

Decision on Revisions to the Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline to include a Speculative Investment Fund

As submitted by DBNGP (WA) Transmission Pty Limited

21 November 2006

Economic Regulation Authority



WESTERN AUSTRALIA

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DECISION

1. On 7 November 2006, DBNGP (WA) Transmission Pty Limited (**DBP**) submitted proposed revisions to the revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (**Revised Access Arrangement**) to the Economic Regulation Authority (**Authority**) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (**Code**).
2. The proposed revisions were not required to be submitted by the Revised Access Arrangement. The proposed revisions were limited to the creation of a Speculative Investment Fund, minor consequential amendments and the correction of minor errors in the Revised Access Arrangement.
3. Section 2.33 of the Code states:
 - 2.33 The Relevant Regulator may dispense with the requirement to produce Access Arrangement Information in respect of proposed revisions and may approve or not approve the proposed revisions without consultation with, or receiving submissions from, persons other than the Service Provider if:
 - (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
 - (b) the Relevant Regulator considers that the revisions proposed are not material and will not result in changes to Reference Tariffs or to the Services that are Reference Services.
4. The Authority has considered the revisions proposed by DBP. In the Authority's view, the proposed revisions satisfy the requirements of section 2.33(a) and 2.33(b) of the Code. Accordingly, the Authority has resolved to dispense with the requirement to produce Access Arrangement Information in relation to the proposed revisions and to consider the revisions without consultation with, or receiving submissions from, persons other than DBP.
5. The Authority is satisfied that the proposed revisions comply with the Code.
6. The Authority's decision is to approve the proposed revisions.
7. The approved revisions will commence on 6 December 2006.

REASONS

Introduction

8. The DBNGP consists of the gas pipeline system as described by Western Australian pipeline licences WA: PL 40, WA: PL 41 and WA: PL 47. The pipeline system comprises 1845.3 km of high-pressure gas pipeline (including laterals) linking gas suppliers in the north west of Western Australia with markets principally in the south west of the State.
9. The DBNGP is operated by DBP and is owned by DBNGP (WA) Nominees Pty Ltd as trustee for the DBNGP WA Pipeline Trust.

10. An Access Arrangement for the DBNGP was approved by the then Western Australian Independent Gas Pipelines Access Regulator on 30 December 2003 (**Access Arrangement**). The functions of the Western Australian Independent Gas Pipelines Access Regulator passed to the Authority on its establishment on 1 January 2004.
11. On 21 January 2005, DBP submitted proposed revisions to the Access Arrangement. On 15 December 2005, the Authority issued a Further Final Decision to not approve DBP's proposed revisions and to draft and approve its own revisions to the Access Arrangement. The Revised Access Arrangement became effective on 30 December 2005.

Materiality of proposed revisions

12. On 7 November 2006, DBP submitted proposed revisions to the Revised Access Arrangement to the Authority for approval under the Code.
13. The proposed revisions were limited to the creation of a Speculative Investment Fund, minor consequential amendments and the correction of minor errors in the Revised Access Arrangement.
14. Section 2.33 of the Code states:
 - 2.33 The Relevant Regulator may dispense with the requirement to produce Access Arrangement Information in respect of proposed revisions and may approve or not approve the proposed revisions without consultation with, or receiving submissions from, persons other than the Service Provider if:
 - (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
 - (b) the Relevant Regulator considers that the revisions proposed are not material and will not result in changes to Reference Tariffs or to the Services that are Reference Services.
15. The revisions have been proposed by DBP other than as required by the Access Arrangement (which requires revisions by 1 April 2010 being the Revisions Submission Date in the Revised Access Arrangement).
16. The Authority considers that the revisions are not material in that they simply replicate, to a substantial degree, the provisions in the Code concerning the Speculative Investment Fund or correct minor errors in the Revised Access Arrangement. Further, the creation of such a fund (or the correction of errors) will have no effect on Reference Tariffs during the Access Arrangement Period, nor will it change the Reference Services under the Revised Access Arrangement.
17. Therefore, in the Authority's view, the revisions satisfy the requirements of section 2.33(a) and 2.33(b) of the Code. Accordingly, the Authority has resolved to dispense with the requirement to produce Access Arrangement Information in relation to the proposed revisions and to consider the proposed revisions without consultation with, or receiving submissions from, persons other than DBP.

Proposed revisions

18. The Authority has grouped DBP's proposed revisions into three categories for ease of reference. The first group of revisions establish the Speculative Investment

Fund. The second group are revisions which are intended to correct minor errors in the Revised Access Arrangement and the final group are minor consequential revisions as a result of the establishment of the Speculative Investment Fund.

