

Proposed Revisions DBNGP Access Arrangement

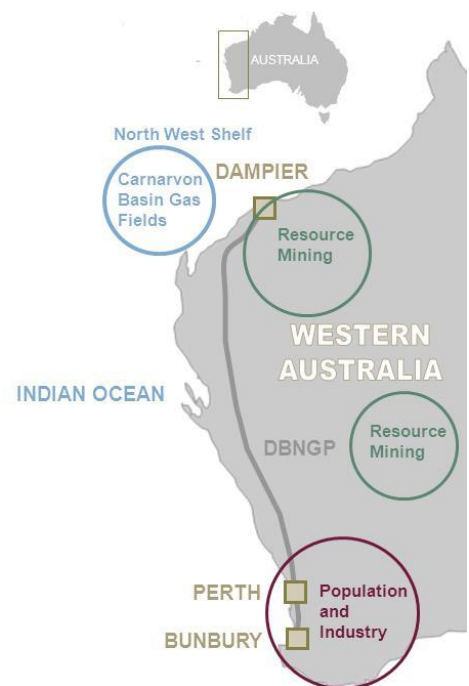
*2016 – 2020 Access Arrangement Period
Supporting Submission: 51
Response to Pipeline Service Amendments*



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DBP Transmission (DBP) is the owner and operator of the Dampier to Bunbury Natural Gas Pipeline (DBNGP), Western Australia's most important piece of energy infrastructure.

The DBNGP is WA's key gas transmission pipeline stretching almost 1600 kilometres and linking the gas fields located in the Carnarvon Basin off the Pilbara coast with population centres and industry in the south-west of the State



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1. INTRODUCTION

- 1.1 On 22 December 2015, 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 31 December 2014 (**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 74 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 and/or addition to the Original AA Proposal (**revision period**), which revision period expires on 22 February 2016.
- 1.4 On 22 February 2016, pursuant to Rule 60 of the NGR, DBP submitted the following documents 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) 22 March 2016.
- 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 ERA, DBP also advised that it will 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 50 – Amended AA Proposal
 - (b) Submission 51 – Response to Pipeline Services Amendments (this submission)
 - (c) Submission 52 – Response to Terms and Conditions Amendments
 - (d) Submission 53 – Response to Opening Capital Base Amendments
 - (e) Submission 54 – Response to Forecast Capital Expenditure Amendments
 - (f) Submission 55 – Response to Forecast Operating Expenditure Amendments
 - (g) Submission 56 – Response to Rate of Return Amendments
 - (h) Submission 57 – Response to Other Tariff Related Amendments
 - (i) Submission 58 – Response to Other Non Tariff Related Amendments
- 1.7 In this Submission, DBP both substantiates its amendments and additions made in the relation to the pipeline services and reference services included in the Amended AA Proposal and responds to aspects of the reasoning in the Draft Decision relating to the following matters raised by the ERA in the Draft Decision:
 - (a) Amendment #3 and the associated reasoning – definition of Full Haul – see section 2; and
 - (b) Amendment #4 and the associated reasoning – Part Haul reference service – see section 3.

- 1.8 DBP also brings the ERA's attention to an error of fact in the Draft Decision relating to its consideration of DBP's proposals relating to pipeline services. This is addressed in section 4 of this submission.

2. RESPONSE TO AMENDMENT #3 - FULL HAUL REFERENCE SERVICE

- 2.1 Draft Decision Amendment #3 provides that “subject to DBP justifying the insertion of the word “Service”, the term “full haul”, as specified in clause 1 (Definitions) of the proposed revised access arrangement, should be amended as follows:

“Full Haul Service” means a ~~Gas transportation~~ Forward Haul pipeline service on the DBNGP where the receipt point is upstream of main line valve 31 on the DBNGP and the ~~delivery point~~ Outlet Point is downstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.

- 2.2 There are several reasons stated by the ERA in the Draft Decision for rejecting DBP’s proposed changes to the definition of Full Haul Service. They are:

- (a) DBP hasn’t provided any rationale for the proposed change.
- (b) While it would appear appropriate to include the word “Service” in order to ensure it is consistent with the way “Part Haul” and “Back Haul” are defined, its inclusion needs to be further justified because:
 - (i) The Standard Shipper Contract (**SSC**) doesn’t include this word in its definition of the term “Full Haul”; and
 - (ii) DBP hasn’t proposed a similar amendment to the definition of “Full Haul” in the proposed terms and conditions for each reference service.
- (c) The addition of the phrase “but does not include Back Haul” is unnecessary.
- (d) In relation to the deletion of the requirement for the inlet point to be upstream of MLV31, while this change ensures consistency with the definition in the SSC, it would create an overlap with the definition of Part Haul that the ERA is requiring.

- 2.3 DBP responds to each of these reasons in turn.

