



Economic Regulation Authority

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PUBLICATION

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

AMENDED FINAL DECISION AND REVISED ACCESS ARRANGEMENT

The Economic Regulation Authority today published an [amended final decision](#) on DBNGP (WA) Transmission Pty Limited's (DBP) proposed revisions to the access arrangement on the Dampier to Bunbury Natural Gas Pipeline (DBNGP) and has released a revised access arrangement. The revised access arrangement becomes effective on 1 January 2012.

DBP as operator of the DBNGP submitted, on its own behalf and on behalf of the other service providers for the DBNGP, proposed revisions to the DBNGP access arrangement, access arrangement information and supporting information to the Authority on 1 April 2010.

The Authority issued its draft decision not to approve the access arrangement proposal on 14 March 2011. The draft decision contained 109 required amendments. In response to the draft decision DBP submitted a revised access arrangement proposal on 18 April 2011.

On 31 October 2011, the Authority issued its final decision not to approve the revised access arrangement proposal. Subsequently, on 1 December 2011 the Authority sought public comment on proposed amendments to the final decision. Interested parties were invited to make submissions on the Authority's intended amendments by 15 December 2011. The Authority received a confidential submission from DBP on 13 December 2011 and a public submission from Alinta on 16 December 2011.

DBP's confidential submission dealt with a wide range of issues. The Authority has not accepted DBP's submissions other than in relation to issues raised in relation to the two proposed amendments to the final decision set out in the Authority's notice of 1 December 2011.

Pursuant to clause 20 of schedule 2 to the *National Gas Access (WA) Act 2009*, the Authority has amended its final decision that was issued on 31 October 2011.

The Authority has amended the sections of the final decision dealing with:

- operating expenditure; and
- extension and expansion requirements.

As a consequence of the first of these amendments, the Authority has amended the sections dealing with total revenue and reference tariffs. The amended final decision has also addressed two factual errors highlighted by DBP on 7 November 2011.

The Authority's amendments to the final decision are described in the attachment to this notice. A copy of the amended final decision is available on the Authority's [website](#).

Under the *National Gas Access (Western Australia) Act 2009* and specifically rule 64 of the National Gas Rules, where the Authority decides not to approve a revised access arrangement of a service provider, the Authority must, within two months of making the final decision, deliver a revised access arrangement for the pipeline.

The Authority has drafted and approved its own revised access arrangement and access arrangement information for the DBNGP consistent with the requirements of rule 64 of the National Gas Rules.

The access arrangement sets out the terms and conditions, including tariffs under which DBP is required to provide services to users seeking access to the DBNGP.

A copy of the access arrangement and access arrangement information are available on the Authority's [website](#).

For further information contact:

General Enquiries

Jeremy Threlfall
Assistant Director Access
Ph: 61 8 9213 1900
Fax: 61 8 9213 1999

Media Enquiries

Richard Taylor
Riley Mathewson Public Relations
Ph: 61 8 9381 2144
Fax: 61 8 9381 3877

LYNDON ROWE
CHAIRMAN

22 December 2011

ATTACHMENT: 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. This amendment has increased the forecast of operating expenditure by approximately \$32 million (nominal dollar values).
3. The addition of forecast carbon tax costs to the forecast of operating expenditure has increased 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 has allowed 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 2010¹ (**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*.

¹ 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, has 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, as approved by the Authority on 31 October 2011, made provision for DBP to elect that an extension, expansion or enhancement of the DBNGP will not become part of the covered pipeline.²
14. The extension and expansion requirements further stated 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:³
- (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

² Proposed revised access arrangement, clause 7.3.

³ 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.⁴

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.⁵

19. Under the extension and expansion requirements of the proposed revised access arrangement, as approved by the Authority on 31 October 2011, 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 extensions and expansions 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).

⁴ , Reasons for Decision in the Applications at p 11 para 36

⁵ Reasons for Decision in the Applications at p 42 para 107

22. The next significant expansion in capacity of the DBP 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 has decided 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 DBP under the coverage provisions of the NGL(WA).

Corrigenda

25. The Authority has given consideration to a letter received from DBP on 7 November 2011 highlighting two factual errors in the final decision. On 21 November 2011 the Authority agreed to correct these errors as a part of the amended final decision:
 - a) Pipeline description, paragraph 48, bullet point 6 has been removed. The sentence stated that there was a difference in the description of a loop between Wagerup Cogen offtake and the Kemerton Power Station offtake between the submitted pipeline description and the description published on DBP's website.
 - b) Capital base escalation, paragraph 209 to 211, figures used in these paragraphs have been corrected. The ERA's assertion was wrong as it referred to the 2005 closing capital base figure rather than the opening capital base figure in its calculations.