SUBMISSION 64: Response to Third Party Submissions

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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 also fixes a period for amendment of the Original AA Proposal (**revision period)**, which revision period expired on 18 April 2011.

1.3 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.

1.4 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 advised that interested parties were to make submissions on the ERA's Draft Decision up until 4:00pm (WST) Friday 20 May 2011.

1.5 In accordance with Rule 59(5)(c)(iii) of the NGR, DBP filed a number of 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.

1.6 The submissions were as follows:

(a) Submission (49) Response to Specific Amendments

(b) Submission (50) Reference Service

(c) Submission (51) Terms & Conditions

(d) Submission (52) Opening Capital Base

(e) Submission (53) Capital Expenditure

(f) Submission (54) Operating Expenditure

(g) Submission (55) Rate of Return

(h) Submission (56) Other Tariff Matters

(i) Submission (57) Non Tariff Matters

1.7 In notice dated 26 May 2011 the ERA advised that it extended the time available for interested parties to respond to the ERA's Draft Decision so that parties could respond to the Amended AA Proposal and to the submissions filed by DBP which are outlined above.

1.8 DBP has objected to this extension and considers that the ERA is potentially acting outside of its function and is otherwise acting in a manner which is procedurally unfair to DBP.

1.9 A number of third parties made submissions prior to 20 May and which have been published on the ERA's website (**3rd Party Submissions**).

1.10 Without derogating from DBP's submissions in paragraph 1.8, DBP considers that there are a number of issues raised in the 3rd Party Submissions which warrant a response.

1.11 Specifically, DBP responds to issues raised in submissions provided by the following parties:

(a) Alinta

(b) APA Group

(c) Office of Energy

(d) BHP Billiton

(e) Verve Energy

2. CONSULTATION & INFOMRATION PROVISION

2.1 Submissions from Alinta, BHP Billiton and Verve contend that DBP has not provided adequate information, thereby precluding interested parties from providing further submissions to the ERA in response to information that may be contained in DBP's supporting submissions.

2.2 DBP submits that the purpose of the public consultation process following end of the revision period that follows the Draft Decision (as provided for in Rule 59(c)(iii) of the NGR) is to allow stakeholders the opportunity to make submissions in relation to the Draft Decision and to the amended AA Proposal submitted in response to the Draft Decision by the service provider. It is not to provide stakeholders the opportunity to also make submissions in response to any submissions that the service provider might make in response to the Draft Decision.

2.3 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.

2.4 The NGL & NGR specifically outline what must be contained in both an Access Arrangement and Access Arrangement Information.

2.5 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 originally advised that interested parties are able to make submissions on the ERA's Draft Decision up until 4:00pm (WST) Friday 20 May 2011.

ERA Notice Extending Public Period

2.6 In a notice dated 26 May 2011 the ERA stated that it is proposing to extend the time available for the public consultation process for interested parties to respond to the Draft Decision, the Amended AA Proposal and DBP's supporting submissions (20 May 2011).

2.7 DBP is concerned by the manner in which the ERA is administering the consultation process in response to the Draft Decision. In particular, DBP is concerned that the ERA is not following the process as prescribed under the National Gas Rules (NGR) or is otherwise misinterpreting the requirements of Rule 59(5)(c)(iii) and Rule 60. In addition, it is conducting its process in a way that is procedurally unfair to DBP.

Rule 59(5)(c)(iii) submissions

2.8 Rule 59(5)(c)(iii) states that when the ERA makes an access arrangement draft decision it must invite written submissions within the time allowed by the ERA (which must be at least 20 business days from the end of the revision period). As a matter of statutory construction, the purpose of the ERA inviting written submissions after publishing the draft decision is to consult on the draft decision and any amendments to the proposed amendments to the Access Arrangement (AA) and Access Arrangement Information (AAI) submitted by the service provider in the revision period in response to the draft decision issued by the ERA under Rule 60. The purpose does not extend to allowing submissions made by the service provider (or any other party for that matter) to be the subject of

further submissions. The NGR do not provide for such submissions under Rule 59(5)(c)(iii).

2.9 For the ERA to have justified its decision to extend the consultation/submission period until 20 July solely by reference to the need, in the ERA's opinion, to allow interested parties to consider DBP's supporting submissions that are subject to a disclosure process and to comment on them is therefore a flawed justification.

