the appropriate measure to calculate each of the charges in schedule 2 was the T1 Reference Tariff and not the P1/B1 Reference Tariff. However, there was one exception to this, which was footnoted as follows:

Note that there was (and still is) one exception to [using the T1 Reference Tariff], which is contained in clause 11.1(b)(i) of the Reference Contracts for B1 Service and P1 Service. If a shipper:

- 1. only has a contract for B1 Service (and/or P1 Service); and
- 2. there is no bid for spot capacity in excess of 115% of the B1 Tariff / P1 Tariff,

it was recognised, in that circumstance, because:

¹¹⁴⁸ "P1" in the terms and conditions for the P1 Service, and "B1" in the terms and conditions for the B1 Service.

¹¹⁴⁹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 12-15.

- A. the shipper did not hold a contract for T1 Service (and did not have the benefit of T1 Aggregated Service);
- B. there wasn't any or significant patent demand for spot capacity (because of the condition in point 2 above); and
- C. the taking of Overrun Gas does not interfere with another shipper's entitlement (as otherwise it would be charged at the Unavailable Overrun rate in Schedule 2),

the Overrun Gas, which is not Unavailable Overrun, would be charged at 115% of the lower B1 Tariff (or P1 Tariff as the case may be).¹¹⁵⁰

2687. DBP further submitted that for the reasons outlined in its submission:

... it does not make sense to say that Overrun, Peaking or Imbalance under a contract for P1 Service or a B1 Service is different from, or has a different effect from, and thus should be subject to a different and lower charge to, Overrun, Peaking or Imbalance under a contract for T1 Service. ... the Overrun, Peaking and Imbalance regimes are part of a holistic pipeline management tool which exists to benefit shippers as a whole, without preferential treatment to any particular category of shipper. The proposed change appears to benefit shippers who only have contracts for P1 Service and/or B1 Service (and no other services) to the potential detriment of all other shippers (in particular, discriminating against shippers who have contracts for T1 Service).¹¹⁵¹

2688. Like the reasoning concerning the use of a distance factor, DBP submitted that there was "one shared pipeline, one calculation and one charge".¹¹⁵²

- The ERA's required change to calculating the Excess Imbalance, Hourly Peaking and Unavailable Overrun Charges in the terms and conditions for the P1 and B1 Services appeared to presume that the imbalance limits and peaking limits for the T1, P1 and B1 Services were separately calculated. This was not the case.
- Each of the limits to which the charges apply were calculated across all of a shipper's capacity services. The concept of "one imbalance/peaking/overrun calculation, one charge" was requested and negotiated by shippers in 2004 and formed an important element of the contractual matrix governing shared access to the capacity of the pipeline.

2689. DBP further submitted that the charges in schedule 2 were not levied in respect of the B1 and P1 Services taken by the shipper:¹¹⁵³

- The charges were not being imposed with respect to the overrun, imbalance or peaking being used as a 'service' – the charges were being imposed because the shipper's behaviour interfered with the rights of other shippers, which may include shippers with capacity under a T1 Service. Specifically:
 - the Unavailable Overrun Charge applies only where the Shipper's take of Overrun Gas impacts or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Service (or other Capacity Service) (as that is the precondition to the unavailability described in an Unavailability Notice (see clause 11.2(a)), which

¹¹⁵⁰ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 11, footnote 5.

¹¹⁵¹ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 12.

¹¹⁵² DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 13.

¹¹⁵³ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, pp. 13-15.

is a precondition to imposing the Unavailable Overrun Charge), so the T1 Reference Tariff is an appropriate rate;

- the Excess Imbalance Charge, where the Shipper's Accumulated Imbalance is between 8% and 20% above the Shipper's total aggregated Contracted Capacity, only applies where the Shipper's imbalance impacts or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity (or other capacity / services) (or will have a material adverse impact on the integrity or operation of the DBNGP) (as that is the precondition to the Operator providing a notice under clause 9.5(b)(iii), which is a precondition to imposing the Excess Imbalance Charge for an imbalance of between 8% and 20%), so the T1 Reference Tariff is an appropriate rate; and
 - the Hourly Peaking Charge, where the Shipper exceeds 125% (Winter) / 120% (Summer) of the aggregate MHQ up to 140% of the aggregate MHQ, only applies where the Shipper's peaking impacts or is likely to impact on T1 Service (or any other Capacity Service) (or will have a material adverse impact on the integrity or operation of the DBNGP) (as that is the precondition to the Operator providing a notice under clause 10.3(a)(iii), which is a precondition to imposing the Hourly Peaking Charge for an imbalance of between 125/120% and 140%), so the T1 Reference Tariff is an appropriate rate.¹¹⁵⁴
 - Given the possible effects on other shippers' capacity and/or the users of spot capacity that bid at the highest price, the charges for a shipper's overrun, imbalance or peaking should not apply a discount based on distance (which is what using the P1/B1 Reference Tariff in the calculation of charges would do). Shippers with a P1 or B1 Service should not be less constrained than shippers with a T1 Service to take up imbalance, overrun or peaking capacity.
 - Shippers are also able to avoid the charges being levied. Clause 15.5(d) of the terms and conditions for each reference service provides shippers with constant access to customer reporting system (CRS) information. Such information allows the shipper to manage its gas flows and options to adjust its usage of gas transportation services, demand requirements and contracted capacity levels to mitigate against overrun, imbalance and peaking charges.
2690. The ERA considers that DBP's submissions concerning the use of the T1 Reference Tariff to calculate the Excess Imbalance, Hourly Peaking and Unavailable Overrun Charges provide support for DBP's position that a contract for a P1 Service or B1 Service should not be treated differently from a contract for a T1 Service for the purpose of calculating the charges and applying the associated penalty regimes.
2691. As submitted by DBP, the Excess Imbalance, Hourly Peaking and Unavailable Overrun Charges are applicable only in instances where a shipper's accumulated imbalance, peaking or overrun, respectively, affects or is likely to affect another shipper's contracted entitlement or will adversely affect the integrity or operation of the pipeline. In addition, the terms and conditions for each of the reference services require that before the respective charges can be issued, DBP must give notice to the shipper as follows:

[Excess Imbalance Charge, clause 9.5(b)(iii) of the terms and conditions]

9.5 Accumulated Imbalance Limit

...

- (b) If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas

¹¹⁵⁴ DBP, 2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions, October 2020, p. 13.

Day just finished and, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition:

- (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), either or both:

- (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 9.5(b)(ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure immediate compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and
- (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.

[Hourly Peaking Charge, clause 10.3(a)(iii) of the terms and conditions]

10.3 Consequences of exceeding Hourly Peaking Limit

(a) If at any time the Shipper exceeds an Hourly Peaking Limit and the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition:

- (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 Capacity Service,

the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:

- (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or 10.3(a)(ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or to procure immediate compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and
- (iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Quantity is within the Hourly Peaking Limit.

[Unavailable Overrun Charge, clause 11.2(a) of the terms and conditions]

11.2 Unavailability Notice

(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 the Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for any Capacity Service including 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.

2692. In instances where a shipper has been notified in accordance with the applicable clause of the terms and conditions (as identified at paragraph 2691 above) and no adjustment to its operations made, DBP can issue the respective charge to the shipper. That is, DBP can issue an Excess Imbalance, Hourly Peaking or Unavailable Overrun Charge. The ERA considers that the provisions of the terms and conditions, requiring DBP to notify the shipper and for the shipper to address its operations before charges can be imposed, benefits both parties. However, in instances where a shipper does not address its operations to remedy the notified action, the shipper should be charged accordingly.
2693. As submitted by DBP, the Excess Imbalance, Hourly Peaking and Unavailable Overrun Charges are imposed only when a shipper's operations interfere with the rights of other shippers, which may include shippers with capacity under a T1 Service. The use of the P1 and B1 Reference Tariffs to calculate these charges under the terms and conditions for the P1 and B1 Services, respectively, would therefore not reflect the value of the gas used, and/or capacity contracted for, under a T1 Service.
2694. As with the calculation of the Overrun Charge, the ERA acknowledges that, by using the T1 Reference Tariff (instead of the P1/B1 Reference Tariff) to calculate the Excess Imbalance, Hourly Peaking and Unavailable Overrun Charges under the terms and conditions for the P1 Service and B1 Service, part and back haul shippers pay disproportionately more when they are charged compared to full haul shippers. However, the requirement for DBP to give notice to shippers, prior to any charge being imposed, gives part and back haul shippers an opportunity to adjust their operations and avoid any charges. In addition to adjusting their operations upon being issued a notice, these shippers can seek a non-reference service and/or contract for additional firm capacity to meet their operational needs and mitigate the risk of additional imbalance, peaking and unavailable overrun charges.
2695. Given the considerations above, the ERA considers that draft decision required amendments 46 and 47 should be withdrawn and DBP's revised proposal, to maintain the way in which other charges in schedule 2 are calculated, should be implemented. That is, in schedule 2 of the terms and conditions for the P1 and B1 Services, the Excess Imbalance Charge, Hourly Peaking Charge and Unavailable Overrun Charge are calculated using the T1 Reference Tariff as follows (**emphasis added**):
- The Excess Imbalance Charge being "200% of the **T1** Reference Tariff from time to time" (row 1 of schedule 2).
 - The Hourly Peaking Charge being "200% of the **T1** Reference Tariff from time to time" (row 2 of schedule 2).
 - The Unavailable Overrun Charge being the greater of "250% of the **T1** Reference Tariff from time to time; and ..." (row 4 of schedule 2).

Other revised proposed amendments submitted by DBP

2696. Further to addressing the ERA's draft decision required amendments, DBP submitted that it had made other revised proposed amendments to the terms and conditions for reference services that include:
- General administrative corrections to correct errors in punctuation, formatting and cross referencing.¹¹⁵⁵
 - An amendment to reflect a change in a company name.
 - Amendments to apply the ERA's suggested changes to the terms and conditions.
 - Amendments to correct an oversight relating to the Tp Service.
2697. The ERA considers that DBP's revised proposed amendments to correct errors in punctuation, formatting and cross referencing throughout the terms and conditions for reference services are administrative in nature and do not materially alter the terms and conditions.

Definition of "AGIG"

2698. DBP submitted that since its initial proposal DUET Investment Holdings Pty Ltd (ABN 22 120 456 573) had changed its name to Australian Gas Infrastructure Holdings Pty Ltd. The change in company name affects the term "AGIG" in the terms and conditions.
2699. The ERA has considered DBP's revised proposed amendment to the term "AGIG", to reflect the new company name, at paragraph 2066.

Suggested, but not required, amendments

2700. DBP submitted that it had accepted the ERA's suggested, but not required, amendments to the terms and conditions that were raised in the draft decision.¹¹⁵⁶ Each of these amendments are set out in turn below. There were no submissions to the ERA that addressed DBP's decision to implement the suggested amendments.
2701. The ERA considers that DBP's implementation of the suggested amendments address the matters raised by the ERA in its draft decision and are consistent with the national gas objective – the amendments improve and/or simplify the terms and conditions for reference services.

Definitions of "Associate", "Control", "Controller", "Related Body Corporate" and "Related Entity".

2702. In the draft decision, the ERA considered that, if DBP's preference was to fix the definitions at a point in time (being 15 July 2019), DBP should include a reference to the Compilation Number and Federal Register of Legislation ID of the Corporations Act in the definitions to avoid parties having to identify the relevant version of the Act in the future.¹¹⁵⁷

¹¹⁵⁵ As shown in the marked-up versions of the terms and conditions for the T1 Service, P1 Service and B1 Service – see Attachments 2, 3 and 4 of DBP's Revised Final Plan.

¹¹⁵⁶ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 24-27.

¹¹⁵⁷ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 290, paragraph 1282.

2703. In its revised proposal, DBP has amended the following definitions in clause 1 (Interpretation) of the terms and conditions as follows:

Associate has the meaning given in section 11 of the Corporations Act as at 15 July 2019 ([being Compilation No 95, Federal Register of Legislation ID C2019C00216](#)).

...

Control has the meaning given in the Corporations Act as at 15 July 2019 ([being Compilation No 95, Federal Register of Legislation ID C2019C00216](#)).

Controller has the meaning given in the Corporations Act as at 15 July 2019 ([being Compilation No 95, Federal Register of Legislation ID C2019C00216](#)).

...

Related Body Corporate has the meaning given in the Corporations Act as at 15 July 2019 ([being Compilation No 95, Federal Register of Legislation ID C2019C00216](#)).

Related Entity has the meaning given to that expression in the Corporations Act as at 15 July 2019 ([being Compilation No 95, Federal Register of Legislation ID C2019C00216](#)).

Definition of “Associated”

2704. In the draft decision, the ERA considered that the introduction of the words referring to the use of the terms “relates” and “related” may be unnecessary as the terms could be replaced with the existing term “associated”.¹¹⁵⁸

2705. In its revised proposal, DBP has amended definition of “Associated” in clause 1 (Interpretation) of the terms and conditions as follows:

Associated, when used to describe the relationship between:

...

- (c) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point;

~~and **relates** and **related**, when used to describe such relationships, have the analogous meanings.~~

2706. Consequential amendments to clauses 6.11(d), 6.11(e) and 6.11(h) of the terms and conditions were also made to replace the words “related to” and “relates” with the words “Associated with” and “is Associated”, respectively.

Formatting of clause 6.14 and consequential cross-referencing changes

2707. In the draft decision, the ERA considered that DBP may wish to reformat clause 6.14 in the terms and conditions for the P1 Service (rather than correcting the cross-references) to make the clause consistent in drafting (and formatting) across the terms and conditions for each reference service.¹¹⁵⁹

2708. In its revised proposal, DBP has amended clause 6.14 in the terms and conditions for the P1 Service as follows:

6.14 Shipper Specific Facility Agreement

~~(a)~~ The Operator must not grant to any shipper (**New Shipper**) access to or use of (or enter into any agreement or arrangement to do so) any Inlet Point, Outlet Point,

¹¹⁵⁸ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 294, paragraph 1310.

¹¹⁵⁹ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 326, paragraph 1477.

Associated Inlet Station or Associated Outlet Station, or related equipment (**Facility**) which is or has been the subject of an agreement or arrangement under which the Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility (**Facility Agreement**) without ensuring that:

- (a) subject to clause ~~6.14(a)(iii)~~6.14(b), the New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.13(b)(iii); and
- (b) the Operator agrees to rebate to the Shipper the contributions it receives from the New Shipper under clause ~~6.14(a)(i)~~6.14(a) in a manner consistent with clause 6.13(b)(iii).

Definition of “SI Units”

2709. In the draft decision, the ERA considered that the term “SI Units” was covered under the *National Measurement Act 1960 (Cth)* and *National Measurement Regulations 1999*, and that given clause 2.1(k) of the terms and conditions provides that “all units of measurement used in this Contract are SI Units as they are applied as Australian legal units of measurement under the National Measurement Act 1960 (Cth)”, a definition of SI Units was not required.¹¹⁶⁰
2710. In its revised proposal, DBP has amended clause 1 (Interpretation) of the terms and conditions to delete the term “SI Units”.

Clause 10.6 (Remedies for breaching peaking limits)

2711. In the draft decision, the ERA considered that further administrative amendments were required to clause 10.6 of the terms and conditions for the B1 Service.¹¹⁶¹
2712. In its revised proposal, DBP has amended clause 10.6 of the terms and conditions for the B1 Service to delete duplicate cross references.

Clause 28.10 (FIRB Compliance)

2713. In the draft decision, the ERA considered that it would be preferable to use the heading “Foreign Investments Review Board Compliance” rather than the acronym “FIRB” in the terms and conditions. Given clause 2.2, which states that “headings are inserted for convenience and do not affect the interpretation of [the] contract”, such an amendment would be administrative in nature.¹¹⁶²
2714. In its revised proposal, DBP has amended the heading for clause 28.10 in the terms and conditions to read: “Foreign Investments Review Board Compliance”.

Tp Service amendments

2715. In its initial proposal, DBP submitted that the term “Tp Service” was not used in the terms and conditions for reference services or the negotiated contacts in place with shippers. Given this, DBP proposed to delete the term from clause 1 (Interpretation) of the terms and conditions.

¹¹⁶⁰ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 291, paragraph 1286.

¹¹⁶¹ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 339, paragraph 1556.

¹¹⁶² ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 359, paragraph 1674.

2716. While the ERA considered that DBP’s proposal to delete the term “Tp Service”, together with other redundant terms, was consistent with the national gas objective (refer paragraph 2045), the ERA noted that:

["Tp Service"] is defined and used in the current terms and conditions for each reference service (see curtailment regime provisions in clause 17.9(c)(ii) and schedule 6) and the Standard Shipper Contracts as published on DBP’s website. Provided that the “Tp Service” is a service that is no longer offered, the ERA considers the term to be redundant and that it should be deleted from the terms and conditions (including all uses of the term) and that the same amendment should be made to Standard Shipper Contracts when next reviewed.¹¹⁶³

2717. In its revised proposal, DBP confirmed that the Tp Service was a service that still existed under an existing shipper contract. Given this, the term “Tp Service” should remain in the terms and conditions. DBP submitted:

On further investigation, one of the existing shippers has surviving rights in relation to the Tp Service under its Negotiated Contracts and will continue to do so during part of the Access Arrangement Period. Notwithstanding that the availability of Tp Service is limited in practice, it still exists and therefore the Curtailment regime in every Reference Contract and Negotiated Contract must treat it consistently.

Accordingly, the following changes are required in the Reference Contracts. These changes align the relevant elements of the Curtailment regime across the Reference Contracts, the Standard Shipper Contracts and the Negotiated Contracts and will help to ensure that the outcome of a Curtailment is consistent with the market’s expectations based on existing contract terms. These changes are reversing the relevant changes submitted in January 2020 back to the existing drafting of the Reference Contracts for the current Access Arrangement Period, aside from the addition of a new row 6 in Schedule 6 and save that we have clarified that Tp Service is limited to a particular kind of Other Reserved Service.

