



SUBMISSION 50: Reference Service

Date Submitted: 20 May 2011

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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 expires 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 (being this Submission)
 - (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

1.7. In this Submission, DBP:

- (a) responds to a number of matters relating to the issue of reference services that were raised in paragraphs 35 to 98 of the Draft Decision; and
- (b) substantiates its amendments and additions made in the elements of the Amended AA Proposal relating to pipeline services.

2. WHAT IS THE RELVANT 'MARKET' TO BE CONSIDERED IN DETERMINING WHAT PIPELINE SERVICES SHOULD BE REFERENCE SERVICES

Are services provided under pre-existing contracts evidence of a market and what should be a reference service?

- 2.1. In paragraphs 56 to 61 of the Draft Decision, the ERA concluded that the types of services that are the subject of pre-existing contracts with users for the duration of the access arrangement period ("Pre-existing Contracts") are evidence of both the relevant market for pipeline services and what service/s should be a reference service:
 - (a) The ERA concluded, at paragraph 56, that pre-existing contracts between DBP and users are an important indicator of the relevant market for pipeline services.....they are indicative of the demand for services.
 - (b) The ERA went on to say at paragraph 61 that the standard shipper contract remains a relevant consideration in determining the nature of services that are likely to be sought by a significant part of the market over the course of the access arrangement period
- 2.2. DBP submits that Pre-existing Contracts are not, of themselves, evidence of:
 - (a) what is the relevant market for pipeline services; and
 - (b) whether the pipeline services to be provided under these Pre-existing Contracts are services likely to be sought by a significant part of the market.
- 2.3. This is so for a number of reasons.
- 2.4. The purpose of an access arrangement is to assist users or prospective users seeking access to capacity during the access arrangement period that is not secured under a Pre-existing Contract. Those who already have access, have a negotiated outcome that either has no regard to the access arrangement or was secured under a prior access arrangement. Those users who already have contracted for a pipeline service under a Pre-existing Contract are not seeking access to a pipeline service under that Pre-existing Contract. Rather they are exercising their rights to use a pipeline service under the contract.
- 2.5. These users may seek access to additional capacity during the access arrangement period. But the fact that the users have Pre-existing Contracts in place for a certain service does not mean that the capacity that is the subject of the Pre-existing Contracts (and the service/s to be provided using this capacity) can be considered part of the market.
- 2.6. The relevant consideration is the type of pipeline service being sought (whether it is a user seeking access under an additional contract to its Pre-existing Contract or a prospective user) during the access arrangement period. They may seek access using the same pipeline service that is the subject of a Pre-existing Contract but they may not.
- 2.7. Whether prospective users are likely to seek access to a service must be assessed by factors other than whether there is a particular service already being accessed – that is an irrelevant consideration.
- 2.8. The issue of whether the T1 service under the Standard Shipper Contract, or the reference service called a T1 Reference Service under the existing access arrangement,

should be a reference service under the proposed access arrangement will depend on whether there is a likelihood of this service being sought by a significant part of the market, not solely by reference to whether there are existing access contracts in place for these pipeline services.

- 2.9. The services provided under Pre-existing Contracts are only relevant therefore, if there is evidence that there is a legitimate likelihood that the service/s provided under the Pre-Existing Contracts is/are to be sought for new access contracts during the proposed access arrangement period.

Is only spare capacity to be considered in determining what services should be a reference service?

- 2.10. In paragraph 60 of the Draft Decision, the ERA concluded that in deciding:

- (a) what is the market for pipeline services; and
- (b) whether a particular pipeline service is likely to be sought by a significant part of the market,

it is irrelevant as to whether there is a lack of spare capacity on a pipeline to provide a particular type of pipeline service.

- 2.11. DBP does not agree with this conclusion. For a service to be sought, it must also be able to be provided by the service provider. To the extent that there is no pipeline capacity on the covered pipeline that could be accessed using a particular service for the duration of the access arrangement period (because the capacity required to provide that service is fully contracted and because either any expansion will not form part of the covered pipeline or, if it will form part of the covered pipeline, there is no likelihood of the pipeline's capacity being expanded during the access arrangement period), the particular service is not able to be provided.
- 2.12. Pre-existing Contracts are only a relevant consideration in assessing the market for pipeline services and why pipeline service/s should be a reference service if there is a likelihood that that any service provided under these Pre-existing Contracts is likely to be sought (whether it be by a user or a prospective user) for any spare capacity or additional capacity to be developed during the access arrangement period where this capacity will form part of the covered pipeline.
- 2.13. While DBP has proposed in its Amended AA Proposal revisions to the extensions and expansions requirements that all expansions and extensions of the DBNGP will form part of the covered pipeline, it has not proposed any expansions and extensions of the covered pipeline during the access arrangement period. Even if it did, it is not compelled to fund the cost of constructing the extension or expansion.