2.10 Not only does it call into question the validity of the regulator's process, it also appears to be:

(a) distinguishing between DBP and other parties who choose to lodge submissions under Rule 59(5)(c)(iii); and

(b) discriminating against DBP by not allowing DBP time to consider and respond to any submissions that third parties make and which are not disclosed by the ERA until too late in the process to give DBP a reasonable opportunity to respond.

2.11 DBP notes that the NGR do not make such a distinction between interested parties who make submissions under Rule 59(5)(c)(iii). This Rule simply states that the ERA is to "invite written submissions" regarding the draft decision and the NGR do not seek to identify or limit the categories of people who may respond to the draft decision in this way.

2.12 The ERA is effectively allowing an extension of time to enable parties other than DBP to consider DBP's response to the draft decision. In addition to the fact that this additional consultation process is not prescribed under Rule 59(5)(c)(iii) or any other rule, DBP will not be afforded the same opportunity with respect to submissions which are lodged by other parties on the extension date. This is not procedurally fair to DBP.

Rule 60 amendments

2.13 Rule 60(1) provides that the service provider may, within the revision period, submit additions or other amendments to the access arrangement proposal to "*address matters raised in the access arrangement draft decision*". DBP submitted amendments and additions to the AA and AAI in accordance with Rule 60 (1) on 18 April 2011.

2.14 Rule 60(2) expressly limits the amendments that a service provider may make to "*those necessary to address matters raised in the access arrangement draft decision unless the [ERA] approves further amendments*". An example is given as to the sort of things the ERA may approve, being amendments to deal with a change in circumstances of the service provider's business since submission of the access arrangement proposal.

2.15 DBP submits that Rule 60(2) limits the sort of amendments that DBP can submit within the revision period to such things as:

(a) accepting (either in part or the whole of) an amendment or addition required by the ERA (which is necessarily an amendment which addresses a matter raised in the draft decision);

(b) otherwise addressing an amendment through a different amendment or addition to the AA or AAI to that outlined in the draft decision; and

(c) an amendment that addresses an issue raised by the ERA but which the ERA has not proposed an amendment.

2.16 DBP submits that Rule 60 is not the means by which the service provider can comment generally on the draft decision or provide context or substantiation of the amendments or additions it has included in the revised AA and AAI. In addition, nothing in Rule 60 extends the scope of what is required to be included in the AA and AAI.

2.17 The limited nature of the amendments and additions that can be submitted by a service provider under Rule 60 supports the view that the means by which a service provider may comment on the draft decision without restriction is by way of Rule 59(5)(c)(iii).

2.18 In the circumstances, DBP considers that the 3rd Party Submissions that complain about the inadequacy of information provided by DBP in response to the Draft Decision are irrelevant and that, if the ERA has relied on these submissions as the basis for extending the period for making 3rd Party Submissions, the ERA has acted beyond its powers by taking into account irrelevant considerations.

3. MONDARA GAS STORAGE FACILITY

3.1 APA made a further submission following the draft decision on the impact of the decision on access to the MGSF. DBP's response to APA's first submission on this issue made prior to the Draft Decision was contained in Submission 26, paragraphs 8.13 to 8.16.

3.2 Some circumstances have changed from the time of DBP's Submission 26.

3.3 In paragraph 8.13 (b), DBP stated that it had not received access requests for capacity at the Mondarra outlet point or any other point for delivery in relation to the proposed MGSF. While DBP is still not in receipt of formal access requests for services for the proposed MGSF facility, DBP been approached by 3 parties that have made initial enquiries regarding the interconnection between the MGSF and the DBNGP, which if they were to result in in excess of 100 TJ/day being delivered to the relevant outlet point.

3.4 DBP submits that this prospective demand and the lack of a Mondarra Storage Facility type reference service still does not support the case for inclusion of a reference service as described by APA in its submissions, because:

(a) the capability of the MGSF is not proven or fully understood by the market;

(b) the long term financial commitment that DBP understands that APA requires from its customers under the storage contract model is significant compared to other available alternatives;

(c) proponents are yet to feel the full impact from tightening upstream supply that might drive the need for storage on the scale that is on offer; and

(d) there are other short term storage options available to the market.

