Our ref: FM/108/6PT1(44A)v6
Enquiries: Frank Tanner
Telephone: 9424 1924
Email: frank.tanner@verveenergy.com.au

Economic Regulation Authority
Access – Dampier to Bunbury Natural Gas Pipeline
PO Box 8469
PERTH WA 6849
By email: ***publicsubmissions@era.wa.gov.au***

Dear Sir

PROPOSED REVISED ACCESS ARRANGEMENT - DAMPIER TO BUNBURY NATURAL GAS PIPELINE (DBNGP)

Please find attached with this letter submissions by the Electricity Generation Corporation trading as Verve Energy in response to the proposed Revised Access Arrangement for the DBNGP for the period 2011 to 2015 made by DBPNG (WA) Transmission Pty Ltd (DBP).

Verve's submissions comprise the following:

1. a discussion on the 2004 contractual arrangements between DBP and DBNGP Shippers;
2. a summary of Verve's concerns and the key issues in relation to the Revised Access Arrangement proposal;
3. comprehensive submissions on the Revised Access Arrangement proposal (Annexure 1);
4 comprehensive submissions on the proposed R1 Service terms and conditions (Annexure 2); and
5. submissions on specific economic matters (Annexure 3).

Please contact Mr Frank Tanner on 9424 1924 if further information is required.

Yours faithfully

Jason Waters
GENERAL MANAGER
TRADING AND FUEL

Attachments

SUBMISSIONS IN RELATION TO THE REVISED DBNGP ACCESS ARRANGEMENT FOR THE PERIOD 1 JANUARY 2011 TO 31 DECEMBER 2015

SUBMISSIONS IN RELATION TO THE REVISED DBNGP ACCESS ARRANGEMENT PROPOSAL FOR THE PERIOD 2011 TO 2015

Submissions

The submissions made by Electricity Generation Corporation trading as Verve Energy (**Verve**) in relation to the revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) for the period 1 January 2011 to 31 December 2015 (**Revised Access Arrangement**) comprise the following:

1. a discussion on the 2004 contractual arrangements between DBPNG (WA) Transmission Pty Ltd (**DBP**) and DBNGP T1 Service Shippers;

2. a summary of Verve's concerns and the key issues to be considered by the ERA in relation to the Revised Access Arrangement proposal;

3. comprehensive submissions on the Revised Access Arrangement proposal (Annexure 1);

4 comprehensive submissions on the proposed R1 Service terms and conditions (Annexure 2); and

5. submissions on specific economic matters (Annexure 3).

Unless otherwise defined within the submissions themselves, capitalised terms in these submissions have the meanings given to them in the Revised Access Arrangement and Access Arrangement Information unless the context otherwise requires.

2004 Contractual Arrangements

In 2004 DBP and the DBNGP Shippers entered into critical arrangements of a contractual nature (**2004 Contractual Arrangements**) outside the National Gas Access Code (**Code**) but clearly linked to that Code and any successor regime, including the National Gas Law (**NGL**) and National Gas Rules (**NGR**) (**Applicable Regime**). These arrangements were critical in re-commercialising and debottlenecking the DBNGP, but resulted in existing Shippers paying more for existing capacity than they would under the Applicable Regime. The arrangements are publicly available on DBP's website as the key elements are contained in DBP's Standard Shipper Contract, and in particular clauses 16 and 20.

The links with the Applicable Regime are an essential part of the 2004 Contractual Arrangements because the arrangements provide for the T1 Service provided to Shippers to return to pricing under the Applicable Regime in 2016. The links with the Applicable Regime are necessary to ensure that the transition of the T1 Service to pricing under the Applicable Regime is meaningful and is based on the elements that were endorsed by the parties in 2004. There is no basis on which those elements should and can be excluded under the Applicable Regime.

The most important links between the 2004 Contractual Arrangements and the Applicable Regime are:

1. DBP is required to offer the T1 Service as a Reference Service from 2005.

2. The split between the capacity reservation charge and the commodity charge is to be 80%/20%.

3. The cost of equity as an input into the calculation of the Reference Tariff is to be determined by applying the Capital Asset Pricing Model (**CAPM**).

4. Capital expenditure incurred in meeting DBP's obligations under the 2004 Contractual Arrangements between 2004 and 2016 is required to meet pre-agreed budgeted levels (or approved variations to those budgeted levels) or is to be approved by the relevant regulator under the Applicable Regime applying the usual tests of prudent operator and efficient investment/expenditure (not an abridged version, or part, of those tests).

5. The T1 Reference Service is to have a Reference Tariff calculated in accordance with the requirements of the Applicable Regime, so that in 2016 the T1 Service held by the Shippers under the 2004 Contractual Arrangements will be accurately priced under the Applicable Regime. This includes an accurate allocation of a proportion of the total revenue to the efficient costs of providing the T1 Service to the T1 Reference Tariff. For this purpose, the throughput of, and the efficient costs of providing, the T1 Service to the Shippers under the 2004 Contractual Arrangements is identical to the throughput of, and the efficient costs of providing, the T1 Reference Service as the services, the throughput and the costs are one and the same, but are clearly not the same as the proposed R1 Service.

DBP's Revised Access Arrangement, apart from its numerous other deficiencies, attempts to sever the critical links between the 2004 Contractual Arrangements and the Applicable Regime, which will have the effect of materially altering what would otherwise be the outcome of the 2004 Contractual Arrangements at the critical juncture in 2016. The outcome will be impacted by the following elements of the Revised Access Arrangement proposal and their obvious consequences for the 2016 Access Arrangement:

- The R1 Service is sought by DBP to be priced at the highest allowable price in 2010 under the Applicable Regime (and the boundaries of allowable total revenue to determine that highest allowable price are pushed beyond breaking point in that exercise).

- The R1 Service is priced in 2010 as if it were the T1 Service.

- The T1 Service is then re-offered by DBP in 2016. It is a significantly more valuable service than the R1 Service; it requires a significant allocation of efficient costs to provide, and must be priced significantly higher than the R1 Service.

- What the T1 Shippers revert to in 2016 is not a Reference Tariff for the T1 Service which has been determined consistently with the Applicable Regime from 2005, but is a tariff which has been determined by pricing very highly in 2010 a service which no Shipper wants or will want in the 2011 to 2015 period, and establishing that as the benchmark base Reference Tariff for a full-haul service on the DBNGP, against which the T1 Service will be priced.

However, the outcome is not available to DBP for a number of fundamental reasons:

- Verve considers that DBP must offer the T1 Service as a Reference Service in 2011 so that offering that service in 2016 is consistent and meaningful under the 2004 Contractual Arrangements (separately to its obligations under the NGR and the NGL).

- The Reference Tariff for the T1 Reference Service must be based on the requirements of the NGL and NGR properly applied by the ERA, including the correct determination of the total revenue allowable and the correct allocation of the revenue to the efficient costs of providing the services, including the T1 Service.

- The T1 Reference Tariff must include the application of the CAPM methodology and the 80/20 split between capacity and commodity charges.

- The capital base for inclusion in the calculation of the total revenue allowable which is the base for determining the T1 Reference Tariff must also apply the standard tests as to prudent operator efficient expenditure/investment required by the NGR.

The 2004 Contractual Arrangements and the National Gas Objective

In the context of the capacity constraints of the DBNGP in the years before 2004 (and until Stage 4 capacity was available in early 2007), and the demand by Shippers for expanded capacity, the 2004 Contractual Arrangements and their interplay with the Applicable Regime underpinned and underwrote efficient investment in the DBNGP to provide Shippers (and ultimately consumers) with greater reliability, safety and security of supply of gas with clarity as to price that balanced the immediate requirements of the pipeline with the medium and longer term interests of all users. Ensuring that the agreed relationship between the 2004 Contractual Arrangements and the Applicable Regime (correctly applied) is maintained is fundamental to ensure the operation of and investment in the DBNGP is consistent with the National Gas Objective set out in section 23 of the NGL. Any undermining of that agreed relationship is directly inconsistent with achieving the National Gas Objective, and offends section 321 of the NGL as it would have the effect of depriving Shippers of protected contractual rights.

Summary

A summary of Verve's key issues and concerns follows, with detailed submissions set out in Annexures 1, 2 and 3.

Key issues and matters for consideration by the Economic Regulation Authority (ERA) in relation to the Revised Access Arrangement for the DBNGP

Key Issue 1

There are important historical and contractual reasons why the T1 Service in particular must be retained as a reference service. Further, DBP has provided insufficient evidence that there will be enough demand for the R1 Service to justify its status as a reference service.

Verve submits that the T1, P1 and B1 Services should be retained as reference services and the R1 Service, if it is to be offered at all, should be offered as a non-reference service only.

1.1 DBP has proposed in the Revised Access Arrangement to remove the existing T1, P1 and B1 Services as reference services, and to introduce a single replacement reference service, the R1 Service.

1.2 The T1 Service in particular is an integral part of the history of third party access to the DBNGP. Shippers have made significant upstream and/or downstream commercial decisions based on the features of the T1 Service.

1.3 At the time of the acquisition and recommercialisation of the DBNGP in 2004, the T1 Service was accepted (and over-subscribed) by full-haul shippers as the full-haul service they required, and were prepared to commercially underwrite to allow the bottled up demand for further capacity on the DBNGP to be met.

1.4 DBP have, in their submissions in support of the Revised Access Arrangement, stated that reference services must be likely to be applied for by prospective shippers and which can become the subject of an executed access contract during the Access Arrangement period. DBP contend that the T1 Service is not likely to be sought as all the T1 capacity on the DBNGP is currently contracted under existing contracts, and services under existing contracts should be excluded from the relevant assessment of the “market”.

1.5 Verve submits that DBP’s interpretation of rule 101 is incorrect, and unreasonably limits the plain meaning of the actual wording of rule 101(2). The T1 Service is, and will continue to be, sought by a significant part of the market, including existing T1 Shippers who nominate for that service, and existing and potential shippers who require increased or new T1 Service, and excluding those T1 Shippers from any assessment of the market for full-haul services on the DBNGP is misconceived.

1.6 Another critical aspect of the 2004 recommercialisation is that the contractual tariff for the T1 Shippers is to return to the full-haul reference tariff in 2016 and beyond. DBP has contracted with T1 Shippers under the Standard Shipper Contract to have a T1 Reference Service as part of each access arrangement in 2005 and 2016, and must act consistently with those obligations. Overall, DBP’s proposed Revised Access Arrangement is inconsistent with critically important contractual protections contained within clause 20.5 of the T1 Standard Shipper Contract relating to reference services and tariffs between 2005 and 2016, which are expressly protected as existing contractual rights under clause 2.47 of the National Gas Access Code (now section 321 of the NGL).

1.7 DBP has provided little to no evidence that there will be any actual demand at all for the R1 Service. Verve submits that the R1 Service, if it is to be offered, should be offered as a non-reference service only.

1.8 Verve submits that a service where Gas is delivered from the Mondarra storage facility into the DBNGP and transported to Outlet Points downstream of CS9 should be included as a reference service.

Key Issue 2

DBP has not provided sufficient evidence to support its claim that approximately $1.8B of capital expenditure should be added to the capital base of the DBNGP as conforming capital expenditure under the National Gas Rules.

Verve submits that further evidence and explanation in relation to the capital expenditure should be required by the ERA before a proper assessment as to whether it is conforming capital expenditure under the National Gas Rules is possible.

2.1 DBP is seeking to have approximately $1.8B rolled into the capital base for the DBNGP as conforming capital expenditure under rule 79 of the NGR. DBP's forecast capital expenditure in 2005 for the Access Arrangement period 2005 to 2010 was approximately $1.14B. DBP also made an application to the ERA in 2006 under s 8.21 of the National Gas Access Code for approval of a revised capital expenditure amount during the same period of approximately $1.52B (**2006 Application**).

2.2 DBP's actual expenditure is substantially in excess of the 2005 forecast (by approximately $650M or 55%) and the 2006 Application (by approximately $270M or 23%).

2.3 In light of the differences between forecast and actual expenditure, particularly where the 2006 Application included a forecast for capital works that were substantially the same as were ultimately built, Verve submits that there are serious doubts as to whether the expenditure meets the "prudent service provider acting efficiently" test under rule 79(1) of the NGR. Further, DBP provides insufficient explanation of the differences between the forecast and actual expenditure for prudence and efficiency to be properly assessed.

2.4 Rule 79(2) provides relevantly that the capital expenditure is justifiable if the overall economic value of the expenditure is positive or necessary to comply with a regulatory obligation or requirement.

2.5 Verve submits that DBP has not provided sufficient evidence to establish that the capital expenditure is justifiable because the overall economic value is positive.

2.6 Verve further submits that DBP's alternative argument that the capital expenditure is necessary to comply with a regulatory obligation, namely DBP's ACCC undertakings, is not applicable to the $1.8B expenditure.

2.7 Verve therefore submits that DBP has not provided sufficient evidence to support its claim that $1.8B of capital expenditure should be added to the capital base of the DBNGP as conforming capital expenditure under the NGR.

Key Issue 3

DBP's methodology in calculating its proposed rate of return in setting the R1 Reference Tariff does not comply with the National Gas Rules nor with its contractual commitments to T1 Shippers, and results in a rate that is unjustifiably high and completely inconsistent with the rate applied to the DBNGP previously, rates approved by the ERA and AER in recent regulatory decisions, and the markets for relevant capital in the current circumstances, including the very low level of risk in investing in the DBNGP.

Verve submits that the rate of return must be calculated with a cost of equity using the Capital Asset Pricing Model with appropriate inputs.

