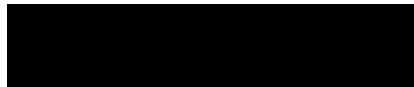




## **SUBMISSION 51: Terms & Conditions**



**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 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 (being this Submission)
  - (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 addresses Amendments #16 to #104 in the Draft Decision (relating to terms and conditions of the reference service) and the ERA's reasoning associated with each of these amendments.
- 1.8. DBP also proposes a number of minor amendments to the terms and conditions that are consequential to the reasons for the Draft Decision.
- 1.9. As a final introductory matter, DBP has issues with the manner in which the ERA has both exercised its discretion in relation to its assessment of the terms and conditions of the Access Arrangement and undertaken its task under the NGL and NGR of assessing the whether the terms and conditions comply with or are consistent with the relevant requirements of the NGL and NGR. This matter is addressed in more detail in submission 48 filed on or about the date of this submission. Throughout this submission, DBP draws the ERA's attention to this point where relevant.

## 2. RESPONSE TO AMENDMENTS RELATING TO TERMS AND CONDITIONS OF THE REFERENCE SERVICE – AMENDMENTS 16 TO 104

- 2.1. This section responds to each of amendments 16 to 104. In responding to each amendment, DBP:
- (a) sets out the required amendment;
  - (b) summarises the ERA's key reasons for the amendment; and
  - (c) outlines DBP's response to these reasons, including a statement as to DBP's position in respect of each amendment which is consistent with and supports the further amended R1 Terms and Conditions submitted on 18 April 2011.

### Required Amendment 16

*The term "B1 Service", under clause 1 of the proposed revised terms and conditions should be amended to be the B1 Service described as a reference service in the access arrangement, amended as required by this draft decision.*

### ERA's key reasons for the amendment

- 2.2. The Authority suggests that the reference to "Back Haul Service" in DBP's proposed interpretation is not defined and the proposed replacement wording does not make sense.
- 2.3. As the Authority requires amendments to the proposed revised access arrangement to include a full haul T1 Service, the Authority is of the view that the definition of the B1 Service should be the same as, or cross-reference, the description of the B1 service (as a reference service) in the access arrangement.

### DBP's Response

- 2.4. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the definition for the term "B1 Service" (correcting a minor typographical error) should be amended as follows:

*"B1 Service means a Back Haul service which, under the terms of a contract for the Back Haul service, is specified to rank equally to a R1 Service in the Curtailment Plan."*

- 2.5. The ERA's definition would mean that any existing B1 service that is not a reference service would not be covered and so, for the purposes of the curtailment plan, there would be an inconsistency between the order of priority under the reference service contracts (which would provide for the negotiated B1 SSC service to be just an "other reserved service") and the order of priority under the existing SSCs (which provide for the B1 SSC service to have priority and the B1 reference service to be just an "other reserved service").

### Required Amendment 17

*The term "Capital Cost of the Expansion" and the definition of this term should be deleted from clause 1 of the proposed revised terms and conditions.*

- 2.6. DBP accepts Amendment 17

#### **Required Amendment 18**

*Clause 1 of the proposed revised terms and conditions should be amended to include the term “Contracted Firm Capacity” with the same meaning as the term “Contracted Firm Capacity” in the existing terms and conditions.*

#### **ERA’s key reasons for the amendment**

- 2.7. The Authority’s decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include the T1 Service, P1 Service and B1 Service as reference services, the Authority believes that the term “Contracted Firm Capacity” should have the same meaning as the term “Contracted Firm Capacity” in the existing terms and conditions.

#### **DBP’s Response**

- 2.8. Consistent with DBP’s response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the term “Contracted Firm Capacity” should be amended as per the proposed terms and conditions.

#### **Required Amendment 19**

*The term “Major Works”, under clause 1 of the proposed revised terms and conditions should be amended to exclude planned maintenance.*

#### **ERA’s key reasons for the amendment**

- 2.9. The Authority considers that DBP has not provided adequate justification for the proposed change, which in the Authority’s view is likely to result in an additional exemption from the operator being liable for curtailing more than two per cent each year under clause 17.3 of the proposed terms and conditions. The Authority is of the view that the most appropriate and practical way of addressing the concerns raised by Alinta and Verve will be to reject the proposed change to exclude planned maintenance in the definition of the term “Major Works”.

#### **DBP’s Response**

- 2.10. DBP accepts Amendment 19.

#### **Required Amendment 20**

*Clause 1 of the proposed revised terms and conditions should be amended to include the term “Overrun Gas” with the same meaning as the term “Overrun Gas” in the existing terms and conditions for the T1 Service.*

#### **ERA’s key reasons for the amendment**

- 2.11. The Authority’s decision is to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service. The Authority is of the view that the proposed revised terms and conditions for the T1 Service should be substantially the same as the existing terms and conditions for the T1 Service. Accordingly, the Authority considers that the term “Overrun Gas” should have the same meaning as the term “Overrun Gas” in the existing 2005 to 2010 terms and conditions.

## DBP's Response

- 2.12. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the definition of "Overrun Gas" should be amended as per the proposed R1 Terms and Conditions.

### Required Amendment 21

*Clause 1 of the proposed revised terms and conditions should be amended to include the term "Accurate" which means "with respect to any measurement of a quantity of Gas, that the measurement is inaccurate to a lesser extent than the relevant limit prescribed by clause 15.13(a)(i) or 15.13(a)(ii), as the case may be".*

- 2.13. DBP accepts Amendment 21.

### Required Amendment 22

*The terms "Related Body Corporate" and "Related Entity", under clause 1 of the proposed revised terms and conditions should be amended so as they apply to the definitions in the Corporations Act as defined from time-to-time, and not as limited to a point in time.*

## ERA's key reasons for the amendment

- 2.14. The Authority has considered submissions and agrees that limiting the definition to a point in time is potentially more difficult to administer for the shipper and DBP and the standard convention in relation to definitions in contracts is to refer to legislation as being from time-to-time.

## DBP's Response

- 2.15. The proposed amendment to the definitions of "Related Body Corporate" and "Related Entity" provides certainty to both DBP and the shipper by referring to a fixed definition of those terms as they appear in the Corporations Act as at the date of execution. The linking of the definitions to the Corporations Act, as amended from time to time, exposes each party to levels of risk which are uncertain as the legislature may change in a manner not contemplated by the parties at the time of execution. Certain rights of each party, such as assignment, may be adversely impacted as a result.

### Required Amendment 23

*The term "Retail Market Rules", under clause 1 of the proposed revised terms and conditions should be amended to mean "the retail market rules that govern the retail gas market in Western Australia".*

- 2.16. DBP accepts Amendment 23.

### Required Amendment 24

*Clause 1 of the proposed revised terms and conditions should be amended to have the same meaning as the term "T1 Service" in the existing terms and conditions.*

## ERA's key reasons for the amendment

- 2.17. Consistent with the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that the proposed revised

terms and conditions for the T1 Service should be substantially the same as the existing terms and conditions for the T1 Service. Accordingly, the Authority believes that the term “T1 Service” should be maintained in clause 1 of the proposed revised terms and conditions with the same definition as the existing terms and conditions, which includes both a T1 Service being provided under the Standard Shipper Contract and a T1 Service being provided under the terms of the access arrangement.

#### **DBP’s Response**

- 2.18. Consistent with DBP’s response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the definition of “T1 Service” should be amended as per its proposal summarised in paragraph 1035 of the Draft Decision and outlined in DBP’s Submission 26.

#### **Required Amendment 25**

*The term “Tp Service”, under clause 1 of the proposed revised terms and conditions should be amended to identify the characteristics of the service.*

#### **ERA’s key reasons for the amendment**

- 2.19. The Authority has considered the submissions and considers that clause 48(1)(b) of the NGR requires that the definition of the Tp service should be, but is currently not sufficient to identify the characteristics of the service.

#### **DBP’s Response**

- 2.20. DBP maintains that the definitions of “Other Reserved Service” and “Firm Service” are necessary definitions and are sufficiently certain to encompass the term “Tp Service”.
- 2.21. The only reason to refer to other services in the R1 Terms and Conditions is for the purposes of the curtailment plan. There is therefore no statutory requirement to include a more detailed definition of Tp than the definition set out in the proposed R1 Terms and Conditions.

#### **Required Amendment 26**

*Clause 2.5(e) should be amended to make reference to “Part 2 of Chapter 4 of the National Gas Access (Western Australia) Law” instead of “section 4 of National Third Party Access Rules for Natural Gas Pipeline Systems”.*

- 2.22. DBP accepts Amendment 26.

#### **Required Amendment 27**

*The proposed revised terms and conditions should be amended to delete clause 2.6.*

#### **ERA’s key reasons for the amendment**

- 2.23. The Authority is of the view that it is not appropriate for gas deliveries made by or on behalf of users to be deemed to be of a certain amount irrespective of actual quantities just so as to enable DBP to meet its contractual obligations in respect of a lease of capacity in the BEP entered into in full knowledge of the existing access arrangement.



## DBP's Response

2.24. DBP accepts Amendment 27.

### Required Amendment 28

*Clause 2.7 of the proposed revised terms and conditions, in relation to the access regime and the regulator's requirements as laws should be amended to insert a full stop after 'Contract' in the 3rd line and delete the balance of the clause.*

## ERA's key reasons for the amendment

2.25. The Authority is of the view that the second part of the proposed new clause dealing with amendments to an access arrangement is unnecessary. The Authority agrees with Rio Tinto that it is inappropriate to deal with parties' rights to seek amendments to other access arrangements in the DBNGP's terms and conditions. It is difficult to see how such a provision would be enforced and, in any event, any proposed amendment to an access arrangement will be dealt with under Divisions 10 or 11 of the NGR.

