



SUBMISSION 27: Response to Rio Tinto Submission

PUBLIC

Date Submitted: 11 August 2010

DBNGP (WA) Transmission Pty Limited
ABN 69 081 609 190
Level 6, 12-14 The Esplanade
Perth WA 6000

Contact: Trent Leach, Manager Regulatory and Government Policy
Telephone: 08 9223 4357
Email: trent.leach@dbp.net.au

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1. INTRODUCTION


- 1.1. On 15 April 2010, the Economic Regulation Authority (**ERA**) issued a notice inviting public comment on the proposed revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**).
- 1.2. Interested parties were given to 11 June 2010 to submit their comments. This period was subsequently extended to 9 July 2010.
- 1.3. An Issues Paper was published by the ERA to assist in the public consultation process.
- 1.4. 11 submissions from interested parties were initially released by the ERA (third party submissions) on 31 July 2010.
- 1.5. DBP provided Submission 26 on 6 August responding to general issues and some specific issues raised by the 11 third party submissions
- 1.6. On 3 August 2010, the ERA advised that a late third party submission had been accepted from Rio Tinto (**Rio Tinto Submission**) and some additional questions relating to matters raised in the Rio Tinto Submission.
- 1.7. The ERA has requested that DBP respond to some specific aspects of the Rio Tinto Submission.
- 1.8. In light of the request made by the ERA, DBP assumes that the ERA will exercise its discretion under the NGR and consider this submission notwithstanding the closure of the public consultation period. If this is not correct, DBP requests that the submission be considered by the ERA.

2. RESPONSE TO QUESTIONS RAISED IN PART 5 OF RIO TINTO SUBMISSION

- 2.1. The ERA secretariat has requested that DBP respond to certain questions raised in Part 5, point 58 (a) – (k) of the Rio Tinto Submission.
- 2.2. This section of the submission outlines DBP's response to each question.
- 2.3. As a preliminary issue however, DBP submits that many of the questions posed by Rio Tinto are irrelevant for the purposes of the ERA's assessment of whether:
 - (a) the capital costs should be rolled into the capital base; or
 - (b) the terms and conditions meet the requirements of the NGL and NGR; or
 - (c) any other aspect of the access arrangement meets the requirements of the NGL and NGR.
- 2.4. DBP outlines why each question is irrelevant following each question below.

Question 1

- 2.5. Who will determine whether a shipper's gas is to be hauled through the steel DBNGP of the leased space in the BEP?

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- 2.7. The question is irrelevant for any of the purposes outlined in paragraph 2.3 because of the following:
 - (a) Under the terms and conditions for the reference service, the shipper's right is to deliver gas for receipt at the inlet point known as I1-01 up to the shipper's contracted capacity at that inlet point. DBP has a corresponding obligation to receive all such gas delivered for receipt at the inlet point. At that point, title and risk to the gas passes to DBP until it is delivered to the outlet point/s. How DBP chooses to ensure it is then delivered to the outlet point/s at which the shipper has contracted capacity is a matter for DBP.
 - (b) In fact, the terms and conditions specifically acknowledge that DBP is entitled to use another pipeline for this purpose, subject to certain conditions (see clause 12.4 – which Rio Tinto itself acknowledges – see below).
 - (c) There are already sufficient checks and balances written into the contract terms and conditions to ensure that DBP meets its obligation to receive gas at the inlet point and deliver gas at the outlet point in accordance with the contract terms.
 - (d) DBP submits that if it had not accessed capacity on the BEP under the terms of the BEP Lease, the cost of delivering the reference service and all other services on the pipeline would have been higher because of the higher capital costs associated with any of the other alternative configurations which could have been implemented to ensure the contracted capacity was able to be delivered to shippers.

Question 2

- 2.8. Is DBP purporting to implement the BEP scheme in exercise of its rights under cl. 12.4 of the shipper contract?
- 2.9. Assuming the reference to the “BEP scheme” is a reference to the BEP Lease, the answer to this question is yes.

Question 3

- 2.10. What happens if a shipper’s upstream gas sale agreement specifies only inlet point I1-01?

- 2.12. The question is irrelevant because of the following:

- (a) Under the terms and conditions for the reference service, the shipper’s right is to deliver gas for receipt at the inlet point known as I1-01 up to the shipper’s contracted capacity at that inlet point. DBP has a corresponding obligation to receive all such gas delivered for receipt at the inlet point. At that point, title and risk to the gas passes to DBP until it is delivered to the outlet point/s. How DBP chooses to ensure it is then delivered to the outlet point/s at which the shipper has contracted capacity is a matter for DBP.
- (b) In fact, the terms and conditions specifically acknowledge that DBP is entitled to use another pipeline for this purpose, subject to certain conditions (see clause 12.4 – which Rio Tinto itself acknowledges – see above).
- (c) There are already sufficient checks and balances written into the contract terms and conditions to ensure that DBP meets its obligation to receive gas at the inlet point and deliver gas at the outlet point in accordance with the contract terms. In particular, the significant financial consequences to DBP if it does not deliver or receive gas.
- (d) DBP submits that if it had not accessed capacity on the BEP under the terms of the BEP Lease, the cost of delivering the reference service and all other services on the pipeline would have been higher because of the higher capital costs associated with any of the other alternative configurations which could have been implemented to ensure the contracted capacity was able to be delivered to shippers.