3.1 Rule 87(1) of the NGR provides that the rate of return on capital is to be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services. Rule 87(2)(b) provides that in determining a rate of return on capital a well accepted approach that incorporates the cost of equity and debt, such as the Weighted Average Cost of Capital (**WACC**), is to be used; and a well accepted financial model, such as the CAPM, is to be used.

3.2 DBP has proposed a real pre-tax WACC rate of return of 10.76%. Importantly, DBP has calculated the rate of return using a cost of equity comprised of an average of certain equity analysts' forecast dividend yields for the period 2010 to 2012, plus amounts for expected share price appreciation.

3.3 While DBP provides some discussion on calculations of the cost of equity using financial models (CAPM, Black's CAPM, Fama French three factor model and the Zero beta Fama-French three factor model), it does not adopt the results of any of the models, preferring the equity analysts' forecasts approach referred to above. Verve submits that only CAPM is an acceptable model to use and DBP's approach in not using any financial model at all (even CAPM) and incorporating arbitrary and non-recognised factors to calculate its cost of equity is completely unacceptable and does not comply with the NGR.

3.4 Verve submits that DBP's proposed rate of return, based on the cost of equity described above, does not comply with rule 87(2), in that a well accepted financial model, such as CAPM, has not been used. DBP has attempted to justify its approach by applying the general test in rule 87(1) only, and argued that no "well accepted financial model" is appropriate to the DBNGP. Verve considers that this approach is fundamentally flawed.

3.5 Verve submits that, in line with the express wording of rule 87(2)(b) and major recent regulatory decisions by the Australian Energy Regulator (**AER**) in relation to Jemena's gas distribution network in NSW, and the ERA for the Goldfields Gas Pipeline and Western Power's SWIS, the rate of return must be calculated using CAPM. Verve also submits that DBP has used a cost of debt (9.73%) that is too high and inconsistent with recent regulatory decisions, and a cost of debt closer to 8.7% should be used.

3.6 The rate of return proposed by DBP (nominal pre-tax WACC of 13.55% and real pre-tax WACC of 10.76%) is extremely high when compared to the recent regulatory decisions referred to above. The AER's final decision on the NSW gas distribution network approved a nominal vanilla WACC of 9.69%, while the ERA's final decision on the Goldfields Gas Pipeline approved a real pre-tax WACC of 7.78%. Prevailing conditions in the markets have not changed since these decisions so the decisions cannot be distinguished on that ground. Verve submits that the return from the DBNGP is at less risk than the return from either of these 2 assets, because of the small number of high credit worthy shippers who all pay capacity reservation charges in advance. The rate of return required from the DBNGP should therefore be less than the rate of return from these 2 assets, and Verve submits that the ERA would be acting inconsistently and capriciously if it decided a rate of return for the DBNGP of greater than or equal to these rates of return.

Key Issue 4

DBP has used an inappropriate allocation of total revenue to the efficient costs of providing the R1 Service in determining the proposed R1 Reference Tariff. The proposed terms and conditions for the R1 Reference Service are also very different from the terms and conditions for the existing T1 Service, resulting in the R1 Reference Service being a significantly lesser service from a Shipper's perspective than the T1 Service.

Verve submits that if an R1 Service is to be offered at all then the proposed tariff must be properly calculated, and must reflect an appropriate discount to the T1 Service tariff.

4.1 In setting the proposed R1 Reference Tariff, DBP has stated in its submissions that:

> "…costs have been allocated to the Services provided to Shippers with Access Contracts entered into prior to the commencement of the Current Access Arrangement Period, as if those Shippers had been provided with the Reference Service".

4.2 DBP has therefore allocated costs to the provision of all existing services (including T1, B1 and P1) on the completely unjustified and erroneous assumption that they have been provided with the R1 Service, rather than, as DBP is required to, first allocate costs directly attributable to providing the new reference service itself, and then allocate costs directly attributable to non-reference services (which will be the vast majority if T1, P1 and B1 are not reference services). Verve considers DBP's approach does not comply with rules 93 and 95 of the NGR, and results in a proposed R1 Reference Tariff without any reference to, or basis in, the costs of providing that Reference Service.

4.3 Further, DBP does not actually provide any forecast throughput volumes for the R1 Service in its pipeline throughput forecast. The lack of forecast throughput information makes it difficult to assess the relative cost and revenue allocation proportions across all Services, which in turn makes it difficult to properly assess the reasonableness of the proposed R1 Reference Tariff.

4.4 The proposed terms and conditions for the R1 Reference Service remove much of the flexibility afforded to Shippers under the terms and conditions for the T1 Service approved in 2005. Significant changes have been made in relation to (without limitation) imbalances, peaking and overrun charges, curtailments and nominations, and if the changes are accepted and are to apply to the R1 Service then the setting of the R1 Reference Tariff must be done in such a way that recognises the substantial differences in value between the R1 Service and the existing T1 Service.

4.5 A corollary to the removal of flexibility from the T1 Service in the R1 Terms and Conditions is that non-reference services (for example, the Peaking, Park-and-Loan and Metering Information Services) are likely to be utilised more often as Shippers are required to manage their capacity within much tighter parameters – effectively having to pay for services that are not required to be paid for under the current arrangements.

4.6 Verve provides detailed comments on the proposed R1 Service terms and conditions in Annexure 2.

Key Issue 5

There are significant differences between items of forecast and actual operating expenditure for the access arrangement period 2005 to 2010, which cast significant doubt over the forecast operating expenditure for the period 2011 to 2015.

Verve submits that further evidence and explanation in relation to the operating expenditure should be required by the ERA before a proper assessment under the National Gas Rules is possible.

5.1 DBP provides very little explanation or information as to the break-down of specific items of operating expenditure during the 2005- 2010 access arrangement period, with expenditure categorised as either “fuel gas” or “other”. The lack of detail makes it very difficult to assess the reasonableness of differences between actual and forecast expenditure, which in turn makes assessment of the reasonableness of the forecast operating expenditure equally difficult. DBP uses six categories in describing its forecast expenditure for 2011 to 2015, and similar categorisation should be required for the actual expenditure for 2005 to 2010.

5.2 DBP states in its submissions that due to the changed configuration of the DBNGP since 2005 it is inappropriate to refer to historical expenditure. Verve considers this argument is incorrect, and that historical expenditure, particularly from 2008 to 2010 is very relevant to an assessment of forecast expenditure for the period 2011 to 2015.

5.3 There is little discussion by DBP as to the impact of two significant events affecting operating expenditure for the DBNGP, notably the amendments to the services arrangements with Westnet Energy Services and the effect of increased system use gas prices.

5.4 It appears from DBP’s submissions that a significant increase in forecast operating expenditure is ascribed to the introduction of a Commonwealth carbon pollution reduction scheme (**CPRS**) or similar measure. Given that the introduction of a CPRS has recently been significantly delayed (if not withdrawn) by the Commonwealth Government, this cost allocation is not appropriate and the forecast operating expenditure should be recalculated.

Key Issue 6

The Revised Access Arrangement includes a number of further proposals that are concerning to Verve, including (without limitation), the split between capacity and commodity charges, the level of forecast capital expenditure, capital contributions and the new tariff variation mechanism.

6.1 DBP has proposed that the R1 Reference Tariff will have a 95/5 split between capacity and commodity charges. As discussed above, the existing 80/20 split for the T1 Service is a very important commercial principle agreed between DBP and T1 Shippers, and Verve submits that DBP's 95/5 proposal is contrary to DBP's contractual obligations to T1 Shippers under the 2004 Contractual Arrangements. The Revised Access Arrangement should be amended to reflect an 80/20 split in the setting of any R1 Reference Tariff, consistent with DBP's definition of R1 Capacity Reservation Tariff in clause 1 of the proposed R1 Terms and Conditions. If Verve's charges were calculated on a 95/5 reservation/commodity charge split its peaky load would result in significantly higher charges, even if it stayed within the much tighter operating parameters of the R1 Service.

6.2 DBP's forecast conforming capital expenditure for the Revised Access Arrangement period 2011 to 2015 is only $133M. Verve considers that this seems low and in stark contrast to a program that has seen more than $1.8B spent in the current Access Arrangement period between 2005 and 2010. There are two elements to this issue:

(a) is the level of expenditure sufficient to maintain the integrity of the DBNGP and reliability of supply?

(b) is the assumption that there will be zero expansion of the DBNGP during the period 2011 to 2015 reasonable?

6.3 There is very little explanatory information provided by DBP in relation to the Capital Contributions proposal, including the specifics of the Funded Capital Expenditure, Contributing Agreement and Shipper Specific Facilities Charge.

6.4 DBP's proposed tariff variation mechanism includes a Tax Change Variation that relates primarily to the introduction of a CPRS or similar measure. As stated above, Verve considers proposals in the Revised Access Arrangement to deal with a CPRS unnecessary and no longer appropriate.

6.6 Verve considers more information is required by DBP to justify the CPI Formula Variation. The commodity tariff should only be indexed by reference to increases (or decreases) in the commodities actually used in the operation and maintenance of the DBNGP; eg salaries and wages, fuel, oils. A discount from general increases in these commodities should apply to encourage efficiency.

ANNEXURE 1

TABLE OF SUBMISSIONS ON REVISED ACCESS ARRANGEMENT

ANNEXURE 1

Submissions on the Revised DBNGP Access Arrangement and Access Arrangement Information

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
	Special circumstances of the DBNGP and general comments	Verve has two fundamental concerns with the Revised Access Arrangement proposed by DBP: 1. *The removal of the T1 Service as a reference service, and its replacement with the R1 Service as a full-haul reference service* The T1 Service is an integral part of the history of third party access to the DBNGP. The thorough consultation process undertaken during 1993 and 1994 resulted in the Gas Transmission Regulations 1994 offering a T1 Service, a T2 Service and a T3 Service commencing on 1 January 1995. Initial shippers and new shippers embraced the T1 Service while the T2 and T3 Services were not utilised and eventually became largely irrelevant for shippers. The probability of supply, the priority of curtailments, the balancing and peaking regimes and nominations and allocations logistics were all important elements of the T1 Service which worked for shippers and upon which shippers made significant upstream and/or downstream commercial decisions. In 1997/98 when the DBNGP was sold by the Gas Corporation on behalf of the State to Epic Energy, the State extracted a covenant from the purchaser that in the move to the National Access Code in 2000, the purchaser would propose a T1 - Equivalent Reference Service as a Reference Service. Shippers with transmission contracts in existence at the time the Access Arrangement came into effect could stay on the terms and conditions of their existing contracts but could elect to move to the Reference Tariff for the T1 - Equivalent Reference Service. The Reference Tariff for the T1 - Equivalent Reference Service was expected to reduce in time against the statutory tariff for the T1 Service, and shippers, especially initial shippers, were intended to be able to capture the benefits of that reducing tariff path. The first Access Arrangement for the DBNGP became operative in 2003 and contained as a T1 - Equivalent Reference Service, the Firm Service. Due to the level of the initial capital base approved by the Regulator for that Access Arrangement against the purchase price paid by Epic Energy, Epic Energy contended that it could not expand the capacity of the DBNGP unless the shippers for whom the expansion was built paid the full capital costs of that expansion, which produced a very expensive tariff for new shippers which did not have the benefit of the statutory T1 tariff or the T1- Equivalent Reference Service Reference Tariff. This means that there was no new capacity committed to be built in the DBNGP between 2001 and 2004 (Stage 4 capacity in fact did not become operative until early 2007) causing significant problems for gas loads in the South West. At the time of the acquisition and re-commercialisation of the DBNGP in 2004, the T1 Service was accepted (and over-subscribed) by full-haul shippers as the full-haul service they required, and were prepared to commercially underwrite to allow the bottled up demand for further capacity on the DBNGP to be met. Shippers at that time agreed to pay well above the Reference Tariff for the T1 – Equivalent Reference Service to obtain the T1 Service on the existing capacity <u>and the</u> expanded capacity of the DBNGP. The ACCC and the State supported the re-commercialisation of the DBNGP outside the Code (the then Applicable Regime) on the basis that all T1 Shippers, existing and new, have the same opportunity to have expanded capacity on a contractual tariff which is based on a methodology set in concrete in the T1 Standard Shipper Contracts, and which is paid by all Shippers regardless of whether they utilise the expanded capacity or not. Another critical aspect of the

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		2004 re-commercialisation is that the contractual tariff for the T1 Shippers is not for the life of the T1 Shipper Contracts, and is to return to a full-haul Reference Tariff in 2016 and beyond. DBP has contracted with T1 Shippers under the T1 Standard Shipper Contract to have a T1 Service as part of each Access Arrangement in 2005 and 2016 and must not act inconsistently with that obligation. Removal of the T1 Service as a Reference Service is unacceptable to Verve, and Verve requests that the ERA require DBP to offer T1 as a full-haul Reference Service. 2. *The terms of the R1 Service, including price and the proposed terms and conditions are unacceptable, particularly if they are considered to be effectively a revision of the T1 Reference Tariff and Terms and Conditions.* The method used by DBP to set the R1 Reference Tariff effectively allocates all of the total revenue to the provision of the R1 Service, as if it were the T1, P1 and B1 Services (see further comments below), which means that the proposed Reference Tariff for the R1 Service is treated as a proxy for a T1 Reference Tariff. The costs of services must be allocated to each service actually being provided and to be provided on the DBNGP during the period of the Access Arrangement, including the T1 Service (and the R1 Service if the ERA is convinced it will be provided at all) and the tariff set according to the respective costs of providing those services. A corollary to this is that the R1 Service is a considerably lesser service in a number of key areas and characteristics than the T1 Service, and is accordingly considerably less valuable to Shippers than the T1 Service. The R1 Service Reference Tariff accordingly cannot be more than, and should be considerably less than, the tariff for the T1 Service. Verve has a number of concerns with DBP's approach to, and with the inputs and outcomes of, the proposed new tariff itself. Further detail as to these concerns is set out below. Verve is also concerned with many of the amendments to the R1 Service Terms and Conditions (particularly when compared to the approved T1 Service Terms and Conditions). These concerns are also set out in more detail below.
AA 3.1	Only one Reference Service (R1 Service) is offered. Existing Reference Services T1, P1 and B1 are no longer Reference Services.	*Historic reasons why the T1 Service must be retained as a Reference Service* Verve considers the removal of the existing key capacity services of T1, P1 and B1 as Reference Services and the introduction of the R1 Service as a single replacement Reference Service is unacceptable. In particular as outlined above, the T1 Service is the accepted standard full-haul service for the DBNGP, and is essentially the service that has governed the majority of the capacity of the DBNGP since 1995 and was chosen by Shippers as the capacity service required for the re-commercialisation and future expansions of the DBNGP in 2004. Existing T1 Shippers are the primary stakeholders in terms of access to the DBNGP. Any regime where the T1 Service is not the reference full-haul service on the DBNGP is misconceived, and inconsistent with the Access Arrangements established for and with the T1 Shippers in 2004 and since then. The part-haul P1 Service is also an important capacity service that has been offered to shippers on the DBNGP since

