

Attachment 15.1

Submissions for changes to AA6 Reference Contract

January 2025

PUBLIC



**Dampier Bunbury
Pipeline**

2026 – 2030 Access Arrangement Period

Submissions in support of Proposed Terms and Conditions for Reference Services

INTRODUCTION TO SUBMISSIONS IN SUPPORT OF PROPOSED TERMS AND CONDITIONS FOR REFERENCE SERVICES

On or before 2 January 2025, DBNGP (WA) Transmission Pty Ltd (**DBP**) submitted the following documents with the Economic Regulation Authority (**ERA**):

- i) proposed revised Access Arrangement (**Proposed Revised AA**); and
- ii) proposed revised Access Arrangement Information (**Proposed Revised AAI**).

These documents are proposed to cover the access arrangement period commencing on 1 January 2026 and ending on 31 December 2030 (**AA Period**).

As required by NGR 48(1)(d), the Access Arrangement must specify for each reference service the reference tariff and the other terms and conditions on which the reference service(s) will be provided. As is outlined in the Proposed Revised AA, DBP has proposed to retain the three reference services in the current access arrangement – T1, B1 and P1 reference services.

DBP has taken the opportunity to undertake a review of the T1, B1 and P1 reference services. The review has focussed upon (1) required adjustments to date and legislation references to address the passage of time; (2) the confidentiality provisions; (3) interaction between each contract and any future changes to the Reference Contracts; (4) issues arising as a result of changes made in the last Access Arrangement; and (5) formatting errors.

Arising from this review, DBP has proposed a number of drafting and formatting changes to the terms and conditions for each reference service in the current access arrangement. Clean versions of proposed T1, P1 and B1 Service terms and conditions are provided as Attachments 2, 3 and 4 to the Access Arrangement. Marked up versions of proposed T1, P1 and B1 Service terms and conditions showing the changes in comparison with the current AA terms and conditions (provided in word as using the ERA approved Word versions provided to DBP by the ERA on 18 May 2021) are contained in the following appendices to this submission:

- i) T1 Service terms and conditions – Appendix A
- ii) P1 Service terms and conditions – Appendix B
- iii) B1 Service terms and conditions – Appendix C

Except where a change has been proposed just to address a formatting error, DBP has provided very thorough submissions in relation to the proposed changes in order to explain the requirement for each proposed change, identifying any flow through impacts of the change to ensure that there are no unintended consequences of the proposed change, and explain how, where necessary, the change promotes the national gas objective.

Unless stated otherwise, the changes showing in these Submissions are as against the T1 Service terms and conditions but analogous changes are proposed in respect of the P1 and B1 Service terms and conditions.

Defined terms used in these Submissions:

- “**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.

1. **Formatting fixes**

1.1 The following formatting changes have been made.

- (a) In clause 1, definition of “Actual Mass Flow Rate”, the indentation of paragraph (b)(ii) has been fixed.
- (b) In clause 1 of the P1 Service terms and conditions only, definition of “Aggregated P1 Service”, the paragraph numbering has been changed from (c) and (d) to (a) and (b).
- (c) In clause 1, definition of “Good Gas Industry Practice”, the indentation of paragraphs (f)(ii) to (iv) have been fixed.
- (d) In clause 1, definition of “Indirect Damage”, the indentation of paragraph (a)(ii) has been fixed.
- (e) In clause 1, definition of “Law”, the indentation of paragraphs (b)(i) and (ii) and (c)(i) and (ii) has been fixed.
- (f) In clause 1 of the P1 Service terms and conditions only, definition of “Major Works”, the paragraph numbering has been changed from (i) and (ii) to (a) and (b).
- (g) In clause 1, definition of “Part Haul”, the dots have been replaced with (a), (b) and (c).
- (h) In clause 1 of the P1 Service terms and conditions only, definition of “System Use Gas”, the indentation of paragraphs (a)(iv)A. and B. has been fixed.
- (i) In clause 1 of the P1 Service terms and conditions only, definition of “T1 Reference Tariff” has been moved into alphabetical order and an empty line deleted above its former location.
- (j) In clause 6.14 of the P1 Service terms and conditions only, a footnote has been deleted.
- (k) In clause 9.5(b) of the P1 Service terms and conditions only, a colon punctuation mark has been inserted.
- (l) In clause 13.3(b) of the B1 Service terms and conditions only, the indentation of paragraph (i) has been fixed.
- (m) In clause 17.9(b)(vi)(B) of the P1 Service terms and conditions only, the indentation of the last line has been fixed.
- (n) In clause 20.5 of the P1 Service terms and conditions only, an empty line after the end of the clause has been deleted.