Creation of a Speculative Investment Fund

19. DBP has proposed amending the Reference Tariff Policy to create a Speculative Investment Fund.

20. Section 8.19 of the Code states:

The Reference Tariff Policy may also provide that an amount in respect of the balance of the New Facilities Investment may subsequently be added to the Capital Base if at any time the type or volume of Services provided using the New Facility change such that any part of the Speculative Investment Fund (as defined below) would then satisfy the requirements of section 8.16(a). The amount of the **Speculative Investment Fund** at any time is equal to:

- (a) the difference between the New Facilities Investment and the Recoverable Portion, less any amount the Service Provider notifies the Relevant Regulator (at the time the expenditure is incurred) that it has elected to recover through a Surcharge under section 8.25 (**Speculative Investment**); plus
- (b) an annual increase in that amount calculated on a compounded basis at a rate of return approved by the Relevant Regulator which rate of return may, but need not, be different from the rate of return implied in the Reference Tariff; less
- (c) any part of the Speculative Investment Fund previously added to the Capital Base under this section 8.19.

21. The “recoverable portion” is defined in section 8.18 of the Code which states:

A Reference Tariff Policy may, at the discretion of the Service Provider, state that the Service Provider will undertake New Facilities Investment that does not satisfy the requirements of section 8.16(a). If the Service Provider incurs such New Facilities Investment, the Capital Base may be increased by that part of the New Facilities Investment which does satisfy section 8.16(a) (the **Recoverable Portion**).

22. DBP has proposed amendments to clause 7 of the Revised Access Arrangement as follows:

23. Clause 7.3(e) is amended as follows:

- (e) The Capital Base at the commencement of the next Access Arrangement Period is to be determined as:
 - (i) the capital base at 1 January 2005 ~~the start of the Access Arrangement Period~~; plus
 - (ii) subject to section 8.16(b) and sections 8.20 to 8.22 of the Code, the amount of New Facilities Investment or Recoverable Portion (whichever is relevant) during the period from 1 January 2005 until 31 December 2010; plus which was forecast to occur within the Access Arrangement Period determined in accordance with sections 8.20 and 8.21, and subject to adjustment in accordance with section 8.22; less
 - (iii) all or part of Speculative Investment that, in accordance with the provisions of the Access Arrangement, may be added to the Capital Base; less

- (iv) the sum of the values of depreciation determined for the purpose of determining the Reference Tariffs for the period from 1 January 2005 until 31 December 2010,

subject to adjustment for inflation so that the Cost of Service methodology can be applied on a real basis (under which the Capital Base, Depreciation and all costs and revenues are expressed in constant prices and a real Rate of Return is allowed).

24. Clause 7.4 is also amended to include the following subclauses:

- (c) Operator may undertake New Facilities Investment that does not satisfy the requirements of the Code. If Operator does undertake such New Facilities Investment and the New Facilities are part of the Covered Pipeline pursuant to the Extensions/Expansions Policy, then the Capital Base may be increased by the Recoverable Portion.
- (d) The difference between the New Facilities Investment and the Recoverable Portion, less any amount that the Operator notifies the Regulator (at the time expenditure is incurred) is to be recovered through a Surcharge, is to be Speculative Investment.
- (e) Subject to clauses 7.4(f) and (g), where clause 7.4(d) applies, the following amounts may be added to the Capital Base:
- (i) all or part of an amount which is Speculative Investment; and
- (ii) an amount that equals the annual increase in the Speculative Investment referred to in clause 7.4(e)(i) calculated on a compounded basis at a rate of return approved by the Regulator (which rate of return may, but need not, be different from the rate of return implied in the Reference Tariff).
- (f) Clause 7.4(e) will only apply in relation to Speculative Investment where the type and volume of Services provided using the New Facilities change such that any part of the Speculative Investment, plus the annual increase as determined in accordance with clause 7.4(e)(ii), would then satisfy the requirements of the Code for addition to the Capital Base.
- (g) Clause 7.4(e) will not apply if it relates to Speculative Investment which has been previously added to the Capital Base.

25. Finally, in relation to the Speculative Investment Fund, DBP has also added the following Code compliant definitions to the Revised Access Arrangement.

Recoverable Portion means that part of New Facilities Investment that meets the requirements of the Code for addition to the Capital Base.

Speculative Investment has the meaning given in clause 7.4(d).

26. The Authority has considered DBP's proposed revisions concerning the creation of the Speculative Investment Fund and is satisfied that they comply with section 8.18 and 8.19 of the Code.
27. Further, the Authority is satisfied that, as the proposed revisions substantially replicate the provisions of the Code, the proposed revisions are consistent with sections 8 and 2.24 of the Code.

Correcting or clarifying aspects of the Revised Access Arrangement

28. DBP has substituted the words "1 January 2005 until 31 December 2010" in place of "Access Arrangement Period" in clause 7.1(a)(ii) (General Principles), clause

7.2(b) (Calculation of Total Revenue), clause 7.3(d) and (e) (Calculation of Capital Base), clause 7.4(a) and (b) (Forecast New Facilities Investment), clause 7.5 (Return on the Capital Base) and clauses 7.12(c) and (e) (Use of Incentive Mechanism). The changes are outlined below.

7.1 General Principles

- (a) Operator's Reference Tariff has been designed to recover from Shippers using the Reference Service, that portion of the Total Revenue that reflects:

...