3.5 Furthermore, initial discussions with prospective shippers as to the terms of prospective access contracts have resulted in the basic features of the service and the detailed terms varying significantly amongst these prospective shippers, therefore substantiating DBP's claim that any reference service intended to service the MGSF has not been or will not be likely to be sought by a significant part of the market.

3.6 Also, there is nothing to suggest that these shippers have been unable to conclude negotiations with DBP for a pipeline service that enables them to access the outlet point on the DBNGP that is the closest to the MGSF on terms that are fair and reasonable.

3.7 DBP's also submits that its submissions contained in Submission 26 still stand, in that:

(a) Gas production opportunities that may at some point exist downstream of Mondarra are potential opportunities at best and cannot be the basis for the inclusion of a back haul reference service north of Mondarra.

(b) Notwithstanding, there is no evidence that has led to justify that without a part haul or back haul service included as a reference service new gas fields will not be able to be commercialised. In fact, other technical issues such as gas reservoir quality, gas processing and access to gas transportation are considered to be of greater commercial importance to field development success.

(c) To the contrary, DBP has to date accommodated the desire of APA to expand the use of the MGSF as efficiently as possible. This has been done as part of the Stage 5B expansion project where DBP installed two additional tees in the looping of the pipeline upstream of Mondarra. This will enable the installation of additional capacity

at the outlet station to be installed as efficiently as possible, should the demand materialise.

(d) APA incorrectly states that the access arrangement proposal contains no explicit provision for exit from the DBNGP at Mondarra and re-entry at Mondarra (from the MGSF). The part haul service that is provided for as a negotiated service allows for this.

(e) APA's assertion that customers who wish to use the MGSF in combination with the DBNGP will face twice the transport cost incurred through use of the DBNGP full haul service alone is unsubstantiated. In fact, DBP is currently discussing appropriate commercial service options with prospective customers.

3.8 APA also made submissions to clarify the definition of the P1 reference service. While DBP does not agree that a P1 service should be included as a reference service, DBP submits that if the ERA is to change the definition to remove APA's limiting interpretation applying, then it must:

(a) have regard to the adverse impact that it will have on the full haul capacity of the pipeline;

(b) ensure that the reference tariff is structure to ensure that DBP has the opportunity of recovering its costs of providing such a service – the tariff will need to be higher on a $ per km basis because of the sterilization of capacity that will occur.

4. JUSTIFICATION OF NEW CAPITAL EXPENDITURE – RULE 79(2)

4.1 Alinta raised, as one of its key concerns with the Draft Decision, the ERA's conclusion that DBP's expansion capital expenditure during the period 2005 to 2010 was justifiable in accordance with the requirements of Rule 79(2), and could be added to the capital base of the DBNGP for subsequent recovery via reference tariffs. Alinta was of the view that the expenditure had not been shown, by DBP, to satisfy the criteria of Rule 79(2). Furthermore, a demonstration, by the ERA, that the overall economic value of the expenditure was positive, was fundamentally flawed.

4.2 Almost identical arguments in respect of DBP's expansion capital expenditure, and in respect of the ERA's demonstration of a positive overall economic value for that expenditure, were presented by Verve Energy in its response to the Draft Decision.

4.3 The paragraphs which follow are, then, a response to the views expressed by both Alinta and Verve Energy, although they reference only submissions made by Alinta.

4.4 Alinta's arguments in respect of DBP's expansion capital expenditure, and the conclusions which the ERA had drawn, were as follows:

(a) the expansion capital expenditure could not be justified under Rule 79(2)(iii) as being necessary to comply with a regulatory obligation or requirement;

(b) Alinta accepted (because it did not have the relevant report prepared by DBP's consultant, Marsden Jacob Associates, for review) the ERA's conclusion that DBP had failed to justify its expansion capital expenditure under Rule 79(2)(b);

(c) Alinta supported (without having had access the report prepared by Marsden Jacob Associates) the ERA's view that DBP had not presented a reliable quantification of the economic benefits from the expansion of DBNGP capacity, and had failed to demonstrate that the overall economic value of the expansion capital expenditure was positive (the "test" or Rule 79(2)(a)); and

(d) notwithstanding its conclusion that DBP failed to justify the expansion capital expenditure under Rule 79(2), the ERA provided its own – alternative – demonstration that the overall economic value of the expenditure was positive, justifying its addition to the capital base.