Question 4

- 2.13. What level of reliability has DBP secured in its lease of capacity in the BEP? I.e in what circumstance can Epic Energy curtail or interrupt DBP’s capacity, or otherwise refuse to accept or deliver gas?

- 2.15. It is an irrelevant question for the following reasons:

Given DBP’s obligations to shippers under clauses such as clause 12.4 of the standard shipper contract, DBP has made sure that it will be able to meet its

contractual obligations to shippers. [REDACTED]

- (c) [REDACTED] DBP has, pursuant to the terms and conditions of the reference service access contract, committed to a level of reliability of service.
- (d) There are sufficient checks and balances in the contract terms and conditions to ensure that DBP is incentivised to not breach those reliability obligations.

Question 5

2.16. What levels of operation and maintenance has Epic committed to undertake? What levels of outage are anticipated? Will the same rules apply to the BEP capacity as to steel DBNGP capacity in terms of BEP outages counting towards the 2% curtailment limit for DBNGP shippers?

Question 6

- 2.18. Can DBP confirm that it has secured the same level of access rights for the full gas flow from all relevant asset owners? That is, are there any assets in the chain which might be owned by people other than Epic with whom DBP will also need access agreements? It is no good if Epic has agreed to haul the gas down the BEP but some third party controls a key asset at the BEP-PEP-DBNGP interconnect and declines to grant access.
- 2.19. DBP considers this is an irrelevant question for the same reasons as are outlined in paragraph 2.12 of this submission.

Question 7

- 2.21. Who puts the gas in the BEP and receives it out of the BEP – is it DBP or the shipper? I.e. who is actually dealing with Epic Energy in a legal sense? This then links to the question of whether a shipper whose gas has travelled down the BEP is regarded putting its gas into the DBNGP at I1-01, or at MLV7?
- 2.22. This is also an irrelevant question for the same reasons as are outlined in paragraph 2.12 of this submission. The shipper delivers gas for receipt by DBP at the inlet point at which it has contracted capacity – ie I1-01. It then receives gas delivered by DBP in accordance with the shipper contract at the outlet point at which it has contracted capacity.

Question 8

- 2.23. Is the leased BEP capacity to be fully transparently treated as DBNGP capacity for all purposes under the shipper contract? E.g. is DBP under an obligation (which it will subcontract to Epic, obviously) to maintain the BEP capacity (cl.12.3(a))? Will DBP be able to claim force majeure if Epic negligently fails to properly operate and maintain the capacity? (it should not.)
- 2.24. This is also an irrelevant question, however, this time for the same reasons as are outlined in paragraphs 2.12 and 2.15 of this submission.
- 2.25. [REDACTED]
- 2.26. DBP's obligations under the reference service terms and conditions, such as the obligation to maintain, will cover the BEP Lease capacity.

Question 9

- 2.27. Does DBP guarantee that gas transported down the BEP can be reinjected back into the DBNGP in all the same circumstances when gas would have been accepted into the steel DBNGP at I1-01? If not, then gas travelling through the BEP will be a "second class citizen" compared with gas which has arrived at MLV7 via the steel DBNGP.
- 2.28. Again, DBP submits this is an irrelevant question for the same reasons as are outlined in paragraph 2.12 of this submission.
- 2.29. In addition, the shipper delivers gas at the inlet point at which it has contracted capacity – ie I1-01. From that point, title and risk to the gas passes to DBP (see clause 13 of the terms and conditions for the reference service).

Question 10

- 2.30. Can DBP confirm that there will be no pressure or quality issues preventing gas entering the DBNGP from the BEP? If is cannot, who takes the risk of these issues?
- 2.31. Again, DBP submits this is an irrelevant question for the same reasons as are outlined in paragraph 2.12 of this submission.
- 2.32. In addition, the shipper delivers gas at the inlet point at which it has contracted capacity – ie I1-01. From that point, title and risk to the gas passes to DBP (see clause 13 of the terms and conditions for the reference service).

Question 11

- 2.33. Whose responsibility will it be to manage the meters and meter stations at the points where gas enters the BEP and leaves the BEP to enter the DBNGP? Are appropriate agreements and equipment in place to obtain and share metering data? Do the meter stations meet the requirements of the DBNGP shipper contract and if not what does DBP propose in terms of upgrade or grandfathering?
- 2.34. This is also an irrelevant question, however, this time for the same reasons as are outlined in paragraphs 2.12 and 2.15 of this submission.
- 2.35. [REDACTED]

Question 12

- 2.36. What scrutiny does the ERA propose to undertake of DBP's costs under its lease? Rio submits that these should be scrutinised rigorously as all other costs.
- 2.37. DBP refers the ERA to DBP's points made in earlier submissions and also to the information contained in section 3 of this submission.

3. RESPONSE TO ERA'S BEP LEASE QUESTIONS

3.1. The ERA's email of 3 August 2010 also included a number of the ERA's own questions about the BEP Lease. This section of the submission responds to these questions.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**Question 2**

- 3.11. Please provide further information/and or documents that demonstrate that the capital costs for the BEP meet the requirements of r.79(1)(A) of the NGR.