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		1995, and is utilised by many shippers, including Verve. The P1 Service is relevant to Verve in a number of aspects of its business and is important in its overall gas management policies and practices, and will continue to be as important, if not more so. Shippers which will continue to have a demand for such services, existing or new, will not be a majority but will be material enough in the overall market for services from the DBNGP to be significant. Verve submits that the Revised Access Arrangement must be amended to provide for the continued inclusion of the P1 Service as a Reference Service. DBP offers very little information or justification as to why the P1 Service is removed as a Reference Service, and for the reasons set out below in relation to the T1 Service, Verve considers the existing P1 Service shippers constitute a sufficient part of the market to require the P1 Service be maintained as a Reference Service. *Contractual reasons why T1, P1 and B1 Services must be retained as Reference Services* DBP has contractual obligations with existing T1 Shippers (including Verve) under the T1 Standard Shipper Contract in relation to the inclusion of the T1 Service as a Reference Service in 2005, and the maintenance of the T1 Service as a Reference Service on and beyond 1 January 2016. Verve considers the revised Access Arrangement proposed by DBP for the period 2011 to 2015 is inconsistent with these obligations, and has the effect of depriving T1 Shippers (including Verve) of relevant protected contractual rights, in breach of section 321(1) of the National Gas Law. Verve would be happy to provide additional relevant information to the ERA on these issues on a confidential basis. *National Gas Law reasons why T1, P1 and B1 Services must be retained as Reference Services* Verve submits that the T1 Service is clearly, for the purposes of the NGR (r101), a "pipeline service that is likely to be sought by a significant part of the market" and must be preserved as a reference service. Verve disagrees with DBP's submissions that the relevant "market" assessment under r101 should be a consideration of the market excluding existing T1 Shippers. Verve considers that DBP's submissions that "likely to be sought" refers to services likely to be applied for by prospective shippers and which can become the subject of an executed access contract during the Access Arrangement period import an unjustified gloss on the plain meaning of the words and unnecessarily and unreasonably limit the actual wording of r101. DBP's submission that because the T1 Service is "fully contracted" it should be ignored in the Revised Access Arrangement is without merit. First, the T1 Service is not fully contracted and existing T1 Shippers, and new Shippers can have access to further T1 Service by having DBP expand the DBNGP under clause 16 of the T1 Standard Shipper Contract. This commitment by DBP was insisted on by the ACCC and the State in 2004. Second, the fact that a service is likely to be sought in exercise of contractual rights for the T1 Service provided by existing capacity on a day to day basis by nominations, or for a T1 Service provided by expanded capacity, does not detract from it being sought by a substantial part of the market. Shippers on the DBNGP will continue to seek that a T1 Service be provided by existing capacity on the DBNGP and by seeking expanded capacity on the DBNGP, both of which meet the r101 test. Third, DBP has given no support or evidence for the proposition that the R1 Service is likely to be sought at all, and certainly not that it is likely to be sought by a significant part of the market. When Verve's broader view of "market" is taken under NGR r101, and the existing and new T1 Shippers are included, the T1 Service is clearly sought by a "significant part of the market". Any proposal to have the R1 Service nominated

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		as the only Reference Service should therefore be rejected by the ERA. Verve notes that critical parts of the public version of DBP's Submission 3 on Pipeline Services, which seeks to provide justification of the reason for removal of the T1, P1 and B1 services as reference services are shown as "DELETED", presumably due to confidentiality issues. Withholding this information (eg sections 5.10-5.14 of Submission 3) significantly reduces the usefulness of the submissions, and results in only scant justification being provided to existing and prospective shippers in relation to a fundamental change to the DBNGP Access Arrangements. This is information which the NGR require to be included in the Access Arrangement Information. The importance of retaining the T1 Service as the reference full-haul service under the NGL is magnified by the contractual arrangements that all T1 Shippers have agreed with DBP (and that are set out in the T1 Service Standard Shipper Contract) about the setting of the T1 tariff from 1 January 2016. This departure from the contractual arrangements with T1 Shippers in particular is, in Verve's view, contrary to the National Gas Objective set out in section 23 of the NGL. The Shippers and the gas markets in WA generally have clearly evidenced their considered commercial assessment that the T1 Service, priced in accordance with the 2004 contracts up until 2016, and then priced under the NGL, is the best way to promote efficient investment, operation and use of natural gas resources in the long term interests of consumers with respect to price, quality, safety, reliability and security of supply. Verve submits that departing from that carefully formulated and structured regime now is likely to have direct negative consequences for consumers of gas in relation to at least price and reliability of supply. Part haul and back haul services have been offered to shippers on the DBNGP since 1995, and a number of shippers have existing contracts for the P1 and B1 services. Shippers which will continue to have a demand for such services, existing or new, will not be a majority but will be material enough in the overall market for services from the DBNGP to be significant. DBP has not produced any evidence or support for the proposition that the P1 or B1 will not be required by a significant part of the market during the Revised Access Arrangement period. The T1 Service should be offered as a reference service under the Revised Access Arrangement, and the information required by NGR r42 and r48 should be set out in the Access Arrangement and Access Arrangement Information as appropriate. The P1 and B1 Services should also be offered as Reference Services.
	New Reference Service	In relation to the Reference Services to be offered by DBP, Verve submits that a service where Gas is delivered from the Mondarra storage facility into the DBNGP and transported to Outlet Points downstream of CS9 should be included as a Reference Service. Utilisation of storage services is an affordable and well-accepted method of improving security of supply (and is a recommendation of the Gas Supply and Emergency Management Committee in its report to the WA Government of September 2009). Market demand for such a service would be strong, and would in Verve's view, meet the "sought by a significant part of the market" test under the NGRs. The inclusion of a Reference Service and a Reference Tariff for a service from Mondarra to outlet points downstream of that storage facility would require a departure for the "postage stamp" pricing policy for a full haul service which has existed since 1995. The Reference Tariff would be based on the equitable allocations of the costs required to provide that service only and would likely be on a distance related proportional part of the full haul tariff. This is justifiable on any commercial analysis as Shippers will have paid the distance related P1 Service tariff to get gas to the Mondarra

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		storage facility in the first place. Introduction of the Mondarra reference service would be further and compelling justification for the retention of the P1 Service as a Reference Service, on the basis that it is only the P1 Service that need be utilised to transport gas to Mondarra.
AA 3.2 and AAI 14	The R1 Tariff is approximately 40% higher than the existing reference tariff for the current T1 Service.	Verve makes further comments on particular elements of the forecast revenue and expenditure for the DBNGP below. As a preliminary comment, Verve considers it erroneous and unjustifiable to take the approach that DBP has in setting the R1 Reference Tariff. DBP states in section 14 of the Access Arrangement Information: "*…costs have been allocated to the Services provided to Shippers with Access Contracts entered into prior to the commencement of the Current Access Arrangement Period, as if those Shippers had been provided with the Reference Service*". Table 21 in section 14 of the Access Arrangement Information shows that the costs allocated for recovery by the R1 Reference Tariff match the entire total forecast revenue for the DBNGP shown in Table 22. In setting the R1 Reference Tariff therefore, DBP has allocated all of the total revenue to the costs of providing the R1 Service as if it were providing the T1, P1 and B1 Services. DBP is required to first allocate costs (and revenue) directly attributable to providing the new Reference Service itself, and then allocate costs directly attributable to non-reference services (which will be the vast majority if T1, P1 and B1 are not reference services). Verve considers DBP's approach does not comply with NGR r93 and r95, and results in a proposed R1 Reference Tariff without any reference to, or basis in, the efficient costs of providing <u>that</u> Reference Service. While the above approach is essentially the same in concept as was used in the current (2005-2010) DBNGP Access Arrangement, its application was to an entirely different situation. The exercise in 2005 involved allocating costs to a new Reference Service which was identical to the existing non-reference service and which was already utilised and would continue to be used over the Access Arrangement period by exactly the same shippers as used the existing non reference service, with no gap. This approach has no basis or validity in relation to the R1 Service however (and does not comply with the NGRs) as allocating costs to a new service which is different from the T1 Service, but will co-exist with the T1 Service, by reference only to the costs of providing the T1 Service is fundamentally flawed. The only situations in which this approach could possibly be justified are if there is no shipper using the R1 Service over the Access Arrangement period (in which case the R1 Service cannot be a reference service) or if the terms and conditions of the T1, B1 and P1 Services and the R1 Service are exactly the same so the costs of providing the Services and each TJ/d of the Services in all circumstances are the same (which is not the case as the R1 Terms and Conditions are materially different on key elements as set out in Annexure 2 to these Submissions). Further, DBP does not actually provide any forecast throughput volumes for the R1 Service in its throughput forecast Submission 7. The lack of detailed forecast throughput information makes it difficult to assess the relative cost and revenue proportions across all services, which in turn makes it difficult to properly assess the reasonableness of the proposed R1 reference tariff.

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		As stated above, Verve considers the T1 Service should be offered as the Reference Service, and the R1 Service removed. If however, the R1 Service is to remain as a Reference Service then Verve requests the ERA require DBP to provide a Reference Tariff that is properly based on the costs attributable to the R1 Service itself (by reference to forecast throughput or usage disclosed in the Access Arrangement Information) rather than across all capacity services.
AA 3.2	The R1 Tariff of $1.683/GJ comprises capacity reservation and commodity charges at a 100% load factor in the following proportions: 95.4% capacity reservation charge and 4.6% commodity charge.	The 95/5 split between capacity reservation and commodity charges at a 100% load factor is a significant move away from the 80/20 split in the current T1 Standard Shipper Contract for the T1 Service. A 95/5 split clearly provides much greater revenue certainty to DBP as Operator, and potentially results in significantly greater income without any actual increase in throughput - this represents a windfall gain for the Operator without reasonable justification. A 95/5 split is again inconsistent with the arrangements accepted by all parties in 2004, and is expressly contrary to DBP's obligations under its contracts with T1 Shippers (including Verve) under the terms of the T1 Standard Shipper Contract. The 80/20 split between capacity and commodity charges in the Reference Tariff is a contractual right of T1 Shippers protected by section 321 of the National Gas Law. The impact of an increase in the capacity/commodity split to 95/5 is even greater for Shippers who operate at a load factor of materially less than 100% (as is the case for Verve which, as an electricity generator, is subject to seasonal swings in demand for its electricity which affects its gas and transport capacity requirements). This magnifies the windfall effect for DBP. The R1 Capacity Reservation Tariff should be shown as 80% of the R1 Tariff, as is the case in DBP's definition of R1 Capacity Reservation Tariff in clause 1 of the R1 Terms and Conditions.
AAI 3.1	The Conforming Capital Expenditure that DBP seeks to have added to the Capital Base is $1.776 billion. This amount is significantly more (approximately $650M or 55%) than the forecast expenditure approved in 2005 (approximately $1.137B), and more (approximately $270M) than a forecast presented to the ERA by DBP in an application for approval of expenditure in 2006 which included a 310TJ expansion project (total forecast capital expenditure increased to $1.521B) which was subsequently withdrawn by DBP.	*Prudency of expenditure – NGR r79(1)* In assessing whether the actual capital expenditure during the period 2005 – 2010 is conforming capital expenditure for the purposes of NGR r 77(2) and 79, Verve considers the substantial difference between the forecast and actual expenditure by DBP for the 2005-10 period to be an important issue, and warrants particularly close review by the ERA. Verve considers there are significant questions as to whether the capital expenditure satisfies the threshold test under NGR r79(1)(a), namely that 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". Given total actual expenditure during the period from 2005 to 2010 exceeds the forecast expenditure from the approved 2005-2010 Access Arrangement by $650M (approximately 55%), Verve considers it is necessary to look very closely at each of the components of the actual expenditure in assessing whether r79(1)(a) has been complied with. The actual capital expenditure is approximately $270M more than was forecast by DBP in its application to the ERA in 2006 for approval of the full 310TJ/d expansion project (for $1.521B) (**2006 Application**). The divergence from the 2006 Application forecast is substantial, particularly when the Stage 4 works were well underway at that time