4.5 DBP has considered arguments in Alinta's original submission on the proposed revisions to the DBNGP Access Arrangement, in the Draft Decision, and now in Alinta's response to the Draft Decision, and remains of the view that DBNGP expansion related capital expenditure can be justified under Rule 79(2)(iii) as being necessary to comply with a regulatory obligation or requirement. DBP's reasons for maintaining its position on this issue have been set out in paragraphs 6.1 to 6.11 of DBP's Submission 52 (Opening Capital Base).

4.6 Alinta accepted the ERA's conclusion that DBP had failed to justify its expansion capital expenditure under Rule 79(2)(b). However, as noted in paragraph 6.17 of Submission 52, neither DBP, nor Marsden Jacob Associates, was of the view that the expenditure in question met the requirements of Rule 79(2)(b).

4.7 Alinta may have supported the ERA's view that DBP had not presented a reliable quantification of the economic benefits from the expansion of DBNGP capacity. However, as has been argued in paragraphs 6.20 to 6.37 of its Submission 52, DBP did not set out

to present a reliable quantification of the economic benefits from the expansion of DBNGP capacity. Capital expenditure is justified in accordance with Rule 79(2)(a) if the overall economic value of that expenditure is positive. DBP – and its consultant, Marsden Jacob Associates – have shown that, on simple and reasonable assumptions about the Western Australian energy market, the overall economic value of pipeline expansion during the period 2005 to 2010 is positive, and substantially so, allowing the conclusion that the expenditure is justified.

4.8 Alinta prefaced its assessment of the ERA's alternative demonstration that the overall economic value of DBP's expansion capital expenditure was positive with the comment that there was no liberty, under the NGR to allow the regulator to abrogate its duties to require that the service provider satisfy one or more of the requirements of Rule 79(2). However, Rule 79(2) does not, as Alinta has implied, impose an obligation on a specific party. Nor could it. In the process set out in the NGL and the NGR, the regulator may find that a service provider's proposed revisions to an access arrangement do not satisfy the requirements of NGR, and be required to make and approve its own revisions. Rule 79(2), like other rules in Part 9, guides the regulator just as much as it guides the service provider, in the setting of reference tariffs. It requires no more than capital expenditure be shown to be conforming before it is added to the capital base. It does not require that a specific party – the service provider or the regulator – show that this is the case.

4.9 The only restriction on the ERA's powers under Rule 79 is the limitation of the ERA's discretion in Rule 40 of the NGR. All that Rule 40 provides is that the ERA must not withhold its approval to the proposed actual capital expenditure if the ERA is satisfied that it complies with the requirements of the Law and is consistent with the applicable criteria prescribed by the Law.

4.10 There is nothing in the ERA's reasoning which suggests that the ERA has acted inconsistently with Rule 40.

4.11 Alinta's assessment of the ERA's alternative justification of DBP's expansion capital expenditure focused on the specific requirements of the Standard Shipper Contract, which Alinta, Verve Energy and others negotiated as part of the DBNGP sale process in 2004. On page 19 of its response to the Draft Decision, Alinta described the tariff arrangements of the Standard Shipper Contract (a similar description was provided on pages 17 and 18 of Verve Energy's response). Alinta noted that these arrangements allowed adjustment of the tariff for capital expenditure made by DBP during the period 2004 to 2016 provided that expenditure was shown, by audit, to have been actually made. Shippers, Alinta argued (although the argument is not entirely clear), were protected from DBP making unregulated capital expenditures subject only to the financial discipline of an audit confirming that the expenditure had been made, and by tariff arrangements which reverted to regulated tariffs from 2016.

4.12 In Alinta's view, in making reference to the Standard Shipper Contract arrangements, the ERA was merging two distinct processes without any basis for doing so. Alinta stated:

> *To clothe the process for calculating the bespoke tariff with any regulatory status at all, let alone use it as an alternative justification in meeting a critical threshold test, or a proxy for a full and thorough regulatory assessment and approval (or rejection) is a fundamental mistake.*

4.13 Alinta's description of the tariff arrangements of the Standard Shipper Contract, and its characterisation of the ERA's alternative demonstration of the justification of DBP's expansion capital expenditure are incorrect and misleading.