- 3.13. However, DBP provides the following additional information to demonstrate that the capital expenditure for the BEP Lease 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.
- 3.14. As part of its investment decision for stage 5B expansion, DBP considered a number of options for the configuration of the northern part of the pipeline system enhancement which was required to ensure delivery of the additional firm full haul capacity contracted by shippers. These options were:
- (a) Replication of the DBNGP through looping from inlet point I1-01 (Option 1);
 - (b) Accessing capacity on the BEP – being an underutilised pipeline system that paralleled the first 23km of the DBNGP – and then commencing the looping of the pipeline at the point where the BEP interconnects with the DBNGP – main line valve 7 (Option 2).
 - (c) The addition of additional compression at CS1, to allow for the draw down of additional gas and pressure from I1-01 and then to commence further looping of the pipeline downstream of CS1 (Option 3).
- 3.15. Option 3 was dismissed without detailed engineering analysis being undertaken because of a number of issues which made it apparent that it could not be implemented in a manner which would provide DBP with certainty that its contractual obligations being met. These issues included:
- (a) The installation of additional compression at CS1 would have created significant variability in the pressure and flow rates adjacent to the DomGas Plant. This not only could have caused significant operational risk to the DomGas Plant, it also could have impacted on the reliability of supply to the Burrup Fertilisers outlet point.
 - (b) Additional fuel gas would have been required to be purchased. At the time, there was little certainty that the fuel gas could have been purchased and even if it could, the price would have been significantly higher than what DBP was paying under pre-existing agreements.

- 3.16. In relation to Option 1, this option was dismissed for a number of reasons. Firstly, the cost to replicate that part of the DBNGP that parallels the BEP is likely to be significantly more expensive than the fee DBP has agreed to pay Epic Energy under the BEP Lease.
- 3.17. In particular, the estimated cost to replicate that part of the DBNGP was about \$60 million. This estimate was derived as follows:
- (a) DBP understands that the cost to construct the BEP in 1998/1999 was approximately \$45,000 per inch-km or \$25M in total in 1998/99.
 - (b) At that time the equivalent construction cost for constructing a pipeline in 'normal' terrain was around \$18,000 per inch Km ("rule of thumb cost estimate").
 - (c) The cost of constructing the BEP therefore was about 2.5 times the rule of thumb cost estimate.
 - (d) Based on DBP's experience of constructing the stage 4 and stage 5A expansions, the cost of constructing a pipeline in 'normal' terrain in 2007 was approximately \$1 million per inch kilometre.
 - (e) By applying the BEP factor to the 2007 unit cost estimate, it would be reasonable to assume that the total construction costs would be in the order of \$60 million for looping the DBNGP parallel to the BEP.
- 3.18. The second reason for why this estimate was dismissed was because there were significant risks that heritage and environmental approvals to construct looping in the Burrup Peninsula would have been very difficult to obtain in a time frame that would have enabled commissioning of the looping in time to meet contracted capacity obligations DBP owes to shippers. This would have exposed DBP to risks of damages claims from shippers under the SSCs.
- 3.19. Accordingly, option 2 would be a better alternative if it could be implemented at a cost of less than \$60million.
- 3.20. DBP provided the justification for Option 2 as part of its Historical Expansion Capital Expenditure Justification - Supporting Submission 9. For the sake of completeness, DBP has repeated below these submissions to the extent that they relate to issues of prudence or whether the expenditure is capital expenditure:
- 3.21. In order to ensure DBP is able to meet its stage 5B contractual commitments, it needed to consider an additional length of looping on the loop known as loop 0 than what is stated in the earlier section.
- 3.22. Epic Energy's Burrup Extension Pipeline (BEP) parallels the DBNGP for the first 23km from the North West Shelf DomGas Plant to Mainline Valve No 7 at Cajaput Well before connection to the Pilbara Energy Pipeline which transports gas to Port Headland. The BEP can be readily used as loop of the DBNGP by opening valves at Cajaput Well and on the BEP itself.
- 3.23. Due to the terrain and heritage issues on the Burrup Peninsula, DBP identified that it would be difficult to construct an additional pipeline in that region, despite the rights which DBP has to do so. It therefore considered it to be highly desirable to reach a commercial arrangement with Epic Energy to utilise the unused capacity in the BEP as a loop of the DBNGP.

[REDACTED]

3.25. DBP considered that acquiring this lease over part of the capacity rights in the BEP was a cheaper alternative than the cost of constructing a new loop to provide the same capacity.

3.26. [REDACTED]

3.27. The terms of the proposed arrangement are such that the lease will be classified as a finance lease. The result of that classification will be that, under AASB 117, DBP will have to recognise the lease as an asset in its balance sheet at an amount equal to the value of the leased asset or the present value of the lease payments, whichever is the lower, as determined at the inception of the lease. A liability in that amount must also be recognised (AASB 117 paragraph 20.)