## DBP's Response

2.26. DBP accepts Amendment 28.

### Required Amendment 29

*Clause 3.2 of the proposed revised terms and conditions should be amended to be materially the same as clause 2 of the current terms and conditions for the T1 Service.*

## ERA's key reasons for the amendment

2.27. The Authority considers the changes to clause 3.2 in the context of the requirement under this Draft Decision for the proposed revised access arrangement to include the T1 Service, P1 Service and B1 Service as reference services. Without the change in the reference service to the R1 Service, the changes proposed by DBP to clause 3.2 are unnecessary. Further, the Authority accepts the submission of Rio Tinto in relation to the proposed deletion of clauses 3.2(h)(iii) and 3.2(h)(iv). Accordingly, the Authority requires that clause 3.2 of the proposed revised terms and conditions be amended to be materially the same as clause 2 of the current terms and conditions.

## DBP's Response

2.28. DBP presumes that the ERA's required amendment 29 contains a typographical error, and the ERA intends to refer to clause 3.2 (and not clause 2) of the current terms and conditions for the T1 Service. In any event, consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the clause 3.2 should be amended (including that clauses 3.2(h)(iii) and 3.2(h)(iv) be deleted) and for the reasons outlined in DBP's Submissions 3 and 26.

### Required Amendment 30

*Clause 4.1(a) of proposed revised terms and conditions in relation to the capacity start date, should be amended to include the words "as the Requested Reference Service Start Date" at the end of the sentence.*

*The definition of "Access Request Form" in clause 1 of the proposed revised terms and conditions be amended to read "means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended".*

2.29. DBP accepts Amendment 30.

### Required Amendment 31

*Clause 4.2(b) of the proposed revised terms and conditions, in relation to the term (duration of the contract), should be amended to include the words "as the Requested Reference Service End Date" at the end of the sentence.*

2.30. DBP accepts Amendment 31.

### Required Amendment 32

*Clause 4.5 of the proposed revised terms and conditions, in relation to a shipper exercising an option to renew its contract, should be amended to state "not later than 12 months before the capacity end date, a shipper may give written notice to the operator that it wishes to exercise an option".*

### ERA's key reasons for the amendment

2.31. The Authority is of the view that a period of 12 months is reasonable to require a shipper to give notice that it wishes to exercise an option.

### DBP's Response

2.32. In accordance with DBP's Submission 26, the 30 month period was intended to prevent DBP being in a position where, half way through an expansion, it finds that a shipper does not want to take the requested expansion capacity.

2.33. DBP was prepared to offer options to renew only on the basis of a 30 month advanced option renewal date. If the ERA insists on a 12 month option period, DBP must remove the options in the Reference Service because retaining the options with a significantly reduced option period could potentially expose DBP to unacceptable risks with respect to the funding of any additional expansion.

### Required Amendment 33

*Clause 5.2(b) should be amended to require DBP to deliver gas at the nominated outlet points in the quantities required by the shipper at each point, up to a maximum across all points of the shipper's contracted capacity.*

### ERA's key reasons for the amendment

2.34. The Authority agrees with Rio Tinto submission that its suggested amendment is reasonable and improves the certainty and clarity of the provision without materially adversely changing the rights of either the operator or user.

## DBP's Response

2.35. DBP accepts Amendment 33.

### Required Amendment 34

- *Clause 5.3(e) of the proposed revised terms and conditions should be deleted. Clause 17.2(c) of the existing terms and conditions should be reinstated.*
- *Clause 5.3(g) of the proposed revised terms and conditions, in relation to being able to refuse to receive gas, should be amended to read "to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day; if the Operator considers as a Reasonable and Prudent Person that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity".*

### ERA's key reasons for the amendment

- 2.36. The Authority also agrees with the submissions made by Alinta and Verve Energy to the effect that it is more appropriate for the issue to be dealt with by way of curtailment than a refusal to receive gas.
- 2.37. Additionally the Authority suggests that the words "the following" should be deleted and the words "all of the shipper's contracted capacity" should replace them.

## DBP's Response

- 2.38. DBP submits that "a refusal to deliver" and "curtailment" are two separate concepts which require separate treatment in the R1 Terms and Conditions.
- 2.39. A Curtailment is a means for managing the integrity of the pipeline when there is an upset condition caused by unavailability of pipeline equipment resulting from either planned or unplanned outages. It covers events such as equipment failure, maintenance, construction activities, damage to pipeline equipment by third parties, etc.
- 2.40. A Refusal to Receive and/or Deliver Gas is a means for managing the integrity of the pipeline when a shipper is in breach of its obligations and that breach results in an upset condition. This covers the failure of the shipper to deliver gas into the pipeline, such as during a producer outage, persistent exceedance of imbalance limits, continuing to take gas in excess of the quantities allowed by a Curtailment Notice, etc.
- 2.41. DBP accepts the second part of Amendment 34 relating to clause 5.3(g).

### Required Amendment 35

*Clause 5.4(c) of the proposed revised terms and conditions should be amended to include the words "as soon as practicable" in relation to DBP providing a shipper with its reasons to refuse to receive gas.*

2.42. DBP accepts Amendment 35.

### Required Amendment 36

*Clause 5 of the proposed revised terms and conditions should be amended to include terms and conditions that are materially the same as clause 5.5 and 5.9 of the existing terms and conditions for the T1 Service, which relates to refusal to receive or deliver gas as a curtailment in limited circumstances.*

### ERA's key reasons for the amendment

- 2.43. Aligned with the Authority's requirement for the access arrangement to include the T1 Service as a reference service, the Authority is of the view that clauses 5.5 and 5.9 of the existing terms and conditions establish reasonable protections for the shipper and these clauses should therefore be retained.

### DBP's Response

- 2.44. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 5 should be amended as per the proposed terms and conditions. In addition, DBP considers that the Authority is applying inconsistent reasoning by allowing the change to clause 5.5 (which means DBP is not liable for a refusal to receive) but then requiring that certain refusals to receive will constitute a curtailment.

#### Required Amendment 37

*Clause 5.6(b) of the proposed revised terms and conditions, which provides that the operator may refuse to deliver gas in response to a reduction in gas transmission capacity by reason of, or in response to, a reduction in gas transmission capacity caused by the negligence, breach of contractual term or other misconduct of the shipper, should be deleted.*

### ERA's key reasons for the amendment

- 2.45. The Authority has considered and accepted Alinta and Verve Energy's views and also considers that the proposed new clause 5.6(b), which allows DBP to refuse to deliver gas to a shipper "in response to" a reduction in gas transmission capacity caused by the shipper's misconduct, widens DBP's discretion considerably by removing the requirement for a client link between the misconduct and the extent of the refusal to deliver.

### DBP's Response

- 2.46. DBP disagrees with the Authority's contention that the use of the words "in response to" in any way breaks the "client link" between misconduct and the extent of the refusal to deliver. If DBP takes action "in response to" an action or inaction of a shipper, there is necessarily a causal link between the action taken and the misconduct which the action is in response to. Accordingly, DBP considers that clause 5.6(b) should be included as per the proposed terms and conditions.

#### Required Amendment 38

*Clause 5.9 of the proposed revised terms and conditions, in relation to no change in contracted capacity, should be amended to:*

- *include provisions that are materially the same as those in clause 5.9 of the existing terms and conditions where the refusal to deliver gas is a curtailment in certain circumstances; and*
- *be amended to reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.*

### ERA's key reasons for the amendment

- 2.47. The Authority is of the view that, consistent with Alinta's and Verve Energy's submissions, the provisions of the proposed clause 5.9 in relation to no change to

contracted capacity should be subject to the refusal to deliver gas being a curtailment in certain circumstances as contemplated by clause 5.9 of the existing terms and conditions, and should be amended to reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.

### DBP's Response

- 2.48. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated and for the reasons outlined in DBP's Submission 3, DBP submits that clause 5.9 should be amended as per the proposed terms and conditions.

#### Required Amendment 39

*Clause 5.10 of the proposed revised terms and conditions, in relation to system use gas, should be amended to:*

- delete the proposed sub-clauses 5.10(a) and (b) and replace these with a clause to the effect that the operator will provide such system use gas as is reasonably necessary to provide the service; and
- delete the proposed clauses 5.10(c) to (h).

### ERA's key reasons for the amendment

- 2.49. The Authority considers that there is insufficient demonstration of demand by shippers to supply system use gas, and insufficient evidence that current arrangements are resulting in inefficient outcomes, for the Authority to determine that the current requirement that the operator provides all system use gas is inconsistent with the National Gas Objective. Therefore the Authority will not require amendment of the terms and conditions to allow users to opt to supply system use gas.

### DBP's Response

- 2.50. DBP accepts the first part of Amendment 39 in relation to clauses 5.10(a) and (b).
- 2.51. In regards to the second part of Amendment 39 (deletion of proposed clauses 5.10(c) - (h)) DBP submits that if the ERA disallows these provisions it follows that it must then allow the 10% transient value in the fuel gas costing assumptions.