4.14 Certainly, as Alinta indicated, the Standard Shipper Contract provides for the audit and verification of DBP capital expenditure, by an independent accounting firm, as being the actual cost of pipeline expansion (Standard Shipper Contract, clause 20.8(e). However, the Standard Shipper Contract goes further.

4.15 Firstly, the SSC provides for verification of DBP's capital expenditure by either an independent accounting firm or by the ERA under the NGR.

4.16 Secondly, clause 20.8(f) imposes on DBP the obligation to minimise the capital costs of DBNGP expansion in a way which does not derogate from its obligation to act as a reasonable and prudent person and to follow good gas industry practice.

4.17 The obligation in clause 20.8(f) imposes on DBP essentially the same requirements that are imposed by Rule 79(1)(a). Contrary to Alinta's assertion in its response to the Draft Decision, DBP's expansion capital expenditures are subject, under the arrangements of the Standard Shipper Contract, to a scheme of control more extensive than auditor verification that the expenditure in question has, in fact, been made.

4.18 That said, the mechanisms of expenditure control under the arrangements of the Standard Shipper Contract are not especially relevant to the ERA's alternative demonstration of a positive overall economic value for DBP's expansion capital expenditure. The ERA's conclusion that the overall economic value of the expansion capital expenditure was positive did not rely on any specific consideration of the process for calculating the tariff of the Standard Shipper Contract, or on assigning any status to that process for regulatory purposes. Contrary to Alinta's assertion, the ERA did not use the process for calculating the tariff of the Standard Shipper Contract as an alternative justification in meeting a critical threshold test, or as a proxy for a full and thorough assessment, under the regulatory regime of the NGL and the NGR. There was no merging of two distinct processes without any basis for doing so, and no fundamental mistake by the ERA.

Discrepancies between the ERA's required amended values of conforming capital expenditure and DBP's Amended AA Proposal

4.19 DBP provides a detailed explanation in Section 5 of Submission 52 as to why variances exist between the conforming capital expenditure which determine the opening capital base in the Original AA proposal and DBP's Amended AA Proposal.

4.20 The key reasons for variances include:

(a) Disposals - DBP's Original AA Proposal did not identify any disposals of assets during the period 2005 to 2010. As a result of the independent audit undertaken in relation to DBP's capital expenditure, DBP has identified a small number of assets were in fact disposed of during the period. DBP makes a number of submissions on this point in paragraphs 5.2 and 5.3 of Submission 52.

(b) Capital contributions – as was previously outlined in submissions made by DBP prior to the draft decision, DBP identified early on in the assessment process, that in the Original AA Proposal, DBP had included values for capital contributions in incorrect years. This occurred because the value of assets were physically entered into the book accounting asset register some time after they had been commissioned but were recorded as having been entered into the asset register on the date they were in fact physically entered, rather than on the date of commissioning. Whereas for regulatory purposes, DBP should have adopted the approach that capital expenditure incurred in relation to an asset which was to be

treated as conforming capital expenditure was to be rolled into the capital base in the year in which the asset was commissioned or first put into service. In this regard, this resulted in a timing error. The total in the Original AA Proposal for capital contributions does not differ from the total in the Amended AA Proposal.

(c) Conforming capital expenditure – there are a number of reasons for the differences in actual conforming capital expenditure. In section 5 of the submission 52.

(d) Depreciation – as a consequence of the change to the values for the actual conforming capital expenditure and the disposals, the depreciation schedule has changed, as shown in Table 11 of the amended proposed access arrangement information.

4.21 DBP's Submission 52 Section 5 provides further detail on each identified variance type.

Forecast Capital Expenditure

4.22 Both Alinta and Verve Energy submit that DBP have not made amendments to its forecast as required by the ERA. DBP explains this why this has occurred in Section 3 of Submission 53. Key reasons include:

4.23 Firstly, in line with the ERA's draft decision, DBP has proposed an Amended AA Proposal that includes capital expenditure amounts that are reconcilable to DBP's annual and half yearly audited financial statements. This is outlined in more detail in submission 52.

4.24 As a result of this, the timing of some of the capital expenditure included in the Amended AA Proposal has changed from the year it was reported in the Original AA Proposal as having been incurred.

