



Economic Regulation Authority

Promoting fair prices, quality services and choice

# CONSULTATION

## Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline

### PROPOSED AMENDMENT TO THE FINAL DECISION

The Economic Regulation Authority is seeking public comment on proposed amendments to the final decision on the proposed revisions to the access arrangement on the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) issued on 31 October 2011.

Pursuant to clause 20 of Schedule 2 to the *National Gas Access (WA) Act 2009*, the Authority proposes to amend its Final Decision on Proposed Revisions to the Access Arrangement for the DBNGP.

The Authority proposes to amend the sections of the final decision dealing with:

- operating expenditure; and
- extension and expansion requirements.

As a consequence of the first of these intended amendments, there will also be amendments to the sections of the final decision dealing with total revenue and reference tariffs.

The Authority's intended amendments to the final decision are described in the attachment to this notice.

Interested parties are invited to make submissions on the Authority's intended amendments by **4:00 pm (WST) on Thursday, 15 December 2011**.

Submissions should be marked to the attention of Mr Rasmus Moerch, Manager Projects.

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### Confidentiality

In general, all submissions from interested parties will be treated as being in the public domain and placed on the Authority's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of the *National Gas Access (WA) Act 2009*.

The publication of a submission on the Authority's website shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

For further information contact:

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LYNDON ROWE  
**CHAIRMAN**

1 December 2011

## ATTACHMENT: PROPOSED AMENDMENTS TO THE FINAL DECISION

### Forecast Operating Expenditure

1. In the final decision the Authority required an amendment to the forecast of operating expenditure to remove forecast costs arising from the expected carbon tax. The reason for this required amendment was that the Commonwealth legislation for the carbon tax scheme had not been established.
2. Subsequent to the final decision, the Commonwealth Government's Clean Energy Bill has been passed by both houses of Parliament. Accordingly, the Authority has determined that the final decision should be amended to allow for the forecast costs of the carbon tax to be included in the forecast of operating expenditure. The Authority estimates that this will amount to an addition to the forecast of operating expenditure of approximately \$32 million (nominal dollar values).
3. The addition of forecast carbon tax costs to the forecast of operating expenditure will increase the values of reference tariffs determined in the final decision. However, this will not result in a change to the reference tariff that will ultimately apply over the access arrangement period as the cost of the carbon tax would in any case have been able to be added to reference tariffs through the tariff variation mechanism of the access arrangement.
4. For the purposes of determining the reference tariff under the amended final decision, the Authority proposes to allow for recovery of the costs of the carbon tax scheme through the commodity charge component of the tariff. This takes into account that the costs of the carbon tax scheme are, in practical effect, a mark-up on the cost of fuel gas and are incurred in direct proportion to the level of use of fuel gas.

### Extension and Expansion Requirements

5. The Authority has given further consideration to its final decision relating to the proposed extension and expansion requirements for the DBNGP and has determined that an amendment is required to this element of the final decision.
6. This further consideration also has regard to a decision of the Western Australian Electricity Review Board (**Board**) in Applications No. 1 and 2 of 2010<sup>1</sup> (**Applications**). The Board's decision reviewed the Authority's further final decision on the proposed revisions to the access arrangement for the Goldfields Gas Pipeline (**GGP**) and addressed matters including the extensions/expansions policy of this access arrangement.
7. On 1 January 2010, the *National Gas Access (WA) Act 2009* (**NGL(WA)**) came into force and repealed the *Gas Pipeline Access (Western Australia) Act 1998* and the *National Third Party Access Code for Natural Gas Pipeline Systems* (**Code**). The GGP proposed revised access arrangement was lodged under the *Code* and was dealt with as if the *Code*, including the provisions in relation to review, continued to apply. The Board's decision in the Applications was determined by reference to relevant provisions of the *Code*.

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<sup>1</sup> BHP Billiton Nickel West Pty Ltd v Southern Cross Pipelines Australia Pty Ltd & Ors (Application No 1 of 2010) and Southern Cross Pipelines Australia Pty Ltd & Ors v BHP Billiton Nickel West Pty Ltd & Anor (Application No 2 of 2010), WA Electricity Review Board (22 November 2011).

8. The Board's decision on the extensions/expansions policy for the GGP relied on a construction of section 3.16(a) of the Code and is therefore not directly relevant to the Authority's determination of the extension and expansion requirements under rules 48(1)(g) and 104 of the *National Gas Rules (NGR)*. However, the Authority is of the view that aspects of the Board's reasoning, in particular its reasons for rejecting the service provider's proposed extensions/expansions policy, may have implications for its approach to DBP's proposed extension and expansion requirements under the NGR.
9. Under rule 48(1)(g) of the NGR, a full access arrangement proposal must set out extension and expansion requirements. Extension and expansion requirements are defined in section 2 of the NGL(WA).

Extension and expansion requirements means—

- (a) the requirements contained in an access arrangement that, in accordance with the Rules, specify—
    - (i) the circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and
    - (ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that arrangement applies; and
    - (iii) whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and
  - (b) any other requirements specified by the Rules as extension and expansion requirements.
10. The required content of the extension and expansion requirements in an access arrangement is set out in rule 104 of the NGR.  