These changes correct the terms and conditions for reference services with respect to the Curtailment regime to promote efficient investment in, and efficient operation and use of, the DBNGP. The certainty and predictability of the application of the Curtailment regime promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply. Accordingly, these proposed changes are consistent with the National Gas Objective.¹¹⁶⁴

2718. DBP set out the revised proposed amendments to the terms and conditions as follows:¹¹⁶⁵

[Clause 1 (Interpretation)]

[Tp Service is an Other Reserved Service which is described in the contract under which it is granted as “Tp Service” and which was granted prior to 1 January 2020.](#)

[Clause 17.9(c)(ii) (Priority of Curtailment)]

- (ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service [\(other than a Tp Service\)](#) or Aggregated Service, then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator

¹¹⁶³ ERA, *Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025*, 14 August 2020, p. 290, paragraph 1279.

¹¹⁶⁴ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, p. 28

¹¹⁶⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1A: Response to Draft Decision on Terms and Conditions*, October 2020, pp. 28-29.

acting as a Reasonable and Prudent Person.

[Schedule 6, Part A (System Curtailment)]

Order of Priority	System Curtailment
<u>6</u>	Tp Service
6 <u>7</u>	Other Reserved Service (other than Tp Service)
7 <u>8</u>	Spot Capacity

[Schedule 6, Part A (Point Specific Curtailment)]

Order of Priority	Point Specific Curtailment
<u>6</u>	Tp Service
6 <u>7</u>	Other Reserved Service (other than Tp Service) that is Contracted Capacity at the relevant point
7 <u>8</u>	Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point
8 <u>9</u>	Other Reserved Service (if any) nominated by and scheduled to the shipper at the relevant point at which the shipper does not have Contracted Capacity in that Other Reserved Service in accordance with the provision of the shipper's contract for the Other Reserved Service
9 <u>10</u>	Spot Capacity

2719. The ERA considers that DBP's revised proposed amendments to keep the term "Tp Service" in the terms and conditions for reference services is consistent with the ERA's draft decision considerations. DBP has confirmed that the Tp Service is a service that is still offered under an existing shipper contract, and hence, the term is not redundant (as was previously submitted by DBP in its initial proposal). However, DBP's proposed revised meaning for "Tp Service" differs from the current (AA4) meaning as follows (shown in mark-up to the current definition):

Tp Service is an Other Reserved Service [which is described in the contract under which it is granted as "Tp Service" and which was granted prior to 1 January 2020](#).

2720. The ERA considers that DBP's proposed revised meaning for the term "Tp Service" further clarifies the nature of the service and is consistent with the national gas objective – the amendment clarifies the terms and conditions for reference services to promote efficient investment in, and efficient operation and use of, the DBNGP.
2721. DBP's other proposed revised amendments to clause 17.9(c)(ii) and schedule 2 (Part A) reinstate existing provisions, with the addition of a new row in the Curtailment Plan (schedule 6, new row 6). As submitted by DBP, the revised amendments align the Curtailment Plan across all contracts, that is, the reference service contracts,

standard shipper contracts and negotiated contracts. The ERA considers that, for the reasons set out in paragraph 2040, amendments to align the terms and conditions for reference services with the contracts in place with shippers are consistent with the national gas objective.

Other revised proposed amendments submitted by third parties

2722. In its submission in response to the ERA’s draft decision, gasTrading submitted that the effects of including DBP’s proposed “Ullage Service” on contractual clauses in other shipper contracts needed consideration.¹¹⁶⁶ GasTrading considered that, given the definition of “Back Haul” in other contracts, the word ‘downstream’ was now ambiguous with bi-directional gas flows through the DBNGP.

2723. GasTrading noted that, based on announcements by Beach Energy, the flow of gas from Compressor Station 1 to the Karratha Gas Plant will be predominately north in the main and/or looped part of the pipeline.¹¹⁶⁷ It further noted the definition of “Back Haul” in shipper contracts is:

“Back Haul means a pipeline service where the inlet point for acceptance of gas into the DBNGP from the customer is downstream of the outlet point for delivery of gas to the customer.”

2724. GasTrading submitted:

In the [Back Haul] definition downstream is not defined, but it could be interpreted to be a point that is “south of the inlet”. However, in the case that the “Ullage Service” proceeds ... “downstream” may well be north of the inlet.

To address this the use of the word downstream should be defined as:

Downstream means a point south of the inlet point; and similarly,

Upstream means a point north of the inlet point.

Where the terms “upstream” and “downstream” (all lower case) are used will refer to actual physical flow. The capitalised terms refer to the contractual concept of back haul and forward haul used for tariff determination.¹¹⁶⁸

2725. The ERA has considered DBP’s proposed Ullage Service as part of its considerations of pipeline and reference services (see paragraph 94). As set out in these considerations, the ERA has determined that the Ullage Service is to be offered as a non-reference rebateable service for AA5.

2726. The characteristics of the Ullage Service may create some uncertainty concerning the existing use of the words ‘downstream’ and ‘upstream’ in the terms and conditions for reference services. Given this, the ERA considers that gasTrading’s suggestion to introduce the defined terms “Downstream” and “Upstream” in the terms and conditions may provide clarity as to the direction of a service. However, given the various ways in which the words ‘downstream’ and ‘upstream’ are currently used in the terms and conditions, the definitions cannot simply focus on a meaning that is a reference to a fixed geographical location (i.e. south or north).

2727. The ERA considers that any definitions for “Downstream” and “Upstream” would need to focus on a position relative to the direction of the physical flow of gas. That is, the definitions could be as follows, and where references to ‘downstream/upstream’ in

¹¹⁶⁶ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 8.

¹¹⁶⁷ Beach Energy, *FY20 Full Year Results and Outlook Presentation*, 17 August 2020 ([online](#)) (accessed November 2020).

¹¹⁶⁸ Gas Trading Australia Pty Ltd submission in response to draft decision, 4 November 2020, p. 8.

the terms and conditions refer specifically to a south/north (geographical) direction, the words 'south' and 'north' could be used (instead of 'downstream' and 'upstream', respectively).

Downstream means that part of the pipeline located in the same direction as the predominant physical flow of gas, being towards or away from a reference point, including an Inlet Point or Outlet Point, as appropriate.

...

Upstream means that part of the pipeline located in the opposite direction to the predominant physical flow of gas, being towards or away from a reference point, including an Inlet Point or Outlet Point, as appropriate.

2728. The ERA sought clarification from DBP as to whether there may be any practical implications from the introduction of the above definitions and use of the words 'south' and 'north', where the context requires, that need consideration. DBP advised that, while it agreed that new definitions for "Downstream/Upstream" may further clarify the terms and conditions, it did not consider such definitions to be necessary. If implemented, the ERA's suggested definitions may unintentionally complicate the current management and interpretation of shipper contracts. DBP advised that the current use of the words 'downstream/upstream', has not been problematic.

[DBP] agrees with the ERA that the terms upstream and downstream have been used in a number of contexts within the shipper contracts, and that including a definition, if simple and easily understood, could possibly improve clarification in some areas, although it has not been an issue in managing shipper contracts up to now, and [DBP] do not see it as a particular issue going forward, irrespective of the commencement of the proposed ullage service.

[DBP] agree with the ERA's assessment that the gasTrading proposal is problematic in some uses of the terms. However, we also believe there is an issue with the ERA's proposal in linking the terms to predominate flow, as flows inherently change and are dynamic, especially above Compressor Station 2. Flows on the DBNGP are always managed by the control room to respond to variable demand and also any temporary producer shutdowns.

Contractually, inlet and outlet points are not aligned with the physical flows of the pipeline, and are based on the orientation described in the DBNGP pipeline description document. [DBP] consider the terms of the shipper contracts correctly reflect this situation.

...

[DBP's] position is that ERA's proposed changes to the uses of the terms upstream and downstream would have an unintended consequence of creating significant complications in the management of shipper contracts and the contractual rights of shippers, and result in additional costs and complexity.¹¹⁶⁹

2729. Given the information provided by DBP, the ERA considers that, on balance, there is no material benefit in amending the terms and conditions for reference services to introduce the defined terms "Downstream" and "Upstream" at this point in time. Apart from gasTrading's submission, there were no other submissions that raised any concerns with the use of the words 'downstream' and 'upstream' in shipper contracts and any impact the proposed Ullage Service may have on the interpretation of these words. DBP does not consider the introduction of the Ullage Service will affect the management and interpretation of shipper contracts given that the pipeline already operates with bidirectional flows to meet operational requirements on any given

¹¹⁶⁹ DBP, 'Request for feedback - DBP AA5 - terms and conditions for reference services', [email] 27 January 2021.

day.¹¹⁷⁰ In any case, should the interpretation of existing provisions in other contracts become an issue, amendments to these contracts can be proposed and made.

2730. The ERA further notes that many of the amendments to the terms and conditions for reference services have resulted from practical experience. That is, amendments to the terms and conditions have been proposed and made to reflect actual operations and the practical application of contractual terms and/or conditions. On this basis, amendments to the terms and conditions for reference services to include definitions for the terms “Downstream” and “Upstream”, if required, can be made as part of the access arrangement review process for the next access arrangement period.

¹¹⁷⁰ DBP noted that bidirectional flows were becoming more common and more frequent since the significant reduction in gas allocated by the North West Shelf since July 2020, and that this would likely continue with the proposed Ullage Service (DBP, ‘Request for feedback - DBP AA5 - terms and conditions for reference services’, [email] 27 January 2021).

Other access arrangement provisions

Access and queuing requirements

2731. Rule 112 of the NGR details the requirements for requesting access to a pipeline service:

112 Requests for access

- (1) A prospective user may request a scheme pipeline service provider to provide a pipeline service for the prospective user. For the purposes of this rule 112, the date that the prospective user's access request is received by the service provider is referred to as the "**access request date**".
- (2) The request must be made in writing and must:
 - (a) state the time or times when the pipeline service will be required and the capacity that is to be utilised; and
 - (b) 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 point; and
 - (c) 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.
- (3) The service provider must:
 - (a) within 5 business days after the access request date, acknowledge receipt of the request; and
 - (b) within 10 business days after the access request date, inform the prospective user:
 - (i) that it is able to provide the requested pipeline service;
 - (ii) that it needs to carry out further investigation to determine whether it can provide the requested pipeline service and provide the prospective user with a statement of the nature of the investigation and the reasonable costs of the investigation the prospective user would be required to meet; or
 - (iii) that it is unable to provide the requested pipeline service.
- (4) If the service provider is unable to provide the requested pipeline service, it must:
 - (a) provide the prospective user with written reasons explaining why the requested pipeline service cannot be provided; and
 - (b) if there is some prospect that it will become possible to provide the requested service at some time in the future – give details (which must be as specific as the circumstances reasonably allow) of when capacity to provide the requested service is likely to become available and, if possible, nominate a specific date.
- (5) If the service provider is able to provide the service, it must, within 25 business days of the access request date, provide the terms and conditions on which the service provider is prepared to provide the requested pipeline service (the **access proposal**).
- (6) If the service provider needs to carry out further investigation to determine whether it can provide the requested pipeline service and the prospective

user agrees to the reasonable costs specified by the service provider under subrule 3(b)(ii), it must carry out the investigation and then, within 25 business days of the access request date, inform the prospective user:

- (a) that it is able to provide the requested service; or
 - (b) that it is unable to provide the requested service.
- (7) If the service provider is unable to provide the requested pipeline service it must include in its notification under subrule (6) the information specified in subrule (4).
- (8) If the service provider is able to provide the service, it must, within 15 business days of providing the notice under subrule (6)(a), provide the terms and conditions on which the service provider is prepared to provide the requested pipeline service (the **access proposal**).
- (9) If the prospective user:
- (a) wants to seek access to the pipeline service based on the access proposal provided by the service provider under subrules (5) or (8), it must notify the service provider within 15 business days of receiving the access proposal; or
 - (b) wants to request amendments to the access proposal provided by the service provider under subrules (5) or (8), it must notify the service provider within 15 business days of receiving the access proposal and provide its requested amendments.
- (10) Following the prospective user's response under subrule (9)(b), the service provider must respond within 15 business days. If the parties have not agreed on the service provider's proposal (or some negotiated modification of it) within a further 20 business days after the date of the service provider's response under this subrule, then the service provider is taken to have rejected the prospective user's request.
- (11) The timeframes specified in subrules (5) to (11) may be extended if the relevant service provider and prospective user agree in writing.
2732. Further to requirements for requesting access, modified rule 48(1)(f) and rule 103(1) of the NGR require the access arrangement to set out queuing requirements.¹¹⁷¹
2733. Rule 103 of the NGR details the specific provisions for queuing requirements:

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.

¹¹⁷¹ Modified rule 48(1)(f) as set out in schedule 1 (rule 62) of the NGR.

- (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.

DBP's initial proposal

Procedures for access requests

2734. Clause 5 of the proposed revised access arrangement details the procedures for making access requests and queuing requirements. DBP proposed several amendments to the clause to address the changes that were made to rule 112 of the NGR in March 2019.¹¹⁷²

- Clause 5.2(b) was amended to delete the requirement for a prospective shipper to lodge an access request in circumstances where DBP advises the shipper during consultation that investigations to determine whether it can provide the requested service are required.
- Clause 5.2(c) was amended to delete the requirement for the “capacity end date” to be, in the case of an access request for a reference service, a date no earlier than the date two years after the commencement date for the service.
- Clause 5.2(d) was amended to limit the forms for access requests to a Reference Service Access Request Form and Non-Reference Service Access Request Form.¹¹⁷³ The requirement for such forms to be executed by or on behalf of the prospective shipper in accordance with section 127 of the *Corporations Act 2001 (Cth)* and be submitted in duplicate was also deleted.
- Clause 5.3 was amended to delete existing clauses and insert new clauses to reflect the changed procedures and timeframes for assessing access requests as set out in rule 112 of the NGR.¹¹⁷⁴ The clause in which DBP may and must reject an access request was also amended (existing clause 5.3(e)).

Queuing requirements

2735. Clause 5.4 of the proposed revised access arrangement sets out the queuing requirements for determining the priority of access to spare and developable capacity. DBP proposed to maintain a single queue for access to reference and non-reference services that are haulage services, with access requests being entered into the queue on the date, being the “priority date”, that they were received by

¹¹⁷² The provisions for requesting access under rule 112 of the NGR were amended in March 2019 to provide for guidance on the process for negotiation and agreement between parties. Further information about changes to the regulatory framework is provided at paragraph 40 of this decision.

¹¹⁷³ The requirement to use a Spot Capacity Service Access Request Form and Non-Transportation Services Access Request Form was deleted from the proposed revised access arrangement.

¹¹⁷⁴ Existing subclauses 5.3(b), 5.3(c), 5.3(d), 5.3(f) and 5.3(g) were deleted. New clauses 5.3(b) to 5.3(f) were inserted.

DBP.¹¹⁷⁵ Clause 5.4(f) was amended to clarify the priority date in instances where the access request requires the terms and conditions of the access contract to be negotiated or is subject to conditions.

Draft decision

DBP's proposed procedures for access requests

2736. DBP's proposed amendments to clause 5 of the access arrangement aimed to address the changes that were made to rule 112 of the NGR. The proposed provisions and timeframes set out in new clauses 5.3(b) to 5.3(f) of the revised access arrangement are materially consistent with the required provisions and timeframes set out in rule 112. The other proposed amendments made to clauses 5.2 and 5.4 of the revised access arrangement are consequential to and/or support the new clauses.
2737. Submissions from Synergy and gasTrading addressed DBP's proposed procedures for access requests.^{1176, 1177}
2738. Synergy raised concerns about the proposed amendments removing the requirement for DBP to offer reference services on the terms and conditions set out in the access arrangement (that is, the Access Contract Terms and Conditions) and allowing such terms and conditions to be negotiated. The ERA noted that:
- The NGL does not prohibit the negotiation of terms and conditions for access to reference services. If an access arrangement were to introduce such a prohibition, this would be inconsistent with the national gas objective: "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."
 - Proposed clause 5.2(c)(viii) of the revised access arrangement requires the shipper in its access request to state the terms and conditions on which the service is being requested by:
 - In the case of a reference service, stating whether the shipper accepts the terms and conditions for the reference service (being the Access Contract Terms and Conditions).
 - In the case of a non-reference service, other than a Spot Capacity Service, specifying either: (a) that the shipper accepts the terms and conditions for the relevant non-reference service that is published by the operator on its website, or (b) the terms and conditions that the shipper proposes should apply to the relevant non-reference service or a request for the operator to propose the terms and conditions for provision of the service.
 - In the case of a Spot Capacity Service, stating that the shipper accepts the Spot Transaction Terms and Conditions and agrees to comply with the Spot Market Rules.
2739. Synergy commented that "it should be made clear that if any service is not provided on the Access Contract Terms and Conditions (whether as a result of negotiation or otherwise), then the service provided to the Prospective Shipper is a Non-Reference

¹¹⁷⁵ A "haulage service" is defined in the proposed revised access arrangement to mean "a Pipeline Service involving the contracting of capacity on the DBNGP".

¹¹⁷⁶ Synergy submission in response to issues paper, 31 March 2020, Annexure A, pp. 1-3.

¹¹⁷⁷ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 14.

Service, rather than a Reference Service.”¹¹⁷⁸ In response to this comment, the ERA noted that, as was decided by the Australian Competition Tribunal in *Application by DBNGP (WA) Transmission Pty Ltd (No.3) [2012] A CompT 14* [at 540], “the terms and conditions on which a reference service is to be offered are inseparable from the nature of the service.” If a service is negotiated on terms and conditions that differ in material respects from the Access Contract Terms and Conditions, it will constitute a non-reference service.

2740. Clause 47A(2) of the NGR provides that a pipeline service is to be treated as distinct from another pipeline service, having regard to the characteristics of different pipeline services:

47A Reference services

...

- (2) A pipeline service is to be treated as distinct from another pipeline service having regard to the characteristics of different pipeline services, including:
- (a) the service type (for example, forward haul, backhaul, connection, park and loan);
 - (b) the priority of the service relative to other pipeline services of the same type; and
 - (c) the receipt and delivery points.