#### Required Amendment 40

*Clause 5.12 of the proposed revised terms and conditions, in relation to shipper's gas installations, should be amended from it being mandatory for a shipper, at its cost, to inspect its facilities to ensure it complies with applicable legislation to it being at the request of DBP acting reasonably.*

### ERA's key reasons for the amendment

- 2.52. The Authority is of the view that the inclusion of DBP's proposed clause is unlikely to promote the efficient investment in, and the efficient operation and use of, natural gas services for the long term interests of consumers as it is likely to add additional costs to shippers where it is unnecessary for such costs to be incurred. The Authority considers that the requirement be amended from being mandatory to being at the request of DBP acting reasonably.

## DBP's Response

- 2.53. DBP has amended clause 5.12 to further clarify the shipper's responsibilities with respect to ensuring that any gas installation which is installed by the shipper must be certified before DBP will commence Delivery of Gas through that gas installation.
- 2.54. DBP has only sought to impose an obligation on shippers that have down stream facilities that are regulated by the Gas Standards Act (that does not mean every shipper with have to comply with the Gas Standards Act). DBP is simply trying to make it clear that it is the shipper's responsibility to have its faculties certified where the Gas Standards Act applies to a facility and for DBP to not be obliged to deliver gas at an outlet point to such a regulated facility until evidence of the certification has been provided by the shipper.

### Required Amendment 41

*Clause 6.4 of the proposed revised terms and conditions in relation to allocation of gas at inlet points should be amended to include provisions that are substantially the same as those in clause 6.4(c) and (d) of the existing terms and conditions.*

## ERA's key reasons for the amendment

- 2.55. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority requires that clause 6.4 of the proposed revised terms and conditions be amended to include provisions that are materially the same as those in clause 6.4 of the existing terms and conditions.

## DBP's Response

- 2.56. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 6.4 should be retained as per the proposed R1 Terms and Conditions.

### Required Amendment 42

*Clause 6.7 should be amended by inserting the words "Subject to clause 6.13" at the commencement of the second sentence in clause 6.7(a).*

*Clause 6.7(d) should be amended to refer to an outlet, not inlet, station.*

## ERA's key reasons for the amendment

- 2.57. The Authority is of the view that a prudence or justifiability test is not appropriate. The Authority agrees with Rio Tinto submission that clause 6.7 should be made expressly subject to clause 6.13 so that it is clear that the additional charges referred to will not apply to existing stations.

## DBP's Response

- 2.58. DBP accepts that Clause 6.7 should be amended by inserting the words "Subject to clause 6.12" (previous clause 6.13) at the commencement of the second sentence in clause 6.7(a).



- 2.59. However, DBP submits that the reference at clause 6.7(d) should, in fact, be to "Inlet Point Connection Facilities" (and not "outlet stations") to be consistent with the balance of clause 6.7(d).

#### **Required Amendment 43**

*Clause 6.8(a) should be amended by:*

- inserting the words "Subject to clause 6.13" at the commencement of the second sentence; and
- 6.8(a)(i) reading "to pay the costs reasonably incurred by the Operator in accordance with good industry practice..."

#### **ERA's key reasons for the amendment**

- 2.60. The Authority is of the view that it is reasonable and appropriate to limit the operator's ability to charge an unreasonable amount for such work. The Authority agrees with Rio Tinto's submission that clause 6.8 should be made expressly subject to clause 6.13 so that it is clear that the additional charges referred to will not apply to existing stations.

#### **DBP's Response**

- 2.61. DBP accepts that Clause 6.8(a) should be amended by inserting the words "Subject to clause 6.12" (previous clause 6.13) at the commencement of the second sentence in clause 6.8(a).
- 2.62. However, DBP submits that the shipper should pay the actual costs incurred by DBP, not whatever the reasonable costs might be, particularly in circumstances where the shipper has input into the design and installation.

#### **Required Amendment 44**

*Clause 6.10(c) about notional gate point should be amended to replace "absolute" with "reasonable" and to insert "in accordance with good industry practice" after "discretion".*

- 2.63. DBP accepts Amendment 44.

#### **Required Amendment 45**

*Clause 6.12(a) should be amended to:*

- include a mechanism to enable a shipper to ensure that only necessary refurbishments and upgrades are carried out;
- include a provision allowing a shipper to obtain a breakdown of the maintenance charge; and
- replace the words "pay a charge for substantially the same purpose" with "use the inlet station, outlet station or gate station associated with a sub-network" and by deleting sub-clauses (iii) and (iv).

#### **ERA's key reasons for the amendment**

- 2.64. The Authority is of the view that the amendment suggested by Verve Energy and Alinta is more precise and is necessary to provide a clearer understanding of the meaning and effect of the clause.

## DBP's Response

2.65. DBP accepts Amendment 45.

### Required Amendment 46

*Clause 7.2 of the proposed revised terms and conditions, in relation to the requirement for gas to be free from certain substances, should be amended to include the word "reasonably" between the words "as" and "determined by the operator".*

2.66. DBP accepts Amendment 46.

### Required Amendment 47

*Clause 7.4(c) of the proposed revised terms and conditions, in relation to gas temperature and pressure, should amend the words "receive gas" to "receives gas".*

2.67. DBP accepts Amendment 47.

### Required Amendment 48

*Clause 7.9(b) of the proposed revised terms and conditions, in relation to the shipper being able to receive out-of-specification gas, should be amended to add the words "by delivering out-of-specification gas to the inlet point" after the words "to be out-of-specification gas".*

2.68. DBP accepts Amendment 48.

### Required Amendment 49

*Clause 8.9 of the proposed revised terms and conditions, in relation to the scheduling of daily nominations, should be amended to replace references to a R1 Service with references to a T1 Service.*

## ERA's key reasons for the amendment

2.69. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that clause 8.9 of the proposed revised terms and conditions should be amended to replace references to the R1 Service with references to a T1 Service.

## DBP's Response

2.70. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 6.4 should be retained as per the proposed R1 Terms and Conditions.

### Required Amendment 50

*Clause 8.10 of the proposed revised terms and conditions, in relation to scheduling where there is insufficient available capacity, should be amended by inserting a new clause 8.10(c) to read "the operator shall use its best endeavours to minimise the extent of any curtailment required under clause 8.10(b)".*

## ERA's key reasons for the amendment

2.71. The Authority agrees with DBP that, in the absence of an appropriate and workable methodology for measuring what is "the smallest amount possible" for any given



shipper, the clause proposed by Alinta and Verve Energy would likely lead to disputes between the parties. However, the Authority is of the view that it is reasonable to require DBP to use its best endeavours to minimise the extent of any curtailment required under clause 8.10(b).

### DBP's Response

- 2.72. DBP submits that as the obligation already exists in clause 17, this amendment is unnecessary.

#### Required Amendment 51

*Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.15 and 8.16 in the existing terms and conditions in relation to an aggregated T1 service; and nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity.*

### ERA's key reasons for the amendment

- 2.73. The Authority is of the view that given its decision that the service should be a T1 service, clause 8 of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those in clauses 8.15 and 8.16 of the 2005 to 2010 terms and conditions in relation to an aggregated T1 service and nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity.

### DBP's Response

- 2.74. DBP submits that as the R1 Service is offered as a point-to-point service it is not appropriate for aggregation rights, which are effectively short term relocation rights, to be offered.
- 2.75. Furthermore, consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 8 should be retained as per the proposed R1 Terms and Conditions.

#### Required Amendment 52

*Clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clauses 8.16 in the 2005 to 2010 terms and conditions in relation to full haul capacity upstream of CS9.*

### ERA's key reasons for the amendment

- 2.76. Aligned to the Authority's determination that the service should be a T1 service, the Authority is of the view that clause 8 of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clause 8.18 of the existing terms and conditions.

### DBP's Response

- 2.77. DBP submits that because the R1 Service is offered as a point-to-point service with its associated nomination obligations, it is not appropriate for clause 8.16 of the existing terms and conditions to be included.

- 2.78. Furthermore, consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 8 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 53**

*Clause 9 of the of the proposed revised terms and conditions should be amended to include provisions that are substantially the same as those in clause 9.5 of the existing terms and conditions in relation to accumulated imbalance limit.*

#### **ERA's key reasons for the amendment**

- 2.79. The Authority is of the view that, given its decision that the reference service should be a T1 service, and for the reasons advised by shippers against the proposed amendments removing the requirement for an adverse impact on the pipeline or other shippers before DBP can impose a charge against a shipper, clause 9.5 of the proposed revised terms and conditions should be amended to include provisions that are materially the same as those contained in clause 9.5 of the existing terms and conditions.

#### **DBP's Response**

- 2.80. DBP submits that its experience with the manner in which clause 9.5 of the existing terms and conditions works in practice is that it does not have the desired effect of ensuring that shippers comply with the behavioural regime. DBP's experience is that because the purpose of the imbalance regime is to protect the integrity of the pipeline, and that integrity can decline rapidly, it is not practical (or safe) for DBP to undertake the sort of analysis contemplated by clause 9.5.
- 2.81. Furthermore, consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 8 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 54**

*Clause 9.6(c) of the proposed revised terms and conditions, in relation to balancing in particular circumstances, should be amended to remove the requirement that the agreement be in writing.*

#### **ERA's key reasons for the amendment**

- 2.82. The Authority is of the view that it may not always be practicable to have the agreement in writing for example if the anticipated failure is due to such circumstances as an impending cyclone and there is limited notice of the impending failure of the shipper's gas supply. For this reason the Authority believes that clause 9.6(c) should be amended to reflect this.