4.25 In the Original AA Proposal, DBP had intended to report items of capital expenditure as having been incurred (and therefore to be rolled into capital base) in the year that the assets to which the expenditure relates were commissioned or first entered into service. However, there were two reasons why this did not occur:

(a) Firstly, in some cases, assets were recorded as having been capitalised in the year in which they were physically entered into the asset register. In some cases this may have been in excess of 2 years after the asset was commissioned or entered into service.

(b) Secondly, due to these significant delays in assets being physically entered into the accounting asset register, the asset register was not up to date at the time DBP came to file its Original AA Proposal.

4.26 Until these assets were physically entered into the asset register, the values attributed to these assets continued to be recorded as "Assets under Construction" or "Construction Work in Progress" in DBP's yearly and half yearly financial statements.

4.27 The second key reason why there is a difference in the 2010 and 2011 capital expenditure figures is that, at the time of DBP filing its Original AA Proposal in April 2010, DBP only had available to it, an estimate of the expenditure it would actually incur in 2010. Given the draft decision was issued in 2011 and after DBP's board had reviewed and approved the half yearly financial accounts, DBP now has an accurate record of its actual expenditure for the 2010 calendar year.

4.28 This updated information was used as the basis for the conforming capital expenditure for 2010 and 2011 included in DBP's Amended AA Proposal lodged in April 2011. So, the items of expenditure included in the Amended AA Proposal as conforming capital expenditure for the year 2010 include the following:

(a) Expenditure for assets which were entered into DBP's asset register in 2010;

(b) Expenditure recorded as having been incurred in 2009 but which, by 31 December 2009, had yet to be entered into the asset register for the DBNGP. These are the items recorded in the annual audited financial statements for 2009 under the line item named "Assets under Construction" or "CWIP".

4.29 The items of expenditure included in the Amended AA Proposal as forecast conforming capital expenditure for the year 2011 include the following:

(a) Expenditure recorded as having been incurred in 2010 but which, by 31 December 2010, had yet to be entered into the asset register for the DBNGP. These are the items recorded in the annual audited financial statements for 2010 under the line item named "Assets under Construction" or "CWIP".

(b) Items of expenditure which DBP forecasts will be incurred in 2011 and entered into the asset register in that same year.

5. OPERATING EXPENDITURE

Activity based costing

5.1 DBP responded to the ERA's consultant's unnecessary comments regarding Activity Based Costing (**ABC**) in attachment 1 of Submission 44. ABC is one among many approaches to the monitoring of resource use within a business. There is general acceptance of the view that ABC leads to better performance than traditional accounting-based budgeting and reporting systems. What is much less clear is whether ABC is superior in environments where multiple organisational processes and systems support resource planning and use. That there are alternatives may be the reason why adoption rates for ABC have been relatively low, and appear to be declining.

5.2 ABC implementation requires significant organisational and reporting system changes, and is costly. Before it is implemented, the potential net benefits must be clearly identified. Halcrow is advocating DBP's adoption of ABC without having made any assessment of either the costs or the potential benefits.

5.3 Moreover, Halcrow has made no overall assessment of DBP's resource planning, allocation and monitoring processes to assess whether, in the particular circumstances of the business, these may be superior to ABC.

Carbon Price

5.4 Both Alinta and Verve Energy support the removal of costs for a carbon pollution reduction scheme from forecast operating expenditure as outlined in paragraph of the draft decision. There is no further rationale for this support.

5.5 DBP has not excluded its forecast costs for the introduction of a price on carbon for the following reasons as were outlined in DBP's Submission 54.

5.6 At or around the time of the ERA's decision, the current Government has reaffirmed its stated policy is to introduce a price on carbon from July 2012.

5.7 Details of the carbon tax were announced on 24 February 2011 by the Federal Government. The Government has also now released the Clean Energy Future Plan (which is supported by the Multi Party Committee on Climate Change) which outlines a two stage plan for a carbon pricing mechanism. This further reinforces the prudency of including carbon costs in the Amended AA Proposal.

5.8 The two-stage plan for a carbon price mechanism will start with a fixed price period for 3 years before transitioning to an emissions trading scheme. The proposed start date of the carbon tax is 1 July 2012 subject to the legislation passing through both houses of parliament during the course of 2011.

5.9 The information that has been publicly released to date about the framework suggests that it will be very similar in substance to the CPRS Bill that was previously tabled in parliament.

5.10 The Government has announced the initial fixed price for the first 3 years of the scheme to start at $23 per tonne and to increase annually by a set percentage.