Response to Reason #1 – DBP hasn’t provided any clear rationale for the proposed change

- 2.4 DBP does not understand how the ERA could reach the conclusion that DBP has not provided any clear rationale for the proposed change. In DBP’s submission 3, DBP made the following points to justify the proposed change to the definition of “Full Haul”:

- (a) The provisions of the NGR require the reference service to be the service that is likely to be sought by a significant part of the market. The proposed changes were to therefore make the proposed T1 reference service one that is likely to be sought by a significant part of the market (i.e. to ensure it meets the requirements under the NGR for a reference service).
- (b) The following evidence pointed to the relevant “market”:
 - (i) In the final decision made by the ERA in its approval of the current access arrangement for the DBNGP (**Current AA**), the ERA determined that the “market” referred to is the total market for pipeline services provided by DBNGP, including any expected increase in provision of services during the access arrangement period for which the approved access arrangement will apply.¹
 - (ii) For the period of the proposed access arrangement (being 2016-2020), no increase in the provision of services is expected. Therefore, the relevant market is all shippers with any pipeline service on the DBNGP, which includes the following types of services:

¹ Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 31 October 2011 as amended on 22 December 2011, p39 @ paragraph 133

- (A) The Pipeline service provided under the Alcoa Exempt Contract;
 - (B) Pipeline services provided under the negotiated T1, P1 and B1 SSCs;
 - (C) Services provided under full haul, customised contracts negotiated with individual shippers (eg the special purposes access contract); and
 - (D) Services provided under any B1 or P1 Reference service.
- (c) To determine whether a "significant part" of the relevant market is likely to seek a particular pipeline service such that it must be included in the access arrangement as a reference service, the ERA has, in the past, had regard to existing contracts between DBP and its Shippers as well as evidence of new services demanded by a significant number of users and prospective users, without regard to pipeline capacity.² Past reference services were also determined by having regard to the nature of services obtained by a significant number of users under contracts entered into just prior to the ERA's consideration of the proposed revisions to the access arrangement.³
- (d) The following evidence pointed to why the T1 service, as proposed by DBP, was "likely to be sought by a significant part" of the market:
- (i) The recontracting negotiations concluded with Standard Shipper Contract (**SSC**) shippers in 2014 confirmed that the existing demand is overwhelmingly for a firm full haul service of the definition proposed by DBP in its Original AA Proposal;
 - (ii) The defining characteristic of the service is the 'firmness' offered, and the firmness of the Proposed T1 Reference Service is consistent with the firmness of the T1 Service the subject of each T1 Standard Shipper Contract entered into between DBP and each existing shipper;
 - (iii) Forecasts of contracted capacity and throughput provided by DBP (see submission 11) indicates that a service that is positioned in the curtailment plan with the same level of priority as the T1 Service provided under the Standard Shipper Contracts is likely to continue to be sought by a significant part of the market;
 - (iv) DBP has a contractual commitment under the T1 SSC to offer a T1 full haul firm service on the same terms as defined in the T1 SSC.
 - (v) Access requests received during the Current AA Period for firm full haul services have only been for the T1 service containing the definition proposed by DBP (albeit on different terms and conditions and at a different tariff to that proposed in the Original AA Proposal).

2.5 The following are additional reasons for why DBP's proposed definition of Full Haul should be accepted by the ERA and the ERA's definition of Full Haul should be rejected:

- (a) Firstly, all of the existing T1 SSCs (being both the SSCs that were renegotiated in 2014 and those that were not) adopt the same definition for Full Haul as that proposed by DBP. The capacity contracted under these T1 SSCs represents approximately [REDACTED] of the total amount of firm full haul capacity currently contracted on the pipeline [REDACTED]

[REDACTED] This represents a significant part of the market. The following table summarises how "Full Haul" is defined in each of the T1 SSCs DBP has entered into with shippers:

² Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 31 October 2011 as amended on 22 December 2011, p29

³ Economic Regulation Authority, 2005, Final Decision on the Proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (reprinted 11 November 2005), paragraph 56

- (b) Secondly, of the remainder of the total pipeline capacity currently contracted that is not contracted under either a T1 SSC or the Alcoa Exempt Contract, all of the contracts for this capacity adopt the same definition for “Full Haul” as that proposed by DBP.
- (c) Thirdly, no shipper has entered into an access contract (whether for a firm full haul service or otherwise) where the definition of Full Haul is as defined in the Draft Decision, nor does DBP have in its possession (or expect to have in its possession) an access request from a prospective shipper seeking such a service or an access contract where the definition of Full Haul is as defined in the Draft Decision.

2.6 DBP notes that no shipper has made submissions regarding this change in the proposed access arrangement. The fact that no shipper argued for a rejection of the changes should be a strong indicator that no shipper was concerned about the changes to the definition of Full Haul Service. The ERA should have placed more weight on this fact in its assessment.

Response to Reason #2 – the inclusion of the word “Service” needs to be justified

2.7 The ERA noted (in paragraph 70 of the Draft Decision) that the insertion of the word “Service”, while achieving consistency with the terms relating to part haul and back haul services in clause 15 of the Original AA Proposal, creates an inconsistency with:

- (a) the definition in the SSCs where “service” is not used with “Full Haul”; and
- (b) the terms and conditions for each reference service do not use the word “service” when defining full haul.

2.8 DBP has reviewed its Original AA Proposal and notes that there are some other inconsistencies in this respect – elsewhere, DBP has used “Service” on its own (eg in the definition of T1 Service), but DBP does not define it.

2.9 Accordingly, to remove all inconsistencies, DBP has, in its Amended AA Proposal, adopted the following approach:

- (a) in all of the definitions of “Part Haul”, “Back Haul” and “Full Haul” in both the access arrangement and the terms and conditions for each reference service, DBP has removed the reference to “Service” and replaced it with “service”. This then:
 - (i) ensures consistency with the definitions in the SSCs;
 - (ii) ensures consistency across all three types of services; and
 - (iii) does not create any uncertainty as to what each defined term means.
- 2.10 DBP also proposes to not define “service”, although, if the ERA were to require one to be included, it should use the same definition as “pipeline service” in the NGR.