#### **DBP's Response**

- 2.83. DBP submits that the ERA's reason for rejecting DBP's requirement for an agreement in writing is not valid. DBP submits that even in the event of an impending cyclone, an expedited agreement may be reached in writing via, for example, email. DBP highlights the heightened level of risk involved in communications not made in writing, particularly in circumstances of impending failure of a shipper's gas supply, and reiterates that an agreement in writing reduces the risk of miscommunication in such circumstances.

#### **Required Amendment 55**

*Clause 9.6 of the proposed revised terms and conditions, in relation to cashing out imbalances at the end of each gas month, should be amended to be substantially consistent with the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

- 2.84. The Authority is of the view that, in the absence of substantiation from DBP as to why the proposed change is necessary for practical reasons and in view of the Authority's decision to require terms and conditions substantially consistent with a full haul T1 Service, clause 9.9 of the proposed revised terms and conditions should be amended to be substantially the same as the existing terms and conditions.

#### **DBP's Response**

- 2.85. DBP submits that the proposed clause 9.6 provides a further monetary incentive to shippers to not abuse their imbalance position and reflects the fact that the price that DBP must pay for gas has increased significantly since the last Access Arrangement period.

#### **Required Amendment 56**

*Clause 10.3 of the proposed revised terms and conditions, in relation to consequences of exceeding hourly peaking limits, should be amended to be substantially consistent with clause 10.3 of the existing terms and conditions and the words "shipper must use best endeavours to comply with a notice issued under clause 10.3" reinstated.*

#### **ERA's key reasons for the amendment**

- 2.86. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service and for the reasons set out in the second part of paragraph 1283 of this Draft Decision, the Authority is of the view that clause 10.3 of the proposed revised terms and conditions should be amended to be materially consistent with clause 10.3 of the existing terms and conditions and the requirement that a "shipper must use best endeavours" to comply with a notice issued under clause 10.3 should be reinstated.

#### **DBP's Response**

- 2.87. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 10.3 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 57**

*The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.4 of the existing terms and conditions in relation to outer hourly peaking limit.*

#### **ERA's key reasons for the amendment**

- 2.88. The Authority is not convinced by the material put forward by DBP that the effect of clause 10.4 will be to sterilise a substantial amount of pipeline capacity.

- 2.89. Further, aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service and for the reasons set out in the second part of paragraph 1283 of this Draft Decision, the Authority is of the view that the proposed terms and conditions should contain provisions that are substantially consistent with clause 10.4 of the existing terms and conditions in relation to the outer hourly peaking limit.

### DBP's Response

- 2.90. DBP submits that clause 10.4 of the existing terms and conditions is not appropriate for the R1 Services and should be deleted.
- 2.91. DBP also submits that the DBNGP's design assumptions are such that, if these additional rights are afforded to shippers, it sterilises so much capacity that it is an inefficient allocation of resources. DBP can demonstrate that capacity will be sterilised through the following simulation exercise, which models the effect of outer hourly peaking limits on pipeline capacity at Neerabup and Pinjar outlet points, assuming full peaking limits with the DBNGP at steady state.
- 2.92. Given a full haul shipper may deliver at a number of outlet points along the DBNGP, the forecasted load assumed for the purposes of this simulation exercise has been spread proportionately over the contracted capacity at the outlet points.
- 2.93. DBP attaches the simulation results from 2011 (**Attachment 1**) and 2012/2013 (**Attachment 2**). The results from the simulation show that there will be multiple pressure breaches and eventually no pressure available south of CS 9. DBP notes that each subsequent year after 2012/2013 will bare similar results.
- 2.94. The simulation exercise analyses DBNGP throughput over the period 15 to 22 January of 2011 and 2013. The simulation assumes a steady state of the DBNGP for the first five Gas Days of the simulation, and assumes on the sixth Gas Day, as a result of the outer hourly peaking limit rights in clause 10.4 being exercised, an additional peak flow at 2:00 pm of 200 TJ/d being added at Pinjar and 80 TJ/d at Neerabup.
- 2.95. The simulation exercise then determines the how long it will take for different pressure breaches to occur.
- 2.96. In compiling the simulation results, DBP has adopted the following assumptions:
- (a) the pipeline is "well packed" and in a full healthy state before the additional peak flow occurs;
  - (b) full haul throughput is as outlined at table 1;
  - (c) the DBNGP is exposed to mid-summer temperatures;
  - (d) the lean gas quality Higher Heating Value ("HHV") = 37 MJ/m<sup>3</sup>;
  - (e) use of current wheelmaps at compressor stations;
  - (f) the BEP is integrated to loop 0;
  - (g) all compressor station units along the DBNGP are available with none offline for maintenance;

- (h) station flow limits are raised to 1,200 kscm/hr (kilo standard cubic metres per hour); and
- (i) a typical summer flow pattern with one daily peak at 10% peak factor.

**Table 1:**

	TJ/d	TJ/d	TJ/d	TJ/d	TJ/d
	2011	2012	2013	2014	2015
Midwest					
Delivery downstream of					
Compressor Station 3					
Full Haul including SPAC					
Extra flow					
Total Full Haul					

### Simulation Results:

Hours to pressure breach as a result from additional peak flow:

	2011	2012/2013	2014	2015
KJN				
Mason Rd				
Multiple pressure breach				
Zero pressure				

### Required Amendment 58

*The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 10.7 of the existing terms and conditions in relation to permissible peaking excursion.*

### ERA's key reasons for the amendment

2.97. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that the proposed terms and conditions should contain provisions that are materially consistent with clause 10.7 of the existing terms and conditions in relation to permissible peaking excursion.

### DBP's Response

2.98. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 10.7 should be retained as per the proposed R1 Terms and Conditions.

2.99. DBP notes that BHP has alleged that without this clause, DBP would be able to selectively refuse to deliver gas and discriminate between shippers and that this is inconsistent with the national gas objective.

2.100. DBP submits that it would not be able to do this because of its existing non discrimination obligations under pre-existing shipper contracts, the ACCC Undertakings and the State Financial Assistance Agreement.

- 2.101. Even so, there are other provisions in the terms and conditions which protect shippers from DBP selectively refusing to deliver gas. It is required to act as a reasonable and prudent person and provide the shippers with notice in advance.
- 2.102. Moreover, for DBP to refuse to deliver gas would not generally be in its interests as it would deprive DBP from the opportunity of earning revenue from throughput related charges.
- 2.103. The requirement to include the peaking rights of the SSC service would mean that DBP is exposed to significantly increased risks in providing a service which is not reflected in the current reference tariff levels. It is not appropriate to argue that it should be included in the terms and conditions just because it is in the SSC service terms and condition – this is because the tariff payable under the SSC is significantly higher than that under the current T1 reference service.

#### **Required Amendment 59**

*The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the existing terms and conditions in relation to the overrun charge.*

#### **ERA's key reasons for the amendment**

- 2.104. The Authority is of the view that, without substantiation or justification, the four fold increase is too high. Further, aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that the proposed terms and conditions should contain provisions that are substantially consistent with clause 11.1 of the existing terms and conditions in relation to the overrun charge.

#### **DBP's Response**

- 2.105. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 10.7 should be retained as per the proposed R1 Terms and Conditions.
- 2.106. In addition, DBP submits that the overrun right effectively consumes gas DBP would otherwise be using, and therefore DBP would need to purchase additional gas from a third party to replace that gas. Accordingly, the increase in the charge reflects the current market price for gas.

#### **Required Amendment 60**

*The proposed terms and conditions should contain provisions that are substantially consistent with clause 11.2 of the existing terms and conditions in relation to an unavailability notice.*

#### **ERA's key reasons for the amendment**

- 2.107. The Authority suggests DBP has not provided any explanation of what are the 'practical reasons' for the proposed change to clause 11.2. The Authority agrees with the concerns raised by Rio Tinto, Alinta and Verve Energy's submissions. Further, aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that the proposed terms and



conditions should contain provisions that are substantially consistent with clause 11.2 of the existing terms and conditions in relation to an unavailability notice.

### DBP's Response

- 2.108. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 11.2 should be retained as per the proposed R1 Terms and Conditions.
- 2.109. In addition, DBP submits that because it is incentivised to encourage shippers to maximise their use of transportation services under the contract, DBP would only utilise clause 11.2 in extremely limited circumstances, such as where the integrity of the pipeline is at risk. Given the current high price for gas and the limited availability for domestic gas generally, but particularly for short term supplies, DBP needs to have greater flexibility in relation to the issuing of unavailability notices.

### Required Amendment 61

*Clause 11.7(c) of the proposed terms and conditions, in relation to savings and damages, should be amended to reinstate the word "not".*

### ERA's key reasons for the amendment

- 2.110. The Authority suggests that it is not convinced the proposed amendments are necessary for practical reasons. The Authority accepts the submissions of BHP Billiton and is of the view that the word "not" should be reinstated in clause 11.7(c) to avoid a shipper being charged twice for the same conduct.

### DBP's Response

- 2.111. DBP submits that the overrun charge is a genuine estimate of the replacement cost of gas i.e. 500% of the R1 tariff and therefore it is justified in seeking a behavioural charge in addition to the replacement cost of gas.

### Required Amendment 62

*The proposed revised terms and conditions should be amended to include a provision that is substantially the same as clause 12.4(b) of the existing terms and conditions, in relation to the delivery of gas. Clause 12 should therefore provide that the operator may satisfy its obligation to enable gas to be delivered to the shipper by using any means other than the DBNGP provided that it otherwise meets its obligations under the contract and only where there is no extra cost or risk to shipper in doing so.*

### ERA's key reasons for the amendment

- 2.112. Alinta and Verve Energy submitted that the requirement in the existing terms and conditions that DBP may use any means other than the DBNGP for delivery only where "there is no extra cost or risk to shipper in doing so" should be reinstated.
- 2.113. The Authority agrees with Alinta and Verve Energy that DBP should be able to use any means other than the DBNGP for delivery only where there is no extra cost or risk to shipper in doing so.