2. **Clause 1 - Interpretation**

2.1 Terms defined by reference to the Corporations Act:

- (a) The terms *Associate*, *Control*, *Controller*, *Related Body Corporate* and *Related Entity* were defined by reference to the meaning in the Corporations Act “as at 15 July 2019 (being Compilation No 95, Federal Register of Legislation ID C2019C00216)”. For each of these definitions, “as at 15 July 2019 (being Compilation No 95, Federal Register of Legislation ID C2019C00216)” has been deleted and “as at 14 October 2024 (being Compilation No 38, Federal Register of Legislation ID C2024C00605 (C137))” has been inserted.
- (b) 14 October 2024 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 Contracts, containing amendments up to Act No. 38, 2024.

Definition of DBNGP

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 2026 – 2030) 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 1 January 2026.

Explanation/Submission

2.2 Updates to refer to the next Access Arrangement period.

Definition of Kwinana Junction

Kwinana Junction has the meaning given in the pipeline description document that forms Appendix A to the Access Arrangement (as approved for the period 2026 – 2030).

Explanation/Submission

2.3 Update of defined term.

Definition of Tp Service

Explanation/Submission

2.4 Each Shipper who has been granted Tp Service was granted it for a period of 15 years beginning on 7 July 2009. In the result, there are no Shippers with Tp Service as at the time of these submissions. AGIG does not propose to offer Tp Service as a service in the future and, accordingly, proposes to remove all references to Tp Service in the Reference Contracts.

3. *Clause 3 – Capacity Service*

Clause 3.2(a) Capacity Service

- (a) The T1 Service is the Full Haul Gas transportation service which gives the Shipper a right of access to Gas Transmission Capacity and which:
- (i) except as otherwise agreed or permitted by Law, can only be Curtailed in the circumstances set out in this Contract;
 - (ii) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
 - (iii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service and in the order of priority with respect to /other Types of Capacity Service referred to in clause 8.10.

Explanation/Submission

3.1 The reason for this insertion:

- (a) in each Reference Contract, clause 3.1 states that the Parties agree that the particular Capacity Service being provided under that contract (being “*T1 Service*”, “*P1 Service*” or “*B1 Service*”) is offered by the Operator, and accepted by the Shipper, on the terms and conditions of that Contract;
- (b) clause 3.2(a) performs a different function to clause 3.1 – it is arguable that clause 3.2(a) serves to define “*T1 Service*”, “*P1 Service*” or “*B1 Service*” (as the case may be) in terms of the priority rights of that Capacity Service. It does not grant the Shipper unencumbered “*T1 Service*”, “*P1 Service*” or “*B1 Service*” (rather, as mentioned in the previous paragraph, the grant and acceptance of that Capacity Service is contained in clause 3.1 (and it is therein limited to the terms and conditions of the particular contract));
- (c) with respect to the words “as otherwise agreed”:
 - (i) if the Shipper and Operator have agreed to Curtailment in circumstances other than those set out in the Reference Contract then such separate agreement should not call into question whether the Shipper has a T1 Service (or, in the context of the P1 Reference Contract or the B1 Reference Contract, a P1 Service or B1 Service respectively); and
 - (ii) these additional words do not detrimentally impact the Shipper, as they do not apply unless the Shipper has “otherwise agreed”;
- (d) with respect to the words “permitted by Law”, these words are consistent with the following opening words of clause 5.13: “In addition to any other rights and remedies that may be available to it under this Contract or under any Law”.

3.2 The changes have a net beneficial effect on shippers or consumers of gas as they lower the probability of disputes (particularly regarding priority in Curtailment scenarios).

4. *Clause 5 – Receiving and Delivering Gas*

Clause 5.3(a) Operator may refuse to Receive Gas

- (a) to the extent that the Operator is entitled to refuse to Receive Gas under all or any of:
 - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
 - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
 - (iii) clause 9.8(c) (Remedies for breach of imbalance limits); and

Explanation/Submission

- 4.1 This change to cross referencing is consequent upon the proposed addition of a new clause 9.8(a) (see submissions below in respect of that change).

Clause 5.7(a) Operator may refuse to Deliver Gas

- (a) to the extent that the Operator is entitled to refuse to Deliver Gas under all or any of:
 - (i) clause 7.6 (Operator and Shipper may refuse to Receive Out-of-Specification Gas);
 - (ii) clause 9.5(b) (Accumulated Imbalance Limit);
 - (iii) clause 9.8(c) (Remedies for breach of imbalance limit);

Explanation/Submission

- 4.2 This change to cross referencing is consequent upon the proposed addition of a new clause 9.8(a) (see submissions below in respect of that change).