Response to Reason #3 – the use of the phrase “but does not include Back Haul” is unnecessary

- 2.11 At paragraph 71 of the Draft Decision, the ERA concludes that by incorporating the defined term “Forward Haul” within the definition of “Full Haul”, the phrase “but does not include Back Haul” is unnecessary.
- 2.12 While DBP does not object with the ERA’s reasoning if all of the ERA’s changes to the definition of Full Haul were to be implemented (in particular the requirement to include a requirement that the inlet point be upstream of MLV31), the wording is necessary if DBP’s proposal is to be implemented. This is so, because, under DBP’s proposal, a T1 reference service shipper would be able to have an inlet point at any location of the pipeline (whether upstream or downstream of the outlet point) without such wording being included.

That this phrase is required is demonstrated by the fact that it is included in the definition of “Full Haul” in every T1 SSC, P1 SSC and B1 SSC that DBP has entered into with its shippers. This is noted in

2.13 Table 1.

Response to Reason #4 – deleting the reference to MLV31 would create an overlap with the ERA's required definition of Part Haul

2.14 In paragraph 72 of the Draft Decision, the ERA gives two reasons why it will not allow the deletion, from the definition of Full Haul, of the requirement for the inlet points to be upstream of MLV 31 (i.e. so that the inlet point could be anywhere on the pipeline):

- (a) Firstly, it creates a risk of overlap with the definition of “part haul” in the Current AA; and
- (b) Secondly, DBP has not provided any justification for the deletion of this requirement.

2.15 In response to the first reason, based on DBP's Amended AA proposal, there is no risk of overlap between the part haul and full haul definitions proposed by DBP. Even if there were, DBP submits that it would be more appropriate to correct for the overlap in the definition of part haul only. This is so because:

- (a) of the reasoning outlined in paragraph 2.16(a) below;
- (b) the majority of the demand is for full haul load. The reference service for that part of the market should be more broadly defined to cover the desires of the largest part of the market. It would therefore be more appropriate to broaden the definition of this service than a service that has a smaller demand, such as the Part Haul service.

2.16 In response to the second reason, DBP's justification for the deletion of the requirement, in the definition of Full Haul, for the inlet point to be upstream of MLV31 is based on two grounds:

- (a) Firstly, MLV31 is an arbitrary location that would appear to have been chosen by the ERA (given that it was the ERA that inserted this requirement in the definition of Full Haul as part of its approval of the access arrangement for AA3) only because it is the most recognisable point on the pipeline sufficiently downstream from the most southerly inlet point that currently exists before the Mondarra inlet point. It would appear that the consequence of choosing this point is that it would mean that there would be no competitive advantage afforded to one Carnarvon producer over the others when assessing the delivered price of gas for each producer, given that all inlet points used to receive Carnarvon Basin gas are presently upstream of MLV31 (the most southerly being Wheatstone gas).
- (b) However, by creating this delineation so close to the inlet point to where Wheatstone gas enters the system (MLV31 is 276km downstream from I1-01 whereas Wheatstone inlet point is 274km downstream from I1-01), it could lead to perverse investment decisions being made by producers to locate the interconnect with the DBNGP downstream of MLV31 so as to reduce transportation costs but to price the gas such that any benefits on reduced transportation costs to shippers (as a result of the service being a part haul service as opposed to a full haul service) are not realised by the shipper, rather the benefits are retained by the producers. This would be contrary to the NGO.
- (c) While DBP acknowledges that the development of new gas reserves in the Carnarvon Basin that might interconnect with the DBNGP downstream of MLV31 seem unlikely during the proposed access arrangement period, the Gas Statement of Opportunities issued by IMO in November 2015 (**GSOO**) (a copy of which is attached in Appendix A:) acknowledges that there are ongoing opportunities. As outlined in section 5.2 of that document, there are other opportunities in this Basin being explored (both for conventional and unconventional gas). These include opportunities located as far downstream as Carnarvon and include:
 - (i) Tap Oil and Rusa Resources undertaking exploration within acreage covered by tenements SPA 5 AO and SPA 6 AO, which are located as far south as Carnarvon⁴;
 - (ii) Tap Oil undertaking exploration within acreage covered by tenements WA-320-P and WA-155-P (Part II);

⁴ See TapOil website - <http://www.tapoil.com.au/irm/content/other-carnarvon.aspx?RID=242>

- (iii) Tap Oil has other interests in the offshore part of the Carnarvon Basin, including the WA-351-P permit, which contains the Tallaganda gas discovery drilled during the second quarter of 2012. The Tallaganda-1 well was a new field gas discovery in the Triassic Mungaroo Formation. Tap Oil also holds the WA-290-P permit immediately South of the Gorgon field. In early 2011, the joint venture drilled the Zola gas discovery and in August 2012, a retention lease, WA-49-R, was granted over the Zola and Antiope discoveries. In July 2013, a gas discovery was confirmed at Bianchi-1 which was drilled in WA-49-R.
 - (d) Secondly, as is outlined in more detail in paragraphs 3.29 to 3.39 in section 3 of this submission, the use of the pipeline as a part haul service, where the inlet point is as far downstream of MLV31 as the Mondarra Inlet Point and the outlet point is downstream of CS9, has the same impact on the capacity of the pipeline to deliver firm gas under a traditional full haul service where the inlet point is in the Carnarvon Basin and the outlet point is downstream of CS9. Yet, based on the ERA's proposed definition, the reference tariff would not afford DBP the opportunity to charge a tariff to recover all of the efficiently determined total revenue.
- 2.17 As a final matter, DBP has proposed an amendment that the ERA has not specified in the Draft Decision that it be made. DBP submits that this amendment addresses a matter raised in the Draft Decision. The amendment is that, in the definition of "Full Haul", "receipt point" is to be changed to read "inlet point". DBP submits that even if amendment #4 is to be accepted by DBP, which it is not, "inlet point" should be used instead of "receipt point" in the definition of Full Haul. This is so for these reasons:
- (a) The term "receipt point" is not used in the access arrangement, terms and conditions of the reference service or the access arrangement information;
 - (b) The use of the term "inlet point" will ensure consistency in terminology throughout the access arrangement documentation
 - (c) The use of the term "receipt point" has the capacity to create confusion in the market in circumstances where that term is used in connection with arrangements for upstream facilities