### DBP's Response

- 2.114. DBP submits that it is impossible to know with certainty whether there will or will not be additional risk to DBP by using another pipeline to deliver contracted capacity to a

shipper. The manner in which the clause was previously drafted was open to dispute among DBP and its shippers in circumstances where DBP used another pipeline. As previously drafted, it would also have meant that, if the use of another pipeline delivered a more cost effective outcome than would otherwise be the case but was a greater risk (or could not be demonstrated to be no more risky), then DBP would not have been able to use this option.

- 2.115. DBP submits shippers are sufficiently protected against any risks to them associated with the clause in the proposed R1 Terms and Conditions by DBP's delivery obligations under other provisions of the contract.

#### **Required Amendment 63**

*The proposed revised terms and conditions should be amended to contain provisions that are substantially consistent with clause 14.2(d)(i) of the existing terms and conditions in relation to the assessment of requested relocation of contracted capacity.*

#### **ERA's key reasons for the amendment**

- 2.116. The Authority considers that in the absence of further sufficient justification from DBP for a change, the threshold of 2 km should remain for a new outlet point to be an authorised relocation if the existing outlet point is no greater than 2 km downstream of the existing outlet point.
- 2.117. The Authority agrees with DBP's response in relation to the use of the word "proposed" at clause 14.2(c)(ii) and 14.2(d)(ii) (Submission 26).

#### **DBP's Response**

- 2.118. DBP submits that the operational reasons for accepting a relocation within 2 km of an existing outlet point include whether the new location for an outlet station is the other side of a compressor station or other significant facility such as end of loop. The 2 km threshold does not take into account any factors other than distance which may affect a relocation.
- 2.119. The DBNGP has many outlet points that are in the vicinity of other outlet points. This is particularly evident in the Kwinana area. Specific examples also include WMC (KNR) and Rockingham outlets and Pye Road and Mondarra outlets which are located next to each other. This is evidenced by the pipeline description document provided as Appendix 2 of the revised access arrangement.
- 2.120. Operationally, DBP need to satisfy that the meter capacity can accommodate the proposed load, as well as whether the pipeline has the capacity to support the intended load if relocating downstream from one outlet to the other. DBP would also be required to ensure the corresponding changes are made to its CRS software to accept higher flow rates.



#### **Required Amendment 64**

*Clause 15.3 of the proposed revised terms and conditions, in relation to metering uncertainty, should be amended to be substantially the same as the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

2.121. The Authority is of the view that DBP has not established a benefit that may justify additional costs potentially being imposed on users by a more stringent metering uncertainty. In the absence of further technical reasoning from DBP the Authority does not agree to the proposed change to reduce the maximum metering uncertainty from 1 per cent to 0.75 per cent.

#### **DBP's Response**

2.122. DBP submits that for the following reasons, clause 15.3 should be retained as drafted in the proposed R1 Terms and Conditions:

- (a) All current inlet and outlet meter stations currently comply with this reduction in mass uncertainty, in fact they have done so for the past 25 years.
- (b) The reduction in mass uncertainty does not add additional cost to the provision of an inlet or outlet meter stations by current DBNGP standards.
- (c) Use of the less accurate measurement equipment has a detrimental affect on pipeline because of unaccounted for gas.
- (d) The revised mass uncertainty is fully in line with industry best practice, equipment availability and the National Measurement Act.

#### **Required Amendment 65**

*Clause 15.4(a)(i)(c) of the proposed revised terms and conditions should be amended to insert the word "reasonable" after the words "any information".*

#### **ERA's key reasons for the amendment**

2.123. The Authority is of the view that given that clause 15.4(a)(i)(C) should apply to enable DBP to require information reasonably necessary to enable it to comply with a Law.

#### **DBP's Response**

2.124. DBP accepts Amendment 65.

#### **Required Amendment 66**

*Clause 15.5 of the proposed revised terms and conditions, in relation to the provision of information to shippers, should be amended to reinstate sub-clauses (e), (f) and (g).*

#### **ERA's key reasons for the amendment**

2.125. The Authority is of the view that it is not reasonable or efficient for individual shippers to be required to negotiate a data services agreement to obtain the relevant information set out in clause 15.5(e), (f) and (g).

## DBP's Response

2.126. DBP submits that in arriving at its decision in relation to Amendment 66, the ERA appears not to have considered:

- (a) the fact that there is no longer an operating agreement in place;
- (b) the Retail Market Rules; and
- (c) the fact that there are no aggregation rights under the R1 Terms and Conditions.

2.127. DBP submits that clause 15.5 should be retained as per the proposed R1 Terms and Conditions.

### Required Amendment 67

*Clause 17.2, in relation to curtailment generally, should be amended to reinstate sub-clauses (c) and (d) in the existing terms and conditions.*

2.128. See response to Amendment 34 relating to refusal to deliver.

### Required Amendment 68

*Clause 17.3(b) of the proposed revised terms and conditions, in relation to curtailment without liability, should be amended to be substantially the same terms as clause 17.3(b) in the existing terms and conditions.*

2.129. See response to Amendment 34 relating to refusal to deliver.

### Required Amendment 69

*Clause 17.5 of the proposed revised terms and conditions, in relation to the operator's right to refuse to receive to deliver gas, should be amended so that the words "Subject to clauses 5.5 and 5.9,..." are reinstated at the beginning of clause 17.5.*

2.130. See response to Amendment 34 relating to refusal to deliver.

### Required Amendment 70

*Clause 17.6(b)(ii)(A) of the proposed revised terms and conditions should be amended to insert after the word "must" the words "use its best endeavours to" and after the word "Notice", the words "a reasonable period in advance of the stating time of the curtailment but in any event".*

2.131. DBP accepts Amendment 70.

### Required Amendment 71

*Clause 17.7(b) of the proposed revised terms and conditions, in relation to the content of a curtailment notice and initial notice, should be amended to require an initial notice to specify the operator's reasons for, and a description of, the major works that has initiated the need for an initial notice to be issued under clause 17.6(b)(i)(A).*

2.132. DBP accepts Amendment 71.

#### **Required Amendment 72**

*Clause 17.8 of the proposed revised terms and conditions, in relation to compliance with a curtailment notice, should be amended to be substantially the same as clause 17.8 of the existing terms and conditions.*

2.133. DBP accepts Amendment 72.

#### **Required Amendment 73**

*Clause 17.9 of the proposed revised terms and conditions, in relation to priority of curtailment, should be amended to be substantially the same as clause 17.9 of the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

2.134. Consistent with the Authority's decision to require the R1 Service to be replaced with the T1 Service, the Authority is of the view that the terms of clause 17.9 relating to aggregation should be reinstated.

#### **DBP's Response**

2.135. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 17.9 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 74**

*Clause 17.10 of the proposed revised terms and conditions, in relation to the apportionment of a shipper's curtailments should be amended to be substantially consistent with clause 17.10 of the existing terms and conditions and an additional requirement for DBP to notify the shipper of apportionment as soon as practicable after the end of the relevant gas day be included.*

#### **ERA's key reasons for the amendment**

2.136. The Authority is of the view that the existing clause 17.10(b) enables DBP to act if a shipper does not co-operate. On this basis, and in light of the Authority's decision to replace the R1 Service with a T1 Service, the Authority rejects the proposed changes. Further, although partly repetitive of clause 17.10(a), the Authority is of the view that clause 17.10(e) contains an additional requirement for DBP to notify a shipper of apportionment as soon as practicable after end of relevant gas day which appears to be reasonable and in the interests of shippers.

#### **DBP's Response**

2.137. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 17.10 should be retained as per the proposed R1 Terms and Conditions.

2.138. In addition, DBP queries why the ERA considers that the additional requirement for DBP to notify the shipper of apportionment is necessary when no shipper has raised an issue or requested this.

#### **Required Amendment 75**

*Clause 18 of the proposed revised terms and conditions, in relation to maintenance and major works should be amended as follows.*

- *Clause 18(d) should be amended to insert “17.6(b)(i)(A)” after “clauses”.*
- *Clause 18 should be amended to include terms that are substantially the same as clause 18(e) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the operator to notify the shipper of changes to its schedule of major works and planned maintenance issued to shippers under clause 18(c) of the terms and conditions.*

#### **ERA's key reasons for the amendment**

- 2.139. The Authority agrees with DBP that provision of information under clause 18(d) does not limit the obligations of the operator under clause 17.6(b)(i)(A). However, the Authority agrees with Alinta and Verve Energy that in the interests of transparency clause 18(g) should be expressed as being subject to clause 17.6(b)(i)(A).

#### **DBP's Response**

- 2.140. DBP submits that as clause 18(d) does not include the word “clauses”, the ERA is actually referring to an amendment of clause 18(g). In any event, DBP submits that the ERA's amendment goes beyond what is reasonably required and fails to recognise that clause 18(c) in the proposed R1 Terms and Conditions imposes an obligation on DBP to provide advance notice of changes to the schedule.