2741. The inclusive list of the characteristics provided in clause 47A(2) includes characteristics (for example, whether a service is forward haul or backhaul) which are currently characteristics of services provided both under Standard Shipper Contracts (as published on DBP’s website) and the terms and conditions for reference services (that is, the Access Contract Terms and Conditions). The uniqueness of a reference service is not the nature of the service, but that any reference service must be available at the reference tariff and on the terms and conditions for that reference service. As stated at paragraph 2737, clause 5.2(c)(viii) of the revised access arrangement provides for the shipper to request a reference service on the Access Contract Terms and Conditions.
2742. Synergy further stated that the provisions of clause 5.3 in DBP’s revised access arrangement no longer distinguish between an access request for a reference service and an access request for a non-reference service. The provisions also apply the same assessment procedure to both types of access requests.
2743. Clause 5.3 of the revised access arrangement sets out the process for the assessment of access requests that are submitted under clause 5.2. Clause 5.3(a) states that the “Operator will assess and respond to an Access Request in accordance with NGR 112 based on the information provided to it with the Access Request.” Consistent with this statement, the process set out in clauses 5.3(b) to 5.3(g) of the revised access arrangement is materially consistent with the process set out in rules 112(3) to 112(11) of the NGR. For this reason, the ERA considered that DBP’s proposed amendments met the requirements of the NGR and were consistent with the national gas objective.
2744. However, given Synergy’s comments concerning the Access Contract Terms and Conditions, the ERA considered that it would be beneficial to provide for an explicit process by which a shipper’s access request for a reference service on the Access Contract Terms and Conditions and the operator’s notification that it can provide the

¹¹⁷⁸ Synergy submission in response to issues paper, 31 March 2020, Annexure A, p. 2.

requested service lead to a binding contract. The ERA set out the following new clause 5.3(d) to apply to an access request for a reference service where the shipper states, in accordance with clause 5.2(c)(viii)(A), that it accepts the Access Contract Terms and Conditions:

5.3 Assessment of Access Requests

...

(d) If the requested service is a Reference Service and the Prospective Shipper has stated in the Access Request that the Prospective Shipper accepts the Access Contract Terms and Conditions, the Operator is deemed to have accepted an offer from the Prospective Shipper to acquire the Reference Service on the Access Contract Terms and Conditions on the date the Operator notifies the Prospective Shipper, in accordance with clause 5.3(c)(i), that it is able to provide the requested service

~~(d)~~(e) If the Operator is able to provide the requested service ...

2745. The draft decision set out the following required amendment:

Draft Decision Required Amendment 48

DBP must amend the requirements for access requests in clause 5.3 of the proposed revised access arrangement to insert new clause 5.3(d), which will apply to an access request for a reference service where the shipper states, in accordance with clause 5.2(c)(viii)(A), that it accepts the Access Contract Terms and Conditions.

The required drafting for new clause 5.3(d) is set out at paragraph 1746 of [the] draft decision [paragraph 2744 of this final decision]. Consequential amendments to renumber the remaining subclauses in clause 5.3 must also be made.

2746. Synergy further commented on DBP's proposal to use the same assessment procedure to assess access requests for reference and non-reference services. The ERA considered this approach to be reasonable and consistent with the national gas objective. The establishment of separate assessment procedures may complicate the assessment process and lead to inefficiencies within the operator's administrative operations (for example, the establishment of separate assessment teams to oversee the separate assessment processes). The NGR also do not require separate assessment procedures for different pipeline services. While the assessment procedure for access requests is the same for both reference services and non-reference services, clause 5.2(d) of the access arrangement requires the use of different request forms to differentiate between a request for a reference service and a request for a non-reference service.

2747. In its submission, gasTrading raised concerns over the access request process and submitted that "capacity should be available on a first come first served basis and not be prioritised based on tariff or contract value."¹¹⁷⁹ The ERA considered that the proposed procedures for access requests, together with the queuing requirements that established a single queue that operated on a first-come-first-served basis, provided for the fair treatment of shippers (customers) seeking access to capacity. The procedures and queuing rules for access requests, as set out in clauses 5.3 and 5.4 of the access arrangement, respectively, do not give priority based on the type of capacity (that is, full, part or back haul capacity) – access requests are assessed and, if required, queued on a first-come-first served basis regardless of what type of capacity is being requested. In any case, in circumstances where a shipper believes

¹¹⁷⁹ Gas Trading Australia Pty Ltd submission in response to issues paper, 30 March 2020, p. 14.

it is being treated unfairly, the shipper may access the provisions in chapter 6 of the NGL to raise an access dispute.¹¹⁸⁰

DBP's proposed queuing requirements

2748. DBP's proposed queuing requirements, as set out in clause 5.4 of the proposed revised access arrangement, were substantively unchanged from the requirements set out in the current (AA4) access arrangement (the exception being clause 5.4(f) where amendments were proposed). The queuing requirements establish a single queue which operates on a first-come-first-served basis, as contemplated by the NGR.
2749. While the provisions of clause 5.4 are sufficiently detailed to explain the operation of the queue and allow prospective shippers to understand how the order of priority is determined, there may be insufficient detail for prospective shippers to determine their actual position in the queue. As drafted and proposed, the current queuing requirements do not require DBP to disclose the total number of access requests that are in the queue and the priority dates assigned to each access request. Without such information, a prospective shipper is not able to determine and/or verify its position in the queue. That is, a prospective shipper can only assume that access requests with an earlier priority date will be ahead of its access request in the queue without knowing how many access requests there are ahead of its request (and likewise, access requests with a later priority date will be behind its access request in the queue).
2750. No submissions to the ERA addressed the queuing requirements. Despite the absence of submissions to confirm the inability of prospective shippers to determine their position in the queue, the ERA considered that, without additional information, prospective shippers would not be able to do so.
2751. Rule 103(5)(b) of the NGR requires the queuing requirements to be sufficiently detailed to enable prospective users, where an order of priority has been determined, to determine their position in the queue. The ERA considered this requirement to mean the user's *actual* position in the queue, rather than *relative* position in the queue. To determine and/or verify its actual position in the queue, a user must know the date its access request entered the queue, how many other users are in the queue and the date each other user entered the queue. The date of entry into the queue is needed because the queue under the access arrangement is a single queue operating on a first-come-first-served basis, with requests entered into the queue based on a "priority date" that is the date on which the request is received (or deemed to be received) by DBP.
2752. The draft decision set out the following required amendment:

Draft Decision Required Amendment 49

DBP must amend the queuing requirements in clause 5.4 of the proposed revised access arrangement to require the disclosure of information to enable a user to determine its actual position in the queue for access to capacity (as required by rule 103(5)(b) of the NGR).

2753. DBP's proposed amendments to clause 5.4(f) of the access arrangement were made to clarify the priority date in instances where the access request requires the terms and conditions of the access contract to be negotiated or is subject to conditions.

¹¹⁸⁰ National Gas Law, Chapter 6 (Access disputes – scheme pipelines), sections 178 to 216.

2754. The ERA considered that the intent of DBP’s proposed amendments was consistent with the national gas objective – clarity in provisions of the access arrangement promotes efficient investment in, and efficient operation and use of, the DBNGP. However, DBP’s amended drafting did not adequately clarify clause 5.4(f) as intended for the following reasons:

- In part (i) of clause 5.4(f), references are made to “NGR 112(3)” and “NGR 112”. These are references to general rule provisions, which are substantively reproduced in the access arrangement at clause 5.3(c) and clause 5.3, respectively. Part (i) should make direct references to these clauses in the access arrangement because it is the access arrangement that sets out the specific requirements applicable to the queue for access to capacity of the DBNGP.
- In part (ii) of clause 5.4(f), clause 5.3(e) is referenced as the clause where the operator is required to notify the shipper that there is no spare capacity sufficient to satisfy the access request. However, it is clause 5.3(c) where the operator is required to notify the shipper that it is able or unable to provide the requested service, or that further investigations are required to determine whether the requested service can be provided.
- The intent of part (ii) of clause 5.4(f) is the same as part (i), except that part (ii) covers the circumstance where the shipper is notified that investigations are needed to determine whether the requested service can be provided, whereas part (i) covers the circumstance where the shipper is notified that the requested service can be provided. Where investigations are required, clause 5.3(e) applies.
- In part (iii) of clause 5.4(f) it is not clear when negotiations are “completed” and satisfaction of the conditions should be subject to a reasonable standard.
- Part (v) of clause 5.4(f) states what will happen to the access request and what priority date will apply, subject to the circumstances detailed in parts (i) to (iv). Part (v) should therefore be reformatted as a paragraph under clause 5.3(f), rather than being a part (that is, part (v)) of the clause.

2755. Given these concerns, the ERA considered that the following amendments were needed to clause 5.4(f) to accurately clarify the priority date in instances where the access request requires the terms and conditions of the access contract to be negotiated or is subject to conditions:

5.4 Queuing Requirements

...

- (f) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the Queue with a priority date being the date of receipt of the Access Request by Operator.

However, unless in a case:

- (i) where Operator notifies Shipper in accordance with ~~NGR 112(3)~~clause 5.3(c)(i) that there is Spare Capacity sufficient to satisfy the Access Request, ~~within 15 Business Days after the Prospective Shipper receives an access proposal under clause 5.3(e) the date Operator responds to the Prospective Shipper but the Prospective Shipper requests amended terms and conditions~~ in accordance with ~~NGR 112~~the process under clause 5.3(d)(ii)(B) in respect of the Access Request; or

- (ii) where Operator notifies Shipper in accordance with clause ~~5.3(e)~~5.3(c)(ii) that there is not Spare Capacity sufficient to satisfy the Access Request and the parties agree to investigations being carried out under a FEED Proposal, ~~within 15 Business Days after the date the Shipper receives the Access proposal under report on the investigations to be provided to the Shipper under the FEED Proposal,~~

unless within 15 Business Days after the date the Shipper receives:

- (A) an access proposal in response to the proposed amended terms and conditions under clause 5.3(d)(ii)(B); or
 (B) an access proposal based on the investigations carried out in respect of a FEED Proposal under clause 5.3(e)(iv);

either:

- (iii) the ~~negotiations are completed~~parties agree the terms of access and/or the conditions are, in Operator's reasonable opinion, satisfied; or
 (iv) the Prospective Shipper ~~has agreed~~agrees to amend the Access Request such that it becomes an Access Request for a Reference Service made on the basis of the Access Contract Terms and Conditions,

~~(v) —~~

the Access Request will be removed from the Queue and will subsequently be re-entered in the Queue with a priority date being the date that ~~negotiations are completed~~agreement is reached and/or the conditions are, in Operator's reasonable opinion, satisfied. However, where a dispute between Operator and the Prospective Shipper arises in respect of the terms and conditions of access and that dispute is referred to arbitration under section 181 of the NGA, the period of time remaining pursuant to clauses 5.4(f)(i) and 5.4(f)(ii) (as applicable) will be suspended from the date the dispute is referred to arbitration (**Referral Date**) until 4 months after the Referral Date.

2756. The draft decision set out the following required amendment:

Draft Decision Required Amendment 50

DBP must amend the queuing requirements in clause 5.4(f) of the proposed revised access arrangement to clarify the requirements in instances where an access request requires the terms and conditions of the access contract to be negotiated between the operator and prospective shipper or is subject to conditions.

The required drafting for these amendments is set out at paragraph 1755 of [the] draft decision [paragraph 2755 of this final decision].

DBP's response to the draft decision

2757. DBP accepted the ERA's draft decision required amendments 48, 49 and 50 to amend the access and queuing requirements in clause 5 of the access arrangement as set out below.

Amendments to clause 5.3 (draft decision required amendment 48)

2758. DBP inserted a new clause 5.3(d) as required by the ERA (see paragraph 2744 above) to confirm that a shipper's access request for a reference service on the reference service terms and conditions and the operator's notification to provide the requested service lead to a binding contract. Consequential amendments to

renumber existing subclauses and correct cross-referencing, and further minor amendments to correct typographical errors and/or make grammatical changes, were also made.¹¹⁸¹

2759. Further to the amendments made to clause 5.3(d), DBP proposed to amend clause 5.3(e)(iii) as follows:

5.3 Assessment of Access Requests

...

- (e) If the Operator is able to provide the requested service (subject to any variation to the timeframes below as is agreed in writing between the Operator and the Prospective Shipper):

...

- (iii) In respect of notice under clause 5.3(e)(ii)(B), the The Operator must respond within 15 business days of receiving the proposed amendments from the Prospective Shipper. ~~If the parties have not agreed on the Operator's proposed terms and conditions, or negotiated amendments to the terms and conditions, within a further 20 business days of the Operator's response under this clause, then the Operator is taken to have rejected the Prospective Shipper's request.~~

2760. DBP submitted that the added words clarified which step (subclause) the 15 business day timeframe was referring to, and the deletion of the last sentence from the clause was consequential to the revised amendments addressing draft decision required amendment 50 (discussed below).¹¹⁸²

Amendments to clause 5.4 (draft decision required amendments 49 and 50)

2761. DBP amended clause 5.4(b) as required by the ERA (see paragraph 2752 above) to include a requirement for the disclosure of information to enable a user to determine its actual position in the queue for access to capacity. The revised drafting is as follows:

5.4 Queuing Requirements

- (a) If Operator notifies a Prospective Shipper in accordance with NGR 112 that Spare Capacity does not exist to satisfy an Access Request, Operator will create a queue for determining the priority of access to Spare Capacity and Developable Capacity that will apply as between that Access Request and any other Access Request.

- (b) Operator will maintain a single queue for access to Reference Services and Non-Reference Services that are Haulage Services (Queue). In the notification provided under clause 5.4(a) the Operator will inform the Prospective Shipper of the date its access request was received (or, as appropriate, deemed to be received) by the Operator, the number of other prospective users in the Queue and the date each other prospective user entered the Queue.

2762. DBP amended clause 5.4(f) to address the matters raised by the ERA. While DBP submitted that it was “comfortable with the ERA’s intended changes [to clause 5.4(f)] as set out in paragraph 1754 of the Draft Decision [paragraphs 2754 and 2755 of this

¹¹⁸¹ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, pp. 16-17.

¹¹⁸² DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, p. 17.

final decision]”, it considered that further amendments could be made to improve drafting clarity.¹¹⁸³ DBP’s proposed revised drafting for clause 5.4(f) is as follows:¹¹⁸⁴

5.4 Queuing Requirements

...

- (f) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the Queue with a priority date being the date of receipt of the Access Request by Operator, except that:-

~~However, in a case:~~

- (i) where Operator notifies Shipper in accordance with clause 5.3(c)(i) that there is Spare Capacity sufficient to satisfy the Access Request but the Prospective Shipper requests amended terms and conditions in accordance with the process under clause 5.3(~~e~~d)(ii)(B) in respect of the Access Request; or
- (ii) where Operator notifies Shipper in accordance with clause 5.3(c)(ii) that there is not Spare Capacity sufficient to satisfy the Access Request and the parties agree to investigations being carried out under a FEED Proposal in accordance with the process under clause 5.3(f)(iv),

unless within 15 Business Days after the date the Shipper receives an access proposal in response to the proposed amended terms and conditions under clause 5.3(e)(ii)(B), or an access proposal based on the investigations carried out in respect of a FEED Proposal under clause 5.3(f)(iv), either:

~~(A) — an access proposal in response to the proposed amended terms and conditions under clause 5.3(d)(ii)(B); or~~

~~(B) — an access proposal based on the investigations carried out in respect of a FEED Proposal under clause 5.3(e)(iv);~~

~~either:~~

- (iii) the parties agree the terms of access and/or the conditions are, in Operator’s reasonable opinion, satisfied; or
- (iv) the Prospective Shipper agrees to amend the Access Request such that it becomes an Access Request for a Reference Service made on the basis of the Access Contract Terms and Conditions,

the Access Request will be removed from the Queue and will subsequently be re-entered in the Queue with a priority date being the date that agreement is reached and/or the conditions are, in Operator’s reasonable opinion, satisfied. However, where a dispute between Operator and the Prospective Shipper arises in respect of the terms and conditions of access and that dispute is referred to arbitration under section 181 of the NGA, the period of time remaining pursuant to clauses 5.4(f)(i) and 5.4(f)(ii) (as applicable) will be suspended from the date the dispute is referred to arbitration (**Referral Date**) until 4 months after the Referral Date.

2763. As indicated at paragraph 2759 above, DBP revised clause 5.3(e)(iii) to delete the last sentence that reads: “If the parties have not agreed on the Operator’s proposed terms and conditions, or negotiated amendments to the terms and conditions, within a further 20 business days of the Operator’s response under this clause, then the

¹¹⁸³ DBP, 2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access, October 2020, pp. 17-19.

¹¹⁸⁴ Shown in mark-up against the ERA’s required drafting set out in paragraph 1755 of the draft decision [paragraph 2755 of this final decision].

Operator is taken to have rejected the Prospective Shipper's request." DBP submitted that the reason for deleting the sentence was that it conflicted with (amended) clause 5.4(f):

... under clause 5.4(f), once the prospective shipper receives the Operator's response, the parties have 15 business days to agree amendments to the terms and conditions offered by the Operator, rather than 20 business days as set out in clause 5.3(e)(iii). It appears that both clause 5.3(e)(iii) and clause 5.4(f) provide slightly different mechanisms to deal with the same situation. We submit that the second sentence of clause 5.3(e)(iii) should be deleted and the parties should follow clause 5.4(f)'s mechanism for agreeing terms and conditions and resolving where the access request sits in the Queue.¹¹⁸⁵

Submissions to the ERA

2764. Submissions from Synergy and gasTrading addressed DBP's initial proposal for access and queuing requirements. The matters raised in these submissions were considered as part of the ERA's draft decision.
2765. There were no submissions in response to the ERA's draft decision and/or DBP's revised proposal that addressed the access and queuing requirements.

