

Attachment 15.5

# Submissions on Proposed AA6 Document Changes

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January 2025

**PUBLIC**



**Dampier Bunbury  
Pipeline**

## Submissions regarding changes to the Access Arrangement

### 1. Clause 4 – Terms and Conditions

#### **Clause 4.1**

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, including after the relevant grant, in accordance with clause 4.3 of the Access Arrangement).

#### **Explanation/Submission**

1.1 See the explanation/submission in respect of the changes to clause 4.3, below.

#### **Clause 4.3**

Operator may seek to amend or vary the Access Contract Terms and Conditions in accordance with:

- (a) Part 8, Division 10 of the NGR;
- (b) Part 8, Division 5 of the NGR; and
- (c) in the case of the Reference Tariff, the Reference Tariff Variation Mechanism in this Access Arrangement.

If the Regulator varies or approves any Access Contract Terms and Conditions (whether during or after the term of this Access Arrangement) in accordance with:

- (d) Part 8, Division 10 of the NGR;
- (e) Part 8, Division 8 of the NGR;
- (f) Part 8, Division 9 of the NGR;
- (g) Part 8, Division 11 of the NGR; or
- (h) in the case of the Reference Tariff, the Reference Tariff Variation Mechanism in this Access Arrangement,

then the Access Contract Terms and Conditions, and the relevant terms and conditions of any Reference Service from time to time granted on the Access Contract Terms and Conditions, will be amended so as to be the same as the varied or approved Access Contract Terms and Conditions, from the time such variation or approval takes effect.

#### **Explanation/Submission**

1.2 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.<sup>1</sup>

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<sup>1</sup> 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).

- 1.3 This change better reflects the intent 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.*

- 1.4 Without this change, there may be uncertainty as to when the relevant changes take effect. In particular, clause 4.3 read literally without these changes provides that the contracts may change automatically from time to time to reflect any changes to the Access Contract Terms and Conditions in a submitted, but not yet approved, Access Arrangement.
- 1.5 Making this clear 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.

## 2. **Clause 5 – Access Requests and Queuing Requirements**

***New clause 5.2(e) (with consequential renumbering of the remaining subclauses in clause 5.2, and updating to cross references in clause 5.2(k))***

- (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.

### **Explanation/Submission**

- 2.1 This change 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.
- 2.2 The reason for the reference to “may” in the proposed clause 5.3(e)(ii) (as contrasted with “must” in clause 5.3(e)(i)) is because the Operator is not required to enter into the contract requested by way of an Access Request in all circumstances.
- 2.3 The Operator proposes to amend its current Access Request Form to reflect the potential (as described in the proposed new clause 5.3(e)) for less onerous methods of execution, which will promote business efficacy.

***Clause 5.3(d)***

- (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 (such that any variations or amendments to the Access Contract Terms and Conditions (as described in clause 4.3) made from time to time after such acceptance, shall be automatically incorporated into the accepted contract from the time such approval or variation takes effect) 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.

#### Explanation/Submission

- 2.4 Clause 5.3(d) was inserted into the current DBNGP Access Arrangement upon request of the ERA in its draft decision published on 14 August 2020. The proposed change is to point back to clause 4.3 of the Access Arrangement, to promote better understanding and clarity in relation to the contract terms, consistent with the national gas objective.

#### Clause 5.3(e)

- (e) If the Operator is able to provide the requested service but an agreement is not deemed to arise under clause 5.3(d), then (subject to any variation to the timeframes below as is agreed in writing between the Operator and the Prospective Shipper):

#### Explanation/Submission

- 2.5 Clause 5.3(d) was inserted into the current DBNGP Access Arrangement upon request of the ERA in its draft decision published on 14 August 2020. The proposed change is to clarify the drafting given the uncertainty that the Operator has since identified may result regarding the interaction between clause 5.3(d) and clause 5.3(e), which is to the benefit of the Operator and the Shippers.

### 3. Clause 11

#### Clause 11.4(b)(i)

- (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 in a manner consistent with the achievement of the national gas objective (**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

#### Explanation/Submission

- 3.1 Change to reflect change to the NGR.

### 4. Clause 13 – Fixed Principles

**Clause 13.3**

- 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 2032; and
  - (b) the date when the rebateable non-reference service revenue earned during the period 1 January 2026 to 31 December 2030 has been fully rebated in accordance with the Fixed Principle in clause 13.1(c).

**Explanation/Submission**

- 4.1 Changes to reflect timing for new Access Arrangement.