5. *Clause 7 – Operating Specifications*

Submission

- 5.1 AGIG are **not** proposing changes to clause 7 however, given some queries raised by a small minority of shippers in the consultation process preceding these submissions, we thought it worth clarifying the effect and rationale of the current drafting.
- 5.2 Put broadly, those queries (by those few shippers) seemed to be suggesting a fundamental shift in respect to the allocation of liability for deliveries of Out-of-Specification Gas from the responsible Shipper onto the Operator (and ultimately all other users).

Such approach is inconsistent with clause 7 and contracts we have seen for similar pipelines. As between the Shipper and the Operator, the Shipper is wholly responsible for ensuring that Gas delivered at the Inlet Point is not Out-of-Specification Gas and that responsibility should not in any way be shifted onto the Operator (and directly and indirectly on all complying Shippers). Such fundamental shift would be unfair, economically inefficient and would have impacts on the viability and reliability of the DBNGP.

Overview of the problems caused by Out-of-Specification Gas delivered at Inlet Points

- 5.3 It is important that each Shipper does not deliver Out-of-Specification Gas into the DBNGP because:
- (a) Out-of-Specification Gas in the DBNGP increases the probability that shippers (including those not responsible for delivering the Out-of-Specification Gas) will receive Out-of-Specification Gas at an Outlet Point. Out-of-Specification Gas can damage and reduce the capacity of the facilities that utilise gas from the DBNGP and increase their operating and maintenance costs (as well as possibly breach their contracting arrangements and operating licences);
 - (b) Out-of-Specification Gas can damage and reduce the capacity of the DBNGP and increase operating and maintenance costs for the Operator; and
 - (c) other interconnected pipelines may not accept Out-of-Specification Gas (and if Out-of-Specification Gas is delivered, issues (a) and (b) may arise with respect to that other pipeline), or such deliveries may give rise to legal liability for those Shippers delivering into such pipeline or for the Operator.

As an initial issue, it is important to dispel any notion that the Operator can, in the ordinary case, completely manage the receipt of Out-of-Specification Gas in the DBNGP.

Most Shippers cannot be expected to definitively know the precise effect of receiving various permutations Out-of-Specification Gas. Shippers invest, operate their plants and enter into third party arrangements (including in relation to third party pipelines and offtakers) on the expectation that they will receive Gas at the Outlet Point which complies with the relevant specifications. It is a key part of Shippers' risk allocation under the Shipper Contract that they are not at risk of receiving Out-of Specification Gas at their Outlet Point. The role of the Operator is to deliver Gas which complies with the Operating Specifications and not to second guess whether or not a Shipper can accommodate any excursion from the specifications at the Outlet Point.

The Operator cannot accurately predict the route and commingling of gas (which is largely dependent on the actions of gas producers and shippers), to determine the precise effect of any delivery of Out-of-Specification Gas by a particular Shipper on the gas receipts of a specific customer. This would be the case even if the Operator had unlimited resources and

an unlimited budget, because such quality specifications are, in a large part, dependant on gas flows occurring contemporaneously or after the receipt of the Out-of-Specification Gas.

The existing position – shipper contract terms

- 5.4 The drafting of clause 7 has remained materially unchanged since the Access Arrangement for the DBNGP for the period commencing 2005 and mirrors the same clause in the Standard Shipper Contract.
- 5.5 The risk allocation adopted by clause 7 places liability on the Shipper in respect of Out-of-Specification Gas delivered at the Inlet Point and liability on the Operator in respect of Out-of-Specification Gas delivered at the Outlet Point (except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas by delivering Out-of-Specification Gas to the Inlet Point), in each case subject to any agreement reached between the Shipper and the Operator to the contrary.¹

The reason for the existing position

- the Shipper, not the Operator, contracts for the supply of gas into the DBNGP

- 5.6 In the Western Australian wholesale market, most gas supplies are procured through bilateral contracts. That is, in most cases, the entity that is the Shipper on the DBNGP will not be the producer of the relevant gas but will instead have upstream gas supply agreements with one or more gas producers which contain rights and obligations regarding the specification of gas delivered by the gas producer to the Shipper. The Operator is not party to these upstream gas supply agreements.
- 5.7 It is appropriate that liability in respect of Out-of-Specification Gas delivered at an Inlet Point is imposed on the Shipper as it is the party which procured the supply of, and thus is best