Final decision

2766. DBP accepted draft decision required amendments 48, 49 and 50 to amend the access and queuing requirements in clauses 5.3 and 5.4 of the access arrangement as required.
2767. When addressing draft decision required amendment 48, DBP made further revised amendments to clause 5.3 to correct typographical errors and/or make grammatical changes. The ERA considers that these amendments are administrative in nature and do not alter the provisions of the access arrangement for access requests.
2768. DBP's revised proposal to amend clause 5.3(e)(iii), to delete the last sentence of the clause, removes the 20 business day timeframe whereby the operator is deemed to have rejected the prospective shipper's request for amended terms and conditions made under clause 5.3(e)(ii)(B). That is, clause 5.3(e)(iii) currently provides that the operator has 15 business days to respond to the shipper's request for amended terms and conditions under clause 5.3(e)(ii)(B) and that the parties then have a further 20 business days to agree/negotiate amendments to the terms and conditions. In circumstances where the terms and conditions have not been agreed/negotiated within the 20-business day timeframe the operator is deemed to have rejected the shipper's request.
2769. As submitted by DBP, the 20 business day timeframe in clause 5.3(e)(iii) conflicts with the timeframe under (amended) clause 5.4(f), which sets out the requirements for queuing where an access request requires the terms and conditions for access to be negotiated. Under clause 5.4(f) the parties have 15 business days, from the date the shipper receives a response from the operator about its request for amended terms and conditions under clause 5.3(e)(ii)(B), to agree/negotiate amendments to the terms and conditions. If no agreement is reached within 15 business days, the access request is removed from the queue and is only re-entered at the time when an agreement has been reached. Parties therefore have only 15 business days to

¹¹⁸⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access*, October 2020, p. 19.

agree/negotiate terms and conditions under clause 5.4(f), compared to 20 business days under current clause 5.3(e)(iii), before a 'penalty' is applied (with the penalty being the removal of the shipper's access request from the queue for pipeline access).

2770. The ERA considers that DBP's revised proposal to delete the second sentence of clause 5.3(e)(iii) from the queuing requirements (see paragraph 2763) is required given the inconsistencies in timeframes. However, the ERA considers that the following clauses should be further amended to better establish and clarify the link between clause 5.3(e)(iii) and the process in clause 5.4(f).

- Clause 5.3(e)(iii) amended as follows:
 - (iii) In respect of notice under clause 5.3(e)(ii)(B), the Operator must respond within 15 business days of receiving the proposed amendments from the Prospective Shipper and the process in clause 5.4(f) will apply.
- Clause 5.4(f) amended as follows:
 - (f) If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the Queue with a priority date being the date of receipt of the Access Request by Operator, except that:

...

unless within 15 Business Days after the date the Shipper receives an access proposal in response under clause 5.3(e)(iii) to the proposed amended terms and conditions under clause 5.3(e)(ii)(B), or ...

Required Amendment 27

The queuing requirements in clauses 5.3(e)(iii) and 5.4(f) of the revised proposed access arrangement must be amended to clarify the link between the two clauses.

The required amended drafting is set out at paragraph 2770 of this final decision.

2771. DBP's proposed revised amendments to clause 5.4(f) include additional drafting amendments (see paragraph 2762 above) to those required by the ERA and set out in draft decision required amendment 50. DBP submitted that the additional amendments were required to further improve drafting clarity. The ERA considers that DBP's proposed amendments improve the drafting of clause 5.4(f) and are consistent with the national gas objective – the amendments clarify the queuing requirements in the access arrangement to promote efficient investment in, and efficient operation and use of, the DBNGP. However, the ERA considers that further minor amendments to clause 5.4(f) are required to correct cross-referencing as follows (shown with the mark-up required by Required Amendment 27):

- (f) If an Access Request requires ... except that:
 - (i) where Operator notifies Shipper in accordance with clause 5.3(c)(i) that there is Spare Capacity sufficient to satisfy the Access Request however the Prospective Shipper requests amended terms and conditions in accordance with the process under clause 5.3(e)(~~iii~~)(ii)(B) in respect of the Access Request; or
 - (ii) where Operator notifies Shipper in accordance with clause 5.3(c)(ii) that there is not Spare Capacity sufficient to satisfy the Access Request and the parties agree to investigations being carried out

under a FEED Proposal in accordance with the process under clause 5.3(f)(~~iv~~),

unless within 15 Business Days after the date the Shipper receives an access proposal in response [under clause 5.3\(e\)\(iii\)](#) to the proposed amended terms and conditions under clause 5.3(e)(ii)(B), or based on the investigations carried out in respect of a FEED Proposal under clause 5.3(f)(~~iv~~), either:

(iii) the parties ...

2772. The above amendments are necessary because:

- It is under clause 5.3(e)(ii)(B) where the shipper must notify that it requests amendments to the terms and conditions. Clause 5.3(e)(iii) covers the requirement for the operator to respond to the shipper's request that is made under clause 5.3(e)(ii)(B) for amended terms and conditions.
- Clause 5.3(f) sets out the provisions (and process) in circumstances where the operator needs to carry out further investigations (that is, a "FEED Proposal") to determine whether it can provide the requested service. Sub clause 5.3(f)(iv) covers only one of the sub provisions/processes for a FEED Proposal.¹¹⁸⁶

Required Amendment 28

The queuing requirements in clause 5.4(f) of the revised proposed access arrangement must be amended to:

- In clause 5.4(f)(i): delete the reference to "clause 5.3(e)(iii)" and replace it with a reference to "clause 5.3(e)(ii)(B)".
- In clause 5.4(f)(ii): delete the two references to "clause 5.3(f)(iv)" and replace them with references to "clause 5.3(f)".

2773. There were no submissions from interested parties on DBP's revised proposal to address draft decision required amendments 48, 49 and 50. Given this, the ERA maintains its draft decision positions concerning the matters that needed to be addressed. Subject to the additional required amendments to clause 5.4(f), the ERA considers that DBP's revised proposal implements the required amendments as intended, and that the amendments are consistent with the requirements of the NGR for access and queuing.¹¹⁸⁷

Capacity trading

2774. Modified rule 48(1)(g) of the NGR requires the access arrangement to set out capacity trading requirements.¹¹⁸⁸

2775. Rule 105 of the NGR details specific provisions for capacity trading requirements:

¹¹⁸⁶ In the access arrangement, "FEED Proposal" or "Front-End Engineering Design Proposal" is used to refer to the further investigations that are required to determine whether the service can be provided (see clause 5.3(c)(ii)).

¹¹⁸⁷ Rules 112 (Requests for access) and 103 (Queuing requirements) of the NGR.

¹¹⁸⁸ As set out in schedule 1 (rule 62) of the NGR.

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.

DBP's initial proposal

2776. Clause 6 of the proposed revised access arrangement sets out the capacity trading requirements. DBP proposed no amendments to the requirements – the requirements remain unchanged from the current (AA4) access arrangement.

Draft decision

2777. Clause 6 of the access arrangement provides for the transfer of capacity consistent with rule 105(1) of the NGR:

- Where DBP is registered as a participant in a particular gas market, the transfer of capacity will occur in accordance with the rules or procedures governing the gas market (clause 6.1(a) of the access arrangement).

- Where DBP is not registered as a participant in a particular gas market, the transfer of capacity will occur in accordance with rule 105 of the NGR and clauses 6.2 to 6.5 of the access arrangement (clause 6.1(b) of the access arrangement).

2778. Clauses 6.2 to 6.4 of the access arrangement provide that:

- Consistent with rules 105(2) and 105(3) of the NGR, shippers with a haulage service may transfer all or any of their contracted capacity with or without DBP's consent (clause 6.2 of the access arrangement):
- Transfers without consent, by way of subcontract, may occur in accordance with clause 27.2 of the terms and conditions for each reference service.
- Subject to any pre-existing contractual rights, transfers with consent may occur in accordance with clauses 27.3 and 27.4 of the terms and conditions for each reference service, and clauses 6.3 to 6.5 of the access arrangement.¹¹⁸⁹
- Consistent with rule 105(4) of the NGR, DBP must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, to do so (clause 6.3 of the access arrangement).
- Consistent with rule 105(6) of the NGR, clause 6.4 of the access arrangement details conditions, based on reasonable technical or commercial grounds, that must be met before DBP will give consent to a transfer. These conditions are in addition to any conditions set out in the terms and conditions for each reference service and include, without limitation:
- That the third party must comply with the queuing requirements detailed in clause 5.4 of the access arrangement.
- That the shipper must reimburse DBP for all costs incurred by it in processing and determining the shipper's consent request regardless of whether the transfer proceeds, provided DBP can demonstrate the costs have been reasonably and properly incurred.

2779. Clause 6.5 of the access arrangement details the consequences following the transfer of capacity, with DBP's consent, to a third party. Consistent with rule 105(5) of the NGR, the shipper's rights or liabilities that accrued under, or in relation to, the shipper's access contract before the date of consent are not affected.

2780. DBP's proposed capacity trading requirements remain the same as the requirements in the current (AA4) access arrangement. There were no submissions from interested parties in response to DBP's initial proposal or the ERA's issues paper that sought any amendments to the requirements. The ERA considered that for these reasons and in the absence of any other reason to amend the requirements, the current capacity trading requirements met the requirements of the NGR.

DBP's response to the draft decision

2781. DBP did not amend the capacity trading requirements in its revised proposal.

Submissions to the ERA

2782. No submissions to the ERA addressed the capacity trading requirements in DBP's initial proposal.

¹¹⁸⁹ In the access arrangement, the term "Pre-existing Contractual Right" means "a 'relevant protected contractual right' as defined in section 321 of the NGL".

2783. There were no submissions in response to the ERA's draft decision and/or DBP's revised proposal that addressed the capacity trading requirements.

Final decision

2784. DBP did not propose any revised amendments to the capacity trading requirements in clause 6 of the access arrangement. There were no submissions from interested parties on these requirements. For these reasons, the ERA maintains its draft decision position that the capacity trading requirements meet the requirements of the NGR.

Extension and expansion requirements

2785. Modified rule 48(1)(h) of the NGR requires the access arrangement to set out extension and expansion requirements.¹¹⁹⁰

2786. Rule 104 of the NGR details specific provisions for extension and expansion requirements. As indicated at paragraph 40, amendments to the NGR occurred in March 2019 and changed the extension and expansion requirements. Rule 104, as amended, states:

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 the pipeline made during the access arrangement period or may allow for later resolution of that question on a basis stated in the requirements.
- (2) Extension and expansion requirements may, if the service provider agrees, state that the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to the pipeline made before the revision commencement date for the applicable access arrangement.
- (3) Extension and expansion requirements must state that the applicable access arrangement will apply to incremental services to be provided as a result of any expansion to the capacity of the pipeline during the access arrangement period and deal with the effect of the expansion on tariffs.
- (4) 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 provided as a result of an extension to the pipeline:
 - (a) in the case of extensions made before the revision commencement date for the applicable access arrangement deal with:
 - (i) the effect of the extension on the opening capital base under rule 77(2)(c1); and
 - (ii) the effect of the extension on the description of reference services specified in the access arrangement proposal; and
 - (b) in all cases, deal with the effect of the extension on tariffs.
- (5) 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.

¹¹⁹⁰ As set out in schedule 1 (rule 62) of the NGR.

DBP's initial proposal

2787. Clause 7 of the proposed revised access arrangement sets out the extension and expansion requirements. DBP amended clause 7.3 to change the date of "1 July 2016" to "1 July 2021". Except for this amendment, the extension and expansion requirements were unchanged from the current (AA4) access arrangement.

Draft decision

2788. DBP amended clause 7.3 of the revised access arrangement to change the date "1 July 2016" to "1 July 2021" as follows:

If the Operator proposes to extend or expand 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~~2021:

2789. The ERA considered that the intent of DBP's proposed date change was to amend the date to reflect the commencement date of the revised access arrangement for AA5. Clause 14.1 of the revised access arrangement states that "the Current Access Arrangement Period commences on 1 January 2021". Given this date, the ERA considered that the date in clause 7.3 of the access arrangement should be 1 January 2021.

2790. The draft decision set out the following required amendment:

Draft Decision Required Amendment 51

DBP must amend the extension and expansion requirements in clause 7.3 of the proposed revised access arrangement to change the date from "1 July 2021" to "1 January 2021" to reflect the expected commencement date of the revised access arrangement for the fifth access arrangement period (AA5).

2791. The ERA considered that clause 7 of the revised access arrangement did not expressly address the amended requirements of rule 104 of the NGR. Rule 104 provides that the extension and expansion requirements:

- May state whether the access arrangement will apply to incremental services to be provided as a result of a particular *extension* to the pipeline made *during* the access arrangement period or allow for a later resolution of that question on a basis as stated in the requirements (rule 104(1)).
- May state, if DBP agrees, that the access arrangement will apply to incremental services to be provided as a result of a particular *extension* to the pipeline made *before* the revision commencement date for the access arrangement (rule 104(2)).
- Must state that the access arrangement will apply to incremental services to be provided as a result of any *expansion* to the capacity of the pipeline *during* the access arrangement period and deal with the effect of the expansion on tariffs (rule 104(3)).

2792. Under rule 104(4), if the requirements in the access arrangement are to apply to incremental services provided as a result of an extension to the pipeline:

- In the case of extensions made before the revision commencement date for the access arrangement, the requirements must deal with the effect of the extension on the opening capital base under rule 77(2)(c1) of the NGR, as well as the effect of the extension on the description of reference services specified in the access arrangement proposal.

- In all cases, the requirements must deal with the effect of the extension on tariffs.
2793. Pursuant to rule 104(5), the extension and expansion requirements cannot require DBP to provide funds for work involved in making an extension or expansion unless DBP agrees.
2794. The ERA considered that clause 7 of the revised access arrangement was not sufficiently clear as to whether the extension and expansion requirements provide that the access arrangement applies to incremental services. The term “incremental services” is not currently used in the access arrangement. Rule 3 of the NGR defines incremental services as follows:
- incremental services** means pipeline services provided by means of an extension to, or expansion of the capacity of, the pipeline.
2795. Further, clause 7.3 also provides that DBP may elect, by way of notice to the ERA, that an extension will not become part of the covered pipeline. DBP may also elect that an expansion will not become part of the covered pipeline. However, in the case of expansions, DBP must give notice to the ERA and demonstrate, to the ERA’s “reasonable satisfaction”, that the application of the access arrangement to the expansion is inconsistent with the national gas objective. The ERA must then issue a notice confirming its position as to whether it is satisfied.
2796. Rule 104 of the NGR does not require or allow the ERA to make assessments as to whether expansions form part of the covered pipeline and/or whether the access arrangement will apply to incremental services that are provided as a result of an expansion. In the case of *expansions*, the service provider has no choice – the access arrangement must apply to the incremental services that are provided as a result of the expansion (rule 104(3)).
2797. Rule 104 of the NGR further requires the extension and expansion requirements to deal with the effect of extensions and expansions on tariffs and, in the case of extensions made before the revision commencement date for the access arrangement, the effect of the extension on the: (a) opening capital base under rule 77(2)(c1) of the NGR; and (b) description of reference services specified in the access arrangement proposal (rule 104(4)).
2798. Clause 7.5 of the revised access arrangement states:
- 7.5 If an extension or expansion of the DBNGP becomes part of the Covered Pipeline, the extension, expansion or enhancement will not affect the Reference Tariff before the Revisions Commencement Date for the Next Access Arrangement. Although, if an extension, 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.
2799. While clause 7.5 states that an extension will not affect reference tariffs before the revision commencement date for the next access arrangement, there is no mention of the effect of the extension on the opening capital base or description of reference services.

2800. Clause 7.5 of the revised access arrangement further applies to enhancements. Enhancements were previously considered in the final decision on amendments to the access arrangement for AA4, where it was determined that the term should not be used.¹¹⁹¹ The ERA subsequently made and published its own access arrangement (after not approving DBP's amended AA4 proposal) removing all references to the term "enhancement". The three references to "enhancement" that remain in the revised access arrangement (see clauses 7.5 and 7.10) were oversights – the references should have been removed by the ERA in accordance with the required amendment in the ERA's final decision for AA4.¹¹⁹²
2801. Based on the considerations above, the ERA considered that the extension and expansion requirements set out in clause 7 of the revised access arrangement did not meet the requirements of the NGR. The ERA stated that DBP needed to amend clause 7 of the access arrangement to:
- Clarify that the extension and expansion requirements provide that the access arrangement applies to the incremental services that are provided as a result of a particular extension or expansion.
 - In the case of expansions, specify that the access arrangement will apply to the incremental services that are provided as a result of the expansion.
 - In the case of extensions made before the revision commencement date for the access arrangement, specify the effect of the extension on the opening capital base and description of reference services.
 - Correct oversights of the ERA when it made and published the access arrangement for AA4 to remove the remaining references to the term "enhancement".
2802. The draft decision set out the following required amendment:

Draft Decision Required Amendment 52

DBP must amend the extension and expansion requirements in clause 7 of the proposed revised access arrangement so that the requirements satisfy rule 104 of the NGR. The matters that DBP must address are set out at paragraphs 1770 to 1780 of [the] draft decision [paragraphs 2791 to 2801 of this final decision].

DBP's response to the draft decision

2803. DBP submitted that the ERA's draft decision required amendment 51 was no longer relevant because the revised amendments addressing draft decision required amendment 52 delete the wording that was the subject of required amendment 51.¹¹⁹³
2804. DBP accepted the ERA's draft decision required amendment 52 to amend the extension and expansion requirements in clause 7 of the access arrangement. DBP's revised amendments are set out below (shown in mark-up against DBP's initial proposal).

¹¹⁹¹ ERA, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020*, 30 June 2016, pp. 442-445, paragraphs 1865-1876.

¹¹⁹² ERA, *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020*, 30 June 2016, pp. 445-446, paragraph 1877 (required amendment 39).

¹¹⁹³ DBP, *2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access*, October 2020, p. 9.