5.11 Given the current position of the Government, DBP has included in the corrected Amended AA Proposal, an amount for the carbon tax regime. In so doing, DBP has

adopted conservative assumptions as to the price of the carbon tax and how long it will remain a fixed price tax - the tax will be set at $20 per tone and that the price will be fixed for the remainder of the access arrangement period.

5.12 DBP submits that it is therefore appropriate to include the costs of the imminent carbon tax in its forecast operating expenditure. DBP has provided its amended proposal on this basis.

6. INCENTIVE MECHANISM

6.1 The Office of Energy has made two key submissions:

6.2 Firstly, there are potential benefits in retaining the incentive mechanism from the current access arrangement in the proposed revised access arrangement.

6.3 Secondly, the ERA's concerns with the existing incentive mechanism, which were the basis for the ERA agreeing to remove it from the access arrangement, could be addressed in the way that the AER's efficiency benefits sharing scheme applies to electricity distribution network service providers under the National Electricity Rules.

6.4 DBP disagrees with these submissions for a number of reasons.

6.5 Firstly, the incentive mechanism is difficult to quantify

6.6 Secondly, it will not have any application during the access arrangement period as the firm full haul capacity of the pipeline is fully contracted during that period.

6.7 Thirdly, DBP's current contractual structure is sufficient to incentivise DBP to achieve efficiencies in its operating expenditure.

6.8 Fourthly, operating expenditure forms such a small proportion of the overall costs of providing pipeline services for the DBNGP. The passing on of any savings in operating expenditure, let alone the passing on of a share in such savings, is unlikely to result in any material benefit to shippers.

6.9 The imposition of a regime developed for electricity distribution businesses on a gas transmission business just because it supposedly addresses two concerns is wrong when it fails to properly consider the significant differences between gas and electricity businesses and between transmission and distribution businesses.

7. TERMS & CONDITIONS

7.1 A number of the 3rd Party Submissions made a number of submissions in relation to certain aspects of the proposed terms and conditions for the reference service and the reasoning in the Draft Decision concerning these terms and conditions. The following table outlines the relevant submissions made by 3rd Parties and DBP's submissions in response to each submission.

Draft Decision Reference	Issue	DBP's submission
995-1000 cl. 1	Alinta and Verve Energy reiterate its previous submissions in relation to the Authority's required amendment to the definition of B1 Service. Alinta and Verve Energy submit that the definition of **B1 Service** is inconsistent with the ranking of the B1 service in the Curtailment Plan in Schedule 6.	Refer to paragraphs 2.4 to 2.5 of Submission 51. DBP agrees that an inconsistency exists between the definition of **B1 Service** and the ranking of the B1 Service in the Curtailment Plan in Schedule 6. Accordingly, DBP submits that the Curtailment Plan in Schedule 6 be amended such that: (a) Item 4 of "System Curtailment" is to read "*The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and R1 Service, T1 Service , P1 Service and B1 Service, which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 6*"; (b) Item 4 of "Point Specific Curtailment" is to read "*The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service, P1 Service and B1 Service, at the relevant point which is not dealt with under item 3 above, apportioned in accordance with the provisions of Part B of this Schedule 6*"; and (c) Item 5 of "System Curtailment" and Item 5 of "Point Specific Curtailment" are to be deleted and the remaining rows of Schedule 6 are to be renumbered accordingly.
1010-1013 cl. 1	Alinta and Verve Energy submit that the inclusion of an Insolvency Event in relation to a third party supplier of the Operator in the definition of **Force Majeure** should be rejected as the Operator should	This is simply not possible in the case of a lot of equipment required on the DBNGP. There are many instances where equipment can only be sourced from sole suppliers. As per DBP's previous Submission 5, the