#### **Required Amendment 76**

*Clause 20.4 of the proposed revised terms and conditions, in relation to other charges, should be amended to be substantially consistent with clause 17.10 of the existing terms and conditions and to include a provision for all of the other charges to be rebateable to shippers.*

#### **ERA's key reasons for the amendment**

- 2.141. The Authority is of the view that given its decision to require the R1 Service to be replaced with the T1 Service, clause 20.4 of the proposed revised terms and conditions should be amended to be substantially consistent with clause 17.10 of the existing terms and conditions. The Authority is also of the view that all of the charges listed above on clause 20.4 should be rebateable to shippers.

#### **DBP's Response**

- 2.142. DBP submits that Amendment 76 does not make sense because clause 17.10 of the existing terms and conditions does not deal with Other Charges. DBP assumes that the ERA actually means that it should be consistent with clause 20.4 of the existing terms and conditions. In any event, DBP queries what is intended by this amendment because DBP has been unable to identify any substantial inconsistency between each clause 20.4.
- 2.143. In addition, in relation to the requirement to rebate other charges to non-offending shippers, DBP submits that this is an unacceptable amendment because the current building block total revenue proposed by DBP does not include an assumption that shippers will behave in a manner which triggers these behavioural charges. Further, as

is provided for in clause 20.4(b), the charges are required to recover costs which DBP incurs as a result of shipper's behaviour. As a consequence, there would be no "revenue" to rebate. See also Submission 56 in relation to the ERA's proposed rebate mechanism.

#### **Required Amendment 77**

*Clause 20.5 of the proposed revised terms and conditions should be amended to be consistent with the structure of the reference tariff and reference tariff variation mechanism of the proposed revised access arrangement as required to be amended under this draft decision.*

#### **ERA's key reasons for the amendment**

- 2.144. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the R1 Service as a reference service and to include a full haul T1 Service, the Authority has determined an associated reference tariff for the T1 Service. The Authority has also considered the reference tariff variation mechanism that will apply under the revised access arrangement.
- 2.145. Additionally, the Authority is of the view that Clause 20.5 of the proposed revised terms and conditions should be amended to be consistent with the structure of the reference tariff and reference tariff variation mechanism of the proposed revised access arrangement as required to be amended under this Draft Decision.

#### **DBP's Response**

- 2.146. DBP queries what actually needs to be changed in the proposed R1 Terms and Conditions under Amendment 77 because clause 20.5 of the proposed R1 Terms and Conditions appears to already be drafted in a manner which is consistent with the required amendment. Accordingly, DBP submits that clause 20.5 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 78**

*Clause 20.7 of the existing terms and conditions, in relation to other taxes, should be reinstated into the proposed terms and conditions.*

#### **ERA's key reasons for the amendment**

- 2.147. Aligned with the Authority's decision to require amendments to the proposed revised access arrangement to remove the R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that clause 20.7 of the existing terms and conditions should be reinstated.

#### **DBP's Response**

- 2.148. DBP submits that the R1 Terms and Conditions ought to include a clause in relation to tax changes which is consistent with the tax change variation mechanism set out in the Revised Amended Access Arrangement. Clause 20.7 of the amended proposed R1 Terms and Conditions submitted on 18 April 2011 includes such a provision.

#### **Required Amendment 79**

*Clauses 21.4 and 21.6 of the proposed revised terms and conditions should be amended to remove the words "and compounded" in relation to the interest payable for a default in payment or correction of payment errors by a shipper.*

### ERA's key reasons for the amendment

2.149. The Authority does not agree that the interest should be compounded for a default of payment or a correction of payment errors.

### DBP's Response

2.150. DBP submits that its recent experience with a shipper supports its view that compounding interest would act as an incentive to pay and assists DBP to minimise the risk that shippers deliberately short-pay accounts.

#### Required Amendment 80

*Clause 22.3 of the proposed revised terms and conditions, in relation when the operator may exercise a remedy, should be amended to replace the reference to "20 Working Days" with a reference to "40 Working Days".*

### ERA's key reasons for the amendment

2.151. The Authority is of the view that in the absence of any evidence to the contrary, the time period for a DBP or shipper to exercise a remedy should be consistent.

### DBP's Response

2.152. DBP accepts Amendment 80.

#### Required Amendment 81

*Clause 22.9 of the proposed revised terms and conditions, in relation to no indirect damages, should be deleted.*

### ERA's key reasons for the amendment

2.153. The Authority is of the view that there is no reasonable justification for extending the indemnity against Indirect Damage in circumstances where fraud exists in relation to a repudiation or disclaimer of the contract by the Operator. On the other hand, the Authority is equally unconvinced that it is commercially reasonable to require DBP to extend the operation of clause 23.2 to circumstances of wilful default.

### DBP's Response

2.154. DBP submits that the fact that clause 23.3(a) provides an indemnity in favour of DBP should not preclude DBP expressly clarifying its rights in particular circumstances.

#### Required Amendment 82

*Clauses 23.6 and 23.7 of the proposed revised terms and conditions, which establish the shipper's and operator's responsibility for contractors' personnel and property respectively, should be amended to reinstate the liability for death or injury to a party's personnel or damage to a party's property.*

### ERA's key reasons for the amendment

2.155. The Authority considers that it has insufficient information to assess whether the proposed change to the allocation of risk is appropriate on the basis that 'knock for knock' insurance regime is more efficient than a fault-based regime. In the



circumstances, the Authority is of the view that the exception to liability for death or injury to a party's personnel or damage to a party's property is a fair and appropriate allocation of liability and should be reinstated.

#### **DBP's Response**

2.156. Consistent with DBP's prior submissions Clause 23.6 and 23.7 should not be amended as the change was proposed to align to what current practice.

#### **Required Amendment 83**

*Clause 25.1 should be amended to read: "Subject to this clause 25 and clause 27, neither Party may assign any right, interest or obligation under this Contract".*

2.157. DBP accepts Amendment 83.

#### **Required Amendment 84**

*Clause 25.2(a) should be amended to include terms that are substantially the same as clause 25.2(a) of the 2005 to 2010 terms and conditions for the T1 Service, requiring the form of tripartite deed to be annexed in a schedule to the terms and conditions.*

2.158. DBP accepts Amendment 84.

#### **Required Amendment 85**

*Clause 25.3 of the proposed revised terms and conditions, in relation to assignment, should be amended to be substantially the same as the existing terms and conditions.*

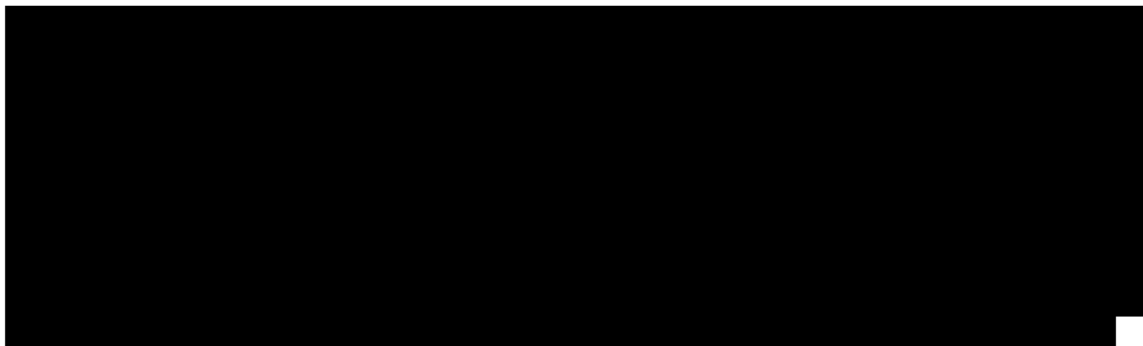
#### **ERA's key reasons for the amendment**

2.159. The Authority accepts the concerns raised by shippers and considers that the proposed changes are not consistent with the national gas objective.

#### **DBP's Response**

2.160. DBP submits that the ERA has not demonstrated how the proposed clause is inconsistent with the national gas objective. In fact, clause 25.3 of the proposed R1 Terms and Conditions better protects DBP against the potential for assignment to a non-creditworthy shipper which, in turn, is a factor in promoting efficient investment in the DBNGP.

2.161.



#### **Required Amendment 86**

*Clause 25.4 of the proposed revised terms and conditions, in relation to a deed of assumption, should be amended to be substantially consistent with the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

- 2.162. BHP Billiton submitted that the addition of clause 25.4(b) is inappropriate from a drafting perspective as it is unclear how this clause interacts with clause 25.3(c), given that both clauses appear to cover the same ground in relation to the operator's ability to withhold consent.
- 2.163. Rio Tinto submitted that if changes are to be made to clause 25.4, the changes should be bilateral. Clause 25.4(b)(ii) should detail the form of security to be given, by both parties' assignees, and append the necessary instrument. Rio Tinto further suggests that a common approach would be for security in the form agreed by the parties acting reasonably, but failing agreement a bank undertaking or parent company guarantee in the scheduled form.
- 2.164. The Authority agrees that it is reasonable that any proposed changes to clause 25.4 should apply equally under clause 25.3 and therefore is of the view that clause 25.4 should be substantially consistent with the existing terms and conditions.

#### **DBP's Response**

- 2.165. See DBP's arguments in relation to Amendment 85.

#### **Required Amendment 87**

*Clause 25 the proposed revised terms and conditions should be amended to include terms and conditions that are substantially the same as clauses 25.5 and 25.6 of the existing terms and conditions for the T1 Service, which set out the acknowledgements and undertakings of the Pipeline Trustee and DBNGP Trustee respectively.*

#### **ERA's key reasons for the amendment**

- 2.166. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that clause 25.5 should be substantially the same as clause 25.5 of the existing terms and conditions. Similarly, clause 25.6 of the existing terms and conditions should be maintained in the proposed revised terms and conditions.