2.14. Accordingly, where a pipeline service cannot be provided using the existing capacity of the covered pipeline (because there is insufficient uncontracted capacity), the ERA must consider whether a pipeline's capacity is likely to be expanded or extended during the access arrangement period in assessing whether the relevant pipeline service should be a reference service.

Should the ERA be entitled to disregard what the service provider proposes to offer as a reference service in determining what service/s should be reference services?

2.15. The ERA also concluded, at paragraph 57, that Rule 101 is concerned with pipeline services that are likely to be sought by users of the pipeline, rather than what pipeline services the service provider proposes to offer via the pipeline.

2.16. DBP submits that it is wrong for the ERA to have disregarded what pipeline services the service provider proposes to offer via the pipeline in the ERA's assessment of what is the relevant reference service/s to be included in the access arrangement.

2.17. If the ERA's position were to be correct, it would mean that the service provider would be limited to being a reactive developer of services – having to wait until a significant part of the market decides that it would like to change from the type of service the regulator has approved to a revised service.

2.18. This is not what happens in a competitive market. In competitive markets, both considerations are relevant to understanding what services are likely to be sought by a significant part of the market.

2.19. A good example of this is the mobile phone telephony market, where each mobile telephony service provider is continually seeking to differentiate itself from its competitors by offering service offerings which are:

- (a) different to those offered by its competitors;
- (b) proactive in nature so as to attempt to change the usage habits of its customers and also to attract new customers in order to grow the overall market; and
- (c) responsive to what are the general demands and trends of the overall market.

2.20. In a similar way, the service provider for a pipeline would wish to grow its business and assists in the efficient operation and use of natural gas services.

2.21. To disregard what a service provider considers should be offered to and accessed by a significant part of the market and only have regard to what shippers would like to access assumes that only prospective users have the ability to determine what is the most efficient operation and use of natural gas services.

2.22. The DBNGP is such an example. There are many shippers who have a dominant position in the downstream markets in which they operate. These shippers are strongly incentivised to defer the introduction of services, as reference services, which either:

- (a) facilitate the entry into those markets of competitors who may take away market share; or
- (b) remove certain features of an existing pipeline service which are not features that would be desired by all participants in the market.

- 2.23. Examples of the features of the existing T1 SSC service and the T1 reference service that do not lead to the efficient operation and use of natural gas services are peaking and imbalance rights and also the methodology for determining contractible T1 capacity.
- 2.24. The R1 Service was an attempt to create a service that removed the various features of the T1 service that were not (in DBP's view) likely to be sought or used by prospective shippers who were seeking to enter into downstream markets in competition with incumbent shippers.
- 2.25. DBP submits that the R1 Service not only leads to a more efficient use of pipeline capacity, it is this form of pipeline service that is most likely to encourage competition and growth leading to efficient operation and use of natural gas services consistent with the natural gas objective.
- 2.26. This does not exclude DBP from offering prospective users additional features to the R1 Service that might exist in the T1 Service. In fact, the description of pipeline services in the Amended AA Proposal makes it clear that these features would be offered.

The risks involved in providing the T1 Service are not reflected in the rate of return allowed in the Draft Decision, whereas the risks involved in providing the R1 service are better reflected