¹ By way of comparison, an analogous risk allocation is adopted in the Access Arrangement for the Goldfields Gas Pipeline. The terms and conditions for Firm Service in the Access Arrangement for the Goldfields Gas Pipeline for 2020-2025 provide:

“D.23.5 Subject to the responsibilities of Service Provider in clause D.23.6 of these Terms and Conditions, if the User requests that Service Provider agrees to receive, transport and deliver Non-Specification Gas, and Service Provider accedes to that request, then the User is responsible for and indemnifies and holds harmless the Service Provider from and against any loss or damage suffered or incurred by the Service Provider to the extent it results from the receipt, transportation and delivery of that Gas by the Service Provider and was not caused by any negligence, breach of contract or other default on the part of Service Provider, any of its related bodies corporate or any person acting for or on behalf of any of them or by any Force Majeure Event. The amount of this indemnity will be reduced to the extent Service Provider does not use reasonable endeavours to mitigate its loss. This indemnity is not limited by clause D.34.1.”

There has been no suggestion that this term will change as part of the proposal for the Access Arrangement for the period commencing 2025 (none of the Service Provider, the ERA nor any public submissions appear to have asked for any relevant change).

For completeness, we suggest that the penultimate sentence of the clause set out above is inappropriate in a contract for use of a multi-user infrastructure facility. The Operator should be obliged to operate the pipeline for the benefit of all shippers acting in accordance with good industry practice, and it should not be specially and specifically obliged to seek to mitigate the loss suffered by a particular defaulting shipper. Thus, in our view, a general obligation to operate the pipeline in accordance with Good Gas Industry Practice (as contained in clause 12.3 of the Reference Contract) should apply at all times and should not be subject to a conflicting obligation to prefer the interests of a defaulting Shipper (by taking special actions to mitigate its loss). In the context of mitigation, we note that the Operator is already obliged to notify each relevant Shipper if it has become aware that it has received Out-of-Specification Gas.

placed to contract for the delivery of, and compensation for the failure to receive, Gas which complies with the agreed specifications.

It is the Shipper (and not the Operator) who is party to the contract with the gas producer, and, ultimately, it is the relevant gas producer who is best placed to not deliver (and failing that, accept the liabilities arising as a consequence of delivering) Out-of-Specification Gas.²

- ***the Producer is the entity who is best placed to ensure gas is “in-specification” Gas***

5.8 The fact that the relevant gas producer is the entity ultimately capable and responsible for ensuring gas for delivery into the DBNGP is not Out-of-Specification Gas (and the entity on whom liability is most sensibly imposed) has been recognised by Legislation. Under the Gas Supply (Gas Quality Specifications) Act 2009 (WA), the onus for keeping pipeline operators whole, and paying compensation to consumers etc, is imposed entirely on the relevant gas producer.

5.9 The issue of in-field gas specifications, and the plant, equipment and processes required to bring it within the DBNGP specifications, is a matter that is taken into account when a gas producer makes its investment, engineering and development decisions in relation to whether and how to develop and process the gas.

5.10 Economic efficiency is achieved by each gas producer having equipment to properly analyse the specifications of the gas it recovers from its petroleum fields and to properly process it to conform to the Operating Specifications, and to factor the cost of doing so into its gas sales price. It would be unrealistic to suggest that the Operator should have – or that the reference tariff should capture - all the equipment that would be required to be able to process any gas from any field delivering into the DBNGP to conform with the Operating Specification, notwithstanding that the Operator may install equipment at its inlet points.

- ***most shippers contract on terms which procure and appropriately incentivise Suppliers to deliver “in Specification” Gas***

5.11 Where the producer of the gas is also the Shipper, allocating liability for Out-of-Specification Gas to that Shipper directly encourages the Shipper to invest in equipment and processes to avoid delivery of Out-of-Specification Gas (and to price its gas sales accordingly).

5.12 Where (as in most cases in relation to the DBNGP) the Shipper buys gas for delivery into the DBNGP, it is up to the Shipper to ensure that its upstream gas purchase agreement contains an allocation of liability that is appropriate in the context of the Shipper Contract terms (which are well known and publicly available, remaining largely unchanged for about 20 years). To the best of our knowledge, most Shippers have contracted on a basis that requires the gas producer to supply gas meeting the DBNGP Operating Specifications and imposes on the gas producer liability arising under the Shipper Contract as a result of any Out-of-Specification Gas supplied by the gas producer (**“Standard Contracting Approach”**). However, we believe that there are a few Shippers which have failed to do so. Presumably they have failed to do so on the basis that they are themselves prepared to bear the risks and liability which may arise under the Shipper Contract in order to procure a lower

² We note that clause 7.9 of the Reference Contract takes an analogous approach when it imposes liability on the Operator for delivery of Out-of-Specification Gas at an Outlet Point (in favour of the Shipper who receives Out-of-Specification Gas (**“Receiving Shipper”**)). This is despite the fact that, in most cases, the Operator is not the cause of the Out-of-Specification Gas.

