



**DAMPIER TO BUNBURY NATURAL GAS PIPELINE
PROPOSED REVISED ACCESS ARRANGEMENT**

SUBMISSION # 79

**FURTHER AMENDED PROPOSED REVISED ACCESS
ARRANGEMENT**

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1. INTRODUCTION

- 1.1 This is one of a series of submissions being made by Operator in response to the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline ("Final Decision") released by the Economic Regulation Authority ("Regulator") on 2 November 2005 and reprinted, with corrigenda, on 11 November 2005. The Final Decision pertained to proposed revisions to the Access Arrangement ("Proposed Revised Access Arrangement") for the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") submitted by Operator on 21 January 2005.
- 1.2 In this submission Operator:
- (a) summarizes its response to each of the Amendments of the Final Decision;
 - (b) provides further submissions to explain its response in connection with Amendments 16, 17 and 21; and
 - (c) explains consequential amendments made to the Access Arrangement as a consequence of responding to the Final Decision amendments.
- 1.3 Other submissions will shortly be provided to the Regulator explaining Operator's position in relation to the amendments 1, 5 – 9 and 12 – 14 from the Final Decision. A further submission will also be provided responding to particular aspects of the Regulator's reasoning in the Final Decision which is not related to the above amendments.
- 1.4 A clear version of the confidential version of a Further Amended Proposed Revised Access Arrangement, incorporating those Amendments with which Operator is able to comply, is attached as Annexure 1 to this submission. A public version is attached as Annexure 2. A version highlighting changes between the confidential version and the Proposed Revised Access Arrangement filed on 21 January is attached as Annexure 3.

2. RESPONSE TO FINAL DECISION AMENDMENTS

2.1 Operator's response to each of the amendments required by the Final Decision is summarized in the following table.

AMENDMENT	ISSUE	OPERATOR'S RESPONSE
1.	Remove Tf Service and include T1 Service as Reference Service	<ul style="list-style-type: none"> Operator unable to comply Further submissions to be made
2.	Redefine spot capacity service	<ul style="list-style-type: none"> Amendment incorporated in Proposed Access Arrangement
3.	Non Reference Services in the nature of transmission services to be made available subject to availability of capacity	<ul style="list-style-type: none"> Amendment incorporated in Proposed Access Arrangement
4.	Include descriptions of all Non Reference Services	<ul style="list-style-type: none"> Amendment incorporated in Proposed Access Arrangement
5.	Include Part Haul Service as a Reference Service	<ul style="list-style-type: none"> Operator unable to comply Further submissions to be made
6.	Include Back Haul Service as a Reference Service	<ul style="list-style-type: none"> Operator unable to comply Further submissions to be made
7.	<i>Reference tariff inputs</i>	
A	Actual New Facilities Investment on compression facilities related to Stage 3A not to be rolled in to the 1 January 2005 Capital Base	<ul style="list-style-type: none"> Amendment made in deriving Reference Tariff of Proposed Access Arrangement
B	Value of depreciation taken into account in calculating the 1 January 2005 Capital Base to be the value used in determining the Reference Tariff for the period 2000 to 2004 adjusted for inflation	<ul style="list-style-type: none"> Amendment made in deriving Reference Tariff of Proposed Access Arrangement
D	Effect of double counting of fuel gas requirements for Part Haul deliveries to be removed from Non Capital Costs	<ul style="list-style-type: none"> Amendment made in deriving Reference Tariff of Proposed Access Arrangement
8.	Reference Tariffs to be included for Part Haul and Back Services	<ul style="list-style-type: none"> Operator unable to comply Further submissions to be made
9.	Efficiency carryover mechanism (section 7.12(c)) to be amended to reallocate efficiency gains between Operator and users	<ul style="list-style-type: none"> Amendment incorporated in Proposed Access Arrangement
11.	Fixed Principles: subsections 7.6(d) and 7.13(a)(ii) relating to Rate of Return to be deleted	<ul style="list-style-type: none"> Amendment incorporated in Proposed Access Arrangement
12.	Terms and Conditions to mirror SSC terms and conditions for T1 Service	<ul style="list-style-type: none"> Operator unable to comply Further submissions to be made