3.28. DBP submits the liability recognised under AASB 117 is conforming capital expenditure.

3.29. DBP notes that the position applicable in Victoria on this issue and that adopted by the AER in its draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers published in May 2004. The application of the Australian Accounting Standards in making determinations on the categorisation of outgoings and liabilities for the purposes of applying the reference tariff principles would encourage a consistent approach by the ERA across its regulated customers.

DBP submits that the BEP lease is an expenditure of a capital nature

3.30. If the proposed investment constitutes the acquisition of a capital nature, it will qualify as a capital expenditure acquired to enable the Service Provider to provide Services, and will therefore be a conforming capital expenditure if it meets the requirements of Rule 79, and the amount of the conforming capital expenditure must be added to the Capital Base. The initial question is therefore whether there is expenditure at all; if so, is it expenditure of a capital nature incurred.

3.31. DBP submits that it is capital expenditure.

3.32. [REDACTED]

What is capital expenditure?

3.33. In commerce, assets are divided into fixed or capital assets, and current or circulating assets. Fixed or capital assets are intended to be held and used in the business, whereas current or circulating assets are intended to be realised in the course of trading. In this case, the asset is the primary right against Epic to capacity in the pipeline, which is not a right DBP will hold for trading. That is, in turning its asset to account, DBP will not confer on its customers primary rights against Epic by assignments of its primary right - but rather it will grant sub-rights enforceable against DBP. Therefore the primary right has the characteristics of a capital expenditure. The application of the accounting standards reinforce this view.

Accounting Standards

3.34. In economic terms, DBP understands that the periodic rental payment would not include a fee for service, but is restricted to an amortisation of the value of the interest in the pipeline. Operating costs are dealt with elsewhere. The liability for a proportionate amount of the capital expenditure and non-routine maintenance costs is consistent with economic ownership of the interest. Ernst & Young reached the conclusion that the transaction would be treated as a finance lease for accounting purposes, resulting in the present value of the periodic rental payments being treated as a capital expense by DBP.

ESC Regulatory Accounting Information Requirements

3.35. In Victoria, the Essential Services Commission has published Gas Industry Guideline No. 17 "Regulatory Accounting Information Requirements", which makes it clear that in information published to the ESC, a licensee's accounting policies must conform with the Australian Accounting Standards wherever possible, and that in the preparation of regulatory accounting statements, substance is to prevail over form wherever they differ.

3.36. On the basis that it is a capital expenditure item it needs to be included in the capital base. The amount to be included in 2010 is \$19.04m (\$2008), being the net present value of the lease fee payable to Epic over the term of the lease (applying a discount rate).

3.37. However, DBP advises that, due to an error in the preparation of the access arrangement proposal, the costs associated with this asset were not included in the capital expenditure to be rolled into the opening capital base.

3.38. This amount will need to be included in the opening capital base in response to the draft decision, and appropriate amendments will need to be made to the proposed access arrangement information revision document.

BEP Capital Cost

3.39. [REDACTED]

3.40. [REDACTED]

3.41. [REDACTED] DBP proposes to update figures provided following the release of the draft decision.

4. RESPONSE TO SERVICE ISSUES RAISED BY RIO TINTO SUBMISSION


4.1. The following table responds to the issues raised by Rio in relation to the proposed reference service and the proposed terms and conditions for the reference service. The table:

- (a) Identifies which of the issues have already been raised by other parties and with respect to which, DBP has responded to in earlier submissions; and
- (b) Includes responses to issues which have not yet been raised by other third parties.

Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
3.1 Replacement of the T1 service with R1		
13(a)	Should not result in shippers being offered a single reference service which is less attractive unless there is a concomitant discount from the full tariff	Submission #3. DBP's response to issues raised for clauses 17.2(c) and 25.6 in the T&Cs Table provided as attachment to Submission 26
13(b)	The curtailment regime should not prejudice either legacy T1 shippers or shippers on the new service	DBP's response to issues raised for clauses 3.2(a) and 3.2(b) in the T&Cs Table provided as attachment to Submission 26
13(c)	Service provider should not be able to interrupt shippers more than in the past	Submission #3 Submission #5
14(a)	R1 service is less attractive to Shippers but the tariffs will effectively be higher	DBP's response to issues raised for clauses 17.2(c) and 25.6 in the T&Cs Table provided as attachment to Submission 26
14(b)	Uncertainty as to how part haul services are priced	Response to specific issues raised by CP Mining Management in submission 26.
14(c)	Replacement of T1 at the T1 tariff with R1 at effectively the same tariff	DBP's response to issues raised for clauses 17.2(c) and 25.6 in the T&Cs Table provided as attachment to Submission 26 Under existing Part haul contracts that are based on the SSC part haul contract, the P1 Tariff is payable and will remain payable by the shipper for the duration of each contract. It will not change if there is no P1 or T1 tariff as a reference tariff in the access arrangement. The P1 Tariff is defined as the


Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		<p>Base T1 Tariff multiplied by a coefficient called the Distance Factor.</p> <p>The Base T1 Tariff is a negotiated tariff. The Distance Factor is the distance between Inlet Point I1-01 (DomGas) and the relevant Outlet Point, divided by 1400 kilometres.</p> <p>It is the case that if the Draft 2010 Access Arrangement were approved and carried through to the period after 31 December 2015, there would be only one reference tariff, being the R1 Tariff, and the R1 Reference Service would be the closest full-haul service to the current T1 Reference Service.</p> <p>In the case of a part haul SSC, the operation of clause 20.5 would result in the R1 Tariff being substituted for the T1 Tariff in the calculation of the P1 Tariff. However, the Distance Factor would still be applied. This would apply until the respective Capacity End Dates for each of those contracts.</p> <p>There would be no ability for DBP to argue that SSC P1 or SSC T1 shippers should pay a premium above the R1 reference tariff on the basis that the T1 service is a premium service to the R1 service.</p>
15	General query as to whether the proposed creation of a new reference service can work given the terms of the T1 contracts	<p>The curtailment plan in the SSCs has always envisaged the existence of other reservation services.</p> <p>DBP is aware of its obligation not to oversell capacity under existing contracts and of its other obligations under existing contracts and therefore would not enter into a subsequent contract if it meant that DBP would not be able to meet its pre-existing contractual obligations. The creation of a R1 Service does not remove these obligations, nor does</p>



Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		it cause the T1 service contracts not to work.
3.2 Removal of part haul and back haul reference services		
17	Access arrangement should continue to provide part haul reference service	Submission 3 Submission 26, in response to the APA submission
18	Access arrangement should continue to provide back haul reference service	Submission 3 Submission 26, in response to the APA submission
19	Allocation of revenue between full haul and part/back haul references services should be scrutinised (assuming they are provided)	This is not proposed by DBP, 
20(a)	Part/Back haul services should allow shippers the right to relocate	Submission #3 DBP's response to issues raised for clauses 8.15 and 8.16 (in the 2005 approved T1 Contract) in the T&Cs Table provided as attachment to Submission 26
20(b)	Full haul charges should not be charged	DBP has not proposed terms and conditions for part haul services as part of the access arrangement proposal.
3.4 Other comments		
22 and 23	Issues with PRAA clause 3, including non-reference services will be made available "subject to the availability of Capacity". Further, this term unclear and risky.	This is not a proposed revision to the access arrangement. DBP response to clauses 3.2(a), 3.2(b) and 3.5 in the T&Cs Table provided as attachment to Submission 26
24	Definition of "Capacity" in PRAA s.15	This is not a proposed revision to the access arrangement.
25	PRAA 3.2(d) - increase of minimum term from 2 to 5 years but there is no reason why this is justified.	Submission#3 There is no evidence of shippers requiring a firm service for less

Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		than 5 years given the downstream requirements of customers. DBP has provided short term interruptible supply services to customers on a negotiated basis but these customers do not represent a significant part of the market.
26	Clarify last sentence of PRAA 3.6(c)	No change is required. The wording is clear that the shipper must also have a contract for a haulage service before it can enter into a park and loan service. It does not require the shipper to enter into a new haulage service if it already has one.
4.2 Headline issues for Rio		
33	Planned maintenance being rolled into "Major Works"	DBP's responses to clauses 1 (3rd row), 17.3(b)(ii) and clause 18(g) in T&Cs Table provided as attachment to Submission 26
34 and 35	Curtailement of planned maintenance	DBP's response to clauses 1 (3rd row), 17.2(c) and 17.3(b)(ii) in T&Cs Table provided as attachment to Submission 26
36 and 37	Planned maintenance can result in more than 2% outages per year	DBP's response to clauses 1 (3rd row) and "5.3(e) and 5.6(b)" in T&Cs Table provided as attachment to Submission 26
38 - 44	Removal of short-term relocation (aggregation)	DBP's response to clause "5.5 and 5.9 (in the 2005 approved T1 Contract)" and "8.15 and 8.16 (in the 2005 approved T1 Contract)" in T&Cs Table provided as attachment to Submission 26
45 - 47	Removal of DBNGP as trustee	DBP's response to clause 30.4 in T&Cs Table provided as attachment to Submission 26
48	Removal of prohibition on over-selling	This clause is not required as there is already adequate protection for all shippers to prevent DBP from over-selling. If DBP enters into a contract which deprives a party under a pre-existing contract of a

Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		<p>contractual right (such as the right to a certain level of reliability of service), DBP will expose itself to being in willful default under the pre-existing contract and the new contract, and therefore will be exposed to direct and indirect damages.</p>
49	Resetting tariffs every 5 years	<p>Rio's submissions on this point are inconsistent with the submissions in paragraph 25. On the one hand, it wants a term of less than 5 years while on the other it wants a tariff path that goes beyond 5 years.</p> <p>DBP is not aware of a contract that provides certainty of the tariff beyond the term of the contract.</p> <p>But even so, if a shipper contracts for a reference service, it must be the reference tariff applicable from time to time. That is the nature of the third party access regime under the NGL</p> <p>It is also wrong for Rio to submit that it requires a predictable tariff path when even the tariff for the T1 and P1 services under the SSC will vary during its term to accommodate actual capital costs for expansions that vary from those budgeted</p> <div data-bbox="968 1532 1445 1637" style="background-color: black; height: 47px; width: 299px;"></div>
4.4 Other matters in the proposed terms and conditions		
51	Inlet point ownership	<p>There is no increased risk to shippers because since 1995, the position has not changed</p> <p>It is wrong to require DBP to take responsibility for inlet stations when it has no contractual relationship with producers but the shipper does.</p>
52	Liability of shipper for out of specification gas	DBP's response to clause 7.9(b) in

Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		T&Cs Table provided as attachment to Submission 26.
53	Pressure at relocated points	No change is required.
60, 61	Pre-commitment by signing access form	<p>DBP submits that there is not issue with the alleged “sudden death” outcome for a reference service access request. It is appropriate in circumstances where there is spare capacity on a pipeline – there needs to be a discipline on shippers to not time waste and this is particularly important where there is spare capacity.</p> <p>In instances where there is no spare capacity, then DBP will not be funding an expansion based on a reference service (on the basis that it will not be economic for the pipeline owner to fund such an expansion).</p>
62	Concerns over the lack of objective parameters and process around the service provider’s discretions in the queuing requirements	<p>See Submission #6</p> 
63, 64	Single queuing approach	A single queue is the only option because any access request for a haulage service will need to be assessed for its impact on all types of capacity services (part haul, back haul and full haul). Clearly if it is a back haul service, the impact on capacity is likely to be significantly less than is the case for a forward haul service request.
65	PRAA 7.1(a) reference to "geographic range"	DBP has not changed the access arrangement in this respect.
70 - 73	Definition of "Carbon Cost"	DBP rejects the proposals in these paragraphs. If they were to be accepted by the ERA, it would be



Para # in Rio Sub	Issue raised by Rio	Comment or Reference to previous DBP response
		<p>inconsistent with the NGR and NGL. DBP should be able to pass through the costs associated with a new tax onto customers. The proposed definition is consistent with this. If DBP is not able to recover costs, it will not be incentivized to grow the asset or become more efficient.</p> <p>For more detailed submissions on this issue, see section 7 of this submission.</p>
74 - 80	Further issues relating to "Carbon Costs"	<p>Carbon Costs referred to in final response in table of submission 26.</p> <p>Further, issues relating to the cost of System Use Gas covered in 5.10(a) and 5.10(c) in T&Cs Table provided as attachment to Submission 26</p> <p>For more detailed submissions on this issue, see section 7 Error! Reference source not found. of this submission.</p>

5. RESPONSE TO ISSUES RAISED BY RIO TINTO SUBMISSION PARAGRAPH 21

5.1. The following table responds to the issues raised in paragraph 21 of the Rio Tinto Submission relating to the perceived implementation problems with the R1 service. The table:

- (a) Identifies which of the issues have already been raised by other parties and with respect to which, DBP has responded to in earlier submissions; and
- (b) Includes responses to issues which have not yet been raised by other third parties.

Clause of T & C	Issue raised by Rio	Comment or Reference to previous DBP response
1	Definition of "B1 Service"	See DBP's first response in T&Cs Table provided as attachment to Submission 26
1	Definition of "Contracted Firm Capacity" should include T1 capacity	See DBP's response to clause 1 (7th response) and "8.15 and 8.16 (in the 2005 approved T1 Contract)" in T&Cs Table provided as attachment to Submission 26
1	Definition of "Overrun Gas" should include T1 capacity	See DBP's reference to "overrun regime" in response to the Verve issue with clause 20.4(b) in T&Cs Table provided as attachment to Submission 26
2.4	Needs to continue to refer to T1, P1 etc	This is not required. The drafting makes it clear that it covers T1, P1 and B1 SSCs
3.2(a)(i)	Inconsistent with Schedule 9	DBP response to cl 3.2(a) in submission 26
30.1(a)(x)	Prohibits DBP from entering into another T1 contract	DBP would be prepared to reconsider re-drafting this clause so that it refers to T1 service instead of R1 service
Sch 9, Part B	Apportionment formula does not work if T1 is excluded	DBP would be prepared to reconsider re-drafting this clause so that it refers to T1 service instead of wherever R1 service is used.

6. RESPONSE TO ISSUES RAISED BY RIO TINTO SUBMISSION PARAGRAPH 50

6.1. The following table responds to the issues raised in paragraph 50 of the Rio Tinto Submission relating to other aspects of the terms and conditions which have not yet been raised. The table:

- (a) Identifies which of the issues have already been raised by other parties and with respect to which, DBP has responded to in earlier submissions; and
- (b) Includes responses to issues which have not yet been raised by other third parties.

