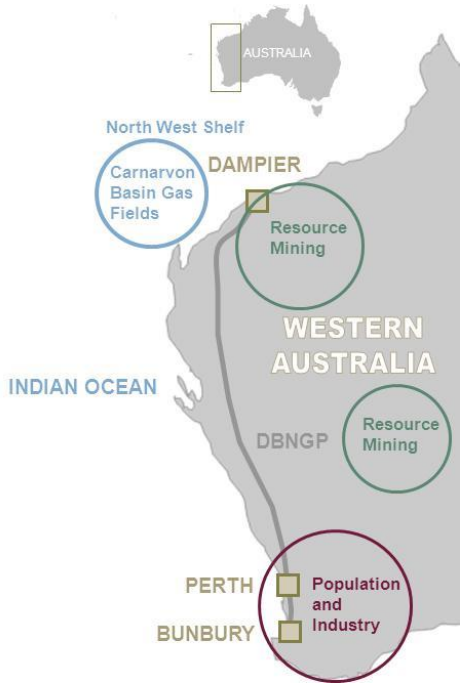
Proposed Revisions
DBNGP Access Arrangement

2016 – 2020 Access Arrangement Period
Proposed Terms and Conditions
Supporting Submission: 52

Date Submitted: 22 February 2016

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



Trent Leach
Manager Regulatory & Government Policy
P: (08) 9223 4357
M: 0429 045 320

Nick Wills-Johnson
Manager Economic Regulation
P: (08) 9223 4902
M: 0477 374 246

DBNGP (WA) Transmission Pty Limited
ABN 69 081 609 190
Level 6
12-14 The Esplanade
PERTH WA 6000
P: +61 8 9223 4300
F: +61 8 9223 4301

Table of Contents

List of Figures

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: Revised AA Proposal;

(b) Submission 51: Response to Pipeline Services Amendments;

(c) Submission 52: Response to Terms and Conditions Amendments (being this submission);

(d) Submission 53: Response to Opening Capital Base Amendments;

(e) Submission 54: Response to Projected Capital Base 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; and

(i) Submission 58: Response to Other Non-Tariff Related Amendments.

1.7 In relation to the terms and conditions submission, the legislative framework of the NGR relevantly provides as follows:

(a) NGR 48(1)(d) requires a full access arrangement to specify, for each reference service:

(i) the reference tariff; and

(ii) the other terms and conditions on which the reference service will be provided; and

(b) NGR 100 provides that the provisions of an access arrangement must be consistent with the National Gas Objective.

1.8 In this Submission 52, DBP both substantiates its amendments and additions made in the relation to the terms and conditions of the reference services included in the Amended AA Proposal and responds to aspects of the reasoning relating to the matters raised by the ERA in the Draft Decision.

1.9 This Submission 52 supplements DBP's submissions made in Submission 51 in relation to the definitions of "full haul" and "part haul service" in clause 1 (Definitions) of the proposed revised access arrangement.

1.10 Clean and marked up versions of proposed T1, P1 and B1 Service terms and conditions showing the changes in mark up mode against DBP's current access arrangement (**AA3**) and against DBP's proposed revised access arrangement in Submission 1 are contained in the following appendices:

(a) Appendix A: T1 Service terms and conditions

(i) Appendix A.1: T1 Service terms and conditions (clean copy)

(ii) Appendix A.2: T1 Service terms and conditions (marked up copy against AA3 terms and conditions)

(iii) Appendix A.3: T1 Service terms and conditions (marked up copy against DBP's proposed revised access arrangement in Submission 1)

(b) Appendix B: P1 Service terms and conditions

(i) Appendix B.1: P1 Service terms and conditions (clean copy)

(ii) Appendix B.2: P1 Service terms and conditions (marked up copy against AA3 terms and conditions)

(iii) Appendix B.3: P1 Service terms and conditions (marked up copy against DBP's proposed revised access arrangement in Submission 1)

(c) Appendix C: B1 Service terms and conditions

(i) Appendix C.1: B1 Service terms and conditions (clean copy)

(ii) Appendix C.2: B1 Service terms and conditions (marked up copy against AA3 terms and conditions)

(iii) Appendix C.3: B1 Service terms and conditions (marked up copy against DBP's proposed revised access arrangement in Submission 1)

1.11 A summary of proposed changes for the terms and conditions that apply to each of the T1 Service, the P1 Service and the B1 Service, together with the rationale for each change, in response to the amendments sought by the ERA under its Draft Decision are provided in Section 2 of this submission.