AMENDMENT	ISSUE	OPERATOR'S RESPONSE
13.	Terms and Conditions for Part Haul and Back Haul Reference Services to mirror SSC terms and conditions for Part Haul and Back Haul Services	<ul style="list-style-type: none"> • Operator unable to comply • Further submissions to be made
14.	Operating specification for gas quality set out in Amendment 14 to be incorporated in Access Arrangement	<ul style="list-style-type: none"> • Operator unable to comply • Further submissions to be made
15.	Capacity Management Policy to indicate a contract carriage pipeline	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement
16.	Trading Policy to be substantially the same as clauses 14.1-14.9, 25.3, 25.4 of SSC	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement • Further submissions made
17.	Queuing Policy: subsection 5.4(f) to be amended to suspend time limits for negotiation in event of dispute	<ul style="list-style-type: none"> • Amendment substantially incorporated in Proposed Access Arrangement • Further submissions made
18.	Revisions Submission Date to be 1 April 2010	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement
19.	Section 2.7 reference to revision pursuant to decision of Gas Review Board to be deleted	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement
20.	Sections 4.1 and 4.2 to indicate commencement of revisions from date of approval by Regulator	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement
21.	Aspects of sections 5.1 and 5.3 relating to costs that may be recovered from party making an Access Request to be removed	<ul style="list-style-type: none"> • Amendment incorporated in Proposed Access Arrangement • Additional changes made • Further submissions made

3. EXPLANATION OF RESPONSE TO AMENDMENT 16

3.1 In the Final Decision, the Regulator justifies Amendment 16 and the required amendments to the Trading Policy by the following reasoning:

- (a) The Trading Policy is not limited to users with contracts for a reference service, but should apply to the pipeline and to services generally and it is unclear in the proposed revised access arrangement as to whether it is so limited
- (b) It is requiring the total replacement of the terms and conditions of the proposed revised access arrangement (some of which are incorporated by cross reference in the Trading Policy of the proposed revised access arrangement) with a set of terms and conditions based on a Standard Shipper Contract.

3.2 While Operator has incorporated into the Trading Policy the clauses from the Standard Shipper Contract that are referred to in the Amendment 16, it has done so by cross referencing for the following reasons:

- (a) The Trading Policy makes it clear that these provisions apply to all services generally and the pipeline;
- (b) There are other provisions relating to assignment in the terms and conditions of service for a reference service that are not included in the Trading Policy and it is less confusing for prospective shippers to understand the full context of what their rights and obligations might be from one document (ie the terms and conditions) rather than from two documents (ie the terms and conditions and the Trading Policy).
- (c) To do otherwise would lead to a repetition of the wording (in both the Trading Policy and the access contract terms and conditions) relating to trading and this could lead to potential confusion between parties.

4. EXPLANATION OF RESPONSE TO AMENDMENT 17

4.1 If Amendment 17 is implemented, the Queuing Policy will operate relevantly as follows:

- If an Access Request which requires negotiation or is subject to a condition is in the queue, and the prospective user (or Operator) seeks arbitration under section 6 of the Code, that Access Request may remain in the queue until such time as the arbitration comes to an end.
- For such time as an Access Request remains in the queue, Operator is restricted from dealing with Access Requests that are later in time (section 5.4(g) of the Proposed Revised Access Arrangement).
- Section 6 of the Code contains some timeframes for an arbitration, including that a final decision from the Arbitrator must be provided within three months of requiring parties to make submissions under section 6.4 of the Code. However, there is no time limit on the starting time for this three month period (ie, there is no time specified by which the Arbitrator must require parties to make submissions under section 6.4) and the Arbitrator has an unlimited right to extend this three month period by notice (section 6.11).
- Accordingly, it is possible that if an Arbitration were to continue for an extended (or even indefinite) time, Operator would not be able to deal with Access Requests that are later in time. This could result in a situation in which Operator is restricted from selling services notwithstanding demand for them.
- Further, it is possible that a prospective user facing the expiry of a time period under section 5.4(f) of the PRAA may seek arbitration in order to preserve its position in the queue.