- 2.27. Another important submission is that DBP is of the view that the risks involved in providing the T1 Service are not reflected in the rate of return allowed by the ERA in the Draft Decision.
- 2.28. The rate of return allowed by the ERA is consistent with the risks involved in providing steady state services on a pipeline. The R1 Service, while it would offer more efficient utilisation of the pipeline's capacity, would do it in a way where the tariff level allowed by the ERA better reflected the risks that were accommodated in the rate of return than compared with were a T1 service to be provided. Examples of the risks DBP is exposed to under the T1 service but which are not prevalent under a R1 Service include:
- (a) The excess imbalance rights of a shipper
 - (b) The limited ability of the service provider to practically stop a shipper's utilisation of imbalance rights, even if the operational integrity of the pipeline were to be questioned – this is based on DBP's experience over the last 5 years
 - (c) The excessive peaking rights of a shipper
 - (d) Again, the limited ability of the service provider to practically stop a shipper's utilisation of these peaking rights.
 - (e) There being no real financial disincentive to stop the shipper abusing these peaking and imbalance rights
 - (f) The aggregation rights
- 2.29. If the ERA is therefore going to insist on the inclusion of the T1 Service as a reference service with associated terms and conditions, the ERA will need to reflect the added risk to DBP in providing these services in the allowed rate of return.
- 2.30. As stated above, the inclusion of the R1 Service as a reference service would not mean that DBP would not offer the additional features to prospective shippers. However, as any

additional feature increases the risk of providing the pipeline service, DBP would be compensated through a tariff level that reflected the additional risks involved in providing those additional features.

- 2.31. If the approved reference service is inclusive of a comprehensive suit of additional services that the prospective user or existing shipper looking to access capacity may or may not require, the rate of return must be commensurate with the risks in providing the reference service.

3. WHAT SERVICE/S SHOULD BE OFFERED AS A REFERENCE SERVICE/S

3.1. As outlined above, a pipeline service can only be a reference service if:

- (a) it is likely to be sought by a significant part of the market; and
- (b) the ERA considers it should be included in the access arrangement as a reference service.

3.2. "Pipeline Services" is defined in the NGL to mean:

- (a) "a service provided by means of a pipeline, including—
 - (i) a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
 - (ii) a service providing for, or facilitating, the interconnection of pipelines; and
- (b) a service ancillary to the provision of a service referred to in paragraph (a) but does not include the production, sale or purchase of natural gas or processable gas."

3.3. It is possible to interpret the term "pipeline service" in either a broad or a narrow sense.

3.4. The broad view is that the meaning of "pipeline service" is the general nature of the service, that is, a firm haulage service or an interruptible haulage service, without regard to the differences in the terms and conditions on which the service is provided. According to this view, DBP's "R1 Service", the negotiated "T1SSC Service" and the "T1 Reference Service" are merely different forms of "firm haulage services" and it is immaterial that the proposed R1 Service differs, even in significant respects, from the existing T1 Reference Service.

3.5. This broad interpretation of "pipeline service" is supported by the breadth of the definition of "pipeline service" in the NGL. That definition makes no mention of the need to examine the particular terms and conditions of any service. Indeed, the examples it gives of "pipeline services" that fall within its meaning are services described in a general way, such as "firm haulage, interruptible haulage, spot haulage and backhaul". These examples are very general - suggesting that a "pipeline service" should be characterised by its general nature rather than its specific terms and conditions.

3.6. The narrow view of the term "Service" is that "service" means exactly the same service taking into account all the terms and conditions that comprise, define and limit the scope of the service. Applying this view, to the extent that there are any significant difference between the terms and conditions of each T1 SSC negotiated service or the reference service in the current access arrangement called the T1 Reference Service, they represent different services.

3.7. If the narrow view were to prevail, then to the extent that there are significant differences between the terms and conditions of the services offered under the T1 SSC contracts (which is the case), each T1 SSC contract would give rise to a different pipeline service. This could mean that there are many pipeline services in existence, and to make each one of them a reference service would not be practical.

- 3.8. The better view is that the broad interpretation is correct. When Rule 101 refers to a “pipeline service” likely to be sought by a significant part of the market, it is referring to the general character of the service - such as “firm” or “interruptible” in the broad senses those terms are understood in the industry. This being the case, all DBP needs to assess is whether a significant part of the market is likely to seek a pipeline service that provides for continuous capacity except in the case of extraordinary or exceptional circumstances, ie. a firm forward haul service.
- 3.9. DBP does not need to assess – for the purposes of determining what should be a reference service - the more specific question of what precise terms and conditions the market may seek for a firm or priority service. According to this view, the only relevance of the T1 SSC Service is that it indicates users to date have shown strong demand for a form of “firm service” (ie, T1 SSC).
- 3.10. However, bearing in mind the fact that the T1 SSC service contract was the only service able to be offered since 2004 and that DBP is constrained by its non discrimination obligations as to the services it can contract for, there is less weight to be given to the submission that the T1 SSC Service is a service likely to be sought by a significant part of the market. It may suggest that DBP should itself be offering a species of “firm service” (which it is) but it does not mean that DBP must offer a firm forward haul service on precisely the same basis and terms and conditions as either the T1 Reference Service or the T1 SSC Service.