7. EXTENSIONS AND EXPANSIONS

- 7.1 The Operator is not required to fund part or all of ~~the any extension of, or~~ expansion of the Capacity of, the DBNGP (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 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.~~
- ~~7.37.2~~ If the Operator ~~proposes to~~ extends or expands 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 2021:~~
- (a) for extensions made during the Current Access Arrangement Period, the an extension is to become part of the Covered Pipeline if, and immediately when, the consent to operate the extension is granted to the Operator under the Petroleum Pipelines Act 1969 (WA) during the Current Access Arrangement Period, unless, before that occurs, the Operator elects otherwise and gives the Regulator notice of the extension which the Operator elects will not become part of the Covered Pipeline; and
- (b) for expansions made during the Current Access Arrangement Period, the an expansion is to become part of the Covered Pipeline, if and immediately when, the consent to operate the expansion is granted to the Operator under the Petroleum Pipelines Act 1969 (WA) during the Current Access Arrangement Period, ~~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.~~
- ~~7.47.3~~ In considering ...
- ~~7.57.4~~ If an extension or expansion of the DBNGP becomes part of the Covered Pipeline during the Current Access Arrangement Period, pursuant to clause 7.2:
- (a) the Current Access Arrangement will apply to Incremental Services provided as a result of that expansion or extension; and
- (b) the extension or, expansion ~~or enhancement~~ will not affect the Reference Tariff before the Revisions Commencement Date for the Next Access Arrangement, ~~;~~
- ~~save that~~ Although, if an extension or, expansion ~~or enhancement~~ of the DBNGP becomes part of the Covered Pipeline:
- (a)(c) Operator may seek a Capital Contribution from Prospective Shippers or levy a Surcharge ~~on Incremental Shippers in respect of~~ Incremental Services in accordance with NGR 82 and 83; and
- (b)(d) prior to 1 May 2023, the review submission date set out in clause 14.2 may be accelerated and brought forward by Operator pursuant to NGR 51 to a date nominated by the Operator (being a date that is at least 6 months prior to the review submission date set out in clause 14.2) ~~Operator may submit proposed revisions to this Access Arrangement under NGR 50.~~
- ~~7.67.5~~ Operator may ...
- ~~7.77.6~~ Except where Operator imposes a Surcharge or seeks a Capital Contribution, or where clause ~~7.407.9~~ applies, Shippers using Incremental

~~Capacity~~ Services which are Reference Services will pay the relevant Reference Tariff.

~~7.87.7~~ To assist ...

~~7.97.8~~ A Capacity Expansion Option ...

~~7.107.9~~ If any extension, ~~enhancement~~ or expansion ...

2805. DBP submitted that it had worked through the provisions of rule 104 of the NGR and made amendments to clause 7 to better align the extension and expansion requirements in the revised access arrangement with the requirements of the NGR.¹¹⁹⁴
2806. Further to amending clause 7 to address the provisions of rule 104 of the NGR (as required by draft decision required amendment 51), DBP submitted that it:¹¹⁹⁵
- Deleted references to “enhancement” in clauses 7.4 and 7.9.
 - Inserted a new term – “Incremental Services” – in clause 16 (Definitions) of the revised access arrangement, which means: “Pipeline Services provided by means of an extension to, or expansion of the capacity of, the DBNGP”. The new term is used instead of “Incremental Shippers” and hence the terms “Incremental Shippers” and “Incremental Capacity” have been deleted from clause 16.
 - Clarified the effect of an extension or expansion of the DBNGP being a trigger event by inserting (new) clause 7.4(d) and making related amendments to clause 14 (see paragraph 82 of this decision).
 - Deleted the words “as it is configured at the time of approval of this Access Arrangement” from clauses 3.3(d), 3.4(e) and 3.5(e) of the revised access arrangement so that the minimum term when lodging an access request for spare capacity applies to any spare capacity resulting from an extension or expansion.¹¹⁹⁶

Submissions to the ERA

2807. No submissions to the ERA addressed the extension and expansion requirements in DBP’s initial proposal.
2808. There were no submissions in response to the ERA’s draft decision and/or DBP’s revised proposal that addressed the extension and expansion requirements.

Final decision

2809. The ERA considers that DBP’s revised proposal to amend the extension and expansion requirements in response to the ERA’s draft decision required amendment 51 has, in turn, addressed draft decision required amendment 50. That is, draft decision required amendment 50 is no longer relevant given DBP’s revised amendments to the extension and expansion requirements in clause 7.

¹¹⁹⁴ DBP, *2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access*, October 2020, pp. 10-11.

¹¹⁹⁵ DBP, *2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access*, October 2020, p. 11.

¹¹⁹⁶ Clauses 3.3(d), 3.4(e) and 3.5(e) apply to the T1 Service, P1 Service and B1 Service, respectively. These clauses require prospective shippers, seeking access to spare capacity, to nominate a minimum two year term when lodging an access request for the respective service.

2810. DBP accepted draft decision required amendment 51. The ERA considers that DBP's revised amendments to the extension and expansion requirements in clause 7 address the matters that were outlined in the draft decision, and that the amended requirements now satisfy rule 104 of the NGR for the following reasons.
- As provided by rule 104(1), clause 7.4 states that if an extension or expansion of the DBNGP becomes part of the covered pipeline during the access arrangement period, pursuant to clause 7.2, the access arrangement will apply to incremental services. Clause 7.2 provides that:
 - Extensions made during the access arrangement period become part of the covered pipeline once consent to operate the extension is granted, unless DBP elects otherwise and provides notice of this to the ERA.
 - Expansions made during the access arrangement period become part of the covered pipeline once consent to operate the expansion is granted.
 - As provided by rule 104(2), the extension and expansion requirements do not state that the access arrangement will apply to incremental services provided by means of an extension made before the revision commencement date for the applicable access arrangement. Rather, the access arrangement will apply only to incremental services provided by means of extensions that become part of the covered pipeline, pursuant to clause 7.2, during the access arrangement period.
 - As required by rule 104(3), the extension and expansion requirements state that the applicable access arrangement will apply to incremental services provided as a result of any *expansion* to the capacity of the pipeline during the access arrangement period and deal with the effect of the expansion on tariffs. That is:
 - Clause 7.2(b) states that expansions made during the access arrangement period become part of the covered pipeline when consent to operate the expansion is granted.
 - Clause 7.4 states that:
 - if an expansion becomes part of the covered pipeline during the access arrangement period, the access arrangement will apply to incremental services provided as a result of that expansion (clause 7.4(a)), and
 - the expansion will not affect the reference tariff before the revisions commencement date for the next access arrangement (clause 7.4(b)).
 - As provided by rule 104(4)(a), DBP has not stated that the access arrangement will apply to incremental services provided by means of an extension made before the revision commencement date for the applicable access arrangement. Hence rule 104(4)(a) does not apply and the extension and expansion requirements do not need to deal with the effect of the extension on the opening capital base under rule 77(2)(c1) and the description of reference services.
 - As required by rule 104(4)(b), the extension and expansion requirements deal with the effect of extensions on tariffs under clause 7.4(b) – extensions will not affect the reference tariff before the revisions commencement date for the next access arrangement.
 - As provided by rule 104(5), clause 7.1 states the operator is not required to fund any extension or expansion of the DBNGP, except for a capacity expansion

option where the provisions of the option require the expansion to be funded by the operator or operator entity.

- DBP's proposal to insert and use the term "Incremental Services" is consequential to the amendments made to clause 7.4 and consistent with the use and meaning of that term in rule 3 of the NGR. The use of this term in the access arrangement makes the existing terms "Incremental Shippers" and "Incremental Capacity" redundant.
- DBP has deleted references to "enhancements" so that the extension and expansion requirements only make references to "extensions" and "expansions".

2811. DBP's proposed revised amendment to clause 7.4(d) is consistent with rule 51 of the NGR, which allows for the acceleration of the review submission date in certain circumstances, including the occurrence of a trigger event. Rule 51(2) states that "a trigger event may consist of any significant circumstance or conjunction of circumstances" and gives as an example of a trigger event "a significant extension, expansion or interconnection occurs". However, the ERA considers that DBP's proposal to include such a trigger event should not be made for the following reasons:

- The proposed trigger event is not limited to significant extensions, expansions or interconnections. As provided by rule 51(2) of the NGR and the given trigger event example, a trigger event should only occur where a *significant* extension, expansion or interconnection occurs. The qualifier 'significant' should therefore be expressly included in the relevant clause for the trigger event. Under the revised proposed drafting, DBP would be able to accelerate the review submission date for *any* extension, expansion or interconnection. In the absence of an express requirement that the extension, expansion or interconnection is 'significant', clause 7.4(d) must be deleted.
- The trigger event is unnecessary given that it is unlikely to materialise based on actual and forecast use of the DBNGP. That is, based on demand forecasts it is unlikely that there will be any significant extensions or expansions to the pipeline during the access arrangement period. In any case, clauses 7.4(a) and (b) of the access arrangement already provide that, during the current access arrangement period, any extensions to or expansions of the DBNGP will apply to incremental services, but reference tariffs will not be affected until the commencement date of the next access arrangement period.

Required Amendment 29

Clause 7.4(d) must be deleted from the extension and expansion requirements in the revised proposed access arrangement.

2812. The ERA considers that DBP's other proposed revised amendments to clauses 3.3(d), 3.4(e) and 3.5(e) (see paragraph 2806 above) enhance the provisions of the access arrangement for prospective shippers seeking access to spare capacity and are consistent with the national gas objective. As submitted by DBP, the amendments provide that the minimum two-year term applies to *any* spare capacity resulting from an extension or expansion, rather than just spare capacity of the DBNGP as it is configured at the time of approval of the access arrangement.

2813. There were no submissions from interested parties on DBP's revised proposal to address draft decision required amendment 51. Given this, the ERA maintains its draft decision positions concerning the matters that needed to be addressed. Subject

to deleting clause 7.4(d) from the access arrangement, the ERA considers that DBP's revised proposal implements the required amendments as intended, and that the amendments are consistent with the requirements of the NGR for extensions and expansions.¹¹⁹⁷

Receipt and delivery points

2814. Modified rule 48(1)(i) of the NGR requires the access arrangement to state the terms and conditions for changing receipt and delivery points.¹¹⁹⁸

2815. Rule 106 of the NGR details specific provisions for changing receipt and delivery points:

106 Change of receipt or delivery point by user

- (1) An access arrangement must provide for the change of a receipt or delivery point in accordance with the following principles:
 - (a) a user may, with the service provider's consent, change the user's receipt or delivery point;
 - (b) the service provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
- (2) The access arrangement may specify in advance conditions under which consent will or will not be given, and conditions to be complied with if consent is given.

DBP's initial proposal

2816. Clause 8 of the revised access arrangement sets out provisions for changing inlet (receipt) and outlet (delivery) points. DBP amended clause 8.1 to replace the words "haulage service Access Contract" with the term "Service Access Contract". Except for this amendment clause 8 remains unchanged from the current (AA4) access arrangement.

Draft decision

2817. Under clause 8.1 of the access arrangement, inlet and outlet points may be changed. Shippers may also relocate their contracted capacity from an existing inlet or outlet point according to the following principles:

- The shipper must make a change request to DBP in writing.
- DBP must consent to a change request before any change or relocation becomes effective.
- DBP must not withhold its consent to a change request unless it has reasonable grounds, based on technical or commercial considerations, for doing so.

2818. Clause 8.2 of the access arrangement sets out the considerations which DBP will consider when deciding whether to consent to a change request and include, without limitation, technical considerations, commercial considerations and, in the case of a

¹¹⁹⁷ Rule 104 of the NGR.

¹¹⁹⁸ As set out in schedule 1 (rule 62) of the NGR.

change request for a reference service, the considerations specified in clause 14 of the terms and conditions for the reference service.

2819. DBP proposed to replace the words “haulage service Access Contract” with the term “Service Access Contract” in clause 8.1. However, the proposed term is not a defined term in the access arrangement. The ERA considered that the term “Access Contract”, which is defined in clause 16 of the access arrangement as meaning “a contract between (among others) Operator and a Shipper for a Pipeline Service”, was the term DBP had intended to use.
2820. The draft decision set out the following required amendment:

Draft Decision Required Amendment 53

DBP must amend the terms and conditions for changing inlet and outlet points in clause 8.1 in the proposed revised access arrangement to read: “In accordance with NGR 106, the Shipper under an Access Contract may: ...”

2821. Notwithstanding DBP’s proposed amendment to use the term “Service Access Contract”, the terms and conditions for changing inlet and outlet points remain substantively the same as the terms and conditions under the current (AA4) access arrangement. There were no submissions from interested parties seeking any amendments to these terms and conditions. The ERA considered that for these reasons and in the absence of any other reason to amend the terms and conditions, the current terms and conditions for changing inlet and outlet points met the requirements of the NGR.

DBP’s response to the draft decision

2822. DBP accepted the ERA’s draft decision required amendment 53 to amend clause 8.1 of the access arrangement to replace the words “a Service Access Contract” with “an Access Contract”.¹¹⁹⁹

Submissions to the ERA

2823. No submissions to the ERA addressed the terms and conditions for changing inlet and outlet points in DBP’s initial proposal.
2824. There were no submissions in response to the ERA’s draft decision and/or DBP’s revised proposal that addressed the terms and conditions for changing inlet and outlet points.

Final decision

2825. DBP accepted draft decision required amendment 53 to amend clause 8.1 in the access arrangement to use the term “Access Contract” (instead of the term “Service Access Contract”).
2826. There were no submissions from interested parties on DBP’s revised proposal to address draft decision required amendment 53. Given this, the ERA maintains its draft decision position concerning the matter that needed to be addressed. The ERA considers that DBP’s revised proposal implements the required amendment as

¹¹⁹⁹ DBP, *2021-2025 Revised Final Plan, Attachment 14.1B: Response to Draft Decision on Pipeline Access*, October 2020, p. 8.

intended, and that the amendment is consistent with the requirements of the NGR for terms and conditions for changing inlet and outlet points.

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Appendix 3 Abbreviations

AA4	fourth access arrangement period
AA5	fifth access arrangement period
AA6	sixth access arrangement period
AGIG	Australian Gas Infrastructure Group
CPM	CITIC Pacific Mining Management Pty Ltd
DBNGP	Dampier to Bunbury Natural Gas Pipeline
DBP	DBNGP (WA) Transmission Pty Ltd
EMCa	Energy Market Consulting Associates
ERA	Economic Regulation Authority
gasTrading	Gas Trading Australia Pty Ltd
LNG	liquified natural gas
Mitsui	Mitsui E&P Australia Pty Ltd
NewGen	NewGen Power Kwinana Pty Ltd
NGL	National Gas Law
NGR	National Gas Rules
NWS JV	North West Shelf Joint Venture
WEGS	Wesfarmers Energy (Gas Sales) Ltd
WesCEF	Wesfarmers Chemicals, Energy & Fertilisers Ltd

Appendix 4 Submissions received

Submissions received in response to the ERA's initiating notice and/or issues paper:

- Australia Gas Infrastructure Group, *Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline: Issues Paper*, 31 March 2020.
- CITIC Pacific Mining Management Pty Ltd, *Public Submission in response to Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-2025*.
- Gas Trading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25 Issues Paper*, 30 March 2020.
- NewGen Power Kwinana Pty Ltd, *Response to issues paper on proposed revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 31 March 2020.
- Perth Energy Pty Ltd, *Response to Issues Paper: Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline for 2021 to 2025*, 14 April 2020.
- Synergy, *Submission in response to DBNGP proposed access arrangement for 2021-2025*, 31 March 2020.
- Wesfarmers Chemicals, *Energy & Fertilisers Ltd, Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025)*, 30 March 2020.

Submissions received in response to the ERA's draft decision:

- Alinta Energy, *Draft Decision and DBP's Revised Proposal*, 4 November 2020.
- Beach Energy Limited, *Submission in support of the proposed Ullage Service by DBP*, 2 November 2020.
- CITIC Pacific Mining Management Pty Ltd, *Extra Submission in response to Economic Regulation Authority's Draft Decision and AGIG's Revised Final Plan relating to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021 – 2025*, 4 November 2020.
- Gas Trading Australia Pty Ltd, *Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021-25, Draft Decision and Revised Proposed Access Arrangement*, 30 March 2020.
- Mitsui E&P Australia Pty Ltd, *Submission in support of the proposed Ullage Service by DBP*, 2 November 2020.
- NewGen Power Kwinana Pty Ltd, *[Submission in response to the ERA consultation on proposed revisions to the DBNGP Access Arrangement for the 2021 to 2025 regulatory period]*, 3 November 2020.
- Wesfarmers Energy (Gas Sales) Limited, *Wesfarmers Energy (Gas Sales) Limited submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025) and the Revised Final Plan*, 4 November 2020.

Submissions received in response to the ERA's position paper:

- Australia Gas Infrastructure Group, *Submission in response to ERA position paper on pipeline and reference services*, 4 December 2020.
- Wesfarmers Energy (Gas Sales) Limited, *Submission on the proposed Dampier to Bunbury Natural Gas Pipeline Access Arrangement (2021-2025) and the Economic Regulation Authority's Position Paper*, 4 December 2020.

Appendix 5 Terms and conditions for reference services

The ERA has considered DBP's proposed amendments to the terms and conditions for reference services as part of this decision at paragraphs 2020 to 2371). This appendix reproduces DBP's initial proposal amendments to individual clauses.

Clause 1 (interpretation) – “AGIG”

DBP's initial proposal

AGIG means

- (a) each of the following entities and any entity which is a Related Body Corporate of any of the following entities:
- (i) the Operator;
 - (ii) the Pipeline Trustee;
 - (iii) DUET Investment Holdings Pty Limited (ABN 22 120 456 573);
 - (iv) CK William Australia Holdings Pty Ltd (ABN 14 613 690 243);
 - (v) Multinet Group Holdings Pty Ltd (ABN 83 104 036 937);
 - (vi) Australian Gas Networks Limited (ABN 19 078 551 685); and
- (b) any other entity part of the group known as the Australian Gas Infrastructure Group of companies from time to time.

Clause 1 (interpretation) – “Aggregated B1 Service”

DBP's initial proposal

In the terms and conditions for the P1 Service and T1 Service:

Aggregated B1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for B1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for B1 Services; and
- (b) in excess of that shipper's Contracted Capacity for B1 Services at an Inlet Point or Outlet Point.