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		and it should have been possible for the forecasting process for Stage 5 to have been highly accurate. Verve considers that the public submissions DBP has made to explain differences between actual and forecast expenditure (see section 9 of DBP Submission 9) makes the comparison between forecast and actual expenditure very difficult. Much of DBP's discussion on the expenditure for expansion Stages 5A and 5B in particular is an unhelpful collection of design assumptions, contracting options and various specifications without providing any direct comparison or explanation as to the divergence between the forecast and actual numbers. In particular, it is very difficult for Shippers and the ERA to ascertain the work that the forecast and actual numbers apply to, and therefore to determine whether costs for each relevant item in the scope of work was managed prudently and efficiently. This information, in detail, is required by the NGR to be included in the Access Arrangement Information: not in piecemeal and unusable form in DBP's submissions which have no formal status under the NGR as to content. While there is a table in section 9.32 of DBP Submission 9 showing differences between actual and forecast capital expenditure, there is little clear explanation for the differences shown. DBP cites differences between ledgers in recording actual expenditure compared to line items in forecasts as a reason why forecast and actual expenditure cannot be properly reconciled. Verve submits this is a significant shortcoming in the information provided to the ERA for its assessment of whether capital expenditure is conforming for the purposes of the NGRs. Without appropriate reconciliation, the ERA and Shippers have no basis to assess the prudence of decisions (and prudence and efficiency of expenditure) which resulted in such a large difference in actual capital expenditure over the 2005-10 period against forecast. Separate from the reconciliation, ERA and Shippers have no basis on which to assess whether the capital expenditure per se satisfies the r79(1)(a) test, as it must before it can be approved. While T1 Shippers receive some information as to expansion costs for the DBNGP under the T1 Standard Shipper Contract, none of the information received to date materially assists in assessing the expenditure in the context of the NGR. Clearly, information received by T1 Shippers under contracts does not assist the ERA in its assessment either, unless it receives that information separately. Verve notes that in the ERA's draft approval of DBP's 2006 Application the ERA required DBP to provide an independent audit report verifying the level of actual expenditure. Verve submits that such an independent audit report would be very helpful in assessing the actual capital expenditure on the expansion. Verve also notes that there is inconsistency in DBP's disclosure as to the capacity created by Stage 5B in particular. Paragraph 1.11 of DBP's Submission 9 states that 261 TJ/d of firm full haul capacity was created by Stage 5B. Other sources, including DBP's media release in April 2010 indicate that Stage 5B only created approximately 110TJ/d. The uncertainty needs to be clarified in the Access Arrangement Information, as the capacity created is obviously a very important issue in determining the reasonableness of the expenditure and the tariff on a per GJ/d capacity basis. *The second limb – r79(2)* To qualify as "conforming capital expenditure" under NGR r79 the expenditure must first meet the threshold "prudent service provider" test under r79(1)(a) above, but must also satisfy one of the grounds in sub-rule 79(2). Ultimately, DBP seems to contend in its relevant Submission (Submission 9 – Justification of Expansion Related Capital Expenditure) that all capital expenditure from the 2005-10 period is conforming capital expenditure for the

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		purposes of NGR r79(2) as either: (i) the overall economic value of the expenditure was positive (sub-rule 79(2)(a)); or (ii) the expenditure was to comply with a regulatory obligation or requirement (namely DBP's 2004 ACCC undertakings) (sub-rule 79(2)(c)(iii)). *Regulatory obligation or requirement* DBP makes a broad assertion in its Submission 9 that all capital expenditure satisfies NGR r79(2) as it was necessary to comply with a regulatory obligation or requirement, being DBNGP Holdings Pty Ltd's 2004 ACCC Undertaking (clauses 5.6(a) and 5.7 in particular). Clause 5.6(a) of the ACCC Undertaking required DBP to offer "Prospective Shippers" a Standard Shipper Contract with expansion rights not materially less favourable than the expansion rights contained in "any other Shipper Contract for a T1 Service". As such, clause 5.6(a) is an obligation to offer a particular form Standard Shipper Contract, it is not a regulatory obligation to undertake capital expenditure that would satisfy NGR r79(2)(c)(iii). The actual obligation on DBP to expand the DBNGP is a contractual one only, and there are many conditions that must be satisfied before the expenditure obligation actually arises. DBP's submission that expenditure that may (ultimately and indirectly) result from the inclusion of clause 5.6(a) satisfies r79(2)(c)(iii) is incorrect and must be rejected by the ERA. Clause 5.7(a) of the ACCC Undertaking requires DBP to expand the DBNGP by not less than 100TJ/d in aggregate to meet the known capacity requirements of Contracted Shippers or Prospective Shippers who enter into Standard Shipper Contracts. Under clause 5.7(c) DBP undertook to spend up to $400M in connection with the expansion under clause 5.7(a). This is a clearer obligation in relation to capital expenditure. However, Verve submits that it is not a regulatory obligation for the purposes of r 79(2); it may be an "undertaking" but it is an undertaking extraneous to the regulatory regime in which the obligation is relevant. This obligation should be distinguished from an obligation incurred, for example, in a competitive tender process to construct a pipeline system or expansion. Even if the clause 5.7 obligation is a regulatory obligation it can have application only to the maximum extent of the $400M. Rule 79(1)(a) obviously remains a threshold test to be satisfied before the expenditure can be approved as conforming by the ERA. *Positive economic value* The only other discussion DBP makes in Submission 9 in relation to sub-rule 79(2) is on the positive economic value criteria in r79(2)(a). DBP discusses the nature of the relevant test, and provides views on possible interpretation of the wording. However, in the relevant parts of its Submission 9, DBP does not provide any evidence or justification, even in general terms, that DBP's expenditure actually satisfies the positive economic value test, save for inclusion of press clippings from the Energy Minister from 2004. DBP provides more detailed (although still essentially qualitative) justification for stay-in-business expenditure in Submission 10, particularly in section 7, including submissions as to satisfaction of various sub-rule 79(2) criteria,

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		although it appears that the justification is of the $79M actual stay-in-business expenditure between 2005 and 2010 and does not relate to the overall capital expenditure the subject of Submission 9. There is also a gap in what DBP has submitted for the 2005-2010 period as total capital expenditure, capital expansion expenditure and stay-in-business capital expenditure of approximately $30-$40M. DBP must be asked to clarify exactly what each of these amounts is, why it was required to be spent and on what basis under the NGR it is conforming capital expenditure. Overall, DBP's approach to satisfying r79(1)(b) and 79(2) is disjointed and inexact and incapable of supporting a conclusion that rules 79(1)(b) and 79(2) have been satisfied. Verve submits that: (i) the difference (whether $650M or $270M) between actual and forecast capital expenditure is not sufficiently explained by DBP; (ii) the actual capital expenditure has not been separately shown to satisfactorily meet the s 79(1) prudence and operator efficient investment/expenditure test; (iii) the ACCC Undertakings cannot not be used to automatically justify all expansion capital expenditure as if it were required to comply with a regulatory obligation or requirement; and (iv) DBP has not provided any direct and specific evidence as to why the capital expenditure satisfies the positive economic value test. Verve submits that the information provided by DBP does not support the capital expenditure being properly characterised as conforming capital expenditure under the NGRs. *Access Arrangement Information* As a general comment on DBP's approach to providing information related to the Revised Access Arrangement, Verve submits that DBP's approach of including significant information (or those parts of what appears would be significant information if it were not withheld) in its submissions and not directly in the Access Arrangement Information itself, is not consistent with the requirements of NGR rule 42. Verve submits that the ERA must insist on most of the information which has been included in DBP's submissions (or would have been included in DBP's submissions if it were not withheld) being included in the Access Arrangement Information document. This is a separate issue to specific deficiencies in information identified in the balance of Verve's submissions. Verve notes that its submissions are based on the information DBP has made available so far. When DBP provides the required disclosure in its updated Access Arrangement Information (as a result of a request by the Authority or otherwise), Verve considers, and requests the Authority to confirm, that Verve and other interested parties should be provided with an opportunity to make further submissions on the updated Access Arrangement Information.

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		Information deficiencies and ERA's assessment Verve considers that deficiencies in the information that DBP has provided as part of the Revised Access Arrangement Proposal, particularly in relation to capital expenditure, exacerbates difficulties that the ERA and Shippers already have in assessing the Revised Access Arrangement. This is the case as DBP are requesting substantially more than forecast capital expenditure be rolled into the Capital Base, without independent verification by an external consultant. This approach, where actual expenditure exceeds forecast by hundreds of millions of dollars, and the classification of the expenditure as conforming under NGR rule 79 is based on assertions by the operator only, is inconsistent with the approaches often taken by operators and regulators in the Eastern States at least (see the recent Jemena application and the report by its consultant Parsons Brinckerhoff) and results in the ERA's task at hand being even more important than might otherwise be the case.
AAI 3	Capital expenditure utilising the Financial Assistance Agreement	DBP discusses in various parts of its Submissions the October 2004 Financial Assistance Agreement between the owners of the DBNGP and the WA State Government (**FAA**). The FAA is described as a loan for $88M that may convert to a non-repayable grant. It is not clear from DBP's Submissions what the FAA funding was spent on, but to the extent it forms part of DBP's proposed Conforming Capital Expenditure and Opening Capital Base for the Revised Access Arrangement period, Verve submits that revenue should not be earned by DBP on that expenditure as it is not true expenditure by the owners and operator of the pipeline. Funding by way of Government grant should be treated similarly to Capital Contributions by Shippers, and excluded from revenue calculations in a clear and transparent manner.
AAI 3	Treatment of the greater T1 contractual revenue over the reference tariff	DBP has not provided any information in relation to the difference between the revenue earned under the T1 Standard Shipper Contracts and the component of the revenue that can be directly attributable to the Reference Tariff. The ERA is requested to consider this issue, and the related issue as to whether the higher revenue for the T1 Service under the 2004 Contractual Arrangements has been, or is being, inappropriately allocated to the costs of providing the Reference Service which is required under the existing applicable Fixed Principle.
AAI 6	The gas specification underpinning the expansion of the DBNGP during the 2005 to 2010 Access Arrangement period is broad	Related to the prudency of expenditure is the issue of the broadened gas specification for the DBNGP introduced in the 2005 Access Arrangement. Verve asks the ERA to consider whether designing the expansion works to cater for the broader gas specification complies with the r79(1)a) test, in particular where the gas actually transported during the Access Arrangement period is of a much higher specification. DBP has offered an additional service, the Tp Service, due to the additional capacity resulting from the differential between the specification of the gas actually transported and the broader specification. Verve considers there is a risk of double counting in approving capital expenditure incurred on the basis of the broader specification when revenue has been earned on capacity created by the transport of gas at the higher specification. Verve submits that: (i) prudency and efficiency in investment and expenditure has to consider potential adverse impact on Shippers,

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		particularly in the context of the objective to provide the lowest cost sustainable services; (ii) immediately adopting the broadened gas specification for the design of the expanded DBNGP when the expected change in actual gas specification was much more gradual may not have been prudent and efficient expenditure. Verve submits that the ERA should require DBP to continue with its practice of using recent past gas composition or adopt the Optimised Approach from the Kimber Report included as Attachment 3 of DBP's Submission 9. On an issue related to design assumptions, Verve also requests the ERA to specifically consider DBP's adoption of 10.2 MPa in the design of the expansion loop projects, and whether the associated costs properly constitute Conforming Capital Expenditure or should more properly be characterised as speculative capital expenditure under NGR r84 that should only be rolled into the Capital Base when further expansion that utilises the higher pressure is undertaken.
AAI 7.5	DBP's forecast total Conforming Capital Expenditure for the period 2011 to 2015 is $133M	Verve considers that the forecast conforming capital expenditure for the period 2011 to 2015 seems low, being an average of approximately $15M-$16M per year excluding 2011 – this is obviously in stark contrast to a program that has seen more than $1.8B spent in the current Access Arrangement period. There are two elements to this issue: Firstly, is the level of expenditure sufficient to maintain the integrity of the DBNGP and reliability of supply (forecast annual capital expenditure excluding 2011 equates to less than 0.5% of the proposed capital asset base each year). Does this forecast expenditure include sufficient for capital refurbishment and maintenance for the compressor turbines (now in excess of 20)? Secondly, is the assumption that there will be zero expansion of the DBNGP during the period 2011 to 2015 reasonable? Verve cannot understand on what basis this assumption can be made as the existing built capacity on the DBNGP is presently fully contracted. Further capacity will be needed to meet incremental demand in gas consumption and in gas fired electricity consumption, for a start. Verve notes that a paper prepared in June 2010 by Economic Consulting Services for the Domgas Alliance on WA's gas demand and supply indicates that a base case increase of 490TJ/d in gas demand is expected by 2015 – presumably at least a reasonable proportion of that increase will be transported on the DBNGP. DBP provides virtually no information in the public version of its Submission 11 "Forecast Capital Expenditure" as to the breakdown of the $133M forecast amount, so it is difficult for Verve to assess the reasonableness of the assumptions. Detailed information as to, and which supports this low estimate of, the forecast capital expenditure for the 2011 to 2015 period should be included in the Access Arrangement Information. The ERA is requested to consider carefully DBP's assumptions regarding forecast capital expenditure.
AAI 11	DBP has proposed a real, pre-tax rate of return (WACC) of 10.76%	Verve makes two key submissions in relation to the rate of return proposed by DBP: (i) DBP is contractually bound in its arrangements with T1 Shippers under the 2004 Contractual Arrangements or the Standard Shipper Contract to use the CAPM to calculate the cost of equity in determining the applicable rate of return;