3. RESPONSE TO AMENDMENT #4 – PART HAUL REFERENCE SERVICE DEFINITION

- 3.1 Draft Decision Amendment #4 provides that the term “part haul service” should retain the same meaning as currently drafted in clause 1 of the Current AA. That is, Part Haul service means:

“a service to provide Forward Haul on the DBNGP which is not a full haul service and which includes, without limitation, Services where:

- *The Inlet Point is upstream of MLV31 and the Outlet Point is upstream of CS9;*
- *The Inlet Point is downstream of MLV31 and the Outlet Point is downstream of CS9;*
- *The Inlet Point is downstream of MLV31 and the Outlet Point is upstream of CS9.”*

- 3.2 DBP’s Original AA Proposal sought to change the definition of the term “Part Haul” that is used in the Current AA. DBP proposed that this definition be amended to align with the definition of Part Haul that is used in the Standard Shipper Contract and which was used in the DBNGP Access Arrangement until 2011 (**Original Definition**). DBP proposed that it be amended to provide:

“Gas transportation service on the DBNGP where the Outlet Point is upstream of Compressor Station 9 on the DBNGP, regardless of the location of the Inlet Point, but does not include Back Haul.”

- 3.3 The term “Part Haul” is used to define the pipeline service that DBP proposed as a reference service called the P1 Service. So, by changing the definition of the term Part Haul, this fundamentally changes the nature of at least one of the reference services in the access arrangement.

- 3.4 The Original Definition includes pipeline services where the Inlet Point is upstream or downstream of main-line valve 31 (**MLV31**) and the Outlet Point is upstream of compressor station 9 (**CS9**), but excludes pipeline services where the Inlet Point on the DBNGP is downstream of MLV31 and the Outlet Point is downstream of CS9.

- 3.5 The ERA relied on a number of reasons for rejecting the Original Definition and requiring Amendment #4. Its two key reasons are that:

- (a) it is likely that there will be a market for the Part Haul service as defined in Amendment #4; and
- (b) provision of this service is consistent with the NGO principles.

- 3.6 DBP’s submissions in respect of Amendment #4 deal only with that part of the definition of Part Haul that allows it to include gas received at an Inlet Point downstream of MLV31 and delivered to an Outlet Point downstream of CS9. For ease of reference, in this submission, DBP has called this the “Short Southern Deliveries limb” (**SSD Limb**).

- 3.7 For the reasons set out below, DBP submits that the ERA would be in error were it to approve an access arrangement that includes the SSD Limb in the definition of Part Haul:

- (a) The ERA has misinterpreted the law relating to reference services by reversing the onus of establishing that there is a significant part of the market likely to seek a pipeline service that falls within the SSD Limb.
- (b) The ERA has failed to establish that a pipeline service for the DBNGP that includes the SSD Limb meets the criteria for a reference service under the NGA for the DBNGP.
- (c) The ERA has failed to take into account the revenue and pricing principle that the service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services. DBP has incorporated

additional evidence to show the impact of the ERA's preferred definition of Part Haul upon the existing firm full haul capacity of the DBNGP to support this contention – see paragraph 3.30 below.

- (d) The ERA has taken into account irrelevant considerations in support of the contention that the criteria for a reference service is met.
- (e) The ERA has failed to take into account relevant considerations as to why the SSD Limb should be removed from the definition of Part Haul by failing to consider the evidence provided by DBP that no prospective shipper had sought or accessed a service of the kind covered by the SSD Limb and all demand that has been sought for part haul services was of the kind covered by one of the other limbs of the definition of Part Haul.
- (f) The ERA has failed to take into account that there is not likely to be any disadvantage suffered by prospective shippers as a result of this service not being a reference service because of the existence of the Parmelia Pipeline as a competitor for gas transportation services from the Perth Basin (including the Mondarra Gas Storage Facility) to downstream of CS9 and the competitive pressure that would place on transportation prices if a non reference part haul service for the SSD Limb service was required by a shipper.