In the terms and conditions for the B1 Service:

Aggregated B1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for B1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for B1 Services; and
- (b) in excess of that shipper's Contracted Capacity for B1 Services at an Inlet Point or Outlet Point,

and in respect to the Capacity Services available under this Contract has the meaning given in clause 8.16.

Clause 1 (interpretation) – “Aggregated P1 Service”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

Aggregated P1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for P1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for P1 Services; and
- (b) in excess of that shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,

and in respect to the Capacity Services available under this Contract has the meaning given in clause 8.16.

In the terms and conditions for the B1 Service and T1 Service:

Aggregated P1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for P1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for P1 Services; and
- (b) in excess of that shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point.

Clause 1 (interpretation) – “Aggregated T1 Service”

DBP’s initial proposal

In the terms and conditions for the P1 Service and B1 Service:

Aggregated T1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for T1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for T1 Services; and
- (b) in excess of that shipper's Contracted Capacity for T1 Services at an Inlet Point or Outlet Point.

In the terms and conditions for the T1 Service:

Aggregated T1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for T1 Service:

- (a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for T1 Services; and
- (b) in excess of that shipper's Contracted Capacity for T1 Services at an Inlet Point or Outlet Point,

and in respect to the Capacity Services available under this Contract has the meaning given in clause 8.16.

Clause 1 (interpretation) – “Associated”

DBP’s initial proposal

Associated, when used to describe the relationship between:

(a) a Gate Station and a Sub-network, means that Gate Station is associated with that Sub-Network;

~~(a)~~(b) an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and

~~(b)~~(c) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point.

and *relates* and *related*, when used to describe such relationships, have the analogous meanings.

Clause 1 (interpretation) – “B1 Service”

DBP’s initial proposal

In the terms and conditions for the P1 Service and T1 Service:

B1 Service means a Back Haul transportation ~~service~~Reference Service provided under the terms and conditions set out in the Access Arrangement for the B1 Service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the ~~Access Arrangement~~relevant contract, to access capacity of the DBNGP and which:

~~(a) can only be Curtailed in the circumstances specified in clause 17.2;~~

~~(b)~~(a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

~~(e)~~(b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause ~~8.9~~8.10.

In the terms and conditions for the B1 Service:

B1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause ~~3.2~~, and in respect of other shippers and other contracts~~3.5(a) of the Access Arrangement~~ and means a ~~service providing~~ Back Haul transportation service which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:~~capacity~~

(a) is treated the same~~with priority as set out~~ in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

(b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

Clause 1 (interpretation) – “Contracted Capacity”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

Contracted Capacity has, when used in respect of the P1 Service under this Contract, the meaning given in clause ~~3.2(b)(iv)~~3.3 and, in the context of any other contract in respect of a particular Capacity Service under that contract, has the meaning given in that contract.

In the terms and conditions for the B1 Service and T1 Service, analogous amendments were made so that the amendments are applicable to the respective service.

Clause 1 (interpretation) – “Contracted Firm Capacity”

DBP’s initial proposal

Contracted Firm Capacity means Alcoa's Exempt Capacity and any contracted Capacity under Service other than a Spot Transaction ~~a T1 Service, B1 Service or P1 Service or a Firm Service.~~

Clause 1 (interpretation) – “Daily Nomination”

DBP’s initial proposal

Daily Nomination means:

- (a) in respect of a ~~Type of~~ Capacity Service at an Inlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is scheduled to Deliver to the Operator at the Inlet Point on a Gas Day under that ~~Type of~~ Capacity Service; and
- (b) in respect of a ~~Type of~~ Capacity Service at an Outlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is scheduled to Receive from the Operator at the Outlet Point on a Gas Day under that ~~Type of~~ Capacity Service,

and in each case ~~as set out in the Initial Nominations~~ scheduled under clause 8 for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled under a Renomination process.

Clause 1 (interpretation) – “Data”

DBP’s initial proposal

Data means:

- (a) bulk customer data;
- (b) bulk personal information (being any holdings or files of personal information within the meaning of the Privacy Act 1988 (Cth) about multiple individuals which contain fields or categories); and
- (c) data as to the quantum of gas delivered (both historical and current load demand) from or to any one or more sites (or their connection points).

relating to or obtained in connection with any AGIG entity's operations.

Clause 1 (interpretation) – “DBNGP”

DBP's initial proposal

DBNGP means the Gas transmission pipeline system that runs between Dampier and Bunbury in Western Australia, described in section 2 of the Access Arrangement (as approved for the period ~~2016~~2021 – 2020~~2025~~) as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists at ~~the Execution Date~~1 January 2020.

Clause 1 (interpretation) – “Inlet Point”

DBP's initial proposal

Inlet Point means an inlet point on the DBNGP flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator and, where the context requires, means a flange, joint or other point specified in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

Clause 1 (interpretation) – “National Gas Access (Western Australia) Law”

DBP's initial proposal

National Gas Access (Western Australia) Law means the provisions applying because of section 7 of the National Gas Access (WA) Act 2009 (WA), as changed from time to time, or any similar provisions specified in or made in accordance with any amendment or replacement of the National Gas Access (WA) Act 2009 (WA).

Clause 1 (interpretation) – “Other Reserved Service”

DBP's initial proposal

Other Reserved Service means a Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, P1 Service, B1 Service, Aggregated Service, a Firm Service and Capacity under a Spot Transaction).

Clause 1 (interpretation) – “Outlet Point”

DBP's initial proposal

Outlet Point means an outlet point on the DBNGP a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Receipt by it of Gas from the Operator and, where the context requires, means a flange, joint or other point

referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

Clause 1 (interpretation) – “Overrun Gas”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

Overrun Gas means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including [T1 Service](#), P1 Service and [B1 Service](#) and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

In the terms and conditions for the T1 Service and B1 Service, analogous amendments were made so that the amendments included references to the “T1 Service”, “P1 Service” and “B1 Service”.

Clause 1 (interpretation) – “P1 Capacity Reservation Tariff”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

P1 Capacity Reservation Tariff, [in all cases subject to clauses 14.7 and 20.5\(a\)\(iii\), has the meaning given in clause 15 of the Access Arrangement.](#) ~~has the meaning given in clause 3.4(c) of the Access Arrangement as adjusted by the Reference Tariff Variation Mechanism from time to time and subject to clause.~~

In the terms and conditions for the B1 Service and T1 Service analogous amendments were made to the terms “B1 Capacity Reservation Tariff” and “T1 Capacity Reservation Tariff”, respectively.

Clause 1 (interpretation) – “P1 Commodity Tariff”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

P1 Commodity Tariff, [in all cases subject to clauses 14.7 and 20.5\(a\)\(iii\), has the meaning given in clause 15 of the Access Arrangement.](#) ~~clause 3.4(c) of the Access Arrangement as adjusted by the Reference Tariff Variation Mechanism from time to time.~~

In the terms and conditions for the B1 Service and T1 Service analogous amendments were made to the terms “B1 Commodity Tariff” and “T1 Commodity Tariff”, respectively.

Clause 1 (interpretation) – “P1 Service”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

P1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Forward Haul transportation service which is named in the relevant contract as P1 Service which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

~~3.4(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.~~

In the terms and conditions for the T1 Service and B1 Service:

P1 Service ~~has the meaning given in clause 3.4(a) of the Access Arrangement and~~ means a Forward Haul transportation service which is named in the relevant contract as P1 Service and ~~providing Part Haul capacity which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:~~

- (a) is treated the same ~~with priority as set out~~ in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

Clause 1 (interpretation) – “P1 Tariff”

DBP’s initial proposal

In the terms and conditions for the P1 Service:

P1 Tariff, in all cases subject to clauses 14.7 and 20.5(a)(iii), has the meaning given in clause 15 of the Access Arrangement. ~~means the reference tariff for P1 Service as set out in clauses 3.4 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time.~~

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made to the terms “T1 Tariff” and “B1 Tariff”, respectively.

Clause 1 (interpretation) – “Relevant Construction Costs”

Relevant Construction Costs means the Relevant Inlet Point Connection Facilities Construction Costs, Relevant Outlet Station Construction Costs or Relevant Gate Station Construction Costs (as the case may require).

Clause 1 (interpretation) – “T1 Service”

DBP’s initial proposal

In the terms and conditions for the P1 Service and B1 Service:

T1 Service ~~has the meaning given in clause 3.3(a)~~ means a Forward Haul transportation service which is named in the relevant contract as T1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

~~of the Access Arrangement and means a service providing Full Haul capacity with priority as set out in the Curtailment Plan.~~

In the terms and conditions for the T1 Service:

T1 Service in respect of the Shipper’s Capacity Service under this Contract has the meaning given in clause 3.2~~3.3(a) of the Access Arrangement~~, and in respect of other shippers and other contracts means a Forward Haul transportation service which is named in the relevant contract as T1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

- (a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
- (b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

Clause 1 (interpretation) – “T1 Tariff”

DBP’s initial proposal

In the terms and conditions for the P1 Service and B1 Service:

T1 Reference Tariff means the reference tariff for T1 Service set out in clauses ~~3.3~~ of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the T1 Reference Tariff shall be re-set to reflect any replacement reference tariff for T1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

In the terms and conditions for the T1 Service, the amended term “T1 Reference Tariff” (as set out above) is not used. Instead the existing term “T1 Tariff” is retained but is amended analogous to the amendment made to the term “P1 Tariff”.

Clause 2

DBP's initial proposal

2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including P1 Service, [T1 Service](#), [B1 Service](#), [Aggregated P1 Service](#), [Aggregated T1 Service](#), [Aggregated B1 Service](#), Other Reserved Service, Contracted Capacity, and Total Contracted Capacity) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

2.5 System Operator

...

- (e) The Operator must procure that the System Operator complies with the requirements of Ring Fencing Arrangements of Part 2 of Chapter 4 of the National Gas Access (Western Australia) Law as if it were a ['covered pipeline Sservice Pprovider'](#) for the purposes of that [sectionPart](#).

Clause 3.2(a)

DBP's initial proposal

In the terms and conditions for the P1 Service:

3.2 Capacity Service

- (a) The P1 Service is the Part Haul Gas transportation service ~~provided under this Contract~~ which gives the Shipper a right, ~~subject to the terms and conditions of this Contract, to~~ of access ~~capacity of the DBNGP~~ [to Gas Transmission Capacity](#) 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)(i)~~ (i) 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 P1 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
 - ~~(iii)(ii)~~ (ii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service, ~~or a P1 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~~ [8.10](#).

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 3.2(b)

DBP's initial proposal

3.2 Capacity Service

...

- (b) The Operator acknowledges and agrees:
- (i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;
 - (ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP to any Outlet Point downstream of Compressor Station 9 is 98% for each Period of a Gas Year;
- ...
- (iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:
 - (A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and
 - (B) Alcoa's Exempt Capacity,
 does not materially exceed the amount of T1 Capacity in the DBNGP (which shall be calculated on the assumption that all Gas Delivered into the DBNGP has a Higher Heating Value of 37.0 MJ/m3).

Clause 3.2(c)

DBP's initial proposal

In the terms and conditions for the P1 Service:

3.2 Capacity Service

...

- (c) Shipper acknowledges and agrees that, subject to clause 14, the ~~T1~~P1 Service under this Contract is a ~~Full~~Forward Haul ~~Service~~service and cannot be:
- (i) Back Haul; or
 - (ii) ~~Part~~Full Haul.

In the terms and conditions for the B1 Service:

3.2 Capacity Service

...

- (c) Shipper acknowledges and agrees that, subject to clause 14, the ~~T1~~B1 Service under this Contract is a ~~Full~~Back Haul ~~Service~~service and cannot be Forward Haul:
- (i) ~~Back Haul~~; or
 - (ii) ~~Part~~ Haul.

In the terms and conditions for the T1 Service:

3.2 Capacity Service

...

- (c) Shipper acknowledges and agrees that, subject to clause 14, the T1 Service under this Contract is a Full Haul ~~Service~~service and cannot be:
- (i) Back Haul; or
 - (ii) Part Haul.

Clause 3.3*DBP's initial proposal***3.3 Contracted Capacity**

~~The~~Subject to this Contract, the Shipper's Contracted Capacity for each Gas Day within a Period under this Contract:

- (a) at an Inlet Point specified in the Access Request Form - is the amount for P1 Service set out (adjacent to that Inlet Point) in the Access Request Form for that Period; and
- (b) at an Outlet Point specified in the Access Request Form - is the amount for P1 Service set out (adjacent to that Outlet Point) in the Access Request Form for that Period.

New clause 5.7(f)*DBP's initial proposal***5.7 Operator may refuse to Deliver 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 refuse to Deliver Gas to the Shipper at an Outlet Point in all or any of the following cases:

...

- (d) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point; ~~and~~
- (e) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13; and
- (f) to the extent that the Delivery of that Gas for a Gas Day at an Outlet Point is in excess of the aggregate of all the Shipper's Contracted Capacity in respect of that Outlet Point for that Gas Day, if the Operator considers as a Reasonable and Prudent Person, that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Outlet Point.

Clause 5.14(b)

DBP's initial proposal

5.14 Shipper's gas installations

...

- (b) The Shipper must, at its cost:
- (i) in accordance with the *Gas Standards Act 1972* (WA) appoint an inspector to inspect:
 - (A) any gas installation ~~installed~~ used or to be used by it, or any of its Related Bodies Corporate, to which gas from the Shipper after the Execution Date DBNGP flows or may flow, prior to the commencement of any Delivery ~~of Gas~~ by the Operator of Gas which flows or may flow to such gas installation; or
 - (B) any gas installation that has been altered by , or on behalf of it, or any of its Related Bodies Corporate, ~~the Shipper after the Execution Date~~ by the installation of a Type B gas appliance, prior to any further Delivery, by the Operator, of Gas which flows or may flow to such gas installation ~~by the Operator;~~
 - (ii) provide evidence of the completion of an inspection under clause 5.14(b)(i) to the Operator, ~~including confirmation that the gas installation is compliant with the Gas Standards Act 1972 (WA);~~ and
 - (iii) ensure that ~~once installed its~~ gas installations used by it, or any of its Related Bodies Corporate, comply ~~at all times~~ with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972* (WA) and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA).

Clauses 6.4(d) and 6.5(d)

DBP's initial proposal

In the terms and conditions for the P1 Service:

6.4 Allocation of Gas at Inlet Points

...

- (d) Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator 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 scheduled P1 Service ~~which and includes Gas for any available~~ Aggregated P1 Service;
 - (ii) second, Gas for any scheduled T1 Service and Aggregated T1 Service;
 - ~~(i)~~ (iii) third, Gas for any scheduled B1 Service and Aggregated B1 Service;
 - ~~(ii)~~ (iv) second fourth, Gas for any available Capacity Services (other than P4 Service Capacity Services referred to above) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a);

~~(iii)~~(v) ~~third~~fifth, other gas.

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~~scheduled P1 Service ~~(which shall include any available and~~ Aggregated P1 Service);
 - (ii) second, Gas for any scheduled T1 Service and Aggregated T1 Service;
 - ~~(i)~~(iii) third, Gas for any scheduled B1 Service and Aggregated B1 Service;
 - ~~(ii)~~(iv) ~~second~~fourth, Gas available for any available Capacity Services (other than Capacity Services referred to above~~P1 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)~~(v) ~~third~~fifth, other gas.

In the terms and conditions for the T1 Service and B1 Service, clauses 6.4(d) and 6.5(d) were amended to provide for the same (amended) drafting as set out above.

Clause 6.8

DBP's initial proposal

6.8 Design and installation of Outlet Stations and Gate Stations

- (a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Outlet Station that is not a Gate Station. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement in respect of the relevant works (an Outlet Station Works Agreement) by which the Shipper must agree either:
- ...
- (ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station (and in such case, for the purpose of clause 6.11(e), such costs are deemed to be associated with an Operator Owned Point).
- ...
- (e) The Operator must, at the collective request of all shippers who have Contracted Capacity at the Notional Gate Point for a Sub-network, procure the design and installation by a third party contractor or third party contractors engaged by the Operator of any required Gate Station Associated with that Sub-network, other than an Existing Station.
 - (f) The costs incurred by the Operator in connection with the design and installation of any Gate Station (which includes the capital cost of acquiring and installing all relevant components of the Gate Station, plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation) (Relevant Gate Station Construction Costs), must

be amortised as part of the Maintenance Charge relating to the Gate Station which is payable in accordance with clause 6.11(f).

Clause 6.11

DBP's initial proposal

6.11 Maintenance Charge for Inlet Stations and Outlet Stations

(a) For the purposes of this clause 6.11 and subject to clause 6.11(b), **Maintenance Charge** means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who ~~use~~ pay a charge for substantially the same purpose in respect of the Inlet ~~s~~Station or Outlet ~~s~~Station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:

- (i) maintaining;
- (ii) operating;
- (iii) refurbishing;
- (iv) upgrading;
- (v) replacing; and
- (vi) decommissioning,

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

...

(d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Inlet Station that is the greater of the amount that:

- (i) in the case of an Inlet Station related to an Inlet Point, is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at that Inlet Point during the previous calendar month bears to the aggregate Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) for all shippers at that Inlet Point during the previous calendar month; and
- (ii) in the case of an Inlet Station related to an Inlet Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Delivers a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Inlet Point, during the previous calendar month to which that Inlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Inlet Point, during the previous calendar month,

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Inlet Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess

being the same proportion described in clause 6.11(d)(i) in respect to that month.

- ~~(d)~~(e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that is the greater of the amount that:
- (i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services ~~but prior to any reduction under the Curtailment Plan~~) at that Outlet Point during the previous calendar month bears to the aggregate Contracted Capacity (across all Capacity Services ~~but prior to any reduction under the Curtailment Plan~~) for all shippers at that Outlet Point during the previous calendar month, ~~less any amount recovered under clause 6.11(d)(ii);~~ and
 - (ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Receives a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month.

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion described in clause 6.11(e)(i) in respect to that month.