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		(ii) DBP's proposed rate of return does not ultimately utilise any well accepted approach or financial model, but is based on "empirical evidence" (including undisclosed equity analysts' views) that indicates a cost of equity of 13% to 14%. This unsubstantiated and unsupported cost of equity results in a rate of return that is much higher than any recent regulatory decision (including the ERA's decision on the Goldfields Gas Pipeline and Western Power's SWIS and the final decision by the AER in relation to Jemena's NSW gas distribution system). DBP has essentially ignored the requirements in both the T1 Standard Shipper Contracts and NGR r87(2) in calculating its rate of return (a nominal pre-tax WACC of 13.55% and a real pre-tax WACC of 10.76%). Verve submits that DBP must under the terms of the Standard Shipper Contract, in relation to the calculation of the reference tariff, calculate the tariff based on the Reference Tariff Policy in clause 7 of the 2003 DBNGP Access Arrangement. Clause 7.5 of the Reference Tariff Policy provides that the determination of the return on equity is to use the CAPM. Alternatively, Verve submits that DBP's approach in proposing a cost of equity that purports to meet the test in NGR r87(1) but ignores r87(2)(b) in the calculation (despite lengthy discussion on r87(2) and four examples of equity methodologies in its submissions) is without foundation. It is contrary to the requirements of the NGRs. It is also contrary to the approach recently taken by relevant regulators including the ERA and the AER. It is an approach that would see a rate of return approximately 350 basis points above the existing rate of return on the DBNGP and a similar margin above recently decided rates of return for other comparable energy infrastructure assets around Australia. The proposed approach is not reasonable, is not acceptable and must be rejected by the ERA. On the basis: (a) of the approach actually taken by DBP in its proposal for the Revised Access Arrangement, which is to not use a particular financial model in calculating the cost of equity; and (b) that Verve's submission that DBP must be required to use CAPM in determining the cost of equity, and subject to the general comments below which are based on other relevant regulatory decisions, and subject to the submissions on specific economic issues contained in Annexure 3, Verve does not make detailed submissions in relation to the relative strengths or weaknesses of particular financial models discussed by DBP, nor on issues arising with various assumptions or parameters that may or should be applied under each. Verve reserves its position in relation to making further submissions on financial models in the context of calculating the cost of equity if it becomes necessary to do so (which may include the appointment of expert economic advisers) as the ERA's consideration of the Revised Access Arrangement progresses. The submissions in Annexure 3 are matters Verve considers the ERA should have regard to only if it undertakes a detailed assessment of the various financial models discussed by DBP. Verve's primary submission on DBP's proposed rate of return is that DBP's approach is fundamentally flawed and should be rejected, and DBP should be required to use CAPM in calculating the cost of equity in particular. In relation to the specific inputs relevant to regulatory rates of return, there is a substantial volume of discussion in recent regulatory decisions on energy infrastructure assets in Australia, notably in the AER's determination in relation

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		to Jemena's NSW gas distribution network and the ERA on the Goldfields Gas Pipeline Access Arrangement. DBP's proposal differs markedly from the considered approaches taken by the ERA and the AER, without any sensible justification, and must be rejected. In particular, DBP's approach in using analysts' views on required rates of return on infrastructure assets rather than a "well accepted financial model" as required by NGR r87(2)(b) is completely inconsistent with recent Australian regulatory decisions. The rate of return proposed by DBP (nominal pre-tax WACC of 13.55% and real pre-tax WACC of 10.76%) is extremely high when compared to the AER's final decision on the NSW gas distribution network of 9.69% (nominal vanilla WACC) and to the ERA's final decision on the GGP of 7.78% (real pre-tax WACC). Verve submits that the return from the DBNGP is at less risk than the return from either of these 2 assets, because of the small number of high credit worthy shippers who all pay capacity reservation charges in advance. The rate of return required from the DBNGP should be less than the rate of return from these 2 assets. While DBP has not actually adopted any of the four financial models referred to in its submissions (CAPM, Black's CAPM, Fama-French three factor model (FFM) and the Zero Beta Fama-French model), DBP has made submissions that CAPM is not an appropriate model to use. The four models resulted in the following costs of equity (using DBP's input assumptions, some of which Verve does not agree as discussed further below): CAPM: 8.79% Black's CAPM: 11.98% Fama-French three factor model: 11.57% Zero beta Fama-French three factor model: 14.36% As stated above, despite discussing each of the models at length in its submissions (including commissioning a consultant's report), DBP did not actually adopt any of the models above, preferring to base its cost of equity on undisclosed equity analysts' views (with no disclosure at all as to the relevant methodologies used by the equity analysts or the assumptions underlying the results). In support of its proposed rate of return, one of the most critical aspects of the Revised Access Arrangement proposal, DBP states in paragraph 11.8 of the Access Arrangement Information: "*The average of equity analysts' dividend yield forecasts for comparable infrastructure businesses over the period 2010 to 2012 was 10.5%. Equity investors investing in the benchmark service provider would, in those circumstances, be expecting to earn a return of at least 10.5%. Those investors would also expect some share price appreciation. The current expectation of inflation, 2.52% is a conservative estimate of this appreciation. With the likely improvement in market conditions following the global financial crisis, an*

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		expectation of further – real – growth in the yields from infrastructure businesses of at least 1%, is reasonable. Accordingly, current market information indicates a cost of equity between 13% and 14%". In the face of robust pricing methodologies, including, in the case of CAPM, the model that has for many years been regarded as the accepted methodology of calculating costs of equity (including in relation to the DBNGP), DBP's unsupported and arbitrary approach represents such a departure from that which is required by the NGRs that it must be regarded as a try on. DBP concludes that it has "conservatively" set its cost of equity at 13.5%. It is worth noting that even the FFM (11.57%) results in a cost of equity almost 200 basis points below DBP's nominated figure, and CAPM (8.79%) results in a cost of equity of almost 475 basis points lower. The use of CAPM or the FFM was the subject of significant recent debate in relation to the Jemena gas distribution network in NSW. Jemena, as operator of the network, sought to base its rate of return on a cost of equity using the FFM. A very substantial amount of information was provided to the AER in support of Jemena's request. The AER, in its final decision handed down on 11 June 2010, did not accept Jemena's use of the FFM, and required the rate of return to be calculated using a CAPM cost of equity. The AER stated as follows (pp 170-172): *The AER assesses a range of information and material before it that is relevant to the assessment of the FFM against the requirements of r87 and r74 of the NGR. The AER considers that:* • *there is no strong theoretical basis to support the inclusion of the additional FFM risk factors for the rate of return on equity:* - *the model is dependent on empirical justification—that is, the systematic observance of the FFM risk premiums* - *since the FFM risk premiums are not systematically observed in the Australian market, there is no reasonable basis for the FFM to be applied in Australia* • *the modelling and statistical analysis presented in the revised access arrangement proposal do not provide support for the FFM, including but not limited to:* - *the predictive testing presented in the Oxera report does not support the submission that the FFM is a better predictor than the CAPM* - *grounds for rejecting the Carhart four-factor model could equally be used to reject the FFM* • *Evaluation of the academic literature does not support the FFM as a reliable or accurate financial model. In particular:* - *analysis from Australia, which is the relevant market for funds, shows that observed empirical evidence is not consistent with the FFM, with conflicting, variable FFM risk premiums and inconsistent FFM factor coefficients. This means that it is unreasonable to*

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		conclude that the additional FFM risk factors are present in the market for funds and can be used to determine a rate of return on equity - *in relation to evidence in other markets for funds:* > *analysis from a global perspective (including the UK, Japan and Germany) shows that the observed empirical evidence is not consistent with the FFM* > *analysis from the US shows conflicting evidence that does not support the FFM for each time period analysed.* *With regard to the evidence examined, the AER considers that:* • *the FFM does not produce a rate of return commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services* • *the estimates generated are not arrived at on a reasonable basis* • *the estimates generated by the FFM do not represent the best estimates possible in the circumstances.* *Evaluation and conclusion* *The AER notes that it has full discretion (as set out in r. 40(3) of the NGR) over determination of the rate of return to meet the requirements of r. 87 of the NGR.* *The AER assesses the FFM after assessment of all material before it, including information provided in the revised access arrangement proposal and other relevant material.* *Overall, the AER considers that:* • *the FFM does not meet the requirements of r. 87(1) of the NGR* • *the FFM does not meet the requirements of r. 87(2)(b) of the NGR.* *Further, the AER also considers that the FFM does not produce forecasts or estimates that meet the requirements of r. 74(2) of the NGR.* *Therefore, the AER does not accept the use of the FFM.* *The AER instead uses the standard Sharpe–Lintner CAPM to estimate the rate of return on equity. The CAPM is provided under r. 87(2)(b) of the NGR as an example of a well accepted financial model. The use of the CAPM to determine the cost of equity complies with the applicable requirements of the NGL and the NGR and is consistent with the applicable criteria prescribed by the NGL and the NGR. The AER also considers that the use of the CAPM (instead of the FFM) for determining the rate of return is consistent with the revenue and pricing principles set out in section 24 of the NGL and will or is likely to contribute to the achievement of*

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		the National Gas Objective (NGO) in section 23 of the NGL. Verve considers that the AER's endorsement of CAPM as the model to be used to determine the cost of equity in accordance with the National Gas Law is compelling. In circumstances where the use of the FFM has been rejected by the regulator for failing to comply with the NGRs (and noting even the FFM results in a cost of equity almost 200 basis points below DBP's nominated cost), Verve submits that DBP's proposal to not use a financial model at all, but rather base the cost of equity on a range of equity analysts' views, is completely untenable and must be rejected by the ERA. It is worth repeating that the cost of equity proposed by DBP (13.5%) is more than 470 basis points higher that which would be obtained using CAPM (with DBP's own parameter inputs), the financial model required by the AER. The ERA also used the CAPM to determine the cost of equity in concluding that the rate of return for the Goldfields Gas Pipeline should be a real pre-tax WACC of 7.78%. DBP's proposed rate of return of a real pre-tax WACC of 10.76% is almost 300 basis points higher than the rate for the GGP. The cost of equity is not the only input into the rate of return modelling where DBP has deviated from the parameters recently required by the AER and the ERA. The nominal cost of debt in the GGP decision was 8.75%, for Jemena it was 8.78%. DBP has proposed a cost of debt of 9.73%. DBP has also proposed a gamma in relation to the treatment (benefit) of tax credits of zero, where the AER required Jemena to use 0.65 and the ERA nominated a range of 0.81 to 0.37 for GGP. Clearly, certain key inputs used by DBP in calculating its proposed rate of return are not in keeping with those of the regulators in recent decisions, which further supports Verve's submissions that DBP's proposal is too high and must be rejected. For the reasons outlined above, and consistent with recent regulatory decisions, Verve would expect a real pre-tax rate of return for the DBNGP less than that for the GGP. The situation in the market for funds has not changed since the recent decisions referred to above. The risks associated with each pipeline are different, and the volatility of the GGP's shipper base compared to that of the DBNGP should be reflected in a lower rate of return for the DBNGP. In table 19 of the AAI, DBP's estimated rate of return using CAPM and, notwithstanding other references to using a gamma of zero, a gamma of 0.2, is 7.75%. Verve submits that using a cost of debt closer to that recently used by the ERA and AER, and in light of the ERA's decision on the GGP in particular, a real, pre-tax rate of return of less than 7.78% should be required by the ERA.
AA 9	Depreciation	The minimum period of depreciation for depreciable assets is 30 years. Is the same approach to depreciation (including asset lives) used for assets such as printers and computer servers?
AA 12	DBP has proposed a capital contributions regime in section 12 of the revised Access Arrangement	There is very little explanatory information relating to the Capital Contributions proposal, including the specifics of the Funded Capital Expenditure, Contributing Agreement and Shipper Specific Facilities Charge. Overall, it is not clear how the Shipper's Capital Contributions are treated, either for the Access Arrangement period 2005 to 2010 or the forecast Access Arrangement period 2011 to 2015. The relevant amounts of Capital

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		Contributions are set out separately by DBP in tables 10 and 12 of the Access Arrangement Information, and paragraph 14.3 of the Access Arrangement Information states that the return and depreciation relevant to the Funded Capital Expenditure will not be allocated to any service. It is, however, not clear how the relevant return and depreciation is excluded, particularly in relation to the 2005 to 2010 Access Arrangement period. Verve submits that much greater transparency in the Access Arrangement Information is required for DBP to demonstrate that moneys paid by Shippers under capital Contribution arrangements such as shipper specific facilities agreements and connection agreements are not also recovered by DBP through being allocated to tariffs as the costs of providing reference or other non-reference services. Verve has a number of such agreements with DBP, and has undertaken significant capital expenditure which it is keen to ensure is treated correctly.
AAI 4 and 9	DBP's forecast operating expenditure increases significantly during the course of the 2011-2015 Access Arrangement period	Verve has a number of concerns in relation to DBP's operating expenditure that it requests the ERA to carefully consider. DBP's aggregate actual operating expenditure for the period 2005 to 2010 was less than the forecast for the same period, but there are significant differences between key elements of the expenditure (fuel gas expense was approximately 20% less than forecast in nominal terms, while all other expenses were higher than forecast). There is very little explanation or information given as to the break-down of specific items of expenditure, in order to assess the reasonableness of differences between actual and forecast expenditure. The disclosure that is made in the AAI and DBP's Submission 12 is often provided on different bases (nominal v real) which again complicates the comparison exercise and is not consistent with NGR r73(3). In particular there is little information provided to explain the outcomes of 2 significant publicly known events relating to the DBNGP. First, in early 2009 DBP announced that it had agreed to bring back in-house a significant proportion of the operating and maintenance services then contracted out to Westnet Energy Services Pty Ltd. This should reduce operating and maintenance expenditure because of capturing efficiencies but is in fact being used by DBP to justify increases in salaries, field and non field expenses. Second, it is known that to accommodate the payment of significantly increased gas prices by Alinta Sales Pty Ltd to the North West Shelf, DBP is likely to pay more for system use gas. The ability for DBP to pass on these costs to shippers is contemplated in a variation to the 2004 ACCC Undertaking made in March 2010. The effect of the increased price of fuel gas and the steps DBP may take in response to the increase are not forecast or accounted for at all. Verve disagrees with DBP's statement in 4.3 of the AAI due to the changed configuration of the DBNGP since 2005 reference to historical expenditure is inappropriate. Verve considers there ought to be a firm link between operating expenditure in 2009 and 2010 for example and the period 2011-2015, as much of the expansion was completed by 2009/10, resulting in a similar operational configuration against which operating expenditure will be incurred during the period 2011 to 2015. DBP should be required to provide much more granularity in the disclosure of historical throughput in pipeline zones and expenditure in its Access Arrangement Information to justify the forecast operating expenditure. DBP's performance in relation to managing operating expenses historically will be a critical indicator as to its likelihood of managing its future operating expenditure as required by the NGRs. Only with significantly more Access Arrangement Information will it be possible to determine whether DBP satisfies the criteria in NGR r91 that the