The Operator accepts such liability because, where liability is imposed on the Operator, the Operator then looks to see if it has a relevant counterparty – i.e. a Shipper under a Shipper Contract - to compensate it with respect to, inter-alia, monies payable to the Receiving Shipper. Of course, this is not ideal from the Operator's perspective as the Operator may not be able to recovery monies owed by a Shipper which delivers Out-of-Specification Gas (for example, if the Shipper is insolvent).

gas price (or other more favourable terms) under their gas supply agreements – as compared to those shippers who have adopted the Standard Contracting Approach.

- 5.13 If a particular shipper has decided to not take the Standard Contracting Approach, that Shipper should not be allowed to pass on the risks it has chosen to bear under its gas supply agreement onto the Operator (by forcing the Operator to take liability if it does not shut off the point) and/or other shippers (by forcing the Operator to shut off the point for all shippers using that point, even those who have taken the Standard Contracting Approach).
- 5.14 If a Shipper does not take a Standard Contracting Approach, it increases the risk that the Gas supplier will feel relatively unconstrained in supplying Out-of-Specification Gas. That is not a good outcome for the Operator, interconnected pipelines, storage facilities or other shippers or their customers.
- ***responsibility for “Out-of-Specification” Gas should not be shifted to the Operator***
- 5.15 It is not in the interests of the market and its participants for the Operator to be overwhelmingly incentivised to stop the receipt of gas at an Inlet Point any time there is any risk that there will be Out-of-Specification Gas to any degree, which would be the likely outcome of imposing the risk of liability on the Operator instead of the Shipper with respect to receipt of Out-of-Specification Gas at the Inlet Point. In particular, such action could have a detrimental effect on third party shippers (for example, back haul shippers reliant on sufficient forward haul capacity) and end use customers (in some cases being critical services/infrastructure).
- 5.16 Of course, the Operator is obliged to use Good Gas Industry Practice in operating the DBNGP, but as outlined in paragraph 5.15 (above) it is neither cost effective or possible for the Operator to be forced into a first line gate keeper role of determining when to stop particular gas receipts, regardless of whether it has specific and detailed knowledge of the Out-of-Specification Gas. The primary obligation, responsibility and liability must be on each Shipper to ensure that it complies with the requirement of its Shipper Contract that it does not deliver Out-of-Specification Gas.

6. *Clause 9 – Imbalances*

Clause 9.8 Remedies for breach of imbalance limits

Except as provided in clause 9.10, 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 9.5(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;
- (b) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;
- (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
- (d) any combination of the rights and remedies in clauses 9.8(a), 9.8(b) and 9.8(c).

The Parties agree that, because the rights and remedies set out in this clause 9.8 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, 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.

Explanation/Submission

- 6.1 The insertion of a new clause 9.8(a) is a step to better align the express imbalance remedies across Negotiated Contracts and the Reference Contracts. This change is important to promote 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 by removing the situation where one shipper under a Reference Contract (on the current terms) is less constrained than other shippers to take up imbalance capacity of the pipeline, thereby limiting the probability that imbalance capacity (and capacity for other services) will be available for those shippers in real operational need at the relevant time. The inclusion of this express remedy was the agreed outcome of the 2004 arms' length negotiations with shippers and reflects the position accepted by the market since that time. It is not appropriate for the Reference Contract to contain a different position on this issue given its potential effect on the availability of capacity services for all shippers.
- 6.2 Clause 9.5(b)(iii) contains an obligation (albeit not a strict obligation but an obligation to "use best endeavours") and therefore a breach by the Shipper should sound in damages if any are suffered by the Operator as a result.
- 6.3 Note that clause 9.8(a) expressly provides that any such damages referred to in that clause are to be reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the Shipper in respect of the relevant breach, thereby preventing any potential double recovery by the Operator.
- 6.4 The changes to cross references result from the addition of clause 9.8(a).