- ~~(e)~~(f) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to ~~an~~ GateOutlet Station that is the greater of the amount that:
- (i) is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at the relevant Notional Gate Point during the previous calendar month ~~for the time being~~ bears to the ~~aggregate~~ sum of all the Shipper's and other shippers' Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) for all shippers at such Notional Gate Point ~~for the time being~~ during the previous calendar month; and
 - (ii) in the case of a Notional Gate Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Receives a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Notional Gate Point, during the previous calendar month, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Notional Gate Point, during the previous calendar month,

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to a Gate Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion described in clause 6.11(f)(i) in respect to that month.

- ~~(f)~~(g) For the avoidance of doubt and without limiting clauses 6.11(d), (e) or (f), ~~W~~ whenever a new Inlet Station or Outlet Station is installed, or Inlet Station or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Inlet Station or Outlet

Station, the Relevant Construction Costs must be included in the apportionments between all shippers who [deliver Gas to the Operator at the Inlet Station or](#) receive Gas from the Operator at the Notional Gate Point or Outlet Station [\(as the case may be\)](#), ~~including~~ and shippers with grants of Capacity at the [Inlet Station](#), Notional Gate Point or Outlet Station made before the date of installation or enhancement.

- ~~(g)~~(h) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point, or an Outlet Station [or an Inlet Station](#), the Operator may have regard to the likely impact of clause [6.11\(g\)](#)~~6.11(f)~~.

Clause 6.12(b)

DBP's initial proposal

6.12 Provisions relating both to Relevant Construction Costs and Maintenance Charge

...

- b) The Operator is not entitled to impose any charges under clauses 6.6, 6.8 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995. Where such incremental costs are incurred, the Operator is entitled to impose charges on the Shipper and other shippers [who have Contracted Capacity at, or use,](#) that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause ~~6.11(d)~~[6.11\(e\) or 6.11\(f\)](#).

Clause 6.13(b)

DBP's initial proposal

6.13 Contribution Agreement

...

- (b)
- (i) a **Contribution Agreement** in respect of an Outlet Point is an agreement between the Operator and the Shipper ...
 - (ii) the Shipper's proportion of the Maintenance Charge is determined under clause [6.11\(e\)](#)~~6.11(d)~~ [or 6.11\(f\) \(as the case may be\)](#), or is otherwise agreed in the Contribution Agreement; and
 - (iii) the Shipper agrees that another shipper (**New Shipper**) may Receive Gas from the relevant Outlet Point, if:
 - (A) the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause [6.11\(e\)](#)~~6.11(d)~~ [or 6.11\(f\) \(as the case may be\)](#); and
 - (B) the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper under clause 6.13(b)(iii)(A) so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.

Clause 8.5(b)

DBP's initial proposal

In the terms and conditions for the P1 Service:

8.5 Operator to make available bulletins of available Capacity

...

- (b) No obligation to schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's P1 Service and Aggregated P1 Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 8.8

DBP's initial proposal

8.8 Nominations priority

- (a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services (from superior to inferior as between rows and equal priority within a row) is, so far as is relevant to the Inlet Point or Outlet Point, set out in the column of Schedule 6 headed "Point Specific Curtailment" as supplemented by this clause 8 and clause 17.9.
- (b) Each category of Capacity Service described in a row of the Curtailment Plan (as relevant to the particular circumstance), together with each other category of Capacity Service in that row, refers separately to a **Type of Capacity Service** such that, for example, Alcoa's Priority Quantity is a **Type of Capacity Service**.

Clause 8.9

DBP's initial proposal

In the terms and conditions for the P1 Service:

8.9 Scheduling of Daily Nominations

- (a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day ~~and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9,~~ for each Nominated Inlet Point and for each Nominated Outlet Point.
- (b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 ~~Capacity~~Service for each Nominated Inlet Point:
- (i) must not exceed ...

- (c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service and Aggregated P1 Service:
- (i) across all ~~Inlet P~~points exceed the Shipper's Total Contracted ~~P4~~ Capacity for P1 Service across all Inlet Points; or
 - (ii) at and upstream of any particular inlet point, exceed the Shipper's Contracted Capacity for P1 Service at Inlet Points at or upstream of that inlet point.
- (d) The sum of the scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service and Aggregated P1 Service may exceed the Shipper's Total Contracted ~~P4~~ Capacity for P1 Service across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.
- (e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 ~~Capacity~~Service at each Nominated Outlet Point:
- (i) must not exceed ...
- (f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service and Aggregated P1 Service:
- (i) across all ~~Outlet~~outlet ~~Points~~points, exceed the Shipper's Total Contracted ~~P4~~ Capacity for P1 Service across all Outlet Points; or
 - (ii) at and downstream of any particular outlet point, exceed the Contracted Capacity for P1 Service at Outlet Points at or downstream of that outlet point.
- (g) The sum of the scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service and Aggregated P1 Service may exceed the Shipper's Total Contracted ~~P4~~ Capacity for P1 Service across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 8.10(b)

DBP's initial proposal

In the terms and conditions for the P1 Service:

8.10 Scheduling where there is insufficient available Capacity

...

- (b) Subject to clause 17.9 and except where, and to the extent, permitted or required pursuant to clause 8.9, if the Operator schedules a Capacity Service for P1 Service to the Shipper which is less than the Shipper's Initial Nomination for P1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference

between the Shipper's Contracted ~~T1~~ Capacity [for P1 Service at that Inlet Point or Outlet Point](#) and the Capacity Service scheduled by the Operator for P1 Service for that Gas Day [at that Inlet Point or Outlet Point](#).

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 8.15

DBP's initial proposal

8.15 Default provision for Renomination process

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by the Operator not providing information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then the Shipper's Daily Nominations are to remain unchanged ~~from the previous Gas Day's nomination~~ (but if the Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.12(b) it must do so).

Clause 8.16

DBP's initial proposal

In the terms and conditions for the P1 Service:

8.16 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

Subject to this clause 8, Shipper is entitled to nominate that Gas be Delivered under Shipper's P1 Service:

- (a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for P1 Services, provided that such outlet point is above CS9; and
- (b) in excess of Shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,

(being Aggregated P1 Service), provided that all of the following are satisfied:

- (c) Aggregated P1 Service is a Forward Haul service and may not be used for Back Haul; and
- (d) the sum of the Shipper's nominations for P1 Service and Aggregated P1 Service (in aggregate without double counting) for:
 - (i) Delivery of Gas at and upstream of any particular inlet point cannot exceed the Contracted Capacity for P1 Service at Inlet Points at or upstream of that inlet point; and
 - (ii) Receipt of Gas at and downstream of any particular outlet point cannot exceed the Contracted Capacity for P1 Service at Outlet Points at or downstream of that outlet point; and
- (e) the Shipper has entered into any agreement in relation to the relevant outlet point required by clause 6.13.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service, with the following exceptions:

- The terms and conditions for the T1 Service do not have an equivalent new clause 8.16(d) as set out above.
- The terms and conditions for the B1 Service include the following amendments to clauses 8.16(a) and 8.16(b):
 - (a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for B1 Services provided that such ~~outlet point is upstream of the Shipper's Inlet Point~~ nomination does not result in any service under this Contract becoming Forward Haul; and
 - (b) in excess of Shipper's Contracted Capacity for B1 Services at an Inlet Point or Outlet Point provided that such nomination does not result in any service under this Contract becoming Forward Haul,

Clause 8.17

DBP's initial proposal

In the terms and conditions for the P1 Service:

8.17 Aggregated P1 Service

- (a) Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for P1 Service which is, according to clause 8.16, deemed to be Aggregated P1 Service, shall be deemed to be a Nomination for a separate Type of Capacity Service which service ranks equally in priority with all other Aggregated ~~P1~~ Service.
- (b) For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated P1 Service shall be excluded from the P1 Service.
- (c) The Shipper is not permitted to use Aggregated P1 Service unless such service has been scheduled pursuant to clause 8.
- (d) For the avoidance of doubt, the Commodity Charge applies to Aggregated P1 Service pursuant to clause 20.3.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 9.4

DBP's initial proposal

Before ~~13:30~~ 13:00 hours on each Gas Day, except the ~~Contract Commencement Capacity Start~~ Date, the Operator must provide to the Shipper notice (**Accumulated Imbalance Notice**) of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day, and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate.

Clause 9.5

DBP's initial proposal

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 the Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service, P1 Service and B1 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 and, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition
- (i) will have ...
- then the Operator (acting as a Reasonable ~~and~~ And Prudent Person) may, subject to clause 9.5(f), either or both:
- (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 9.5(b)(ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure immediate 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 ...
- ...
- (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) ... 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).

New clause 9.6

DBP's initial proposal

9.6 Excess Imbalance Charge

- (a) The Shipper's Outer Accumulated Imbalance Limit for a Gas Day is 20% of the quantities referred to as the Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service, P1 Service and B1 Service and Capacity under Spot Transactions) for that Gas Day.
- (b) If the absolute value of the Shipper's Accumulated Imbalance at the end of a Gas Day exceeds the Outer Accumulated Imbalance Limit for the Gas Day just finished then, subject to clause 9.6(c), the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in

excess of the Shipper's Outer Accumulated Imbalance Limit in accordance with clause 20.

- ~~(g)~~(c) No Excess Imbalance Charge under clause 9.5(e) or 9.6(b) is payable in respect of that part (if any) of the imbalance that is attributable to:
- (i) the Shipper's Capacity Service being Curtailed under clause 17;
 - ~~(ii)~~(ii) 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;
 - ~~(iii)~~(iii) 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)~~(iv) 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 9.6(c)(i), 9.6(c)(ii) or 9.6(c)(iii) 9.5(g)(i) or 9.5(g)(ii) 9.5(g)(i) or 9.5(g)(ii)

but in each case the Shipper's Daily Imbalance and Accumulated Imbalance must still be calculated for the Gas Day.

Clause 9.8 (previously clause 9.7)

DBP's initial proposal

9.79.8 Remedies for breach of imbalance limits

Except as provided in clause ~~9.10~~9.9, the Operator may not exercise any rights or remedies against the Shipper for exceeding the Accumulated Imbalance Limit, other than:

- (a) an action for breach of clause 9.2 or 9.5(b)(iii), limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 9.5(b)(iii) is reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the Shipper in respect of that failure;
- ~~(a)~~(b) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
- ~~(b)~~(c) to 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 Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or
- ~~(c)~~(d) any combination of the rights and remedies in clauses ~~9.8(a)~~9.7(a), 9.8(b) and 9.8(c)~~9.7(b)~~.

The Parties agree that, because the rights and remedies set out in this clause ~~9.8~~9.7 apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause ~~9.8~~9.7, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

Clause 9.9 (previously clause 9.8)

DBP's initial proposal

9.89.9 Trading in imbalances

...

- (b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator ~~by 12:00 hours~~ on the next Working Day following receipt from the Operator of the Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day, by the later of 14:00 hours and the time (on that next Working Day) which is 1 hour after the time of receipt from the Operator of the Shipper's Accumulated Imbalance Notice for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.

Clause 10.3(a)

DBP's initial proposal

10.3 Consequences of exceeding Hourly Peaking Limit

- (a) If at any time the Shipper exceeds an Hourly Peaking Limit and the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition
- (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 Capacity, ~~or any Other Reserved Service~~,
- the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:
- (iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or 10.3(a)(ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or to procure immediate compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and
 - (iv) refuse to ...

New clause 10.4

DBP's initial proposal

10.4 Outer Hourly Peaking Limit

- (a) The Shipper's Outer Hourly Peaking Limits are:
- (i) 140% of the aggregate MHQ calculated across all Outlet Points on the DBNGP;
 - (ii) 140% of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10; and
 - (iii) 140% of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10B.

(each of the limits in clauses 10.4(a)(i), 10.4(a)(ii) and 10.4(a)(iii) being an Outer Hourly Peaking Limit).

- (b) For each Gas Hour following the issue of a notice pursuant to clause 10.4(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.
- (c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.4(b) is calculated using only the amount of the largest excess.
- (d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.4(b) in respect of a Gas Hour, then the Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.4(b).
- (e) If at any time the Shipper's take of Gas is such that the Operator, acting as a Reasonable and Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.4(e) is only valid for the purposes of clause 10.4(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

Clause 11.2

DBP's initial proposal

In the terms and conditions for the P1 Service:

11.2 Unavailability Notice

- (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 the Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for ~~P1 Capacity, any Other Reserved~~ any Capacity Service or including 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.
- ...
- (c) Any Curtailment Notice issued under clause 17 for any period is taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:
 - (i) is a Point Specific Curtailment;
 - (ii) does not affect Gas Transmission Capacity generally; and
 - (iii) does not affect the ~~Inlet Point or~~ Outlet Point at which the Overrun Gas is being Received by the Shipper.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clause 14.2

DBP's initial proposal

In the terms and conditions for the P1 Service and T1 Service:

14.2 Assessment of Requested Relocation

- (a) The Operator must, as soon as reasonably practicable and in any event not later than 40 Working Days after receiving a notice under clause 14.1, assess as a Reasonable and Prudent Person whether the Requested Relocation is an Authorised Relocation having regard to ...
- (b) For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:
- ...
- (iii) the Requested Relocation is such that ~~the~~an Inlet Point at which there is Contracted Capacity under this Contract would be downstream of ~~the~~an Outlet Point at which there is Contracted Capacity under this Contract ~~and it would change the normal direction of Gas flow in the DBNGP.~~
- (c) For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:
- (i) the Requested Relocation would result in the New Inlet Point being downstream of the all Existing Inlet Points;
- (ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; and
- ~~(i) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements; and~~
- (iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.
- (d) For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:
- (i) the Requested Relocation would result in the New Outlet Point being upstream of the all Existing Outlet Points;
- ~~(ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements;~~
- ~~(iii)~~(ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located; and

~~(iv)~~(iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

In the terms and conditions for the B1 Service analogous amendments were made, with additional amendments to clauses 14.2(b)(iii), 14.2(c)(i) and 14.2(d)(i) as follows to make the clause applicable to a back haul service:

- Clause 14.2(b)(iii):

the Requested Relocation is such that ~~the an~~ Inlet Point at which there is Contracted Capacity under this Contract would be ~~downstream~~upstream of ~~the an~~ Outlet Point at which there is Contracted Capacity under this Contract ~~and it would change the normal direction of Gas flow in the DBNGP.~~

- Clause 14.2(c)(i):

the Requested Relocation would result in the New Inlet Point being ~~downstream~~upstream of the Existing Inlet Points;

- Clause 14.2(d)(i):

the Requested Relocation would result in the New Outlet Point being ~~upstream~~downstream of the Existing Outlet Points;

Clause 14.7(a)

DBP's initial proposal

In the terms and conditions for the P1 Service:

14.7 Charges for relocation

- (a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract ~~must~~will 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 has the result that there is a shorter distance between the inlet point(s) and outlet point(s) at which the Shipper has Contracted Capacity, or reduces the "km" (as that term is otherwise used in the calculation of the P1 Tariff, P1 Commodity Tariff or P1 Capacity Reservation Tariff (as the case may be)), or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.

In the terms and conditions for the B1 Service and T1 Service analogous amendments were made so that the amendments are applicable to the respective service.

For the T1 Service the words "or reduces the "km" (as that term is otherwise used in the calculation of the P1 Tariff, P1 Commodity Tariff or P1 Capacity Reservation Tariff (as the case may be))" are not applicable and were not included.

Clause 14.7(c)

DBP's initial proposal

In the terms and conditions for the P1 Service:

14.7 Charges for Relocation

...

- (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 down stream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to be treated as if it were:
- (i) ~~be treated as if it were on the same terms and conditions as~~ Full Haul Capacity for T1 Service; and
 - (ii) on the terms and conditions for T1 Service forming part of the Access Arrangement at the time the relocation first takes effect (as though the Parties had executed an access request form for a Reference Service that is a T1 Service in respect of such Capacity, with a Requested Reference Service Start Date of the date the relocation first takes effect and a Requested Reference Service End Date which is the same as that in the Access Request Form), for the avoidance of doubt including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - ~~(ii)(iii) be treated under this Contract as though it was Full Haul~~ no longer Contracted Capacity under this Contract.

In the terms and conditions for the B1 Service:

14.7 Charges for Relocation

...

- (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 down stream of Compressor Station 9 on the DBNGP so that a Back Haul service becomes a Forward Haul Full Haul service, any Capacity so relocated is to be treated as if it were:
- (i) Full Haul Capacity for T1 Service; ~~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) on the terms and conditions for T1 Service forming part of the Access Arrangement at the time the relocation first takes effect (as though the Parties had executed an access request form for a Reference Service that is a T1 Service in respect of such Capacity, with a Requested Reference Service Start Date of the date the relocation first takes effect and a Requested Reference Service End Date which is the same as that in the Access Request Form), for the avoidance of doubt including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; ~~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~~ and

~~(ii)~~(iii) no longer Contracted Capacity under this Contract.

In the terms and conditions for the T1 Service:

14.7 Charges for relocation

...

- (c) If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated:
- (i) remains on the same terms and conditions as Full Haul Capacity for T1 Service under this Contract, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and
 - (ii) is treated under this Contract as though it was Full Haul Capacity for T1 Service under this Contract.

Clause 15.3

DBP's initial proposal

15.3 Metering uncertainty

- (a) Primary Metering Equipment must be designed, adjusted and Operated so as to achieve:
- (i) measurement to within a maximum uncertainty of:
 - (A) subject to clause 15.3(b), plus or minus ~~0.75~~1% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of 5 TJ/d or greater; and
 - (B) plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and
 - (ii) measurement to within ...
- (b) Alternative Metering Equipment referred to in clause 15.4(b) need not comply with clause 15.3(a)(i)(A) if:
- (i) it is designed, adjusted and Operated so as to achieve measurement to within a maximum uncertainty of plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level; and
 - (ii) it is not used or likely to be used for more than 72 hours in any Gas Year.
- ~~(b)~~(c) Subject to clauses 15.3(a) and 15.3(b), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.
- ~~(e)~~(d) In this clause 15, **95% confidence level** has the meaning given to that expression by ISO 5168.