3.8 DBP deals with each of these reasons in turn below.

Criteria for a Reference Service under Rule 101

3.9 Before doing so, DBP notes that while paragraphs 47 to 50 of the Draft Decision correctly summarises the criteria for assessing what pipeline service or services should be a reference service (in particular the requirement to take into account the revenue and pricing principles as set out in section 28 of the NGL (see Rule 101(2) of the NGR)), it is relevant to note that the Australian Competition Tribunal, in *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14*, quoted with approval from *Application by Energy Australia [2009] ACompT 8* (Energy Australia), where the Tribunal considered the revenue and pricing principles in s 7A of the *National Electricity Law (NEL)* which is in similar terms to s 24(2) of the NGL and the reference, in those principles, to the service provider being given an opportunity to recover “at least” its efficient costs incurred. At [81], the Tribunal quotes:

*“... The regulatory framework does not guarantee recovery of costs, efficient or otherwise. Many events and circumstances, all characterised by various uncertainties, intervene between the ex ante regulatory setting of prices and the ex post assessment of whether costs were recovered. **But if, as it were, the dice are loaded against the [service provider] at the outset by the regulator not providing the opportunity for it to recover its efficient costs (eg, by making insufficient provision for its operating costs or its cost of capital), then the [service provider] will not have the incentives to achieve the efficiency objectives, the achievement of which is the purpose of the regulatory regime.**”⁵*

3.10 Further at [77] the Tribunal states:

*“Inevitably, a regulator such as the ERA has a public watchdog function. It is directed by the applicable rules such as ss 23 and 24 of the NGL and rule 87(1) of the NGR to attend to the proper interests of the covered pipeline service provider on the one hand, but on the other hand it is required to be mindful of the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and the security of supply of natural gas and the concept of economic efficiency in setting tariffs under an access arrangement **The national gas objective itself in s23 of the NGL refers to promoting efficiency for the long term interests of consumers of natural gas (inter alia) with respect to price. That objective, focused on the interests of consumers, is balanced and informed also by the revenue and***

⁵ *Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14*

pricing principles to be applied by the regulator, but still in the context of ensuring the covered pipeline service provider acts efficiently.”⁶

3.11 DBP submits that the extracts above provide guidance as to how the revenue and pricing principles and the NGO are to be achieved. That is, the NGO is to be achieved within the constraints of ensuring the continued ability of the pipeline service provider to recover at least its efficient costs and operate efficiently in line with the pricing principles in s24 of the NGL. Thus, where the ERA asserts that a particular outcome “*achieves the NGO*” it must ensure that in reaching that conclusion, it has:

- (a) considered the revenue and pricing principles, not just the interests of consumers; and
- (b) demonstrated in its reasoning how these principles have been considered.

3.12 The ERA has failed to do this in the Draft Decision.

Misinterpretation of the law by the ERA

3.13 DBP submits that in deciding whether a particular pipeline service should be a reference service, the proper interpretation of the requirements of the NGL and NGR is that:

- (a) It is for the service provider to demonstrate that, in the market for pipeline services serviced by the DBNGP (**relevant market**):
 - (i) a significant part of the relevant market is likely to seek the service/s that the service provider has proposed as a reference service; and
 - (ii) there is no other service that a significant part of that market is likely to seek.
- (b) If the ERA forms the view that the service provider has not provided sufficient evidence on the above matters or that it believes that a preferable alternative exists, the ERA must, in deciding what that preferable alternative is:
 - (i) identify a particular pipeline service that is likely to be sought by a significant part of the market and to provide evidence to that effect in its reasoning; and
 - (ii) demonstrate that it is consistent with the applicable criteria prescribed by the NGL & NGR.

3.14 In its Draft Decision at [81], the ERA has misinterpreted the law by reversing this onus and stating that:

“The Authority is generally of the view that having a wider, more flexible part haul service that includes the ability for deliveries downstream of CS9 is, absent other evidence to the contrary, more likely than not to promote the efficient operation and use of natural gas services consistent with the NGO and the revenue and pricing principles. The Authority also notes that, even if (as DBP claims) there is no evidence that a significant part of the market has so far sought the part haul service in its current form, that does not necessarily mean that this service is not likely to be sought by a significant part of the market (as required by s101 of the NGR and claimed by [Wesfarmers])”

3.15 In any circumstances, but particularly in circumstances where DBP has demonstrated a detriment to the efficiency of its operations and its ability to recover its costs, it is wrong for the ERA to say:

- (a) in the absence of evidence that a service that fits within the SSD Limb is likely to be sought by a significant part of the market; and
- (b) where there is evidence that the service proposed by DBP is likely to be sought by a significant part of the market,

⁶ *Ibid*, para [77]

that DBP has failed to demonstrate that there is no market, and therefore it considers that there “could be” a market for the service within the SSD Limb.

No evidence that a significant part of the market is likely to seek a part haul service with the SSD Limb