7. **Clause 17 – Curtailment**

With respect to the B1Service terms and conditions only:

Clause 17.3(b)(iii)

- (iii) where the Curtailment is in accordance with any of clauses 17.2(a), 17.2(b) or subject to clause 3.5, 17.2(g); or

Explanation/Submission

- 7.1 This change to cross referencing is consequent upon the insertion of a new clause 17.2(f) by the ERA in the final decision for the Access Arrangement for the period 2021 – 2025.

With respect to the B1Service terms and conditions only:

Clause 17.3(c)(i)

- (i) a Curtailment in circumstances set out in clause 17.2(a), 17.2(b) or 17.2(g);

Explanation/Submission

- 7.2 This change to cross referencing is consequent upon the insertion of a new clause 17.2(f) by the ERA in the final decision for the Access Arrangement for the period 2021 – 2025.

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 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.

Explanation/Submission

- 7.3 See the explanation in these submissions in respect of the deletion of the definition of “Tp Service” in clause 1.

8. *Clause 28 - Confidentiality*

Clause 28.2(j)

is requested by an operator of a pipeline which is inter-connected with the DBNGP, subject to the Confidential Information being relevant to, and the disclosure being for the purpose of, the operation of the inter-connected pipeline or for the allocation of Gas at the inter-connection point;

Explanation/Submission

- 8.1 Clause 28.2 contains a list of circumstances in which a Party is entitled to disclose Confidential Information. It is at least arguable that paragraph (j) in its current form limits disclosure to an operator of an inter-connected pipeline to circumstances where it is necessary for the operation of the inter-connected pipeline. However, the sharing of information as to allocations and gas flows reflects the commercial reality of how pipeline interconnects work – at the interconnect, each shipper’s ‘debits’ from one pipeline are intended to equal that shipper’s ‘credits’ on the other, save that in limited instances pipeline operators will enter into Operational Balancing Agreements which may allow, in some circumstances, accounted gas flows to be more or less than actual gas flows. Sharing information between inter-connected pipeline operators promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better utilise their contracted services, reduces the administrative burden, promotes timely determination and sharing of information (allowing each shipper to promptly know its position) and reduces the scope for disputes. The changes clarify that certain limited information may be shared for the limited purpose of the allocation of Gas at the inter-connection point.

Clause 28.2(k) and (l) and new paragraph (m)

- (k) is required by Law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the DBNGP and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be);
- (l) comprises the terms of the Operator's Standard Shipper Contract; or
- (m) is requested by a Producer, subject to the Confidential Information being relevant to, and the disclosure being for the purpose of, the allocation of Gas Deliveries at an Inlet Point to which Gas supplied by that Producer flows.

Explanation/Submission

- 8.2 Clause 28.2 contains a list of circumstances in which a Party is entitled to disclose Confidential Information. The new paragraph 28.2(m) clarifies that disclosure may be made to a Producer for the purpose of allocation of Gas at the Inlet Point to which Gas supplied by that Producer flows.
- 8.3 In most cases, Shippers delivering Gas at an inlet point do so pursuant to gas supply contracts under which the gas supplier (being a “Producer” under the Contract) makes the delivery to the inlet point and charges the Shipper for the amount of gas delivered as determined in accordance with the relevant gas supply contracts. Those gas supply contracts do not bind the Operator and there is ample scope for the amount of gas treated as having been delivered under them to Shippers to differ from the amount of gas which the Operator allocates as having been received into the DBNGP from those same Shippers. While it may be appropriate, in certain scenarios, for the numbers to differ, we submit that it is in the net interests of Shippers and their gas suppliers for the Operator to be able to share

information with Producers for the purposes of the allocations so that, where appropriate, the figures can align.

- 8.4 Among other reasons, this enables consistency, certainty and alignment across the Shipper's commercial arrangements relating to gas supply and transportation, which promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better utilise their contracted services and reduces the scope for disputes. The changes only narrowly extend the scope for allowed disclosure by limiting it to where it is for the purpose of the allocation of Gas by a Producer at the relevant point.

Clause 28.3(b)

- (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 Western Australia under the National Gas Access (Western Australia) Law;
 - (B) the retailing of Gas within Western Australia;
 - (C) the generation or sale of electricity in Western Australia if such electricity is, or may be, generated using (whether in whole or in part) Gas Delivered from the DBNGP;
 - (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).

