



SUBMISSION 57: Non Tariff Matters

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1. INTRODUCTION

- 1.1. On 14 March 2011, the Economic Regulation Authority (**ERA**) made its draft decision (**Draft Decision**) in relation to the full access arrangement proposal filed by DBNGP (WA) Transmission Pty Ltd (**DBP**) on 1 April 2010 (**Original AA Proposal**).
- 1.2. The Draft Decision indicates that the ERA:
 - (a) is not prepared to approve the Original AA Proposal; and
 - (b) requires 109 amendments to the Original AA Proposal in order to make the access arrangement proposal acceptable to the ERA.
- 1.3. The Draft Decision also fixes a period for amendment of the Original AA Proposal (**revision period**), which revision period expired on 18 April 2011.
- 1.4. On 18 April 2011, DBP submitted the following documents pursuant to Rule 60 of the NGR, which make up the amended access arrangement proposal (**Amended AA Proposal**):
 - (a) Amended Proposed Revised Access Arrangement; and
 - (b) Amended Proposed Revised Access Arrangement Information.
- 1.5. Rule 59(5)(c)(iii) of the NGR requires the ERA to allow at least 20 business days from the end of the revision period for submissions to be made (in relation to both the Draft Decision and the Amended AA Proposal). The ERA has advised that interested parties are able to make submissions on the ERA's Draft Decision up until 4:00pm (WST) Friday 20 May 2011.
- 1.6. While DBP has submitted to the ERA that the Amended AA Proposal contains the information that the NGA (which includes the WA National Gas Access Law text (**NGL**) and the National Gas Rules (**NGR**) requires to be included in order to enable it to be approved by the Economic Regulation Authority (**ERA**), on 18 April 2011, DBP also submitted that DBP will also be filing the following supporting submissions that explain and substantiate the amendments and additions in the Amended AA Proposal that have been made to address various matters raised in the Draft Decision:
 - (a) Submission (47) Revised Amended Access Arrangement Proposal (this was filed on 18 April 2011)
 - (b) Submission (48) Overarching
 - (c) Submission (49) Response to Specific Amendments
 - (d) Submission (50) Reference Service
 - (e) Submission (51) Terms & Conditions
 - (f) Submission (52) Opening Capital Base
 - (g) Submission (53) Capital Expenditure
 - (h) Submission (54) Operating Expenditure

- (i) Submission (55) Rate of Return
- (j) Submission (56) Other Tariff Matters
- (k) Submission (57) Non Tariff Matters (being this Submission)

1.7. In this Submission, DBP both substantiates its amendments and additions made in the relation to the following non tariff elements of the Amended AA Proposal and responds to aspects of the reasoning in the Draft Decision relating to these elements:

- (a) Queuing requirements.
- (b) Extensions and expansion requirements.

2. QUEUING REQUIREMENTS

- 2.1. Paragraphs 1596 to 1617 of the Draft Decision outline the reasoning supporting the required amendments dealing with queuing requirements (being amendments 105 and 106).
- 2.2. DBP has issues with the following aspects of the reasoning and as a result, DBP has not included Amendments 105 and 106 in the Amended AA Proposal.

Amendment 105 - Process for dealing with access requests – non refundable deposits

- 2.3. Amendment 105 in the Draft Decision is as follows:

Clause 5.3(d) of the proposed revised access arrangement should be amended to include the option for a user to choose between a non-refundable deposit for the submission of an access request or an executed application form.