4.2 While the Arbitrator has the power to terminate an arbitration if the notification of the dispute was vexatious, the subject matter of the dispute is trivial, misconceived or lacking in substance or the party who notified the dispute has not engaged in negotiations in good faith (section 6.6 of the Code) and Operator also will have rights under clause 5.3(e)(viii) of the Proposed Revised Access Arrangement in respect of requests that are not bona fide, Operator considers that if the Amendment 17 is incorporated, the Access Arrangement will not provide clear guidance as to when the period of suspension is to come to an end. In particular:

- (a) it is not clear whether the suspension will extend until the expiration of the 14 day period under section 6.24(b) of the Code; and
- (b) it does not specify whether the suspension will extend for a period during which there is an appeal to the GRB or a Court of an Arbitrator's decision.

4.3 Operator has made further revisions to address these issues.

4.4 In order to impose discipline on parties to negotiate in a bona fide manner without unnecessary recourse to arbitration, a 44 day time limit has been outlined for the suspension of the time periods referred to in section 5.1(f). This time limit enables an arbitrator to conduct any arbitration that is necessary within the statutory 30 day period, and for prospective shippers to assess potential grounds of appeal in the ensuing 14 day period. If, at the end of this 44 day period, a party considers the need to refer an arbitrator's award to a review body there is an ability for an affected party to obtain an injunction to prevent the lifting of the suspension of the time periods in sections 5.1(f)(i) and (ii).

- 4.5 It should be noted that while the Regulator states that this is a substantive revision to the Queuing Policy (paragraph 626), clause 5.3(f) of the existing Access Arrangement has an equivalent effect, albeit with different time periods applying.

5. EXPLANATION OF RESPONSE TO AMENDMENT 21

- 5.1 Amendment 21 in the Final Decision differs from Amendment 22 from the Draft Decision in that Final Decision Amendment 21 now requires only the removal of those aspects of clauses 5.1 to 5.3 of the Proposed Access Arrangement relating to the imposition of costs that may be recovered in relation to Access Requests.
- 5.2 Operator considers that there are a number of problems in complying with this amendment:
- 5.3 Firstly, in the Draft Decision, the Regulator concluded that clauses 5.1 to 5.3 were not a required element of an Access Arrangement under sections 3.1 to 3.20 of the Code and indeed, the Code contemplates the substance of the matters dealt with by clauses 5.1 to 5.3 (ie the process by which Access Requests are made) as being described not as an element of an Access Arrangement but rather as part of the Information to be made available under section 5 of the Code. The Regulator has not provided any reasons for altering its position on these clauses from the Draft Decision to the Final Decision and so, if the Regulator's interpretation of the relevant provisions of the Code is to be accepted, clauses 5.1 to 5.3 of the Proposed Revised Access Arrangement are not provisions that should be included in an access arrangement and moreover are not provisions that the Regulator can insist Operator include.
- 5.4 Secondly, if it is accepted that these provisions are ones that should be included in the Access Arrangement, it is not clear exactly which "costs" are referred to in Amendment 21. Sections 5.1 to 5.3 of the PRAA refer to three types of costs:
- (a) those relating to costs of investigations prior to an Access Request being made (clauses 5.1(b); 5.1(c)) (**Investigation Costs**). These costs relate to the period prior to the lodgment of an Access Request, and are therefore are not "in relation to an Access Request";
 - (b) those relating to the Prescribed Fee (clauses 5.2(d), (e) and (f)). It is not clear whether Amendment 21 applies to this fee. The Prescribed Fee is not mentioned expressly by the Regulator in its reasoning. Also, the Authority discusses submissions from Western Power, but none of those refers to the Prescribed Fee not forming part of Queuing Policy (indeed, Western Power refers to the Prescribed Fee being too high and to the requirement of an additional fee upon an amendment of an Access Request as being unreasonable (see para 665), indicating an acceptance of its existence); and
 - (c) those relating to costs relating to investigations after receipt of an Access Request (clause 5.3(e)(ii)). It is unclear whether Amendment 21 requires an amendment of clause 5.3(e)(ii).
- 5.5 In respect of Investigation Costs, Clause 5.1 is designed to ensure efficiency in decision-making as to whether an Access Request should be made in a given case and to ensure that Access Requests, when received, are in a form which allows them to be managed efficiently by Operator.
- 5.6 In respect of the Prescribed Fee, its removal will remove a discipline from prospective users. In addition, the Prescribed Fee is seen as an important feature of the Queuing Policy aimed at ensuring requests are not made lightly or speculatively and that a prospective user does not make multiple requests in respect of the one service need. A proliferation of Access Requests would impact on the practical workability of the Queuing Policy.