- 3.16 Rule 101 of the NGR requires that for the ERA to include a service as a reference service, (i) the service must be likely to be sought by a significant part of the market; and (ii) the ERA must consider the revenue and pricing principles.
- 3.17 The ERA has not only failed to address both of these criteria in respect of the SSD Limb, DBP submits that there is no evidence that the first criterion is met. This is so for the reasons set out below.
- 3.18 Firstly, in the Tribunal's review of the definition of Part Haul following the 2011-2015 Access Arrangement, the primary justification for the inclusion of the SSD Limb in the definition of Part Haul was that it would facilitate development of the market for usage of the Mondara Gas Storage Facility (**MGSF**) and would allow shippers to efficiently utilise the MGSF.⁷ At the time, APA submitted evidence that there were discussions between DBP and prospective customers of the facility that would lead to implementation of part haul contracts for a service within the SSD Limb. That evidence was cited by the Tribunal as “hard evidence” in support of the assertion that pipeline services that would provide for the delivery of gas into and out of the MGSF were likely to be sought by a significant part of the market [576].
- 3.19 However, DBP submits that this is no longer valid evidence to sustain the retention of the SSD Limb in the definition of Part Haul in the form approved by the Tribunal for the 2016-2020 access arrangement period. There is no such “hard evidence” in existence for the proposed access arrangement period.
- 3.20 Secondly, even with the SSD Limb being included in the definition of the P1 reference service since 2012, no reference service contract for the delivery of gas from MGSF to the South West or Metropolitan areas (that is, utilising the SSD Limb) has materialised nor has one ever been sought by a prospective shipper.
- 3.21 DBP submits that the ERA should also exercise its statutory powers to enquire of APA Group as to the status of the capacity of the MGSF, whether it is fully contracted, how many customers have contracted for that capacity in the MGSF and whether these customers already have a gas transportation agreement on the DBNGP that would be able to be used to receive gas from and deliver gas to the MGSF.
- 3.22 Thirdly, shippers with existing T1 SSC contracted capacity are significantly underutilising this capacity. Given the nature of the tariff structure under these contracts (which generally require 80% of the tariff to be paid as a reservation charge irrespective of whether the capacity is utilised or not, it is reasonable to assume that should these shippers seek to access a pipeline service with an inlet point at Mondarra (or any other inlet point downstream of MLV31) and an outlet point downstream of CS9, they will use their existing unutilised capacity under the T1 SSC contracts before seeking an additional part haul service that includes the SSD Limb.
- 3.23 Fourthly, the recent announcement by AWE⁸ that:
- (a) it has entered into a gas sales agreement with Alinta Energy for 10TJ/d, with that gas to be delivered to the Parmelia pipeline for domestic consumption; and
 - (b) it expects to be producing 100TJ/day from the Waitsia Gas Field for domestic consumption by 2020, equivalent to 10% of domestic consumption requirements,

⁷ Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14 at paragraph 564

⁸ <http://www.awexplore.com/IRM/PDF/2356/AWEapprovesfirststageWaitsiagasfielddevelopment>

is not of itself evidence that a significant part of the market is likely to seek a part haul service with the SSD Limb included because:

- (c) the statement provides that this gas will be transported through the Parmelia Pipeline and not the DBNGP;
- (d) DBP has not been approached by any prospective shipper for additional transportation services for deliveries to downstream of CS9; and
- (e) even if this statement about gas transportation solutions proves to be incorrect and AWE's development of the Waitsia Gas Field in the Perth Basin ramps up to 100TJ/d of gas supplies by 2020, the AEMO's GSOO indicates that the likely customer base will be in the Pilbara rather than at an outlet point on the DBNGP downstream of CS9.

Evidence that there is, in fact, a significant part of the market likely to seek a part haul reference service without the SSD Limb

3.24 Moreover, there is in fact evidence of demand in the market for a part haul reference service without the SSD Limb – i.e. for delivery of gas above CS9 (being the Original Definition) and that the demand for this type of service is likely to be sought during AA4. It appears that the ERA has failed to take into account this relevant consideration in making its decision. There are three types of evidence to this effect.

3.25 Firstly, during the Current AA Period, four access requests have been received by DBP for a Part Haul service matching the Original Definition. As DBP has consistently stated, DBP does not dispute the inclusion of a reference service for a part haul service where the outlet point is upstream of CS9.

3.26 Secondly, during 2014 and 2015, DBP sought to renegotiate every one of its then existing part haul contracts with each part haul shipper.



3.27 Thirdly, the AEMO 2015 Gas Statement of Opportunities (**GSOO**)⁹ concludes that over the next 10 years:

- (a) Overall domestic demand for gas will remain almost flat at 0.1%pa (base case) to 0.9%pa (high case);
- (b) there will be no growth of gas demand in the South West, in fact there will be a decrease in gas-fired electricity generation in the South West Interconnected System;
- (c) the IMO is not aware of any new large industrial projects commencing operations in the South West and Metropolitan regions during the forecast period and if any large industrial users do commence operation, they are likely to connect to the SWIS for their energy needs rather than require independent gas-fired electricity generation; and
- (d) it is likely that there will be growth of gas demand in the Pilbara.

3.28 Finally, DBP reiterates the other points made in its Access Arrangement submission to the ERA in support of the Original Part Haul Definition:

- (a) The majority of existing shippers under utilise their contracted capacity. Shippers who utilise the MGSF have existing contracted capacity under their T1 Standard Shipper Contracts. They continue to use that contracted capacity to deliver gas to and from the MGSF rather than enter into a new transportation agreement for deliveries to and from the Mondarra outlet

⁹ <http://wa.aemo.com.au/docs/default-source/Reserve-Capacity/2015-gsoo-executive-summary-and-key-findings.pdf?sfvrsn=0>

point. As the Reservation Charge for a T1 Service is a sunk cost, the incremental cost of transporting gas from the MGSF to outlet points located downstream of Compressor Station 9 is the Commodity Charge only (being 20% of the overall tariff cost under each Standard Shipper Contract).

- (b) Additionally, the majority of shippers with T1 SSC contracted capacity have extended their contracted term until at least 2025 (most until 2030) and therefore are unlikely to use any other service to use the MGSF during the Proposed AA Period. It would therefore not be economically rational to contract for an alternative service to utilise the MGSF. The evidence supporting this theory is that despite uncontracted capacity existing on the DBNGP and the SSD Limb being in place as a reference service since 2012, there has been no request for transportation of gas over the area covered by the SSD Limb.
- (c) Accordingly the economic reality is that in the event that there is any increase in demand for deliveries of gas to outlet points downstream of CS9 (which are not forecast), it is far more cost efficient for customers to utilise excess or spare capacity in existing firm full haul contracts than it would be to enter into a P1 Service for the SSD Limb.