**5. Clause 14 – Revision and Commencement Date**

**Clause 14**

- 14.1 The Current Access Arrangement Period commences on [to be inserted upon approval] 2026.
- 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 2026 to [insert date immediately prior to date in 14.1] 2026.
- 14.3 The review submission date for the Current Access Arrangement is 1 January 2030.
- 14.4 The revision commencement date for the Next Access Arrangement is 1 January 2031.

**Explanation/Submission**

- 5.1 Changes to reflect timing for new Access Arrangement.

**6. Clause 15 – Operating Cost Efficiency Incentive Mechanism**

**Clause 15.2(g)**

- (g) if necessary, the annual E Factor carryover amount is carried forward into the access arrangement period commencing 1 January 2031 until it has been retained by the Operator for a period of five years.

**Explanation/Submission**

- 6.1 Changes to reflect timing for new Access Arrangement.

**Clause 15.4**

- 15.4 Deleted

**Explanation/Submission**

- 6.2 Change to remove historical reference as no longer required.

**Clause 15.5**

15.5 Deleted

**Explanation/Submission**

6.3 Change to remove historical reference as no longer required.

**Clauses 15.6**

For savings that arise in ~~each~~~~the second to fifth~~ year of the Current access arrangement period, and each year of subsequent access arrangement periods, the E Factor incentive is calculated as:

$$E_t = (B_t - A_t) - (B_{t-1} - A_{t-1})$$

where:

$E_t$  is the E Factor incentive in year  $t$ ;

$B_t, B_{t-1}$  is the E Factor benchmark for the years  $t$  and  $t-1$  respectively; and

$A_t, A_{t-1}$  is the actual operating expenditure less E Factor exclusions for the years  $t$  and  $t-1$  respectively.

6.4 Change to update to include each year of the Current Access Arrangement Period consistent with deletion of 15.5.

**Clause 15.11(b)(i)**

- (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;
    - B. non-recurrent operating expenditure; and
    - C. Inspections and Other Asset Management.

**Explanation/Submission**

6.5 We have provided an explanation of this change in Chapter 12 (in particular, section 12.5.2) of our Final Plan.

**Clause 15.13**

Deleted

**Explanation/Submission**

6.6 Given the E Factor benchmark is impacted by exclusions that will not be known until after the start of the access arrangement period, it is at best confusing to include figures for the E Factor benchmark which give only a partial indication of the outcome.

## 7. Clause 16 – Definitions

### *Clause 16 Definition of Access Contract Terms and Conditions*

**Access Contract Terms and Conditions** means the terms and conditions for the Reference Services contained in Attachment 1, 2 and 3 (or, if the Regulator varies or approves any of the terms and conditions for the Reference Services from time to time as described in clause 4.3 of this Current Access Arrangement, the varied or approved Access Contract Terms and Conditions).

#### **Explanation/Submission**

- 7.1 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.<sup>2</sup>
- 7.2 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.*
- 7.3 Making this clear 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.
- 7.4 We note that we have also proposed amendments to clause the proposed Access Contract Terms and Conditions 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).

### *Clause 16 Definitions in relation to tariffs*

**B1 Capacity Reservation Tariff** as at 1 January 2026 is the amount described as the “B1 Capacity Reservation Tariff” in clause 3.5(c)(i) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

**B1 Commodity Tariff** as at 1 January 2026 is the amount described as the “B1 Commodity Tariff” in clause 3.5(c)(ii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

...

<sup>2</sup> 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).

**B1 Tariff** as at 1 January 2026 is the amount described as the “B1 Tariff” in clause 3.5(c)(iii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

...

**P1 Capacity Reservation Tariff** as at 1 January 2026 is amount described as the “P1 Capacity Reservation Tariff” in clause 3.4(c)(i) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

**P1 Commodity Tariff** as at 1 January 2026 is amount described as the “P1 Commodity Tariff” in clause 3.4(c)(ii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

**P1 Tariff** as at 1 January 2026 is amount described as the “P1 Tariff” in clause 3.4(c)(iii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

...

**T1 Capacity Reservation Tariff** as at 1 January 2026 is amount described as the “T1 Capacity Reservation Tariff” in clause 3.3(c)(i) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

**T1 Commodity Tariff** as at 1 January 2026 is amount described as the “T1 Commodity Tariff” in clause 3.3(c)(ii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

...

**T1 Tariff** as at 1 January 2026 is amount described as the “T1 Tariff” in clause 3.3(c)(iii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time.