Clause of ERA paper	Issue raised by Rio	Comment or Reference to previous DBP response
1	Definition of "Capital Cost of the Expansion"	DBP would be prepared to consider the deletion of this definition.
2.7	Proposed contractual restriction on parties' regulatory conduct	DBP's response to clause 2.7 in T&Cs Table provided as attachment to Submission 26
3.2	Amendments to provisions for curtailment of the service under the Curtailment Plan	DBP's response to clauses 3.2(a) and 3.2(b) in T&Cs Table provided as attachment to Submission 26
5.2(b)	Issue as to drafting of clause 5.2(b)	This is the same drafting as is used in the SSCs. No change is required.
Old 5.5 and 5.9	Reinstatement of old clauses 5.5 and 5.9	DBP response to clause 5.5 and 5.9 (in the 2005 approved T1 contract) in T&Cs Table provided as attachment to Submission 26
5.10	Issues with drafting of clause 5.10	DBP responses to clause 5.10 and 5.10(a) in T&Cs Table provided as attachment to Submission 26
6.6, 6.7, 6.8, 6.10, 6.12(a)	Requests further changes to these clauses	DBP response to clause 6.7(d) and 6.12(a) in T&Cs Table provided as attachment to Submission 26
7.2	Request to keep an objective test	DBP response to clause 7.2 in T&Cs Table provided as attachment to Submission 26
9.5, 10.3	Shift of commercial and operational risk from DBP	DBP responses to clauses 9 and 10 in T&Cs Table provided as attachment to Submission 26
9.6, 9.9	Results in a less efficient system	DBP responses to clauses 9 and 10 in T&Cs Table provided as

Clause of ERA paper	Issue raised by Rio	Comment or Reference to previous DBP response
		attachment to Submission 26
10.3, 10.4, 10.6	Shift of commercial and operational risk from DBP	DBP responses to clauses 9 and 10 in T&Cs Table provided as attachment to Submission 26
11.1(b), 11.2(a), 11.7(c)	Numerous issues with clause 11	This is not a T1 service. DBP submits that based on its experience over the last 5 years, the regime in the shipper contracts do not act as a sufficient incentive to force shippers not to abuse their already favourable overrun rights.
14.2	Removal of final words of clause	DBP responses to clauses 14.2 in T&Cs Table provided as attachment to Submission 26
15.4	Issues raised with additional gas parameters in metering requirements	DBP response to clause 15.4(a)(i)(C) in T&Cs Table provided as attachment to Submission 26
15.16	Charges under clause 6.12 should apply to new expenditure only	If DBP is required to recommission an outlet or inlet station, then a shipper should in those instances, be treated no differently to a shipper seeking access to a new outlet station – therefore a maintenance charge should be payable by the shipper.
17.6	Re-include requirement of "a reasonable period in advance"	The prior drafting created confusion. The amended drafting addresses that confusion.
old 17.8(f)	Reinstate old clause 17.8(f)	DBP's response to clause 17.8(f) in T&Cs Table provided as attachment to Submission 26
17.9	Removal of aggregation	This is not a T1 Service
17.10	Results in reduced shipper operational control	DBP's responses to clauses 17.10(a) and 17.10(e) in T&Cs Table provided as attachment to Submission 26
22.9	Exclusion of indirect damages	DBP's response to clause 22.9 in T&Cs Table provided as attachment to Submission 26

Clause of ERA paper	Issue raised by Rio	Comment or Reference to previous DBP response
25.2	Tripartite Deed	DBP's response to clause 25.2 in T&Cs Table provided as attachment to Submission 26
25.3, 25.7	Details of assignment provisions	DBP's response to clause 25.3(a)(iii) in T&Cs Table provided as attachment to Submission 26
28.2(k)	Clause 28.2(k) is too narrow	The clause as is currently drafted would entitle a shipper to disclose information in the circumstance listed in the Rio Tinto Submission
28.10	Reinstate audit obligations	This clause is not required because the Undertakings themselves contain the obligation to undertake an audit of compliance with the Undertakings.
30.1(a)(i) and 30.4	Deleted of DBP warranties	Responses to clauses 30.1(a)(i) and 30.4 in T&Cs Table provided as attachment to Submission 26
38(b)	Drafting issues with clause 38(b)	This is not required because you can not contract out of the queuing policy
45.2	Non discrimination obligations with respect to information provided to a shipper	<p data-bbox="986 1249 1433 1350">There is only one owner who is also a shipper, not two as alleged by Rio Tinto.</p> <div data-bbox="979 1384 1449 1554" style="background-color: black; width: 100%; height: 100%;"></div> <p data-bbox="979 1585 1442 1821">Even if it were, the non discrimination obligations are not a requirement of the NGL and NGR. Accordingly, it is beyond power for the ERA to insist on the inclusion of this clause in the terms and conditions.</p>

7. RESPONSE TO TARIFF RELATED ISSUES IN RIO TINTO SUBMISSION

- 7.1. The Rio Tinto Submission raises a number of tariff related issues which require a more detailed response than in the above tables. This section of the submission contains this more detailed response for certain tariff related issues

Response to Paragraph 49: Floating tariffs

- 7.2. Paragraph 47 of the submission notes that the reference tariff variation mechanism of the proposed revisions to the DBNGP Access Arrangement operates for a period of only five years. Rio Tinto claims that this is commercially unattractive, exposing shippers to the regulatory risk associated with the periodic resetting of the reference tariff.
- 7.3. This may be the case. However, DBP's proposed tariff variation mechanism is consistent with the requirements of a regulatory regime which provides for tariff redetermination at periodic intervals to ensure, among other things, that tariffs do not diverge far from costs.
- 7.4. Moreover, DBP has no right, and the ERA has no power to consider fixing this aspect of the access arrangement in the manner proposed by Rio Tinto.
- 7.5. A different scheme, in which a fixed base tariff was escalated so that it followed a pre-determined price path over a period longer than the period between reviews established in accordance with Rule 50(1), would lie outside the regulatory regime of the NGR. If Rio Tinto saw commercial benefit in such a scheme, it could approach DBP for a non-reference service.