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		forecast operating expenditure is 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. Verve considers that the inclusion of only 2 categories of historical expenditure (fuel gas and other) does not comply with the requirements NGR r72(1)(ii), particularly when six categories have been used for the operating expenditure forecast. There is a significant increase in operating expenditure between 2010 and 2011, again without any real degree of explanation. To the extent that part of the increase is due to Government Charges associated with the introduction of a CPRS (carbon pollution reduction scheme), as indicated in section 9.3(d) of the Access Arrangement Information and section 6.35 of DBP's Submission 12, then Verve completely disagrees with the inclusion of any such amount in the forecast operating expenditure. There is significant uncertainty as to whether such charges will be introduced by the Commonwealth Government at all, but Verve submits there is no likelihood at all that such charges would be payable by DBP during 2011 and 2012. Verve submits that no allowance for a CPRS should be made in the forecast expenditure for the period 2011 – 2015. Verve requests the ERA carefully consider the issue of DBP's operating expenses, including the forecast fuel gas costs (and all relevant underlying assumptions) and the appropriateness of DBP's treatment of self-insurance costs in particular.
AA 13	The Fixed Principles from the 2005 to 2010 Access Arrangement have been included in the Revised Access Arrangement without amendment	DBP has included the following as a Fixed Principle: "the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services which is in excess of the amount (in net present value terms) equal to the sum of: (A) the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and (B) the revenue actually earned from the sale of those services which were services other than Full Haul Services, must not: (C) be taken into account directly or indirectly for the purposes of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or (D) otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR." It seems clear to Verve that any relevance the Fixed Principle has or had under the previous Access Arrangement cannot be transposed to the Revised Access Arrangement, where the R1 Service is the proposed Reference Service.

Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number	Provision / Issue	Comment
		This is a different issue as to whether the existing Fixed Principle has been applied, or properly applied in the 2005 - 2010 period and in the transition to the Revised Access Arrangement period 2011 to 2015. The purpose of the Fixed Principle in 2005, as Verve understands it, was to ensure that the higher tariff that T1 Shippers committed to pay under the 2004 Contractual Arrangements was not fed back into the calculation of the Reference Tariff for the exact same service under the Applicable Regime. The revenue from the service (the T1 Service) was treated as if it had been priced at the Reference tariff, not the 2004 Contractual Arrangements. This is based on 2 factors: first, the price under the 2004 Contractual Arrangements for the T1 Service was higher than the Reference Tariff. Second, there was a need under the 2004 Contractual Arrangements to price the T1 Reference Service entirely in accordance with the principles and requirements of the Applicable Regime. This is because when the price for the T1 Service under the 2004 Contractual Arrangements reverts to a price under the Applicable Regime it reverts to a price that has been calculated consistently and strictly in accordance with the Applicable Regime, properly applied; and not a hybrid of the 2004 Contractual Arrangements and the Applicable Regime. The Fixed Principle has no application to the relationship between the T1 Service under the 2004 Contractual Arrangements (or the P1 and B1 Services) and the R1 Service. The R1 Service, if any of DBP's extravagant submissions get up, is likely to be priced higher than the T1 Service under the 2004 Contractual Arrangements. T1 Shippers will not revert to a Reference Tariff for the R1 Service in 2016. The Fixed Principle must only be retained if the T1 Service is offered in the Revised Access Arrangement period and it must apply to the relationship between the T1 Reference Service Reference Tariff (properly priced under the NGR) and the tariff under the 2004 Contractual Arrangements.
AA 11 and AAI 15	DBP has introduced a new tariff variation mechanism	The component of DBP's tariff variation mechanism dealing with tax changes (Tax Change Variation) is based primarily on dealing with the pass through of costs arising in connection with the CPRS. For the reasons discussed above, Verve submits that no costs associated with the CPRS should be included in the forecast operating expenditure for the period 2011 to 2015. As such, the concept of "Included Taxes and Carbon Costs" and DBP's submissions in support of the Tax Change Variation are no longer appropriate. To the extent the Tax Changes Variation and the New Costs Pass Through Variation each purport to cover changes in Tax, the inconsistent and overlapping treatment is not workable. Verve considers more information is required to justify the CPI Formula Variation. The commodity tariff should only be indexed by reference to increases (or decreases) in the commodities actually used in the operation and maintenance of the DBNGP; eg salaries and wages, fuel, oils. A discount from general increases in these commodities should apply to encourage efficiency.
AA 6	DBP has amended the Capacity Trading Policy	Clause 6.4 of the Access Arrangement must be amended to clarify that it is only the Shipper's rights and obligations in relation to the Traded Capacity that are terminated following a transfer to a third party. Clause 27.8 of the R1 Terms and Conditions provides that "…Subject to this clause 27 this Contract remains in full force and effect following any Transfer of Traded Capacity…".

ANNEXURE 2

TABLE OF SUBMISSIONS ON PROPOSED R1 SERVICE TERMS AND CONDITIONS

ANNEXURE 2

Submissions on R1 Terms and Conditions

Clause Number	Provision / Issue	Comment
1	**B1 Service** is defined as a "Back Haul service which, under the terms of a contract for the Back Haul Service, is specified to rank equally to a R1 Service in the Curtailment Plan".	The B1 Service ranks ahead in priority to the R1 Service in the Curtailment Plan in Schedule 6. The definition of B1 Service is not correct.
1	The definition of **Force Majeure** has been amended to include an Insolvency Event in relation to a third party supplier of the Operator	The amendment should be deleted as the Operator should be able to and required to take steps in those circumstances to ensure its ability to perform its obligations under the Contract is not affected.
1	The definition of **Major Works** now includes the defined term **Planned Maintenance**. This means that Planned Maintenance is an additional exculpation from the Operator being liable for curtailing for more than 2% each year.	The definition should exclude Planned Maintenance from Major Works.
1	The definition of **Previous Verification** includes the capitalised term "Accurate" which is not defined.	The existing definition of Accurate should be reinstated.
1	Definitions of a **Related Body Corporate** and **Related Entity** have the meanings given to them in the Corporations Act as at the Execution Date.	Definitions incorporating terms as defined in the Corporations Act should incorporate those terms as they apply from time to time, and not as limited to a point in time. Limiting the definition to a point in time is difficult to administrate for Shipper and Operator.
1	**Retail Market Rules** is defined to mean the retail market rules that govern, or will govern when operative, the Retail Gas Market in Western Australia.	The Retail Market Rules are already operative.
1	The definition of **T1 Service** has been deleted.	T1 Service is still a term used in the Terms and Conditions (including in the Curtailment Plan) and a definition of the T1 Service should be retained. That Service should be, Verve submits the service the subject of the Terms and Conditions. Firm Service has been retained as a definition and as an Other Reserved Service, when it is doubtful that any shipper has contracted for such service.

Clause Number	Provision / Issue	Comment
1	**Tp Service** is defined simply as an Other Reserved Service.	The definition does not actually identify or describe the Tp Service itself which should be identified by its essential characteristics, and that it was only available to Stage 5A shippers.
2.5(e)	The Operator must procure that the System operator complies with the requirements of section 4 (Ring Fencing Arrangements) of the *National Third Party Access Rules for Natural Gas Pipeline Systems*	The reference to the Code should be to Part 2 of Chapter 4 (Structural and operational separation requirements (ring fencing)) of the National Gas Access (Western Australia) Law.
2.6	Gas delivered to the BEP Inlet Point in excess of the BEP Inlet Point Capacity is deemed not to have been delivered.	DBP do not explain why this result is required. What happens if the Gas is out of specification, or the deeming results in an imbalance?
2.7	To avoid doubt, any provisions of the Access Regime and any requirements of the Regulator that prevail by force of law over an inconsistent clause of this Contract are Laws for the purposes of this Contract, but neither Party may seek to procure an amendment to an access arrangement under the Access Regime if the purpose for which such amendment is sought is to affect materially and adversely any of the other Party's rights and obligations under this Contract that are not general rights and obligations applicable to all shippers.	Amendments to the Access Regime must not be sought to affect materially and adversely any of the other Party's rights and obligations under the Contract regardless of their nature – "that are not general rights and obligations applicable to all shippers" must be deleted.
3.2(a)	The R1 Service is described as a Gas transportation service that gives the Shipper a right of access to Gas Transmission Capacity which (subject to clause 17.9) is treated the same in the Curtailment Plan as all other shippers with a R1 Service, P1 Service or a B1 Service and in the order of priority with respect to other Types of Capacity Services set out in clause 17.9.	The drafting in this provision is incorrect. The R1 Service is a different Type of Capacity Service and is lower in priority in the Curtailment Plan than the P1 and B1 Services, and it is therefore not correct to say the R1 Service is "treated the same in the Curtailment Plan". Clause 3.2(a)(ii) also states that the R1 Service is treated the same in the Nominations Plan as all other shippers with a R1, P1 or B1 Service which statement is also incorrect, as the Nominations Plan is based on the Curtailment Plan.

Clause Number	Provision / Issue	Comment
3.2(b)	R1 Capacity is quantified by reference to the Gas throughput at Kwinana Junction in January with the most critical compressor offline.	Verve assumes that "critical" means the most important compressor in maximising Gas transmission capacity and this should be clarified. DBP has not provided any support for this quantification methodology such as the amount of capacity it will capture in addition to the T1 Capacity already captured by the quantification methodology in the existing shipper contracts, what is the likely annual percentage of curtailments (as it is curtailed before T1, P1 and B1) and how much does the average throughput in January (why January without evidence that it is the hottest month?) vary from the highest and lowest throughput which of course are dependent on gas demand downstream of Kwinana Junction?
3.5	The Spot Capacity service has been deleted from the R1 Service Contract.	The Operator has stated in its supporting submissions that the Spot Capacity service has been removed from the reference R1 Service as Rule 109 of the National Gas Rules prohibits bundling of services. Verve does not consider Rule 109 requires the removal of Spot Capacity from the reference service, as Rule 109 is intended to prohibit shippers having to pay for services they do not need. Spot Capacity is actually a service that most (if not all) shippers would like to use if and when it is available, which supports its inclusion in the reference service contract. Having a published and approved pricing structure and terms and conditions for Spot Capacity set out in the approved R1 Service Contract is beneficial for shippers. If Spot Capacity is not included in the reference service then there is no clarity at all as to the terms and conditions upon which Spot Capacity may be made available in the future – while there are Spot Capacity Service principles set out in the Revised Access Arrangement itself, they are stated to apply only "until otherwise advised by Operator". Additionally, the principles change a fundamental aspect of the Spot Capacity Service in that it is now take-or-pay once allocated. The present terms (in the T1 contract) provide that the Shipper must pay only when it uses the capacity unless the Operator would have sold the Spot Capacity to another shipper. There are also erroneous references to Westnet in the description of Spot Capacity in section 3.6 of the Access Arrangement.

Clause Number	Provision / Issue	Comment
4.1(a) and 4.2(a)	The Capacity Start Date is 08:00 hours on the date specified in the Access Request Form, and the Capacity End Date is 08:00 hours on the date specified in the Access Request Form.	The only relevant dates in the Access Request Form are referred to as the "Requested Reference Service Start Date" and the "Requested Reference Service End Date". There are several drafting problems with this clause. First the defined term "Access Request Form" is the form in the Schedule, which does not specify any dates, and does not link the contract for R1 Service with the form in which the request was made. Secondly the date requested in the form on which the request is made may not be the date agreed by the Operator on which Capacity starts. Thirdly the terminology is inconsistent between this clause and the form; the form refers to "Reference Services" and the clause refers to "Capacity".
4.6 and 4.7	Provisions relating to the first and second option periods are based on the original Term being 15 years.	Why do the references to Term and Capacity End Date not simply refer to a 15 year period?
5.3(e) and 5.6(b)	This clause is now a basis on which the Operator can refuse to accept/deliver Gas rather than a basis on which the Operator can Curtail. It is therefore now outside the 2% allowance of Curtailments.	The provision should be deleted from clauses 5.3 and 5.6 and reinstated in clause 17.2.
5.3(g)	The provision relates to the Operator's refusal to Receive Gas in certain circumstances.	The clause does not make sense. The words "the following" should be deleted and the words "all of the Shipper's Contracted Capacity" moved up to replace them.
5.5 and 5.9 (in the 2005 approved T1 Contract)	Clauses 5.5 and 5.9 from the T1 Contract have been deleted. These clauses provided that in certain circumstances where Operator could have taken steps to avoid or minimise the magnitude and duration of a refusal to Receive and/or Deliver Gas then such refusal to Receive and/or Deliver Gas constitutes a Curtailment for the purposes of the Contract and shall be taken into account in determining whether Curtailments aggregated over a Gas Year cause the Permissible Curtailment Limit to be exceeded.	There is no reason for these protections for the Shipper to be removed under the new R1 Contract. The provisions are important in protecting against the impact of an unreasonable refusal by Operator to Receive and/or Deliver Gas and should be reinstated.