Clause 15.4(c)

DBP's initial proposal

- (c) Inlet Metering Equipment must provide digital signals associated with valve or other equipment status, and must include components for signalling the following primary measurements and Derived Variables associated with Gas quality and quantity:
-
- (xii) hydrocarbon content in mole percent for each of the fractions and LPG content in tonnes per TJ of Gas;

Existing clauses 15.5(e) and 15.5(g)

DBP's initial proposal

15.5 Provision of information to Shipper

...

- ~~(e) The Operator must make available to the Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:~~
- ~~(i) Received by the Shipper in a Gas Day at each Physical Gate Point; and~~
- ~~(ii) Received by the Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.~~
- ~~(f)(e)~~ The Operator must available to the Shipper ...
- ~~(g)(f)~~ Clauses ~~15.5(e) and (f)~~ 15.5(e) only apply/applies for as long as the Shipper is a Distribution Networks Shipper.

Clause 17.2

DBP's initial proposal

In the terms and conditions for the B1 Service:

17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

...

- (d) for any Planned Maintenance; ~~and~~
- (e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable; and
- (f) in circumstances where actual Forward Haul gas flow is less than the B1 Service demand across all shippers with a B1 Service.

Clause 17.3

DBP's initial proposal

In the terms and conditions for the B1 Service:

17.3 Curtailment without liability

...

- (b) The Operator has no liability to the Shipper whatsoever under clause 17.3(a) or otherwise, except as may be provided in clause 17.4, for a Curtailment in any of the following circumstances:
- (i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the B1 Service during the Gas Year does not cause the B1 Permissible Curtailment Limit to be exceeded;
 - (ii) where the Curtailment is in accordance with any of clauses 17.2(a), ~~or 17.2(b)~~ [or 17.2\(f\)](#); or
 - (iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

- (c) The B1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
- (i) a Curtailment in circumstances set out in clause 17.2(a), [17.2\(b\)](#) or [17.2\(f\)](#);
 - (ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and
 - (iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied,

is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the B1 Permissible Curtailment Limit to be exceeded.

In the terms and conditions for the P1 Service and T1 Service:

17.3 Curtailment without liability

...

- (c) The B1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:
- (i) a Curtailment in circumstances set out in clause 17.2(a) [or 17.2\(b\)](#);
 - (ii) a circumstance ...

Clause 17.7(c)

DBP's initial proposal

17.7 Content of a Curtailment Notice and Initial Notice

...

(c) A Curtailment Notice:

...

- (vi) does not retrospectively affect the Shipper's compliance with Hourly Peaking Limits or Outer Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes the Shipper's compliance with those limits for an hour must be determined having regard to the Shipper's Contracted Capacity at the commencement of the hour).

Clause 17.9

DBP's initial proposal

In the terms and conditions for the P1 Service:

17.9 Priority of Curtailment

(a) Any Curtailment of the Shipper's Total Contracted Capacity must be conducted in accordance with the Curtailment Plan...

(b) The general principle in clause 17.9(a) is subject to the following:

- (i) Any Laws regulating the priority of Capacity Services (~~which for the purposes of this clause~~ include capacity under a Spot Transaction) on the DBNGP.

...

(iii) Any Point Specific Curtailment ... of either of the following:

- (A) (subject to clause 17.9(b)(iii)(B)) one or more ~~I~~inlet ~~P~~points or ~~O~~utlet ~~P~~points (as the case may be) where the Shipper has unutilised Contracted Capacity for the P1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the P1 Service at that or those ~~I~~inlet ~~P~~points or ~~O~~utlet ~~P~~points (as the case may be);

...

(vi) In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the ~~Shipper's~~relevant shipper's:

- (A) Aggregated ~~P1~~ Service which derives from Contracted Capacity for P1 Services, T1 Services or B1 Services at the Outlet Points (or, where the Curtailment relates to Receipt of Gas into the DBNGP, any Inlet Point) located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) not be included in the Aggregated ~~P1~~ Service; and

- (2) be included in the P1 Service, T1 Service or B1 Service (as the case may be),

available to the relevant Sshipper in the Curtailment Area;
and

- (B) Aggregated ~~P1~~ Service which derives from Contracted Capacity for P1 Services, T1 Services or B1 Services at any Outlet Point (or, where the Curtailment relates to Receipt of Gas into the DBNGP, any Inlet Point) located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

- (1) be included in the Aggregated ~~P1~~ Service;
(2) not be included in the P1 Service, T1 Service or B1 Service (as the case may be),

available to the relevant Sshipper in the Curtailment Area.

...

- (c) (i) Subject to clause 17.9(c)(ii) ...
(ii) If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service ~~(other than a T₁ Service)~~ or Aggregated Service, then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

In the terms and conditions for the P1 Service and B1 Service, the following additional amendments were made to clause 17.9(c)(i) to replace references to “P1 Service” and “B1 Service”, respectively, with a reference to “T1 Service”.¹²⁰⁰

Subject to clause 17.9(c)(ii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

$$\text{Available Capacity} \times \frac{A}{B}$$

where:

Available Capacity = the total amount of relevant capacity which the Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

A = the particular shipper’s relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of ~~[x]T1~~ Service only, less any of the shipper’s relevant share of the Distribution Networks’ IPQ which is to be transported using that ~~[x]T1~~ Service on that Gas Day); and

B = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of ~~[x]T1~~ Service only, less the aggregate of the shippers’ relevant shares of

¹²⁰⁰ For the purpose of reproducing DBP’s proposed amendments in this decision, references to “P1 Service” and “B1 Service” have been replaced with “[x]”.

the Distribution Networks' IPQ which is to be transported using that ~~TX~~T1 Service on that Gas Day).

Clause 17.10(a)

DBP's initial proposal

17.10 Apportionment of Shipper's Curtailments

- (a) Subject to clause 17.10(b), if the Shipper has:
- (i) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one Inlet Point, the Operator must apportion any refusals to ~~Deliver~~Receive Gas across those Inlet Points in the manner required by the Shipper;
 - (ii) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to ~~Receive~~Deliver Gas across those Outlet Points in the manner required by the Shipper; or
 - (iii) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points in the manner required by the Shipper.

Clause 18

DBP's initial proposal

18 Maintenance and Major Works

- (a) By 31 ~~March~~August of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 ~~July~~October (**Maintenance Year**) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.
- (b) ~~Within 30 days of receiving the schedule referred to in clause 18(a)~~On or before 30 September of each Contract Year, the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works for the DBNGP for the Maintenance Year (**Annual DBNGP Maintenance Schedule**), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.

Clauses 20.2(a) and 20.3

DBP's initial proposal

In the terms and conditions for the P1 Service:

20.2 Capacity Reservation Charge

- (a) [Subject to clause 14.7, t](#)The Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by calculating the sum of Contracted Capacity for P1 Services at each Outlet Point multiplied by the ~~T4~~[P1](#) Capacity Reservation Tariff.
- (b) ...

20.3 Commodity Charge

[Subject to clause 14.7, t](#)The Commodity Charge will be calculated for each Gas Day during the Period of Supply by calculating the multiple of the P1 Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for P1 Services at all Outlet Points by the Operator on that Gas Day.

In the terms and conditions for the B1 Service, the same amendments were made, except that in clause 20.2(a) the amendment was: "~~T4~~[B1](#) Capacity Reservation Tariff".

Clause 20.5(a)

DBP's initial proposal

In the terms and conditions for the P1 Service:

20.5 Adjustment to P1 Tariff

- (a) The Parties acknowledge that:
- (i) as at the commencement of this Contract, the P1 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 P1 Tariff, [P1 Capacity Reservation Tariff and P1 Commodity Tariff](#) may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and:
 - (iii) the P1 Tariff, [P1 Capacity Reservation Tariff and P1 Commodity Tariff](#) shall be re-set to reflect any new P1 Tariff, [P1 Capacity Reservation Tariff and P1 Commodity Tariff](#) approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

In the terms and conditions for the T1 Service and B1 Service analogous amendments were made so that the amendments are applicable to the respective service.

Clauses 22.2 and 22.3(c)

DBP's initial proposal

22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing to the Shipper specifying the nature of the ~~default~~event and requiring the Shipper to rectify the event~~default~~ (**Shipper Default Notice**).

22.3 When Operator may exercise remedy

...

- (c) An ~~default~~event of the kind referred to in clause 22.1(d) is deemed to be remedied when the relevant Insolvency Event is no longer continuing.

Clauses 22.6 and 22.7(c)

DBP's initial proposal

22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing to the Operator specifying the nature of the ~~default~~event and requiring the Operator to rectify the ~~default~~event (**Operator Default Notice**).

22.7 When Shipper may exercise remedy

...

- (c) An ~~default~~event of the kind referred to in clause 22.5(b) is deemed to be remedied when the relevant Insolvency Event is no longer continuing. An ~~default~~event of the kind referred to in clause 22.5(a) that relates to the repudiation or disclaimer of a contract, agreement or deed is deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.

Clause 25.2(a)

DBP's initial proposal

25.2 Charges

- (a) A Party may, without the consent of the other Party (but subject to all other necessary consents and approvals), charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the chargor and chargee enters into a tripartite deed with the other Party substantially in the form of Schedule 7. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.

Clause 25.5(f)

DBP's initial proposal

25.5 Pipeline Trustee's Acknowledgments and Undertakings

...

- (f) ~~Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date, t~~The Pipeline Trustee shall not dispose of the whole or any part of its rights, title or interest in the DBNGP without requiring the ~~dispossee~~disponee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which:
- (i) assumes all, or the relevant portion, of the ...

New clause 25.7

DBP's initial proposal

25.7 Non complying assignment

Any purported sale, transfer or assignment in breach of the requirements of any of the provisions of this clause 25 is void *ab initio*.

The Parties acknowledge that this clause 25 does not apply to a Transfer under clause 27.

Clause 28.2(i)

DBP's initial proposal

28.2 Exceptions to Confidentiality

Either Party may disclose Confidential Information which:

...

- (i) is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a Party, a Related Body Corporate of a Party, a member of AGIG, the Diversified Utility and Energy Trust No 1 ABN 83 495 791 796~~and No 2~~ or the DUET Finance Trust~~POWERS Trust~~ ABN 85 482 841 876, or any funding vehicle of any of those parties;

Clause 28.3

DBP's initial proposal

28.3 Permitted Disclosure

(a) Either Party may disclose Confidential Information to:

- (i) subject to clauses 28.3(d) and 28.5, its, and its Related Bodies Corporate's, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers (including any entity that directly or indirectly provides financial accommodation to a Party or its Related Body Corporate or a financier of any of them), financial and technical

advisers (and for the purpose of this clause 28.3(a) Alcoa, ~~and the System Operator and each member of AGIG are deemed to be~~^{must be considered} Related Bodies Corporate of the Operator); and

(ii) ...

(b) Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:

(i) any person who is directly involved in:

- (A) the distribution of Gas to customers through a covered pipeline that is a distribution pipeline situated in the Western Australia – Natural Gas Distribution System as that term is used in the National Third Party Access Rules for Natural Gas Pipeline Systems (as amended from time to time) under the National Gas Access (Western Australia) Law;
- (B) the retailing of Gas within Western Australia;
- (C) the generation or sale of electricity in the South West Interconnected System of Western Australia;
- (D) contracting for Capacity on the DBNGP; or
- (E) the management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or

(ii) such person's employees, officers, agents, contractors, consultants and technical advisers who are themselves directly involved in any of the activities described in clause 28.3(b)(i).⁷

except to the extent that such person is:

(iii) the System Operator ...

(iv) a director or senior manager of Alcoa, or any of Alcoa's Related Bodies Corporate ~~through which they have a direct or indirect equity interest in the DBNGP, and requires~~^{who is provided with} the disclosure of aggregated information in connection with ~~the management of their respective equity~~^{their} interests in the DBNGP; ~~or~~

~~(v) a senior manager of Alcoa, or any of Alcoa's Related Bodies Corporate, who:~~

- ~~(A) is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or~~
- ~~(B) by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv);~~

which disclosure under clauses 28.3(b)(iii) and, 28.3(b)(iv) ~~and 28.3(b)(v)~~ is, subject to clauses 28.3(d) and 28.5, permitted in accordance with the provisions of this clause 28.3.

Clause 28.6(a)

DBP's initial proposal

- 28.6 Information received by Operator
- (a) The Operator must develop, implement and enforce, policies and procedures to:
- (i) give effect to its obligations under:
 - (A) clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c); and
 - (B) clauses 28.4 and 28.5 to the extent related to disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b); and
 - (ii) ensure that all shippers are treated equally and fairly in relation to disclosure of Confidential Information,
- and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.

New clause 28.10

DBP's initial proposal

28.10 FIRB Compliance

Unless otherwise agreed by the Operator, the Shipper acknowledges that the Data is subject to conditions imposed under section 74(4) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) and undertakes to ensure that all Data provided (or access to which is provided) to it by or on behalf of the Operator:

- (a) is stored only within Australia;
- (b) is accessible and maintained only from within Australia; and
- (c) will not be taken outside of Australia.

except in circumstances where it is required to be accessed in order to comply with any law of the Commonwealth of Australia or any of its States and Territories.

Clause 29

DBP's initial proposal

- 29. Notices**
- 29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading**
- (a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5, 9.9(b)~~9.9(c)~~, and 17.6(a) must be communicated by ~~facsimile to the facsimile number~~email to the email address set out in the Access Request Form, until further notice is given under clause 29.3(c).
 - (b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.

- (c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each ~~install~~establish and maintain a dedicated ~~email address~~facsimile machine on a separate facsimile number for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new ~~email address~~facsimile number which takes effect in substitution for the ~~email address~~number set out in in the Access Request Form.

...

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 ~~and~~, 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 and~~ a Dedicated Email Address ~~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 ...

29.4 Receipt of notices

- (a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or ~~facsimile machine~~email address, or posted to the CRS, by no later than that time.
- ~~(b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.~~
- ~~(c) When the time printed on the transmission report referred to in clause 29.4(b) is between:~~
- ~~(i) 00:00 hours and 09:00 hours; or~~
- ~~(ii) 17:00 hours and 24:00 hours,~~
- ~~on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.~~
- ~~(d)~~(b) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in the Access Request Form or, if an email address is substituted pursuant to clause 29.1(c) or 29.3(c), such substituted email address (Dedicated Email Address). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4,

taken to be given and received at the time the sender receives an automatic response message to the email.

~~(e)~~(c) For the purposes of this Contract, a notice sent by certified mail ...

~~(f)~~(d) For the purposes of this Contract:

(i) a notice sent by the CRS ...

(ii) the other notices sent by the CRS ...

Schedule 6

DBP's initial proposal

Part A

Order of Priority	System Curtailment	Order of Priority	Point Specific Curtailment
1	Any Capacity Service insofar as it is for the Shipper's relevant share of the Distribution Networks' IPQ	1	Any Capacity Service insofar as it is for the shipper's relevant share of the Distribution Networks' IPQ*
2	Alcoa's Priority Quantity	2	Alcoa's Priority Quantity*
3	Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), <u>P1 Service (including Aggregated P1 Service) and B1 Service (including Aggregated B1 Service)</u> , to the extent of, and apportioned in accordance with, the provisions of <u>item (a) of Part B of this Schedule 6</u>	3	Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)* and T1 Service (in excluding Aggregated T1 Service), <u>P1 Service (excluding Aggregated P1 Service) and B1 Service (excluding Aggregated B1 Service)</u> , that is Contracted Capacity at the relevant point to the extent of, and apportioned in accordance with, the provisions of <u>item (a) of Part B of this Schedule 6</u>
4	The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), P1 Service (<u>including Aggregated P1 Service</u>) and B1 Service (<u>including Aggregated B1 Service</u>), which is not dealt with under item 3 above, apportioned in accordance with the provisions of <u>items (b) and (c) of Part B of this Schedule 6</u>	4	The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)* and T1 Service (in excluding Aggregated T1 Service), P1 Service (<u>excluding Aggregated P1 Service</u>) and B1 Service (<u>excluding Aggregated B1 Service</u>), that is Contracted Capacity at the relevant point which is not dealt with under item 3 above, apportioned in accordance with the provisions of <u>items (b) and (c) of Part B of this Schedule 6</u>
5	Firm Service	5	Firm Service that is Contracted Capacity at the relevant point
6	<u>Other Reserved Service</u> (other than Tp Service)	6	Other Reserved Service (other than Tp Service) that is Contracted Capacity at the relevant point

Order of Priority	System Curtailment	Order of Priority	Point Specific Curtailment
7	Spot Capacity	<u>7</u>	Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point
		7 8	Other Reserved Service (if any) nominated by and scheduled to the shipper at the relevant point at which the shipper does not have Contracted Capacity in that Other Reserved Service in accordance with the provision of the shipper's contract for the Other Reserved Service
		8 9	Spot Capacity

[* denotes amounts that are net of such quantities delivered at other inlet points or outlet points \(as the case requires\) on the relevant Gas Day](#)

Part B

- (a) The amount of Capacity available after allowing for items 1 and 2 in Part A of this Schedule 6, up to the next 253.5 TJ/d of Capacity, must be apportioned as follows:
- (i) ½ of the available Capacity must be apportioned to Alcoa; and
 - (ii) ½ of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service ([including, in a relevant System Curtailment, Aggregated Service](#)) which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i).
- (b) The amount of Capacity available after allowing for items 1, 2 and 3 in Part A of this Schedule 6 must be apportioned as follows:
- (i) the Alcoa Proportion of the available Capacity must be apportioned to Alcoa; and
 - (ii) the balance of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service ([including, in a relevant System Curtailment, Aggregated Service](#)) which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i), or if there is available Capacity after all T1 Service, P1 Service and B1 Service ([including, in a relevant System Curtailment, Aggregated Service](#)) has been provided for then to items below T1 Service, P1 Service and B1 Service in the applicable column of the table in Part A of this Schedule 6, which among shippers with the relevant Type of Capacity Service must be apportioned in accordance with clause 17.9(c)(i).
- (c) The Alcoa Proportion must be determined in accordance with the following:
...

Appendix 6 Tariff Model – Public Version

This appendix is published separately on the ERA website.