Impact of the SSD Limb on efficient use of pipeline capacity and on DBP's cost recovery – evidence that the revenue and pricing principles haven't been taken into account

3.29 If, despite the above submissions and evidence above regarding the lack of a significant part of the market being likely to seek a part haul service for the SSD Limb, the ERA continues to justify inclusion of the SSD Limb on the basis that such a market could arise, DBP submits that a proper consideration of the revenue and pricing principles would lead a regulator to conclude that the part haul service should not include the SSD Limb and should be defined to match the Original Part Haul Definition. This is so for the following two key reasons:

- (a) The inclusion of the SSD Limb in the part haul definition and the entry into of an access contract for a part haul service including the SSD Limb would lead to a greater reduction in the pipeline's firm full haul capacity than would be the case if an access contract for a part haul service for the Original Definition were entered into – this would lead to an inefficient utilisation of the pipeline's capacity; and
- (b) The inclusion of the SSD Limb in the part haul definition would, based on the tariff structure proposed in the draft decision and assuming that the ERA will insist on all other amendments from the draft decision being made to the access arrangement, not provide DBP with a reasonable opportunity to recover at least the efficient costs DBP incurs in providing such a reference service in two respects:
 - (i) It would mean DBP would earn an amount of revenue that would be insufficient to afford DBP the opportunity of recovering the Total Revenue given that the tariff allocation methodology for the Part Haul Service assumes less cost to deliver a part haul service because less capacity is required; and
 - (ii) DBP would need to incur further capital expenditure to enable Compressor Station 9 to offset the reduction in full haul capacity caused by the entry into of the service, which expenditure is not provided for in the Total Revenue calculation.

Inefficient use of firm full haul pipeline capacity

3.30 Table 2 below shows the impact of the two alternative definitions of P1 Service on the available firm full haul capacity of the DBNGP. DBP's modelling assumes that 50TJ/day is switched from firm full haul capacity (ie provided under the T1 Service) to the P1 Service for two scenarios as follows:

- (a) *Scenario 1:* DBP's proposed part haul definition (ie excluding the SSD Limb).
- (b) *Scenario 2:* ERA preferred part-haul definition (ie including the SSD Limb).

3.31 The model assumes for each scenario that the 50TJ of part haul gas is flowed over 1100 km, through an identical number of compressor stations (7 stations for both scenarios, although the gas

in scenario 1 is delivered to an outlet point downstream of CS7 and under scenario 2, it is delivered to an outlet point downstream of CS9) and other operating parameters, including gas quality, are constant.

Table 2: Impact of Incremental Part Haul Service on Firm Full Haul Capacity

	Name plate firm full haul capacity – no incremental Part Haul	Scenario 1:	Scenario 2:
T1 [SSC] Capacity	845 TJ/d	801 TJ/d	795 TJ/d
Reduction in T1 [SSC] Capacity	NA	44 TJ/d	50 TJ/d

Inability to recover efficient costs

3.32 Table 3 and Table 4 below demonstrate that DBP would be prevented from having the opportunity to earn \$17.7m per annum if, instead of a shipper contracting for a T1 Service (as that service is proposed to be defined by DBP), it contracts for the ERA's P1 reference service (as proposed in the draft decision) where both arrangements provide for delivery of gas to an outlet point downstream of CS9. Table 3 shows the revenue available to DBP if the ERA's P1 Reference Service is contracted for. Whereas, Table 4 shows the revenue available to DBP if the proposed T1 Reference Service were entered into.

3.33 The Total Revenue established by the ERA in the Draft Decision has been set on the basis that any delivery to an outlet point downstream of CS9 is to be treated as a T1 reference service.

Table 3: Impact on DBP's Revenue as a result of ERA's Part Haul Service being entered into

	Capacity	Tariff Assumption	Regulated Revenue to be earned
T1 [SSC] Capacity	795 TJ/d	\$1.30	\$377.227M
50TJ/d contracted Part Haul	50 TJ/d	\$0.33	\$6.038M
Total Capacity	845TJ/d		\$383.265M

3.34 The table below highlights the impact based on DBP's proposed definition of Part Haul

Table 4: Revenue based on Full Haul Service for outlet points downstream of CS9

	Name plate firm full haul capacity – no Part Haul	Tariff Assumption	Revenue
T1 [SSC] Capacity	795 TJ/d	\$1.30	\$377.227M
50TJ/d contracted Part Haul	50 TJ/d	\$1.30	\$23.725M
Total Capacity	845TJ/d		\$400.953M

3.35 In the above example, the Part Haul tariff is distance factored from Mondarra (1043.678km) to 1400km (\$0.33/GJ). This service would then render the capital invested in capacity from MLV31 to CS8 as unnecessary. DBP would receive \$17.7M less revenue.

3.36 The capacity not utilised could not easily be resold as there is very little part haul demand for gas between CS3 and CS9, the bulk of capacity utilised in this region is full haul capacity to deliver south of CS9 or to Mondarra. DBP understands Mondarra is nearly (if not totally) fully contracted.

3.37 Whilst demand south of CS9 would remain at current levels the financial incentive for DBP would result in capacity being removed between CS3 and CS8, which could be required by Shippers at

any time, simply as a result of a shipper with capacity south of CS9 wishing to change to any alternative gas supplier given they are all north of MLV31 and require full haul transport.