- 2.4. The ERA's reasons for requiring Draft Decision amendment 105 are:
- (a) based on Rio Tinto's submission, it is difficult for a large corporation to obtain sign off by board or authorised representative body on an access request form in circumstances where that form in effect is a contingent liability for up to 15 years' capacity reservation charges and the applicant has no idea of when or whether DBP will agree to grant access
 - (b) it will provide DBP with adequate security to maintain its commercial operations; and
 - (c) it will better promote the national gas objective, although it is noted that the ERA does not explain how this will be achieved.
- 2.5. DBP has not made this amendment in its Amended AA Proposal for 3 reasons.
- 2.6. Firstly, DBP can not see how it is difficult for a corporation (regardless of its size) to obtain internal approvals for an access request for a reference service for the following reasons:
- (a) The nature of a reference service is that there is no negotiation required between operator and the prospective shipper. When a prospective shipper makes a request for a reference service, the service provider has no ability to refuse to provide the reference service if there is spare capacity. So, the prospective shipper knows that by lodging an access request for a reference service, it will be accepted by the service provider unless there is no spare capacity. Accordingly, there does not appear to be any practical difference from a commercial perspective whether a prospective shipper signs an access request capable of immediate acceptance before the request is lodged or after the service provider responds to the lodged request.
 - (b) If there is no spare capacity at the time the access request is lodged, the service provider will advise the prospective shipper of this fact (in accordance with the access arrangement and the NGR). However, the prospective shipper has no right to require that the service provider provide the additional capacity which is required to meet the request. As stakeholders are aware, a decision to proceed with funding of an expansion to accommodate an access request takes months

and will require the service provider to work closely with the prospective shipper before making the final investment decision. So, the prospective shipper would have plenty of time to withdraw its access request.

- (c) In a situation where there is no spare capacity to meet an access request (which DBP will have advised the prospective shipper following DBP's receipt of the access request), it is doubtful that a prospective shipper would have to provide, in its accounts, for a contingent liability equal to the amount of the capacity charges for the term of the proposed access request.

2.7. Secondly, in circumstances where there is no capacity, without either a binding access request or an access request capable of immediate acceptance by the service provider, DBP will not be able to obtain funding for expanding the pipeline's capacity to meet an access request. Financiers (including debt and equity financiers) will require this as a precondition to funding. Without this certainty, there could be significant delays in investment in pipelines and this is directly contrary to the national gas objective.

2.8. Thirdly, the provision of a binding access request capable of immediate acceptance would provide DBP with protection against spurious access requests that could be used by an entity as a means of blocking access to spare or developable capacity by bonafide prospective shippers. As has been previously outlined by DBP to the regulator, there has been at least one example in the history of the DBNGP queue of a party lodging an access request in circumstances where the entity had no intention of entering into an access contract. The entity was simply seeking to extract a fee from either the service provider (to remove the request from the queue) or bona fide prospective shippers (to bypass the access request). To structure a queuing requirement in an access arrangement which has this effect is contrary to the national gas objective. On the other hand, DBP's proposal does not have this effect.

Amendment 106 - Creation of an explicit by-pass arrangement in the queue

2.9. Draft Decision amendment 106 is as follows:

Clause 5.4(g) of the proposed revised access arrangement dealing with the processing of access requests in the queue, should be amended to include explicit bypass provisions to allow applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do.

2.10. The ERA has considered submissions received from Rio Tinto (summarised in paragraph 1615 of the Draft Decision) as the reason for requiring this amendment – being that the queuing requirements must not allow for access requests which are not competing for comparable resources to be queued against each other. The ERA is of the view that to allow a provision in the queuing requirements which might prevent potentially small users from accessing and utilising existing capacity (where available) would discourage economically efficient use of the pipeline.

2.11. DBP submits that the ERA has misunderstood the effect of the proposed queuing requirements which already explicitly allow for the access request of a small prospective shipper whose access request can be met without expanding the pipeline, such as the small Pilbara part haul prospective shipper outlined in the example used by Rio Tinto, to bypass the access request of the other (larger) prospective shipper used in Rio Tinto's

example whose access request can only be met by expanding the capacity of the pipeline. The provision leaves this to the discretion of the service provider.