Clause Number	Provision / Issue	Comment
5.9	This clause provides that a refusal to Deliver Gas under clause 5.6 does not affect the calculation of Charges payable by the Shipper.	Clause 5.9(a) should be subject to the reinstated clause 5.9 (from the T1 Contract) where refusal to Deliver Gas is a Curtailment in certain circumstances. Clause 5.9 should therefore be amended to reflect situations where the Capacity Reservation Charge must be refunded under clause 17.4 for a refusal to Deliver.
5.10	This clause provides an indemnity by the Shipper in favour of the Operator in respect of the cost of additional Gas incurred by the Operator in supplying System Use Gas in circumstances where the Shipper takes Overrun Gas or breaches the Accumulated Imbalance Limit or the Hourly Peaking Limit to the extent that the costs are not recovered by the Operator by Other Charges or Direct Damages paid by the Shipper. An independent verification process is established to confirm the relevant costs.	The auditor should be nominated by the Shipper (and agreed by the Operator) and the auditor should be required to hand down his or her decision within 30 days after having received all relevant information from the Operator in accordance with clause 5.10(g). A new provision should be inserted clarifying that the verification process in clause 5.10 is not a dispute over a Tax Invoice for the purposes of clause 21.5, and that no interest is payable by the Shipper in any circumstances for the period prior to the handing down of the auditor's decision.
5.10(a)	The Operator must supply the Shipper's share of System Use Gas.	Should be clarified as being for no charge, as the SUG cost is included in the R1 Reference Tariff.
5.10(c)	The Shipper must indemnify the Operator in respect of the cost of additional Gas incurred by the Operator in supplying System Use Gas in accordance with this Contract to the extent to which that System Use Gas is required to be supplied, in accordance with Good Gas Industry Practice, because of the Shipper taking Overrun Gas or breaching the Accumulated Imbalance Limit or the Hourly Peaking Limit on any Gas Day, aggregated over a Contract Year, but only if that cost is not recovered by the Operator during that Contract Year by Other Charges or Direct Damages paid by the Shipper.	The concept of "share of System Use Gas" defined in clause 5.10(c) has no role in clause 5.10. Further there is no basis upon which the Operator is to determine whether System Use Gas is required to be supplied because of the shipper's identified conduct, other shippers' conduct or other operating conditions, such as exceptionally hot days or higher unaccounted for gas. System Use Gas is simply Gas used in the operation and maintenance of the DBNGP. Any attempt to allocate additional costs of System Use Gas to isolated episodes of one shipper's conduct will be artificial, arbitrary and unsupportable. This provision allows the Operator to include in a Tax Invoice the amount it considers it should be indemnified, and will be a source of constant dispute based on doubts as to the cause of the need for System Use Gas. In summary, the additional indemnity over and above the obligation to pay relevant "Other Charges" and Direct Damages is contentious, unnecessary and unreasonable and should be deleted.

Clause Number	Provision / Issue	Comment
5.11	An additional paragraph has been added referring to the Emergency Management Act 2005 (WA) which refers to the Minister or other persons declaring a state of emergency.	This paragraph should be amended to replace the reference to "the Minister or any other person, regulatory authority or body" with "a hazard management agency", and "a state of emergency" with "an emergency event"; and to delete "or any successor, supplementary or similar Law" which words are superfluous in the light of clause 2.1(e).
5.12	The Shipper is obliged to arrange inspections of certain gas installations installed or altered by the Shipper. The Operator should only be interested in policing this statutory requirement where gas is supplied directly to the gas installation from the DBNGP, as provided in section 13(1) of the Gas Standards Act 1972 (WA).	The words "to which Gas is supplied directly from the DBNGP" should be added after the words "gas installations" in 3 places in clause 5.12(b).
6.1(a)	The Inlet Points for the Contract are set out in the Access Request Form.	A previously commented, (eg, in relation to Capacity Start Date and Capacity End Date) the Access Request Form is not defined in any way which connects it to the request which resulted in the Contract. This connection must be established.
6.4(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, then firstly Gas is deemed to be Received for any available R1 Service.	This provision provides that R1 Service will in the absence of a Shipper specification be treated as a priority to T1 Service, which is not acceptable as a Shipper may have contracts for T1 and R1 Services.
6.7(d)	The issue, design and installation of Inlet Point Connection Facilities.	Clause 6.7(d) refers to a right of access for the purpose of maintaining and operating an Outlet Station – this should be a reference to an Inlet Station.
6.12(a)	Maintenance Charge means, with respect to a particular Inlet Station, Outlet Station or Gate Station Associated with a Sub-network, 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)…	"…across all shippers who pay a charge for substantially the same purpose" should be replaced with "…across all shippers who use the Inlet Station, Outlet Station or Gate Station Associated with a Sub-network…"

Clause Number	Provision / Issue	Comment
7.2	Gas Delivered at an Inlet Point or an Outlet Point must be free, by normal commercial standards (as determined by the Operator), from dust and certain other constituents.	The test should be an objective one, and reference to “as determined by the Operator” should be deleted.
7.4(c)(ii)	If at any time the Shipper Delivers Gas to the Operator at that Inlet Point or the Shipper Receive Gas from Operator at that Outlet Point.	Typographical error – “Receive Gas” should be “Receives Gas”.
7.9(b)	If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9(a), then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of- Specification Gas the Operator is liable to the Shipper for Direct Damage arising in respect of the Out-of-Specification Gas.	The words “by Delivering Out-of-Specification Gas to the Inlet Point” should be added after the words “to be Out-of-Specification Gas”.
7.12	The Operator will Deliver Gas to the Shipper at each Outlet Point at which odorising occurred as at 27 October 2004.	The Operator should also be required to Deliver odorised Gas at Outlet Points agreed in writing with the Shipper.
8.9	The clause refers to “Capacity Services for” and “Capacity Services in respect of the Shipper’s Daily Nomination for”	As the only Capacity Service being scheduled under clause 8.9 is the R1 Services all these references are confusing, redundant and should be deleted.
8.10	The Operator may schedule a Capacity Service for R1 Service to the Shipper which is less than the Shipper’s Initial Nomination for R1 Service at an Inlet Point or an Outlet Point.	A new clause 8.10(c) should be inserted, where Operator must endeavour as a Reasonable and Prudent Person to ensure that where the scheduled Capacity Services in respect of Daily Nominations is less than the Initial Nomination (calculated across all of the Shipper’s R1 Contracts) the difference is kept to the smallest amount possible.
8.15 and 8.16 (in the 2005 approved T1 Contract)	The T1 Contract contemplated an Aggregated T1 Service for Services above Contracted Capacity at specific Inlet Points and Outlet Points.	There is no equivalent “Aggregated R1 Service”. In the absence of provisions which govern the nomination, scheduling and curtailment of R1 Service at Outlet Points at which the Shipper does not have Contracted Capacity, or nominates in excess of its Contracted Capacity, it is unclear how the contract operates. For example there appears to be no restriction on nominating and being scheduled R1 Service at Outlet Points at which the shipper does not have Contracted Capacity or in excess of its

Clause Number	Provision / Issue	Comment
		Contracted Capacity (provided it does not exceed its Contracted Capacity across all Outlet Points) but in a Point Specific Curtailment such a scheduled R1 Service does not feature at all in the Curtailment Plan. Is this intended? If so, the value of the R1 Service is on this characteristic alone significantly less than the T1 Service, which must be reflected in the R1 tariff, being lower than the T1 tariff.
9	The Imbalance regime has been substantially amended from that which is contained in most shippers' 2004 Shipper Contracts and from that which was approved in 2005.	There was a threshold condition in the approved 2005 T1 Contract underpinning the Imbalance regime, which was the requirement that the Operator must first consider that: (i) a continuation of the Imbalance condition 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 shipper's entitlement to its Daily Nomination for Capacity before the Operator may issue a notice requiring the shipper to reduce the Accumulated Imbalance and/or refuse to Receive or Deliver Gas. The threshold condition has been deleted. Deletion of the condition can result in the situation where the pipeline is in perfect balance on a Gas Day, with all shippers having a zero imbalance except two, which have equal offsetting positive and negative imbalances above the 8% threshold – and the Operator can levy Excess Imbalance Charges against the two shippers and/or refuse to Receive/Deliver Gas. Verve considers this right of the Operator to be completely unacceptable, as it effectively provides for payments to be made to Operator where no possible loss has been incurred by Operator nor any adverse impact to the integrity or operation of the pipeline suffered nor to any other shipper. The Shipper could not agree to provide the statement in clause 20.4(a) that the Excess Imbalance Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling the Excess Imbalance Charges to be levied in those circumstances. Further, Operator is given the discretion in clause 9.5(c) to levy (or not) the Excess Imbalance Charge where the absolute value of the Shipper's

Clause Number	Provision / Issue	Comment
		Accumulated Imbalance is still above, but closer to, the Accumulated Imbalance Limit. There are no conditions at all placed on the exercise of the Operator's discretion – again this is not acceptable. The obligation on the Operator to endeavour to cooperate with the Shipper to ameliorate the impact of exceeding the Accumulated Imbalance Limit has also been deleted, as has the concept of the Outer Accumulated Imbalance Limit of 20%. These elements should be reinstated. The changes to the exceptions to the imposition of the Excess Imbalance Charge are not acceptable. Curtailment must remain an exception, and the Daily and Accumulated Imbalances must be calculated. Overall the existing Imbalance regime has been replaced with one that is very penal in its nature, and entirely out of keeping with the arrangements that have been in place since the introduction of third party access to the DBNGP. The cashing out of imbalances on a monthly basis is unfair and unreasonable. The provision penalises the Shipper by mandating a sale of gas to the Operator at a hugely discounted price, unless the Shipper takes a Storage Service. On the other hand, the price at which the Shipper must buy the imbalance quantity is a commercial price, and the Shipper may have no capability (within the physical constraints of the DBNGP) to deliver Gas to the Operator at a sufficient rate to restore the imbalance to zero.

Clause Number	Provision / Issue	Comment
10	The provisions governing Hourly Peaking Limits and Hourly Peaking Charges have been amended in much the same way as the Imbalance provisions in clause 9 discussed above.	The changes to the Hourly Peaking provisions, including the deletion of any conditions related to adverse impacts on the integrity and operation of the DBNGP before Hourly Peaking Charges can be levied and the removal of the Outer Hourly Peaking Limit, result in the Hourly Peaking regime becoming penal in nature – as discussed in relation to Imbalances above. In circumstances where breaching the Hourly Peaking Limit does not in any way impact on the integrity nor operation of the DBNGP, nor on any Capacity Services provided to any other Shipper, a charge for breaching such limit cannot be a genuine pre-estimate of the loss or damage resulting from breaching the relevant threshold and should not be approved. DBP does not currently provide accurate hourly data. It is offering a Peaking Service and a Metering Information Service as non-reference services. The draconian approach to Hourly Peaking Limits and Hourly Peaking Charges for the R1 Service seems designed to create a paying market for its non-reference services; which services are unnecessary at present.

Clause Number	Provision / Issue	Comment
11.1(b)	The Overrun Rate is the greater of: (i) 500% of the R1 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. The percentage in 11.1(b)(i) under the 2005 approved T1 Contract was 115%. The Unavailable Overrun Charge is the greater of: (iii) 250% of the R1 Tariff; and (iv) 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.	There has been a dramatic increase in the percentage in clause 11.1(b)(i). None of the submissions made by the Operator in support of the Revised Access Arrangement and R1 Terms and Conditions purport to give any justification for the increase. The Overrun Rate is twice the Unavailable Overrun Charge, which purports to deal with behaviour more detrimental to the pipeline. How can this be justified? Without any justification, a more than four-fold increase in the Overrun Rate is completely unacceptable to Verve. Paying 750% of the reference tariff on the same quantity of Gas must be considered a penalty and unenforceable.
11.2(a)	Under the 2005 approved T1 Service Contract, the Operator could give an Unavailability Notice to the Shipper 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 T1 Capacity, Firm Service, any Other Reserved Service or scheduled Spot Capacity. That condition to issuing an Unavailability Notice has been deleted.	The comments in relation to this change are similar to those in relation to the Excess Imbalance Charges and Hourly Peaking Charges discussed above. Where penalties for breaching certain thresholds are not related at all to the actual impact on the DBNGP or other shippers' capacity, they cannot be accepted as a genuine pre-estimate of damage or loss suffered by Operator due to the relevant Gas usage. The penalties become particularly hard to accept when they are increased arbitrarily and to a very significant extent (refer comment above).
12.4	The Operator may satisfy its obligation to enable Gas to be Delivered to the Shipper by using any means other than the DBNGP provided that the Operator otherwise meets its obligations under the Contract.	The requirement in the 2005 approved T1 Service Contract that the Operator may use any means other than the DBNGP for Delivery only where there is no extra cost or risk to Shipper in doing so should be reinstated in clause 12.4.