## Explanation/Submission

7.5 Changes to reflect date of new Access Arrangement.

### *Clause 16 New Definition of Inspections and Other Asset Management*

**Inspections and Other Asset Management** means:

- (a) inspection of the pipeline and mainline valve (MLV) assets in accordance with Australian Standard (AS) 2885 and AS 3788 and aligned with the Operator’s risk management framework;
- (b) inspection of pressure vessels (including water bath heaters) and pressure relief valves, inspection and re-preservation of compressor rotor bundles in long term storage in accordance with Australian Standard 3788 (AS 3788) and the asset management requirements under AS 2885 and aligned with the Operator’s risk management framework, along with inspections of other assets located at compressor stations such as exhausts, vent attenuators and site buildings, as well as the land itself;
- (c) Decommissioning or mothballing (where the asset may again be required in the provision of services) of non-operational assets and facilities to minimise risk to the environment, public and employee safety and to safeguard cost effective future operations;
- (d) asset preservation works and asset management through the Operator’s change management and emergency management processes; and



- (e) health, safety and environment (HSE) implementation and improvement projects including those necessary from a regulatory perspective to meet Operator's workplace health and safety obligations.

**Explanation/Submission**

- 7.6 Further details and explanations are included in the Business Case and Attachments in Chapter 8 of our Final Plan.

**Clause 16 Definition of NGR**

**NGR** means the *National Gas Rules* which are referred to in section 294 of the NGL as amended and applied in Western Australia.

**Explanation/Submission**

- 7.7 Change for better clarity.

**Clause 16 Definition of Public Register**

**8. Clause 18 – Annexure A**

**Clause 18 New Annexure A6 Adjustments for Safeguard Mechanism**

- 18.21 The Safeguard Mechanism is legislated as part of the National Greenhouse and Energy Reporting Act 2007 and Safeguard Mechanism Rules. It requires facilities in Australia which are responsible for more than 100,000 tonnes of carbon dioxide equivalent per annum to keep their net emissions below an emissions limit ('baseline'). Reforms which commenced on 1 July 2023 apply a declining rate to facilities' baselines so that they are reduced predictably and gradually over time, consistent with the national emission reduction targets.
- 18.22 The DBNGP is a Safeguard facility that is subject to a designated baseline declining over time. The Operator may therefore incur costs in complying with the Safeguard Mechanism (as set out in the *National Greenhouse and Energy Reporting Act 2007* (Cth)); either to reduce emissions or to purchase and surrender emissions credits to ensure that net emissions from the DBNGP remain within the baseline (Safeguard Mechanism Amount).
- 18.23 Any Safeguard Mechanism Amount incurred by the Operator to meet compliance requirements under the Safeguard Mechanism will be applied to increase the Reference Tariff as follows:
- (a) any determined Safeguard Mechanism Amount under clause 18.22 incurred during the time period specified in Column A will result in an adjustment to the Reference Tariff for the adjacent period in Column B below.

Period	Column A	Column B
1	1 January 2026 until 30 September 2026	1 January 2027 until 31 December 2027
2	1 October 2026 until 30 September 2027	1 January 2028 until 31 December 2028
3	1 October 2027 until 30 September 2028	1 January 2029 until 31 December 2029
4	1 October 2028 until 30 September 2029	1 January 2030 until 31 December 2030
5	1 October 2029 to 30 September 2030	1 January 2031 until 31 December 2031
6	1 October 2030 to 30 September 2031	1 January 2032 until 31 December 2032

18.24 The Safeguard Mechanism Amount in clause 18.23 excludes any costs already recovered in Reference Tariffs or as a Cost Pass Through Event. The amount is expressed in dollars of the day and accounts for the time value of money.

### Explanation/Submission

- 8.1 This approach provides a clear mechanism for recovery of the DBNGP's Safeguard Mechanism costs, which the Operator may incur in accordance with our obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth), which are currently unable to be forecast.
- 8.2 It also accommodates the potential variability in the Safeguard Mechanism Amount from year to year.
- 8.3 This change is also consistent with the approach applied by the Australian Energy Regulator to recover Safeguard Mechanism costs through the tariff variation mechanism for the three Victorian gas distribution businesses (AusNet Gas Services, Australian Gas Networks and Multinet Gas Networks) for the 2023/24 to 207/28 Access Arrangement periods.<sup>3</sup>

<sup>3</sup> Australian Energy Regulator, *Final Decision AusNet Gas Services Attachment 10 – Reference tariff variation mechanism, June 2023, Section 10.1.6.1 p6*