Explanation/Submission

- 8.5 Clause 28.3(a) provides that a Party may, subject to clauses 28.4 and 28.5, disclose Confidential Information to its and its Related Bodies Corporate's, employees, officers, agents, contractors and consultants (among others) ("**Related Persons**"). Clauses 28.4 and 28.5 provide additional protection in the case of such disclosures, by requiring that the Party making the disclosure must ensure that the persons receiving the Confidential Information do not disclose it except in the circumstances permitted under the Contract and do not use it except for the purpose of exercising the Party's rights or performing the Party's obligations under the Contract or as otherwise contemplated under the Contract.
- 8.6 Clause 28.3(b) creates exceptions to the right to disclose to Related Persons allowed under clause 28.2(a) by providing that such disclosure is not allowed if the Related Person is directly involved in, or in the management of, any of the activities listed in clause 28.3(b)(i)(A) – (D). One of those activities is the generation or sale of electricity in Western Australia.
- 8.7 Clause 28.3(b) was intended to mitigate against any ability of the Operator's corporate group to gain a competitive advantage (or undertake anti-competitive conduct) in a related industry by virtue of the knowledge or use of Shippers' Confidential Information gained through

operation of the DBNGP. The limits in clause 28.2(b) restrict the ability of the Operator's corporate group to use shared staff, contractors, consultants etc by requiring that any Relevant Persons who gain Confidential Information through their role supporting the Operator must be prevented from direct involvement in, or in the management of, the activities listed in clause 28.3(b)(i)(A) – (D). In the case of the generation or sale of electricity in Western Australia, the core relevance of information gained through operation of the DBNGP and performance of the Shipper Contracts would be if the relevant electricity might be generated using Gas Delivered from the DBNGP.

- 8.8 Where there is no potential for Gas Delivered from the DBNGP to be used (for instance, in the case of a power station using only renewable energy), the limit on the ability of the Operator's corporate group to use shared staff, contractors or consultants etc for an electricity business if those persons may spend part of their time working for the Operator and thereby receive Confidential Information goes beyond what is necessary to prevent unfair competition and actually limits competition (by introducing hurdles to the Operator's corporate group engaging in legitimate competition in that market) and creates unnecessary inefficiencies within the Operator's corporate group.
- 8.9 The information that employees, officers, agents, contractors and consultants of the Operator's corporate group may be privy to by reason of their knowledge of the DBNGP's operations provides no advantage to the Operator or its Related Bodies Corporate in terms of electricity generation operations that do not use gas transported on the DBNGP. The Operator seeks inclusion of these words so as to avoid doubt in the event that a member of the Operator's corporate group tenders for an opportunity to build, own or operate an electricity generation facility that will not use gas from the DBNGP.
- 8.10 We also note that the national gas objective has been amended, since the start of DBNGP's current Access Arrangement period, to include reference to the achievement of targets for reducing Australia's greenhouse gas emissions or that are likely to contribute to reducing Australia's greenhouse gas.

Clause 28.6(b)

- (b) The Operator recognises that some information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that where the information is commercially sensitive (as determined by the Operator acting reasonably), in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP (including performing or enforcing this Contract). The Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.

Explanation/Submission

- 8.11 This change is to clarify the intent of clause 28.6(b), noting that the term "Operate" is not exhaustively defined in the Contract. Obviously, personnel other than control room personnel may need to receive Confidential Information for the performance of the Contract. This change improves clarity and certainty.

9. Clause 38 – Revocation, Substitution and Amendment

A new paragraph (c) has been added

- (c) The Parties agree that the provisions of this Contract will change automatically from time to time to reflect any changes to the terms and conditions for the T1 Service as approved by the ERA from time to time.

Explanation/Submission

- 9.1 Keeping the terms of all Reference Contracts consistent enhances the Operator's ability to administer all of its contracts in a consistent and efficient manner. The ERA has previously recognised that alignment across the contracts in place with shippers is consistent with the national gas objective.³
- 9.2 The change reflects the intention of clause 4.1 of the current DBNGP Access Arrangement for 2021 – 2025 approved by the ERA on 1 April 2021, which provides (underlining added for emphasis):
- The terms and conditions of any Reference Service (being T1 Service, P1 Service or B1 Service) granted under this Access Arrangement are those terms and conditions for the T1 Service, P1 Service and B1 Service contained in the Access Contract Terms and Conditions as amended or varied from time to time in accordance with clause 4.3 of the Access Arrangement.*
- 9.3 Making this clear in the terms of the Reference Contract itself is in the net interest of Shippers and consumers because it clarifies the operation of the agreements and accordingly aids Shippers and the Operator to use the documents efficiently and with greater certainty. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.
- 9.4 We note that we have also proposed amendments to clause 4.3 of the Access Arrangement to reflect this concept with greater clarity and certainty for both Shippers and the Operator (as noted in our separate submissions in relation to those changes).