#### **DBP's Response**

- 2.167. DBP notes that no shipper made a submission in relation to this clause. DBP also queries in what way this clause is linked to the ERA's requirement for a T1 service (which DBP does not accept).
- 2.168. In addition, DBP submits that it is inappropriate to include the DBNGP Trustee in the R1 Terms and Conditions in circumstances where it was only included in the T1 SSC as the provider of acknowledgements to deal with specific expansion arrangements which are not relevant for the purpose of the R1 Service.
- 2.169. Furthermore, the DBNGP Trustee is neither the operator of the DBNGP nor the owner of the DGNGP. It is also not the licensee under the DBNGP pipeline licences. It is



merely a shareholder of the owner of the DBNGP. There is no statutory basis for requiring the DBNGP Trustee to be a party to a reference service.

#### **Required Amendment 88**

*Clause 25.6 of the proposed revised terms and conditions should be amended to include terms and conditions substantially the same as clause 25.6 of the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

2.170. Having regard to the competition and efficiency issues and the matters raised by interested parties, including DBP, and the Authority's decision to remove the R1 Service and retain the T1 Service, the Authority is of the view that the proposed amendments should not be allowed.

#### **DBP's Response**

2.171. DBP submits that an inlet sales agreement streamlines the administration of the contract. In the absence of an inlet sales agreement, shippers run the risk of facing significant imbalances in circumstances where a multi-shipper agreement is in place and a third party undertakes the allocation (which is currently the case at every inlet point).

#### **Required Amendment 89**

*Clause 26 of the proposed revised terms and conditions should be amended to be substantially the same as clause 26 of the 2005 to 2010 terms and conditions for the T1 Service, which establishes terms for a general right of relinquishment by a shipper.*

#### **ERA's key reasons for the amendment**

2.172. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority believes that the terms for a general right of relinquishment by a shipper (clause 26 of the 2005 to 2010 terms and conditions) should be maintained in the proposed revised terms and conditions particularly as such a right is consistent with the efficient use of the pipeline.

#### **DBP's Response**

2.173. DBP submits that the right of relinquishment was included in a negotiated outcome in 2004 but does not promote efficient use of the DBNGP and is not appropriate for a reference service.

#### **Required Amendment 90**

*Clause 27.4 of the proposed revised terms and conditions, in relation to transfer of capacity, should be amended to be substantially consistent with the existing terms and conditions.*

#### **ERA's key reasons for the amendment**

2.174. The Authority is of the view that the proposed change to clause 27.4 creates ambiguity and in the interests of clarity it is preferable that the existing wording is retained to expressly state that the transfer may be less than or equal to the remaining period of supply.

## DBP's Response

2.175. DBP does not agree that clause 27.4 of the proposed R1 Terms and Conditions creates any ambiguity because it is intended that the duration of any transfer is determined between the parties at the time of the transfer. Clause 27.4(a) of the proposed R1 Terms and Conditions requires a shipper to make a written request in accordance with clause 27.4(b) (which sets out the proposed terms and conditions of the transfer, including the duration of the transfer), prior to agreeing to transfer contracted capacity.

### Required Amendment 91

*Clause 28.2 of the proposed revised terms and conditions should be amended as follows:*

- *Clause 28.2(j) should be amended so that the exception to confidentiality, where the information is requested by an operator of a pipeline which is interconnected with the DBNGP, is subject to the confidential information being relevant to and necessary for the operation of the interconnected pipeline.*

2.176. DBP accepts Amendment 91.

### Required Amendment 92

*Clause 28.3 of the proposed revised terms and conditions, in relation to permitted disclosure, should be amended to expressly incorporate the operator's obligations to comply with ring fencing provisions under the NGL and NGR.*

## ERA's key reasons for the amendment

2.177. The Authority considers that clause 28.3 should be amended to expressly incorporate the operator's obligations to comply with ring fencing provisions under the NGL and NGR.

## DBP's Response

2.178. This amendment is unclear. However, if it means that it can not be disclosed to another shipper then the amendment will create circularity and will be unworkable. This is because the NGL / NGR provide that a shipper's confidential information can be provided to another shipper if the shipper consents. The way clause 28.3 is drafted under the proposed R1 Terms and Conditions is that it contains a consent to the disclosure of a shipper's confidential information to [REDACTED], but only in limited circumstances.

### Required Amendment 93

*Clause 30.1 of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.*

## ERA's key reasons for the amendment

2.179. The Authority considers that it is appropriate that DBP's warranty in clause 30.1(a)(i) with respect of past and continuous compliance with environmental and safety laws be retained and is not satisfied that shippers should be left to rely upon operator's compliance with the regime independently of the contract. In this regard, the Authority notes that the shipper's warranties to the operator contain a similar warranty in proposed clause 30.2(a)(i).

## DBP's Response

2.180. DBP does not agree with the ERA that it is necessary to include a warranty with respect to laws that DBP is required to comply with as a prudent operator. Shippers do not generally have the same statutory obligations as the operator.

### Required Amendment 94

*Clause 30.2 of the proposed revised terms and conditions, in relation to operator's representations and warranties, should be amended to be substantially consistent with the existing terms and conditions.*

## ERA's key reasons for the amendment

2.181. While no submissions to the Authority addressed this proposed change, the Authority is of the view that such a change may not promote the efficient investment in, and the efficient operation and use of, natural gas services for the long term interests of consumers as shippers as the source of the shipper's obligations with respect to environmental and safety laws may vary and it is reasonable to require the shipper to warrant compliance with those legal instruments that are relevant to their obligations.

## DBP's Response

2.182. DBP queries whether the ERA intended to refer to the "shipper" and not the "operator" in relation to Amendment 94 because, as noted in paragraphs 1537 and 1538 of the Draft Decision, clause 30.2 contains shipper representations and warranties and not operator representations and warranties. In any event, DBP submits that the change to the clause does not narrow the scope of the representation and warranty because the definition of "authorisation" encompasses all of the types of authorisations which were previously set out in clause 30.2. The change was merely to correct a drafting error.

### Required Amendment 95

*Clause 30 the proposed revised terms and conditions, in relation to representations and warranties of the DBNGP Trustee to a shipper, should be amended to be substantially the same as the existing terms and conditions.*

## ERA's key reasons for the amendment

2.183. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service, the Authority is of the view that the representations and warranties of the DBNGP Trustee should be maintained in the proposed revised terms and conditions.

## DBP's Response

2.184. See DBP's submissions in relation to amendment 87.

### Required Amendment 96

*Clause 31 of the proposed revised terms and conditions, in relation to the preparation and maintenance of records and information, should be amended to be substantially the same as the existing terms and conditions.*

### ERA's key reasons for the amendment

- 2.185. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that the proposed revised terms and conditions for the T1 Service should be materially the same as the existing terms and conditions for the T1 Service. Accordingly, the Authority requires that the provisions of clause 31(b) of the 2005 to 2010 terms and conditions remain in the proposed revised terms and conditions.

### DBP's Response

- 2.186. DBP submits that the Revised Amended Access Arrangement contains DBP's proposed plans for an expansion and this is where they should reside rather than in private contracts. Moreover, it is incorrect to require this amendment by reference to the need to include a T1 service when this feature does not describe the T1 service.

#### Required Amendment 97

*Clause 38 of the proposed revised terms and conditions, in relation to revocation, substitution and amendment, should be amended to be substantially the same as the existing terms and conditions.*

### ERA's key reasons for the amendment

- 2.187. Rio Tinto submitted that it does not object in principle to DBP's proposed change, however, it is of the view that the clause is framed incorrectly because it is not clear that the shipper will ever be "entitled to additional contracted capacity under the access arrangement". For this reason, Rio Tinto submits that clause 38(b) should specify that "an amendment to increase contracted capacity may not be made if doing so would be inconsistent with the access arrangement/queuing policy".
- 2.188. The Authority agrees that it is not necessary to expressly state that shippers cannot contract outside the queuing policy. However, given the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service the Authority is of the view that clause 38 of the proposed revised terms and conditions should be substantially the same as the existing terms and conditions.

### DBP's Response

- 2.189. DBP submits that the ERA's reason for requiring the amendment appears to be flawed in that the ERA appears to be arguing that the inclusion of a T1 service necessarily requires that clause 38 be drafted as per the existing terms and condition but as this clause does not describe the nature of a T1 service the ERA's reason is not substantiated. Therefore, consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that clause 38 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 98**

*Clause 45 of the proposed revised terms and conditions should be amended to be substantially the same as clause 45 of the existing terms and conditions, which establish terms for non-discrimination.*

#### **ERA's key reasons for the amendment**

2.190. The Authority is of the view that clause 45.1 and clause 45.2 (of the 2005 to 2010 terms and conditions) are reasonable and consistent with the National Gas Objective and should be maintained in the proposed revised terms and conditions.

#### **DBP's Response**

2.191. DBP submits that the ERA is incorrect in asserting that non-discrimination clauses are reasonable and consistent with the NGL. In particular, DBP notes that:

- (a) only one of the existing owners is a shipper but that shipper has a different contract to all other shippers and so non discrimination is irrelevant; and
- (b) the NGL does not enshrine non discrimination, particularly in the national gas objective. In fact, to the contrary, the NGL promotes discrimination through things such as surcharges and capital contributions.