- 5.7 Given the above issues, and the lack of reasoning provided by the Regulator in the Final Decision to support Final Decision Amendment 21, Operator considers that it is more appropriate to remove clauses 5.1 to 5.3 of the proposed revised access arrangement in their entirety. Operator considers this, nonetheless, complies with the Amendment.

6. CONSEQUENTIAL AMENDMENTS

- 6.1 As a result of Operator's response to the amendments in the Final Decision, the following consequential amendments have been made to the Proposed Revised Access Arrangement.
- 6.2 Section 4 of the Access Arrangement has been amended to delete the reference to section 2.38 given that a Final Decision has already been issued by the Regulator. Accordingly, the revisions to the Access Arrangement are to have effect on the date the approval under section 2.41 or 2.42 of the Code becomes effective (as the case may be).
- 6.3 Section 5 of the Access Arrangement has been amended to delete all references to the Information Package.
- 6.4 Section 7.1(b) of the Access Arrangement has been amended for the reasons outlined in Submission 78.
- 6.5 Section 7.2(c) has been amended to correct an error. The Rate of Return is applied to the real Capital Base, and not the nominal Capital Base.
- 6.6 Section 7.5 has been amended to reflect the fact that there is no requirement to adjust the Capital Base for inflation given that the calculations are made in real terms.
- 6.7 Section 7.12 has been amended to accord with Amendment 9, and paragraphs 439 and 440 of the Final Decision.
- 6.8 A new section 7.13(a)(iii) has been inserted in the Proposed Revised Access Arrangement for the reasons outlined in Submission 78.

7. CONFIDENTIALITY

- 7.1 This submission is provided to the Regulator to assist it in its assessment of the Proposed Revised Access Arrangement.
- 7.2 Information contained Annexures 1 and 3 of this submission is confidential and commercially sensitive.
- 7.3 The submission is provided to the Regulator on the following conditions:
- (a) it is to be used by the Regulator solely for the purposes of assessing the proposed revisions to the DBNGP Access Arrangement;
 - (b) the confidential information referred to in paragraph 7.2 is not to be disclosed to any person other than the following without Operator's prior written approval:
 - (i) those staff of the Regulator who are involved in assisting the Regulator in its assessment process; and
 - (ii) those of the Regulator's consultants who are involved in assisting the Regulator in its assessment process and who have appropriate confidentiality undertakings in place.

Annexure 1:

**FURTHER AMENDED PROPOSED REVISED ACCESS ARRANGEMENT –
CLEAR CONFIDENTIAL VERSION**

See Attached

Annexure 2:

**FURTHER AMENDED PROPOSED REVISED ACCESS ARRANGEMENT –
CLEAR PUBLIC VERSION**

See Attached

Annexure 3:

**FURTHER AMENDED PROPOSED REVISED ACCESS ARRANGEMENT –
MARK UP CONFIDENTIAL VERSION**

See Attached