104 Extension and expansion requirements

    - (1) Extension and expansion requirements may state whether the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline or may allow for later resolution of that question on a basis stated in the requirements.
    - (2) Extension and expansion requirements included in a full access arrangement must, if they provide that an applicable access arrangement is to apply to incremental services, deal with the effect of the extension or expansion on tariffs.
    - (3) The extension and expansion requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.
  11. 'Incremental services' are defined under rule 3 of the NGR as "pipeline services provided by means of an extension to, or expansion of the capacity of, the pipeline".

12. Under section 18 of the NGL(WA):
- (a) an extension to, or expansion of the capacity of, a covered pipeline must be taken to be part of the covered pipeline; and
  - (b) the pipeline as extended or expanded must be taken to be a covered pipeline,
- if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline.
13. The extension and expansion requirements of the proposed revised access arrangement make provision for DBP to elect that an extension, expansion or enhancement of the DBNGP will not become part of the covered pipeline.<sup>2</sup>
14. The extension and expansion requirements further state that DBP may have regard to the following factors in considering whether to treat an extension, expansion or enhancement as part of the covered pipeline:<sup>3</sup>
- (a) the application of the matters set out in rule 104 of the NGR in respect of the facilities comprising the extension, expansion or enhancement;
  - (b) the extent to which the Capacity resulting from the extension, expansion or enhancement is Contracted Capacity;
  - (c) the legitimate business interests of Operator;
  - (d) the application of any voluntary right of access to the Capacity resulting from the extension, expansion or enhancement;
  - (e) the extent to which any Access Contract under which the extension, expansion or enhancement capacity is contracted relies upon a determination of the Reference Tariff; and
  - (f) the extent to which the Capacity is as a result of an expansion to be undertaken through the application of the provisions of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*.
15. These factors do not limit or constrain DBP in electing that an extension, expansion or enhancement of the DBNGP will not become part of the covered pipeline.
16. In its decision on the Applications, the Board considered section 3.16(a) of the Code, which is in the following terms:

Extensions/Expansions Policy

3.16 An Access Arrangement must include a policy (an Extensions/Expansions Policy) which sets out:

- (a) the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline:
  - (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or

<sup>2</sup> Proposed revised access arrangement, clause 7.3.

<sup>3</sup> Proposed revised access arrangement, clause 7.4.

- (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);

17. The Board held that, on a proper construction of s 3.16(a) of the Code, an extensions/expansions policy must set out a method to be applied by which coverage of an extension to, or an expansion of the capacity of, a covered pipeline is evaluated by reference to the policies and objectives of the Code (**code criteria**), including the factors referred to in s 2.24(a) to (g):

That evaluation requires consideration of the particular circumstances of each extension or expansion, at the time the extension or expansion is proposed. An EEP which involves the application of a fixed rule to all future extensions or expansions does not therefore comply with the Code.<sup>4</sup>

18. The Board rejected two extensions/expansions policies submitted by the GGP service provider on the basis that both of the proposed extensions/expansions policies permitted the service provider to determine coverage having regard to its own interests, rather than for coverage to be evaluated by reference to the code criteria:

The Board considers that each of [the proposed extensions/expansions policies submitted by the Service Provider] do not comply with s 3.16(a). This is because both [proposed extensions/expansions policies] do not provide for substantive evaluation of Coverage by reference to the Code Criteria. Both [proposed extensions/expansions policies] confer on [the service provider] the determinative role in deciding whether an expansion should or should not be covered. It is inevitable that [the service provider] would carry out that role having regard to its own interests, rather than by reference to all the relevant Code Criteria, which include the public interest and the interest of Users and Prospective Users.<sup>5</sup>

19. Under the extension and expansion requirements of the proposed revised access arrangement, DBP has an unfettered discretion to elect that an extension, expansion or enhancement of the DBNGP will not become part of the covered pipeline. This may have the result that DBP will make such an election taking into account only its own commercial interests.
20. Although rule 48(1)(g) of the NGR is expressed in different terms to section 3.16(a) of the Code, the Authority is of the view that, in making a decision on the extension and expansion requirements in the access arrangement for the DBNGP, it is required to take into account the National Gas Objective.
21. The Authority also considers that, in the current circumstances of the DBNGP, an election by DBP not to include an expansion of capacity as part of the covered pipeline is likely to result in outcomes that are contrary to the National Gas Objective and the coverage criteria under section 15 of the NGL(WA).

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<sup>4</sup> Reasons for Decision in the Applications at p 11, para 36.

<sup>5</sup> Reasons for Decision in the Applications at p 42, para 107.

22. The next significant expansion in capacity of the DBNGP is likely to be achieved by the completion of looping of the pipeline between compressor stations. The result of this is likely to be a decrease in the average cost of gas transmission when the increment to capacity becomes fully utilised. In the event that the expansion in capacity does not form part of the covered pipeline, there is a risk that the benefits of the expansion (in a reduced average cost of gas transmission) will not be passed on to all pipeline users with adverse consequences for competition in energy markets in Western Australia.
23. The Authority therefore proposes to amend the final decision to require that the extension and expansion requirements under the access arrangement provide that the access arrangement will apply to incremental services to be provided as a result of any expansion in capacity of the DBNGP, except in instances where DBP can demonstrate to the Authority's reasonable satisfaction that application of the access arrangement to such services is inconsistent with the National Gas Objective.
24. If DBP takes the view at any time that an expansion of capacity should not form part of the covered pipeline, it is open to DBP to seek revocation of coverage of the relevant part of the DBNGP under the coverage provisions of the NGL(WA).