Response to Paragraphs 68 - 80: carbon pass-through

- 7.6. In paragraph 68, Rio Tinto indicates its concurrence with DBP's inclusion of a carbon cost pass-through in the reference tariff variation mechanism.
- 7.7. However, Rio Tinto is concerned that the definition of "carbon cost" is too broad, capturing a wide range of indirect costs. In Rio Tinto's view, the definition should not be "too expansive"; it should not mean any costs DBP may incur meeting its obligations under any greenhouse gas emissions legislation, to the extent that those obligations are connected to the DBNGP". DBP's broad definition potentially captures "a large range of unquantifiable costs".
- 7.8. If the "breadth" of DBP's definition does no more than potentially capture a large range of unquantifiable costs, it will have little in the way of implications for shippers. Only quantifiable changes in costs can be a "passed through" to effect a change in the reference tariff.
- 7.9. If the "breadth" of the definition allows the capture of all (quantifiable) costs incurred in meeting obligations under any greenhouse gas emissions legislation, then DBP is of the view that its reference tariff variation mechanism is entirely consistent with the general principle of section 24(2) of the NGL. Section 24(2) of the NGL requires that the service provider be provided with a reasonable opportunity to recover at least the efficient costs it incurs in:
- (a) providing reference services; and
 - (b) complying with a regulatory obligation or requirement or making a regulatory payment.
- 7.10. In paragraph 75, Rio Tinto claims that there is no specific allocation of carbon costs to reference tariffs or to shippers, "either in proportion to their contracted capacities, or subject

to the pipeline services they use". This may "result in an unfair allocation of Carbon Costs between the shippers seeking access to DBP's pipeline services", and Rio Tinto calls for the problem to be remedied.

- 7.11. Rio Tinto's concern seems, however, to be misplaced. Carbon costs which can be "passed through" are those for which:
- (a) insufficient provision has already been made in the forecast of operating costs used to determine the reference tariff; and
 - (b) those for which an "over provision" has been made in the forecast of operating costs used to determine the reference tariff.
- 7.12. Operation of the pass through mechanism may increase or decrease the reference tariff, but it does not change the structure of the tariff, or the way in which the tariff is recovered from shippers. To the extent that any tax change variation increases operating costs other than the cost of fuel gas, it is passed through to the capacity reservation component of the tariff and recovered from shippers in proportion to their contracted capacities. To the extent that any tax change variation decreases operating costs (other than the cost of fuel gas), the effect is passed through to the capacity reservation component of the tariff and shippers benefit from the reduction in proportion to their contracted capacities.
- 7.13. In paragraphs 76 to 79 of the submission, Rio Tinto indicates a concern about the potential for DBP's double recovery of carbon costs under the proposed reference tariff variation mechanism. This potential for "double recovery" was also raised in submissions by Alinta and Verve Energy.
- 7.14. DBP notes that the possibility of "double recovery" is precluded by:
- (a) the regulator having full information about the costs which comprise the forecast of operating expenditure used to determine total revenue and the reference tariff;
 - (b) the requirement that DBP provide the regulator with a Tax Change Notice before the reference tariff is varied under the proposed Tax Changes Variation provisions of the DBNGP Access Arrangement; and
 - (c) the requirement that DBP provide the regulator with a Cost Pass Through Event Notice before the reference tariff is varied under the proposed New Cost Pass Through Variation provisions of the DBNGP Access Arrangement.
- 7.15. The proposed Tax Change Notice which DBP must provide to the regulator is to set out, among other things:
- (a) any amounts attributable to the CPRS tax change for which a tariff variation is being proposed and which have been included in the forecast operating expenditure used to determine the (unadjusted) reference tariff;
 - (b) evidence of the amount of the tax change; and
 - (c) information on the financial impact of the tax change.
- 7.16. Similarly, the proposed Cost Pass Through Event Notice which DBP must provide to the regulator is to set out, among other things:
- (a) the substantiation for the Cost Pass Through Event justifying an increase to the operating expenditure that is used to calculate the total revenue for each year of the current access arrangement period;

- (b) evidence as to how the Cost Pass Through Event has increased DBNGP operating expenditure;
- (c) the scope of the financial impact; and
- (d) the calculation of the proposed variation to the reference tariff as a result of the Cost Pass Through Event.

Response to Paragraphs 81 and 82: other escalation

- 7.17. Rio Tinto asks, in paragraph 81 of the submission, why the reference tariff variation mechanism should escalate tariffs at 100% of CPI when the industry standard is 67% of CPI.
- 7.18. DBP notes that, in industries subject to explicit schemes of price regulation (like that imposed by the NGL and the NGR), tariff escalation at 67% of CPI is not the "industry standard". In these industries, the "standard" is a "CPI - X" price cap, which compensates a service provider for the full effect of inflation on its costs.

[REDACTED]

8.

[REDACTED]