³ For example, through various references in the Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025 (published on 14 August 2020).

10. Schedule 1 – Access Request Form

Section 6 Terms and Conditions

Prospective Shipper accepts the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement) for the T1 Reference Service.

Explanation/Submission

- 10.1 This amendment to Schedule 1 of each of the Reference Contracts corrects and clarifies the terms and conditions that the Access Request Form refers to and ensures that the Access Request Form is consistent with the clause 5.3(d) of the Access Arrangement, which (in the Current Access Arrangement) states (with underlining added):

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.

- 10.2 The amendment improves efficiency by ensuring that the consequence of completion of the Access Request Form is clear under the Access Arrangement.

Section 7 Acknowledgment

By executing and submitting this Access Request Form, Prospective Shipper acknowledges having read and understood the latest version of the Access Arrangement, including the Queuing Policy under the Access Arrangement, and the current Access Contract Terms and Conditions.

Explanation/Submission

- 10.3 This amendment to Schedule 1 of each of the Reference Contracts corrects and clarifies the terms and conditions that the Access Request Form refers to. The amendment improves efficiency by ensuring that Shippers seeking access to the DBNGP under the Access Arrangement are guided to the correct set of terms and conditions for the service sought.

Section 8 Agreement

In accordance with the Access Arrangement:

- (a) a contract may be deemed to arise between the parties on the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement); or
- (b) otherwise, this Access Request when executed by the Operator and the Pipeline Trustee and returned to the Prospective Shipper, creates a contract between the parties on the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement).

Explanation/Submission

10.4 The Operator refers to and repeats the submission above in relation to section 6 of the Access Request Form.

Execution block – Prospective Shipper

Executed by Prospective Shipper:

Executed by

[insert Prospective Shippers Details and ABN] in accordance with section 127 of the Corporations Act 2001 or such other manner as approved in writing by Operator:

Signature

Signature

Title

Title

Name (block letters)

Name (block letters)

Explanation/Submission

10.5 This amendment to Schedule 1 of each of the Reference Contracts is consistent with our requested amendment to insert a new clause 5.2(e) in the Access Arrangement as follows.

(e) *An Access Request:*

- (i) *must be executed by or on behalf of the Prospective Shipper in accordance with sections 127(1), (2) or (3) of the Corporations Act or in such other manner as Operator, acting reasonably, may approve; and*
- (ii) *may be executed by or on behalf of the Operator and Nominees in accordance with sections 127(1), (2) or (3) of the Corporations Act or in such other manner as Operator reasonably determines.*

10.6 The potential for less onerous methods of execution will promote business efficacy, and reflecting this potential in the Access Request Form promotes certainty in relation to the preconditions for a binding contract between a shipper and Operator. It is not in the interest of any market participant for there to be a lack of clarity with respect to when a binding contract for pipeline services has arisen.

Execution block – Operator

Executed by Operator:

Executed by

DBNGP (WA) Transmission Pty Limited (ABN 69 081 609 190):

Signature	Signature
Title	Title
Name (block letters)	Name (block letters)

Explanation/Submission

10.7 The Operator refers to and repeats the submission above in relation to execution by the Prospective Shipper.

Execution block – Pipeline Trustee

Executed by Pipeline Trustee:

Executed by

DBNGP (WA) Nominees Pty Limited (ABN 78 081 609 289):

Signature	Signature
Title	Title
Name (block letters)	Name (block letters)

Explanation/Submission

10.8 The Operator refers to and repeats the submission above in relation to execution by the Prospective Shipper.

11. **Schedule 4 – Pipeline Description**

Schedule 4 - Pipeline Description

Description of the Dampier to Bunbury Natural Gas Pipeline System (as at [insert date cited in relevant attachment to the Access Arrangement])

Available as part of the Economic Regulation Authority's *Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, [insert date of final decision].

Explanation/Submission

11.1 Updates to dates for next Access Arrangement.

12. Schedule 6 – Curtailment Plan

Part A, rows 6, 7 and 8 of the System Curtailment column

6	Other Reserved Service
7	Spot Capacity

Explanation/Submission

12.1 See the explanation in these submissions in respect of the deletion of the definition of “Tp Service” in clause 1.

Part A, rows 6, 7, 8, 9 and 10 of the Point Specific Curtailment

6	Other Reserved Service that is Contracted Capacity at the relevant point
7	Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point
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
9	Spot Capacity

Explanation/Submission

12.2 See the explanation in these submissions in respect of the deletion of the definition of “Tp Service” in clause 1.