- (ii) a share of those costs (including capital costs) which are attributable to provision of the Reference Service jointly with Services provided to other shippers with contractual rights existing prior to the commencement of this Access Arrangement Period 1 January 2005 and other Services which Operator considers are reasonably foreseeable to be offered during the Access Arrangement Period period from 1 January 2005 until 31 December 2010.

7.2 Calculation of Total Revenue

...

- (b) The Total Revenue has been calculated as the sum over the Access Arrangement Period period from 1 January 2005 until 31 December 2010 of the costs in each year of ~~the Access Arrangement Period~~ that period that comprise the sum in each year of:
 - (i) return on the Capital Base;
 - (ii) depreciation; and
 - (iii) non capital costs.

7.3 Calculation of Capital Base

....

- (d) Consistent with the Cost of Service methodology of section 8.4 of the Code, the Reference Tariff for the Access Arrangement Period is determined on the basis of New Facilities Investment that is forecast to occur during the period within the Access Arrangement Period from 1 January 2005 until 31 December 2010, and which is expected to pass the requirements of section 8.16(a) when the investment is forecast to occur.
- (e) The Capital Base at the commencement of the next Access Arrangement Period is to be determined as:
 - (i) the capital base ~~at~~ at 1 January 2005 ~~the start of the Access Arrangement Period~~; plus
 - ...
 - (iv) the sum of the values of depreciation determined for the purpose of determining the Reference Tariffs for the Access Arrangement Period period from 1 January 2005 until 2010,

subject to adjustment for inflation so that the Cost of Service methodology can be applied on a real basis (under which the

Capital Base, Depreciation and all costs and revenues are expressed in constant prices and a real Rate of Return is allowed).

7.4 Forecast New Facilities Investment

- (a) New Facilities Investment forecast to occur during the period during the Access Arrangement Period from 1 January 2005 until 31 December 2010 is reasonably expected to pass the requirements of section 8.16 of the Code when that New Facilities Investment is forecast to occur.
- (b) For the purposes of calculating the Capital Base at the commencement of the next Access Arrangement Period in accordance with section 8.9 of the Code, the New Facilities Investment will consist only of actual New Facilities Investment that has occurred during the period during this Access Arrangement Period from 1 January 2005 until 31 December 2010.

7.5 Return on the Capital Base

The return on the Capital Base has been determined by multiplying the Capital Base at ~~the beginning of 1 January 2005, and at the beginning of each subsequent year until 1 January 2010, each year of this Access Arrangement Period~~ by the Rate of Return.

- 29. Clause 7.12(c) of the Revised Access Arrangement has been amended by deleting the references to "Access Arrangement Period" and replacing them with "period from 1 January 2005 until 31 December 2010".
- 30. The introduction to clause 7.12(e) is amended as follows:
 - (e) For the purposes of this clause 7.12, non-capital costs for any year of the period from 1 January 2005 until 31 December 2010 ~~Access Arrangement Period~~ do not include the costs associated with:
- 31. The phrase "Access Arrangement Period" is defined in the Access Arrangement to mean "the date that the Regulator approves the Access Arrangement until the start of the Revisions Commencement Date". This is a different time period from 1 January 2005 until 31 December 2010.
- 32. The Authority is accepting the revision as it reflects the Authority's decision in its Final Decision and Further Final Decision and Final Approval. That is, the Authority's modelling and calculations were based on the period 1 January 2005 to 31 December 2010.
- 33. Accordingly, the Authority is satisfied that the proposed revisions merely correct the Revised Access Arrangement and do not alter the Authority's decision in the Final Decision and Further Final Decision.
- 34. DBP has also deleted the superfluous clause numbers "6.2A" and "6.2B" in the heading of clauses 6.3 and 6.4 respectively. These references appeared next to clause 6.3 and 6.4 and were an automatic numbering error in the Revised Access Arrangement.

Consequential revisions

35. As a result of the proposed revisions, clause 1.2 (Introduction) and clause 4 (Commencement) have been revised to reflect the revision of the Revised Access Arrangement. Clause 1.2 is revised as follows:

It comprises:

- (a) revisions to the access arrangement drafted and approved on 15 December 2005 ~~(corrected by corrigenda included in a notice dated 12 January 2004)~~ by the Regulator ("Original First Revised Access Arrangement")~~;~~ and
- (b) revisions to the access arrangement submitted by the Service Provider and approved on DATE¹ by the Regulator which amend the Reference Tariff Policy to provide for a Speculative Investment Fund in accordance with section 8.19 of the Code.

36. The Authority is satisfied that this clause accurately describes the process of revision of the Revised Access Arrangement.

37. Clause 4 is revised as follows:

The revisions referred to in clause 1.2(a) to the Access Arrangement commence on 30 December 2005, and the revisions referred to in clause 1.2(b) commence on the date specified by the Regulator in accordance with section 2.48 of the Code.

38. The Authority is satisfied that this clause accurately describes the commencement of the minor revisions of the Revised Access Arrangement.

¹ The date will be the date of issue of the Authority's Decision- 21 November 2006.