#### **Required Amendment 99**

*Schedule 2 of the proposed revised terms and conditions should be amended to detail:*

- the "T1 capacity reservation tariff" and "T1 commodity tariff", as determined under this draft decision; and
- the rates at which other charges are determined under the proposed terms and conditions, being the:
  - "excess imbalance charge" at 200 per cent of the T1 reference tariff;
  - "hourly peaking charge" at 200% of the T1 reference tariff;
  - "overrun charge" at the rate specified in clause 11.1(b); and
  - "unavailable overrun charge" at the greater of:
    - 250% of the T1 reference tariff; and
    - the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

#### **ERA's key reasons for the amendment**

2.192. With respect to the other charges that are detailed in Schedule 2 (i.e. the excess imbalance charge, hourly peaking charge, overrun charge and unavailable overrun charge) the Authority is of the view that the rates at which the other charges are determined should be as follows:

- The "excess imbalance charge", of proposed clause 9.5(c), is to be determined at 200 per cent of the T1 reference tariff.

- The “hourly peaking charge”, of proposed clause 10.3, is to be determined at 200% of the T1 reference tariff.
- The “overrun charge”, of proposed clause 11.1(a), is to be determined at the rate specified in clause 11.1(b).
- The “unavailable overrun rate”, of proposed clause 11.6 and 17.8(e), is to be the greater of:
  - 250% of the T1 reference tariff; and
  - the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.

### DBP’s Response

2.193. Consistent with DBP’s response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that Schedule 2 should be retained as per the proposed R1 Terms and Conditions.

#### Required Amendment 100

*Schedule 3 in relation to Operating Specifications should be amended to:*

- *delete the table at item 1 – Gas Specifications, and instead provide that the Operating Specifications are those as specified in the Gas Supply (Gas Quality Specifications) Regulations 2010; and*
- *amend Item 2 – Gas Temperature and Pressure so that it is the one measurement applying to all inlet points.*

### ERA’s key reasons for the amendment

2.194. The Authority is of the view that, in the absence of evidence to the contrary, the temperature should be the same for all inlet points so there is no discrimination between shippers (whether that is 45 or 60 degree Celsius).

### DBP’s Response

2.195. DBP agrees that the Operating Specifications require amendment and has included references to the Gas Supply (Gas Quality Specifications) Regulations 2010 for inlet points and outlet points on the DBNGP in Schedule 3 of the amended proposed R1 Terms and Conditions which were submitted on 18 April 2011.

2.196. DBP submits that there are technical design reasons why the maximum temperature at I1-01 is different to the maximum temperature at other inlet stations and it is not technically feasible for the temperature to be consistent between I1-01 and other inlet stations.

2.197. The presence of aftercoolers immediately after I1-01 and the increase in the wall thickness of the DBNGP between I1-01 and MLV5 allows DBP to receive gas at I1-01 at a maximum temperature of 60 degrees Celsius. The other inlet points along the DBNGP are not equipped with the same wall thickness or aftercoolers and accordingly cannot tolerate a maximum temperature greater than 45 degrees Celsius.

2.198. If the maximum temperature at I1-01 was reduced to 45 degrees Celsius, this would require a de-rating and a restriction of the production of gas by producers delivering gas at I1-01, which could place producers in breach of their gas delivery obligations.

#### **Required Amendment 101**

*Schedule 4 of the proposed revised terms and conditions should be amended to include the pipeline description that is referenced in and appended to the proposed revised access arrangement.*

#### **ERA's key reasons for the amendment**

2.199. The Authority has considered the requirement for an access arrangement to identify the pipeline to which the access arrangement relates and to include a description of the pipeline at paragraph 25 and following of this Draft Decision. Consistent with these considerations, the Authority is of the view that Schedule 4 of the proposed terms and conditions should include a pipeline description that is referenced in and appended to the proposed revised access arrangement.

#### **DBP's Response**

2.200. See DBP's submissions in relation to Amendment 1.

#### **Required Amendment 102**

*Schedule 6 of the proposed revised terms and conditions, which sets out the curtailment plan, should be amended to be substantially consistent with Schedule 8 of the 2005 to 2010 terms and conditions for the T1 Service.*

#### **ERA's key reasons for the amendment**

2.201. Aligned to the Authority's decision to require amendments to the proposed revised access arrangement to remove the proposed R1 Service as a reference service and to include a full haul T1 Service, the Authority is of the view that Schedule 6 of the proposed revised terms and conditions should be amended to be substantially consistent with Schedule 8 of the existing terms and conditions.

#### **DBP's Response**

2.202. Consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that Schedule 6 should be retained as per the proposed R1 Terms and Conditions.

#### **Required Amendment 103**

*The proposed revised access arrangement should be amended to include a Schedule 7 that sets out the form of the tripartite deed that is entered into under clause 25.2 of the contract.*

#### **ERA's key reasons for the amendment**

2.203. The Authority provides no further reasoning other than it requires Schedule 7 to be retained.

#### **DBP's Response**

2.204. See DBP's submissions on amendment 84.



#### **Required Amendment 104**

*The proposed revised access arrangement should be amended to include terms and conditions for the part haul service (i.e. the P1 Service) and back haul service (i.e. the B1 Service), as reference services, that are substantially the same as the terms and conditions established under existing contracts for part haul and back haul pipeline services negotiated with shippers.*

#### **ERA's key reasons for the amendment**

2.205. The Authority is of the view that the terms and conditions for the part haul and back haul services should be, to the extent applicable for these services, substantially the same as the terms and conditions established under existing access contracts for part haul and back haul pipeline services negotiated with shippers.

#### **DBP's Response**

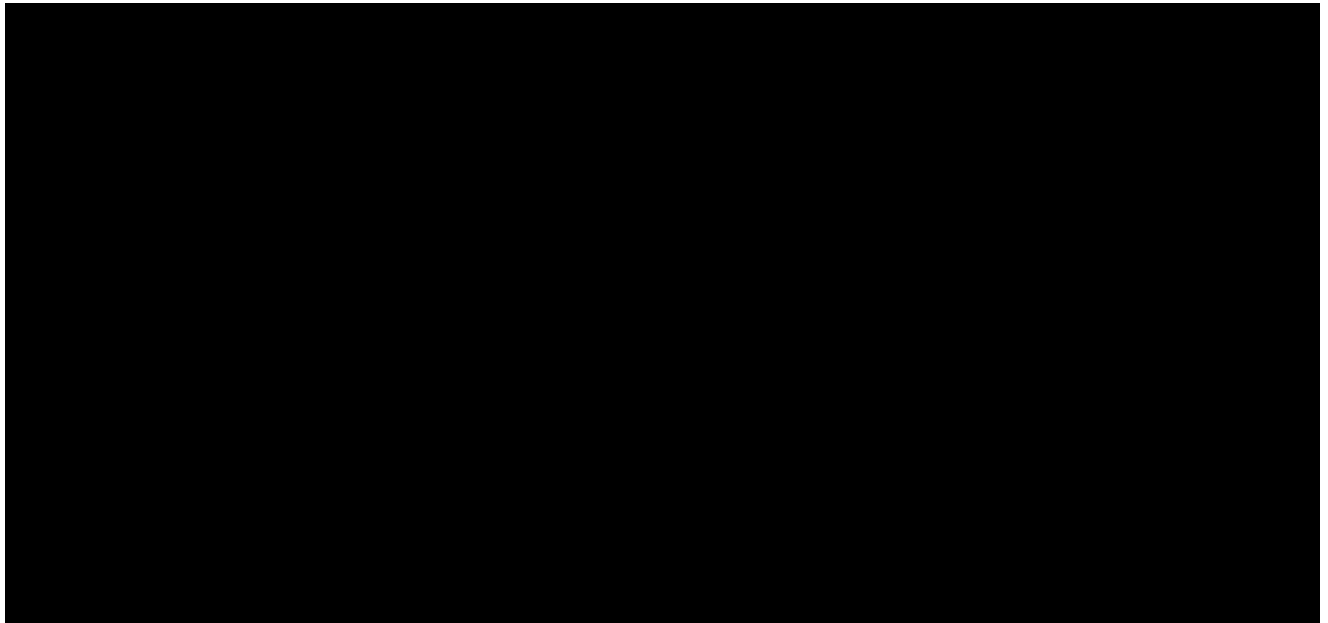
2.206. DBP submits that Amendment 104 is problematic because:

- (a) there is currently no single set of terms and conditions for either part haul or back haul services on the DBNGP;
- (b) it is not appropriate to use terms and conditions negotiated outside of a regulatory framework as the basis for terms and conditions of a reference service when shippers where negotiating for specific outcomes; and
- (c) consistent with DBP's response to the Draft Decision on why the proposed R1 Service should be reinstated, DBP submits that the R1 Service is the only service that should be available as a reference service.

### **3. AMENDMENTS ADDITIONAL TO AMENDMENTS REQUIRED UNDER DRAFT DECISION**

- 3.1. DBP amended two clauses in the amended proposed R1 Terms and Conditions (which was submitted on 18 April 2011) for reasons other than to address issues raised in the Draft Decision, namely:
- (a) clause 6.11 has been amended to remove reference to "Gate Stations" because there is no practical reason to differentiate between gate stations and outlet stations; and
  - (b) clause 24.8 has been amended to deal for the fact that the bodies previously used for the purpose of nominating an expert to determine a dispute no longer offer that nomination service. The clause has been amended to refer to bodies which do offer an expert nomination service.

#### **4. CONFIDENTIALITY**



## **ATTACHMENTS**

Attachment 1 – Simulation Results – 2011

Attachment 2 – Simulation Results – 2012/13