Is the R1 Service likely to be sought by a significant part of the market?

- 3.11. The R1 service is a firm service that is similar to the T1 service under the SSCs and under the T1 reference service under the existing access arrangement in that it offers:
- a forward haul firm transportation service;
 - a forward haul interruptible transportation service;
 - an authorised overrun service; and
 - certain behavioural rights.
- 3.12. The R1 service is a service that would lead to a better utilisation of pipeline capacity (for the reasons outlined in section 2 of this submission).
- 3.13. Given the submissions above, the R1 service is a firm forward haul service and there is nothing to suggest that it would not likely be sought by a significant part of the market during the proposed Access Arrangement Period.

Is the existing T1 reference service likely to be sought by a significant part of the market?

- 3.14. Contrary to paragraph 43 of the Draft Decision, DBP did not make submissions to the effect that existing demand for existing reference services shouldn't be taken into account. Rather, it made submissions that there was no demand for existing reference services (and nor was there expected to be any demand during the proposed access arrangement period).
- 3.15. Given this, there is no clear evidence to support the retention of the existing T1 Reference Service as a reference service.

Are any of the existing negotiated T1, P1 and B1 SSC services likely to be sought by a significant part of the market?

- 3.16. To the extent that the capacity secured by negotiated T1, B1 and P1 Services should be considered as a market for services, DBP argued in submissions made prior to the Draft Decision that in respect of any service provided under Pre-existing Contracts entered into and which are to last for as long as the AA period, the services under these contracts are not, of themselves, evidence of a service likely to be sought. This is discussed in more detail in section 2 of this Submission.
- 3.17. DBP's submission 7 did not make submissions that indicated that the existing AA's reference services are likely to continue to be sought by a significant part of the market. What DBP submitted in submission 7 was the usage forecasts of the existing contracted capacity (under the T1SSC service, the P1 SSC service, the B1SSC services, the AEC service and other firm full haul type services). It can not therefore be said that the forecasts DBP put forward are therefore reflective of the demand for the 3 services that the ERA has proposed as reference services or for any other services that have similar names.
- 3.18. Assuming that the R1 Service and the T1 SSC Service are different Services, the test which the ERA will need to apply to determine whether DBP is required to offer a T1 equivalent Reference Service is whether the T1 Service is likely to be sought by a significant part of the market.
- 3.19. In this regard:
- It is wrong to say that existing T1 SSC shippers "seek" a T1-equivalent Reference Service simply to enable them to determine the tariff for the T1 SSC services from 1 January 2016. The word "seeks" in the context of the NGR means that the user is actually seeking a service in the sense of wanting to apply for, be granted and **utilise** the service under the Access Arrangement.
 - None of the shippers with rights to a T1 SSC Service under Pre-existing Contracts seek a T1 Reference Service in this sense. Instead, they seek the **inclusion** of a T1 equivalent Reference Service in the Access Arrangement (as distinct from wanting to apply for, be granted and utilise a new T1 service) so that they can have an easy point of reference for determining the tariff to apply to the existing service being provided (and which it will continue to utilise) under Pre-existing Contracts.
 - In fact DBP is not aware that any of the existing shippers has any expectation of a need for additional capacity during the proposed Access Arrangement Period.
 - To the extent that existing shippers have referred to the possibility that they might want to contract for further capacity and if so they would want further T1 capacity or that they like the T1 Service, these are irrelevant considerations unless these shippers can show (which they have not) that they are likely to seek additional capacity within the Access Arrangement Period and that the volume of additional capacity is likely to constitute a significant part of the market.
- 3.20. No shipper has demonstrated this, which is confirmed by the fact that:
- (a) DBP has not forecast any increase in demand for any pipeline service
 - (b) No shipper has lodged an access request for a T1 Service (either the SSC service or the reference service).