Clause Number	Provision / Issue	Comment
14.2(c)(ii) & 14.2(d)(ii)	New Inlet Points to satisfy the Operator's technical and operational requirements.	The references to "proposed" should be replaced by "planned" in both sub clauses. Also, the Operator's technical and operational requirements should be set out in detail or reference made to the specific provisions of the Contract in which the requirements are set out.
14.2(d)(i)	A Requested Relocation to a New Outlet Point is an Authorised Relocation under the Contract if the Requested Relocation would result in a New Outlet Point being upstream of the Existing Outlet Point.	A New Outlet Point should be an Authorised Relocation if the New Outlet Point is upstream of the Existing Outlet Point or no greater than 2kms downstream of the Existing Outlet Point.
15.3(a)(i)(A)	Maximum metering uncertainty has been reduced to 0.75%	Verve considers that the previous maximum uncertainty of 1% should be retained.
15.4(a)(i)(C)	Primary Metering Equipment must continuously compute and record any information required by the Operator from time to time to assist the Operator to comply with any Law.	This should be at Operator's cost.
15.5(e) & 15.5(f)	These provisions which relate to the availability of information to Distribution between Shippers have been deleted.	These provisions should be reinstated for the benefit of Distribution Network Shippers.
15.13(b) & 15.13(c)	Primary Metering Equipment in accuracy and Verification.	Clause 15.13(a)(i) is referred to twice in clauses 15.13(b) and (c) – one of the references in each clause should be deleted.
17.2(c)	The removal of this basis for curtailment and constituting it as a basis for refusing to accept or deliver Gas is a significant change in the characteristics of the R1 Service from the T1 Service.	The approach should be retained otherwise the R1 Service is devalued, which must be reflected in a lower tariff than the T1 tariff.
17.3(b)(ii)	Curtailment without liability includes a Curtailment for Major Works, which now includes Planned Maintenance.	Curtailment for Planned Maintenance has previously counted towards the Permissible Curtailment Limit and to change this is a significant devaluation of the R1 Service. Planned Maintenance should be treated separately to Major Works in relation to Curtailments without liability.

Clause Number	Provision / Issue	Comment
17.7(b)	An Initial Notice must specify the Operator's estimate of the starting time of the Curtailment and the portion of the Shipper's Contracted Capacity that is to be Curtailed.	An Initial Notice should also be required to include the reasons for the Curtailment, and if the Operator is not able to provide reasons at that time an explanation as to why not. Given the planning involved in Major Works the Operator will have information that it is able to provide to the Shipper as to why the Shipper's Capacity is to be Curtailed.
17.8(f) (in 2005 T1 Contract)	The existing T1 provision where Operator is obliged, other than when due to Force Majeure or by reason of an emergency it is unable to do so, to give effect to a Curtailment by a Curtailment Notice instead of, or prior to, doing so physically under clause 17.8(c) has been deleted.	This provision should be reinstated.
17.10(a)	Operator may apportion refusals to Receive or Deliver Gas or to Curtail in its discretion.	The apportionments should be made as determined by the Shipper, unless standing requirements under clause 17.10(b) have been proposed by the Shipper.
17.10(e)	If no apportionment mechanism has been proposed by the Shipper or agreed or determined under clause 17.10(c), and it becomes necessary to effect an apportionment of the kind referred to in clause 17.10(b), the apportionment may be effected by the Operator acting as a Reasonable and Prudent Person and must in that case be notified by the Operator to the Shipper as soon as practicable after the end of the relevant Gas Day.	Amendments to 17.10(a) suggested above make 17.10(e) redundant and it should be deleted.
18(d) & 18(e)	At the Shipper's request, the Operator must provide the Shipper with its estimate of the Curtailment to Capacity available to the Shipper on each day of the planned outages specified in the Annual DBNGP Maintenance Schedule.	Any information provided by the Operator following a request under clause 18(d) should not limit the Operator's obligation to give an Initial Notice within the timeframes required by clause 17.6(b)(i)(A) and this should be clarified.
18(g)	Despite clause 18(b), but subject to clauses 18(e) and 18(f), the Operator may determine the timing and extent of any Curtailment necessitated by Major Works in its discretion.	Curtailment for Major Works should also be expressed to be subject to clause 17.6(b)(b)(i)(A), and the obligation to give an Initial Notice not less than 60 days in advance of the Curtailment.

Clause Number	Provision / Issue	Comment
20.4(b)	The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by the Operator or is otherwise a penalty or constitutes penal damages.	See comments above in relation to the statement that the Excess Imbalance Charge, Hourly Peaking Charge and Overrun Rate are genuine pre-estimates of additional costs, losses and damages. Clause 20.4(b) to be deleted unless each of the imbalance, peaking and overrun regimes is returned to the position under the T1 Shipper Contract.
21.4(a) and 21.6(a)	Interest on unpaid amounts and incorrect amounts to be compounded.	Interest should not be compounded.
22.2 and 22.6	Default Notices previously needed to be given by certified mail.	Given their importance, the requirement to give Default Notices by certified mail should be reinstated.
22.9	The right of termination (with the right to recover Direct Damages) are the Shipper's sole and exclusive remedy in respect of a repudiation or disclaimer and the Operator (despite any provision of clause 23) is not liable to the Shipper for any other Indirect Damage arising in respect of a repudiation or disclaimer.	This is not satisfactory and should be deleted.
23.6 and 23.7	Liability for death or injury to Party's personnel or damage to Party's property lies with the Party – the exception for liability for acts or omissions of the other Party has been deleted	The exception is an appropriate allocation of liability and should be reinstated.
25.1	Subject to this clause 25 and to clause 27, neither Party may assign any right, interest or obligation under this Contract (but this clause 25 does not prevent the creation of an interest for the Shipper).	What does "creation of an interest for the Shipper" mean in this context? This should be amended to read "(but this clause 25 does not prevent the Shipper from creating equitable or other interests in relation to its rights under the Contract)".

Clause Number	Provision / Issue	Comment
25.2	Party's may charge their interests under the Contract subject to entering into a tripartite deed in the form published on DBP's website from time to time.	The form of tripartite should be appended to the Contract itself.
25.3(a)(iii)	A Party may assign all or part of its rights and interests under the Contract without obtaining the consent of the other Party where that assignment is to a Related Body Corporate provided that: (i) where the assignor is the Shipper, such assignment does not release the assignor from liability; (ii) where the assignor is the Operator, such assignment does not release the assignor prior to the assignment date.	There is no reason for the treatment of liability following assignment to be different between the Shipper and the Operator. If the Operator as assignor is to be released from liability then it must be by way of a formal deed of assumption or novation which the Shipper has approved or is a party to. This is consistent with the operation of clause 25.4(a).
25.6	The ability of the Shipper to use its Daily Nominations on behalf of other shippers is now subject to the Shipper entering into an Inlet Sales Agreement, under which the Shipper will no doubt pay additional charges.	The provision should be reinstated as previously drafted, or this is a further devaluation of the R1 Service from the T1 Services, which must be reflected in a lower R1 tariff.
26 and 27.12 (in 2005 T1 Contract)	Relinquishment provisions have been deleted.	The provision enabling the Shipper to offer to relinquish Contracted Capacity should be reinstated. Why has it been deleted?
27.1(b)	The clause is subject to clause 25.6.	The reference to clause 25.6 should be deleted.
27.4(a)	If the Shipper desires to transfer all or part of its Contracted Capacity to a Replacement Shipper, the Shipper must, prior to transferring or agreeing to transfer that Contracted Capacity (Tradeable Capacity), make a written request to the Operator for the approval of the Transfer of that Tradeable Capacity (Request for Approval).	In the T1 Contract the Shipper could request that the transfer be for a duration less than or equal to the remaining duration of the Period of Supply. This should be reinstated.

Clause Number	Provision / Issue	Comment
27.11 (in 2005 T1 Contract)	Operator could, if requested by Shipper, agree to provide marketing services for tradeable Capacity. This has been deleted.	This provision does not represent an onerous obligation on Operator and should be reinstated.
28.2(j)	Either Party may disclose Confidential Information which is requested by an operator of a pipeline which is inter-connected with the DBNGP.	The disclosure of Confidential Information must relate to and be necessary for the operation of the interconnected pipeline.
30.1(a)(i)	The Operator's warranty that it has complied with Environmental and Safety laws has been deleted.	This is an important warranty and should be reinstated.
30.4	DBNGP Trustee's warranties have been deleted.	The representations and warranties given by the DBNGP Trustee should be reinstated.
31(b) (in 2005 T1 Contract)	Shipper's right to request information on planned expansions has been deleted.	This right should be reinstated.

ANNEXURE 3

TABLE OF COMMENTS ON SPECIFIC ECONOMIC MATTERS

ANNEXURE 3

Submissions on specific economic matters

Reference in AA, AAI and/or Submissions	Comment or Query
AAI 11.7 and others	DBP argues that all the four models (including the Fama-French Three Factors models) it discusses in relation to the cost of equity do not pick up all the relevant risks in an investment in the DBNGP. On this basis DBP adds to the equity analysts' forecast returns the inflation rate to reflect share price appreciation and 1% for improvement from the global financial crisis. Verve submits that the argument that the models leave out other risks ignore that residual risks are captured through the mechanics in the determination of the parameters in the models themselves. The betas and risk premiums determined for the models include these residual risks. Verve considers DBP's argument is incorrect.
AAI 11.15	DBP argues that gamma should be zero on the basis that overseas investors do not benefit from imputation credits. This appears to Verve to be a simplistic view of how the investment market operates – for example an overseas investor could invest ex-dividend and sell cum-dividend and effectively capture some of the imputation credit benefits. Ascribing a value of zero to gamma is not appropriate.
Submission 8 Paragraph 5.20	DBP argues that in determining whether a model is well accepted, reference to use (or non-use as the case may be) of a model by regulatory bodies should be excluded because it is circular. Given that regulators are challenged in their choice of a model and deliberate on the choice their support for a model (or rejection of the use of a model) should not be dismissed. Deliberation by the regulators and conscious adoption or rejection of any given model breaks the circularity.
Submission 8 Attachment 3 – "A regulatory estimate of Gamma under the National Gas Rules" - paragraph 30	In support of its argument for ascribing a value of zero to gamma, DBP's consultant SFG Consulting states that credit rating agencies do not make adjustments in relation to franking or imputation credits when assessing Australian firms. Verve considers that this argument will only be valid if, in determining how likely a debt could be serviced, the value of any imputation credit is actually an important consideration. Imputation credits may not be directly relevant to the exercise undertaken by the ratings agencies, and therefore the failure to make an adjustment for imputation credits does not of itself imply a gamma of zero.

Reference in AA, AAI and/or Submissions	Comment or Query
Submission 8 Attachment 3 – "A regulatory estimate of Gamma under the National Gas Rules" - paragraph 48	SFG Consulting suggests that imputation credit, like shareholder discounts and a general reduction in personal tax rate, has no impact on the equilibrium cost of capital to a firm. Verve considers however that to the extent that a resident investor is attempting to maximise its return after tax, shares with imputation credit dividends are favoured relative to other investments. By extension, this should lead to contributing to the supply of capital for such firms relative to others and thus lower the equilibrium cost of capital for the firm.
Submission 8 Attachment 1 – "The Required Rate of Return on Equity for a Gas Transmission Pipeline, A Report for DBP from NERA" - Table 1 and boxes on pages 31 and 32	The market betas included by DBP's consultant NERA in relation to the four models set out in Table 1 of the NERA report are specific to the models: 0.51 for Sharpe-Lintner CAPM and Black CAPM and 0.57 for the two versions of Fama-French models. This could perhaps suggest that the relevant parameters may not be transportable between each of the models. By extension, the use of the same zero-beta premium of 6.5% for Black CAPM and Zero-beta Fama-French may therefore not be appropriate. Similarly, the use of the same market risk premium of 6.5% for Sharpe-Lintner CAPM and Fama-French models may also not be appropriate, particularly when the 6.5% market risk premium is taken from another external source (the ERA's decision in relation to Western Power's SWIS) rather than being generated within NERA's own construction of the models.
Submission 8 Attachment 1 – "The Required Rate of Return on Equity for a Gas Transmission Pipeline, A Report for DBP from NERA" - page 12	NERA claims that the Sharpe-Lintner CAPM currently used by ERA and AER underestimates the required return on equity for low-beta stocks. This is based on NERA's own construction of the models. Table 1 of the NERA Report (on page iii) has 0.51 as the market beta for Sharpe-Lintner CAPM, which is quite different to the equity beta of 0.8 (low) to 1.0 (high) in ERA's final decision on the revised Access Arrangement for the Goldfields Gas Pipeline. This would indicate to Verve that NERA and ERA have different constructions of the Sharpe-Lintner CAPM and that NERA's claim as to underestimation of the return required for low-beta stocks is therefore true only within the context of its own model construction.
Submission 8 Attachment 1 – "The Required Rate of Return on Equity for a Gas Transmission Pipeline, A Report for DBP from NERA" - Table 3.4 on page 24	In Table 3.4 in the NERA Report the market risk premiums are stated as negative: -5.68 for US evidence and -1.68 for Australian evidence. These negative market risk premiums seem counterintuitive to Verve.

Reference in AA, AAI and/or Submissions	Comment or Query
Submission 8 Attachment 1 – "The Required Rate of Return on Equity for a Gas Transmission Pipeline, A Report for DBP from NERA" - page 27	In the third paragraph on page 27 NERA argues that its choices of the 6.5% for zero-beta premium and 0% for market risk premium are conservative because they yield lower equity return. This choice does not take away the concern that the theory could be flawed as seen in the counterintuitive negative market risk premiums in Table 3.4 in the NERA Report. Verve submits that the choice as to premia should not be needed if the model is robust.
Submission 8 Attachment 1 – "The Required Rate of Return on Equity for a Gas Transmission Pipeline, A Report for DBP from NERA" - page 32	The first paragraph on page 32 on the value market places on imputation credit is unclear: a. How is the 50 cents determined? b. How do the relative yield of high-to-market to low-to-market portfolios and the relative yield of small firm portfolio to big firm portfolio support the assumption that all imputation credits created are distributed as being conservative?