	be able to, and required to, take steps in those circumstances to ensure its ability to perform its obligations under the Contract is not affected.	definition of **Force Majeure** reflects what works in practice and the amendments are administrative in nature.
1065-1072 cl. 3.5	Alinta and Verve Energy submit that the Spot Capacity service does not offend Rule 109 of the NGRs and should be retained. Spot Capacity should be available on the same terms as under the ET&Cs where the Shipper only pays when it uses capacity unless the Operator would have sold the Spot Capacity to another shipper.	Deletion of clause 3.5 does not materially affect a user's ability to obtain access to Spot Capacity as a Spot Capacity service has been incorporated into clause 3.6 of the proposed access arrangement.
1076-1086 cl. 4.1 & 4.2	Alinta and Verve Energy submit that the term "Access Request Form" is the form in the Schedule, which does not specify dates and does not link with R1 Service Contract. The date requested in the form on which the request is made may not be the date agreed by the Operator for the start of Capacity. The terminology is inconsistent between this clause and the form; the form refers to "Reference Service" and the clause refers to "Capacity".	1. DBP does not agree with the submission that the words "unless otherwise agreed in writing between the operator and the shipper" should be added to the end of clauses 4.1(a) and 4.2(a) as inserting the text would be contrary to the queuing requirements. 2. DBP agrees with the submission that required amendment 31 should refer to clause 4.2(a). The additional of these words to the end of clause 4.2(b) do not make sense.
1087–1100 cl. 5.2	Alinta and Verve Energy submit that DBP's deletion of the option provisions is unacceptable and should be reinstated in substantially the same form as the ET&Cs.	Refer to paragraphs 2.32 – 2.33 of Submission 51.
1103-1106 cl. 5.2	Alinta and Verve Energy submit that DBP's amendments do not accommodate the required concept of "Aggregated T1 capacity".	Refer to paragraphs 2.74 – 2.75 of Submission 51.
1140-1158 cl. 5.10	Alinta and Verve Energy submit that further amendments could be made to clarify that the Operator must supply all System Use Gas	Refer to paragraphs 2.50 – 2.51 of Submission 51.

	of no additional charge.	
1164-1165 cl. 5.12	Alinta and Verve Energy submit that the words "to which Gas is supplied directly from the DBNGP" should be added after the words "gas installations" in 3 places in clause 5.12(b) The Operator should only be interested in policing the statutory requirement where gas is supplied directly to the gas installation from the DBNGP, as provided in section 13(1) of the Gas Standards Act 1972 (WA).	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. Refer to paragraphs 2.53-2.54 of Submission 51.
cl. 6.11	Alinta and Verve Energy submit that they do not understand how shippers with capacity at a Sub network will be able to obtain necessary physical connection to the Sub network if it became necessary to accommodate additional loads on the Sub network in the absence of clause 6.11. Both submit it should be reinstated.	Clause 6.11 has been amended to remove references to "Gate Station" because there is no practical reason to differentiate between gate stations and outlet stations. DBP has accepted 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). 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. Refer to paragraphs 2.61-2.62 and 3.1(a) of Submission 51.
1395-1400 cl. 17.7(b)	Alinta and Verve Energy submit that DBP's amendment does not reflect the required amendment as a reason for the Curtailment may be as uninformative as "Major Works". The operator should be required to provide reasons for, and a description of any Major Works giving rise to an Initial Notice.	DBP submits that its amendment to clause 17.7(b) addresses Required Amendment 71. Specifically, clause 17.6(b)(i)(A) states that an Initial Notice must be given to shipper where the reason for the Curtailment is Major Works. Accordingly, the requirement under clause 17.7(b) read together with clause 17.6(b)(i)(A) will necessarily require disclosure of the reasons for, and a description of, any Major Works giving rise to the Initial Notice.
1453-1556 cl. 22.2	Alinta and Verve Energy submit that it is important that Default Notices are required to be given	DBP submits that email notification currently works well in practice for the vast majority of its shippers. DBP has retained the

	by certified mail (delivery by courier where confirmation of receipt is given would also be acceptable).	requirement that Default Notices be in writing, and submits that, for reasons of importance, timeliness and practicality, alternative transmittal options that that of certified mail should be warranted.
1501-1503 cl. 27.1(b)	Alinta and Verve Energy submits that: 1. clause 25.6 be amended to delete the requirement for an Inlet Sales Agreement; and 2. clause 27.1(b) and 25.6 are then practically in the same form. There is no need to make clause 27.1(b) subject to clause 25.6 and it is confusing and unhelpful to do so.	DBP submits that the reference to clause 25.6 at clause 27.1(b) should remain because it clarifies that an "Inlet Sales Agreement" is required where a shipper agrees to utilise its Daily Nominations on behalf of another shipper, and further submits that clause 27 is consistent with the capacity trading requirements of the NGRs.