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Dear Lyndon

**DRAFT GAS ACCESS ARRANGEMENT GUIDELINES**

DBP appreciates the opportunity to comment on the ERA's Draft Access Arrangement Guideline (Draft Guideline) for regulated gas transmission and distribution service providers.

This letter comments on a number of aspects of the Draft Guidelines.

**1. Greater clarity on how discretion is to be exercised and what supporting information is required is encouraged**

As an initial, overarching comment, DBP appreciates attempts by regulators to publish documents that better explain how regulators are likely to perform their statutory functions and exercise their statutory powers under the NGL and NGR. This promotes greater transparency and in turn, gives stakeholders like investors a better understanding about the likely outcomes from regulatory processes like access arrangement approvals. The combined effect of this should lead to reduced risks of unforeseen outcomes.

With this in mind, DBP encourages the ERA to include in the guidelines the following additional information:

- Examples of the type of information the ERA would be seeking from stakeholders in relation to certain aspects of the access arrangement – for example it would be useful for the ERA to explain the type of information relevant to substantiating capital expenditure as conforming capital expenditure.
- examples of how the ERA may exercise its discretion. This is particularly so in relation to aspects of the Access Arrangement (AA) process where other guidelines are yet to be issued. For example, in relation to paragraph 47, it may be useful to outline some examples of when the ERA might consult on any access arrangement that the ERA proposes to formulate in circumstances where the ERA's final decision is to refuse to approve an AA proposal submitted by a service provider.

While DBP acknowledges that guidelines on this topic are not binding on either service providers or the regulator, DBP is of the view that if they were to contain the above additional information, the guidelines would be significantly more helpful for stakeholders than just being a document which summarised relevant parts of the NGR.

## 2. Treatment of Confidential Information

The ERA's notice published 7 February suggests that the purpose of the Draft Guideline...

*"is to inform the parties of the access arrangement and confidentially processes stipulated in the National Gas Access (WA) Act 2009 (NGL(WA)) and National Gas Rules (NGR)".*

The Draft Guidelines actually go well beyond what is required by the NGL and NGR in terms of confidentiality. The ERA intends to adopt the AER guidelines on handling confidential information as their own and in DBP's view is likely to streamline the consideration of confidential information however, it should be noted that the NGL and NGR do not 'stipulate' the process outlined in the Draft Guideline and that is a clear misrepresentation.

## 3. Response to specific aspects of Draft Guideline

DBP has a number of comments in regard to specific aspects of the Draft Guideline:

1. At paragraph 25, the ERA suggests that it may also consider holding a public meeting so that the service provider can explain the basis of its access arrangement proposal. DBP notes that the Standard Consultative Procedure (NGR 8) does not allow for a public hearing to be held at the receipt of a proposal from a service provider. NGR 61 does however contemplate that a public hearing may be requested in writing after a draft decision is made by the regulator.
2. At paragraph 87 the ERA lists a number of factors it suggests will be taken into account when considering whether to use information disclosure powers. Those factors are not found in either the NGL(WA) or NGR and should be removed from the guideline. To provide an example, the ERA suggests that it will consider whether the service provider discussed the issue with the ERA during a pre-submission conference. Firstly, there is no obligation on the service provider to have a pre-conference. Secondly, whether or not the service provider raises a particular issue with the ERA in a pre-conference has no bearing on the test that the ERA is required to apply. The test that is required to be applied by the ERA is whether the disclosure of the information would cause detriment to the person who has given it in confidence or that although the disclosure would cause detriment, the public benefit in disclosing it outweighs that detriment.

What would be useful in the guidelines is how the ERA intends to make its determination under s.329 of the NGL(WA).

3. Paragraph 95 suggests that Section 54 and 55 of the NGL(WA) allow the ERA to:

*"request information to inform a decision about an access arrangement proposal, or to follow up on the implementation of the Access Arrangement"*

Under s.46 of the NGL(WA) a regulator must consider it reasonably necessary for the performance or exercise of its functions or powers under this Law or the Rules. The ERA can't make an information request simply because it would like to follow up on the implementation of an access arrangement. It would be useful for the guidelines to outline how the ERA determines that serving and making information instruments are reasonably necessary for the performance of its functions or powers.

4. The ERA should expand on what it has outlined in paragraph 106 of the Draft Guideline. DBP suggests it would be useful if the ERA outlined the circumstances in which it envisages

it issuing an urgent RIN. Given the short timeframes service providers have to respond, it is DBP's opinion that the ERA should not use an urgent RIN to request copious amounts of information. Requests should be limited to very specific items or types of information that the service provider can reasonably comply with.

5. Paragraph 185 refers to forecast demand being required as one of the criteria for justifying required capital expenditure to maintain the service provider's capacity meeting levels of demand for service existing at the time the capital expenditure is incurred. DBP suggests that the ERA should be clear that when it refers to demand it encompasses both the demand for contracted capacity and usage of that contracted capacity on the covered pipeline. It may be construed that demand is only referring to throughput.
6. Paragraph 93 suggests that all services other than reference services are rebateable services. DBP submits that this is incorrect. DBP currently has a number of non-reference services which are not rebateable services. A pipeline service is a rebateable service if it meets NGR 93(4):
  - a. The service is not a reference service; and
  - b. Substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated for the service; and
  - c. The market for the service is substantially different from the market for a reference service.

If you have any further queries regarding the comments outlined above please contact Trent Leach, Manager Regulatory and Government Policy on (08) 9223 4357.

Yours sincerely,

**Anthony Cribb**  
General Manager Corporate Services