- 3.38 An alternative scenario is DBP could invest at CS9 to relieve the capacity constraint, but this would be inefficient in the current market where there is available full haul capacity.
- 3.39 The above scenario demonstrates that the proposed part haul definition including the SSD Limb would lead to inefficient outcomes, which would also work against providing competitive tension for upstream gas marketing.
- 3.40 Rule 101 of the NGR requires that when determining whether or not to include a type of service as a reference service, the regulator must take into account the revenue and pricing principles (RPP). The RPP exist to guide the Regulator in assessment of what will achieve the NGO and to provide balance in the assessment of the interests of end consumers of gas and the interests of investors in the relevant infrastructure. Clearly the revenue and pricing principles are not met by this outcome, in particular, the outcome:
- (a) removes an opportunity for DBP to recover its efficient capital costs;
 - (b) does not efficiently utilise the pipeline under existing contracts; and
 - (c) increases the risk of potential over investment by DBP if it is deemed necessary to build in additional capacity.

ERA's Justification based upon Irrelevant Considerations.

- 3.41 DBP submits that the ERA has taken into account a number of irrelevant considerations in justifying the inclusion of the SSD Limb in the part haul definition.
- 3.42 Firstly, in the Draft Decision, the ERA pointed out that Wesfarmers made submissions in favour of maintaining ERA's preferred definition and claimed that there is a likelihood of demand for a service for transfer of gas from the MGSF to customers with contracted capacity at outlet points downstream of CS9 (see paragraphs 79 and 81 of the Draft Decision). It appears that ERA has inappropriately relied upon Wesfarmers claim to establish the "likelihood of a significant part of the market seeking a service for the SSD Limb" and to therefore justify it being a reference service. In response to this, DBP points out that:
- (a) The claim by Wesfarmers is a mere assertion and not backed up by any evidence of such demand.
 - (b) Wesfarmers itself has not sought from DBP (directly or otherwise) nor evidenced any intention to seek such a service.
 - (c) Wesfarmers' submission referred to submissions made historically to support the demand for such a service, when in fact those submissions have never been borne out.
- 3.43 To the extent that these considerations are relevant (which DBP disputes), it is noted that another shipper (CPMM) made submissions that supported the Original Definition proposed by DBP. There is no apparent reason for the ERA to prefer Wesfarmers' submission over CPPM's.
- 3.44 Secondly, at paragraph [83] of the Draft Decision, the ERA refers to a risk that if demand for the SSD Limb part haul service did eventuate but the service were only a non reference service, shippers would be exposed to an unregulated non-reference part haul service or require use of a full haul service. The ERA has failed to recognise that the Parmelia Gas Pipeline already provides competition for this service. If any new customers seeking delivery to the Perth metropolitan area or the South West do materialise, and an existing or prospective shipper would like to contract for a P1 Service in the AA Period (which DBP has previously demonstrated is not only not likely, it is not likely to be sought by a significant part of the market), the existence of pipeline services provided by means of the unregulated Parmelia Gas Pipeline ensures that competition will continue to drive efficient outcomes for consumers for that particular form of service on the DBNGP. As to the use of

a full haul service for shipping of gas, DBP refers to its submissions above in paragraph 3.28 regarding full utilisation by existing shippers of their firm full haul contracts being more cost effective than under-utilising those contracts and entering into a separate part haul contract.

Prior submissions

- 3.45 Prior to the Draft Decision, DBP also made submissions on a number of other considerations which at the time, it considered relevant to this issue. They were:
- (a) DBP's Discrimination Claim – DBP submitted that if it were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, it would put DBP in breach of one of its key obligations owed to at least one shipper under an existing contract - being to not discriminate in respect of price between shippers who have outlet points downstream of CS9; and
 - (b) DBP's MFN Claim - DBP asserted that If DBP were required to enter into a contract for P1 Service with a contracted outlet point downstream of CS9, on the basis of the Current ERA Definition, this could also trigger most favoured nation (or MFN) arrangements with at least one shipper which, in turn could trigger MFN arrangements with other shippers.
- 3.46 DBP has reconsidered the submissions referred to in paragraph 3.45 and no longer relies on them as relevant to the assessment of whether the P1 service required by the ERA should be a reference service on the DBNGP for AA4.

4. ERROR IN DRAFT DECISION – BUNDLING OF SERVICES

- 4.1 The Draft Decision contains an assessment of the extent to which the Original AA Proposal complies with the requirements of Rule 109 of the NGR. This Rule prevents the bundling of pipeline services unless reasonably necessary. At paragraph 97 of the Draft Decision, the ERA concludes that the ERA is not aware of any bundling of services by DBP and so, it concludes that the Original AA Proposal complies with the requirements of Rule 109(1).
- 4.2 DBP draws the ERA's attention to relevant parts of its Original AA Proposal and its submissions filed in support of that proposal which identified circumstances where DBP does, in fact, make it a condition of the provision of a particular pipeline service to a prospective shipper that the prospective shipper accept another non-gratuitous service from the service provider. But DBP has submitted (and continues to submit) that it is reasonably necessary to require the bundling of these services:
- (a) In section 3.6(c) of the Original Access Arrangement – DBP makes it clear that for a prospective shipper to access a Park and Loan Service, the prospective shipper must also contract for a Haulage Service.
 - (b) In section 3.2 of submission 3 – DBP outlines why it is reasonably necessary to require the bundling of a Park and Loan Service with a Haulage Service.

APPENDIX A: GAS STATEMENT OF OPPORTUNITIES 2015

APPENDIX B: CONFIDENTIALITY TABLE