- 2.12. DBP has not, therefore, made the amendment in the Amended AA Proposal.
- 2.13. If, instead, the ERA intended, by making this amendment, to require the AA Proposal to include a provision for the bypass to occur automatically, DBP submits that it would be wrong to include such an amendment in the AA Proposal, for the following reasons.
- 2.14. Firstly, including in the queuing requirements a provision which explicitly contains a by-pass arrangement which allows for applications in the queue for haulage services that do not require expansion of capacity to be processed ahead of applications that do is anticompetitive. Why should one small shipper get preferential treatment over a large shipper. For example, if there are 2 prospective shippers seeking access at or around the same outlet point and they both compete in the same downstream market, then why should the one shipper seeking only a small amount of capacity (that can be delivered from existing capacity) be given a competitive advantage (in terms of both timing and price, particularly if the tariff increases as a result of an expansion). This would put the larger shipper at a competitive disadvantage to the smaller shipper.
- 2.15. Secondly, clause 5.4(g) of the Original AA Proposal explicitly contains a by-pass arrangement which allows for applications in the queue for haulage services that do not require developable capacity to be processed ahead of applications that do but in a way that does not create anti-competitive effects in a downstream market. This is done by requiring that the later access request be materially different to an earlier request in the queue.
- 2.16. Thirdly, clause 5.4(g) in the Original AA Proposal, when combined with DBP's commercial incentives, means that DBP will be encouraged to use the existing pipeline in the most economically efficient way before expanding its capacity.
- 2.17. Finally, clause 5.4(g) has been in place in the DBNGP access arrangement for some time and has never led to a difficulty for shippers or DBP in its ability to process access requests of a varying nature (including the example quoted by Rio Tinto in its submission).
- 2.18. Accordingly, the ERA's amendment, if incorporated, will not be consistent with the national gas objective, whereas DBP's Original AA Proposal will be in so far as the queuing requirements are concerned.

3. EXTENSION & EXPANSION REQUIREMENTS

- 3.1. Paragraphs 1625 to 1635 of the Draft Decision outline the reasoning supporting the required amendments dealing with the extension and expansion requirements (being amendments 107 and 108).
- 3.2. DBP has incorporated Amendment 107 in the Amended AA Proposal. However, DBP has issues with the following aspects of the above reasoning and as a result, DBP has not included Amendment 108 in the Amended AA Proposal.

Amendment 108 - The relevance of clause 7.4(f) of the queuing requirements – Gas Quality Changes

Clause 7.4(f) of the proposed revised access arrangement, extensions and expansion requirements, should be amended by deleting clause 7.4(f). This clause provides that in considering whether to treat the extension or expansion as part of the covered pipeline the operator may have regard to the extent to which capacity is a result of an expansion to be undertaken through the application of the provisions of the Gas Supply (Gas Quality Specification) Act 2009 (WA)

- 3.3. DBP has issues with two aspects of the reasoning associated with Amendment 108.
- 3.4. Firstly, in paragraph 1634 of the Draft Decision the ERA states its view that, without changes to the *Gas Supply (Gas Quality Specifications) Act 2009* or associated Regulations, capital expenditure required in connection with that Act should be allowed to be added to the capital base if such expenditure was consistent with the national gas objective.
- 3.5. DBP submits that changes are not necessary because:
- (a) it would never be consistent with the national gas objective for the ERA to approve a part of an Access Arrangement Proposal which would have the effect of allowing DBP to recover its investment more than once; and
 - (b) the Act as it presently stands already prevents DBP from recovering more than its actual capital and operating costs.
- 3.6. Secondly, the ERA's reasoning as to why clause 7.4(f) of the Original AA Proposal should be deleted is that any works to replace capacity of a covered pipeline due to a broadening of the gas quality specification should be part of the covered pipeline because it is simply replacing capacity of the covered pipeline that would otherwise be lost.
- 3.7. DBP submits that the Amendment 108 is not required for the following reasons:
- (a) Any works undertaken in response to a pipeline impact agreement give rise to an expansion and this expansion should not be treated any differently to any other type of expansion when it comes to determining whether it should be covered.
 - (b) The purpose of clause 7.4(f) is to deal with the following circumstances:
 - (i) If DBP incurs costs in making up lost capacity but which it can not recover from a producer under a pipeline impact agreement by reason of the compensation methodology

prescribed under the Act which do not guarantee that the service provider is to be compensated for all of its capital and operating costs.

- (ii) If DBP recovers all of its costs from a producer under a pipeline impact agreement and wants to include these costs in the capital base (for a reason such as the need to meet a financing covenant), but will do so on the basis that these costs will not be included in the reference tariff calculation
- (iii) If DBP is not able to secure a pipeline impact agreement from a producer because the DBNGP ceases to be a PIA pipeline under the Act