1.12 A summary of further additions and other amendments made to DBP's access arrangement proposal but not specifically addressed by the ERA under its amendments set out in its Draft Decision are provided in Section 3 of this submission.

2. RESPONSE TO AMENDMENTS TO TERMS AND CONDITIONS

2.1 On 22 December 2015, the ERA made its Draft Decision to not approve the access arrangement revision proposal of DBP. The ERA's reasons for not approving the access arrangement revision proposal were set out in its Draft Decision.

2.2 In this Submission 52, DBP substantiates its amendments and additions made in the relation to the terms and conditions of the reference services included in the Amended AA Proposal and responds to aspects of the reasoning in the Draft Decision relating to the matters raised by the ERA in the Draft Decision.

Response to Required Amendment #27 – "Access Request Form"

2.3 Draft Decision Amendment #27 provides that the term "Access Request Form", under clause 1 of the proposed terms and conditions, should retain the same meaning as specified in clause 1 of the current AA3 terms and conditions.

2.4 DBP accepts the decision of the ERA.

Response to Required Amendment #28 – "Carbon Cost"

2.5 Draft Decision Amendment #28 provides that the term "Carbon Cost", under clause 1 of the proposed terms and conditions, should be amended as follows:

> "***Carbon Cost*** means any costs ~~(for the avoidance of doubt, including penalties if that is how such costs are described in the relevant Law)~~(excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law) arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect and the costs incurred in acquiring and disposing of or otherwise trading emissions permits."

2.6 There are several reasons stated by the ERA in the Draft Decision for rejecting DBP's proposed changes to the definition of "Carbon Cost". They are:

(a) the Standard Shipper Contract (**SSC**) for a full haul ("T1") service does not define or use the term "Carbon Cost";

(b) having regard to the submissions of interested parties;

(c) DBP has not provided adequate justification for the proposed change, noting that it should be within the ability of a pipeline operator, acting reasonably and operating the pipeline efficiently, to manage its obligations under the statutory emissions reduction safeguard mechanism (when in force) and other laws in such a way that it does not break the law or incur penalties; and

(d) the new wording proposed by DBP in its proposed amendment would have effect more widely than necessary to deal with the particular concern raised by DBP in relation to the penalties arising under the statutory emissions reduction safeguard mechanism.

2.7 DBP is of the view that the amendments proposed by the ERA to the definition of "Carbon Cost" do not adequately protect DBP from its potential exposure to additional costs arising from the *National Greenhouse and Energy Reporting Act 2007* (Cth) and associated clean energy legislation.

2.8 As set out in DBP's supporting Submission 4, DBP submits that it has little or no control over the reasons relating to increased demand, the uncertainty of permit trading availability and the inability

to recover penalties if they are imposed. The level of DBP's net emissions is almost entirely dependent on levels of throughput of the DBNGP by shippers. Other than ensuring delivery of service, DBP is unable to control these levels of utilisation of its asset and are therefore exposed to potential carbon costs due to acts and omissions of shippers.

2.9 DBP agrees with the submission advanced by CPMM as referred to by the ERA in its Draft Decision that DBP ought to be able to surrender prescribed carbon units if required to reduce the net emissions number and thus avoid the imposition of a penalty. DBP's concerns with the imposition of a penalty under the relevant legislation arise where, despite acting as a reasonable and prudent operator, it is unable to purchase Australian Carbon Credit Units (**ACCUs**) to mitigate its exposure, such as where there is a shortfall in the issue or availability of ACCUs in the market.

2.10 Set out below at Figure 1 is a graphical representation of the volume of abatement purchased by the Clean Energy Regulator over the last three quarters. As illustrated in Figure 1, there is substantial variance in the purchasing levels of abatement by the Clean Energy Regulator at auction to date and a corresponding variance in availability of ACCUs available to entities to surrender to meet their applicable baseline emissions number. Such variance is, in part, due to the availability of carbon abatement projects suitable for contract award, which vary from time to time.

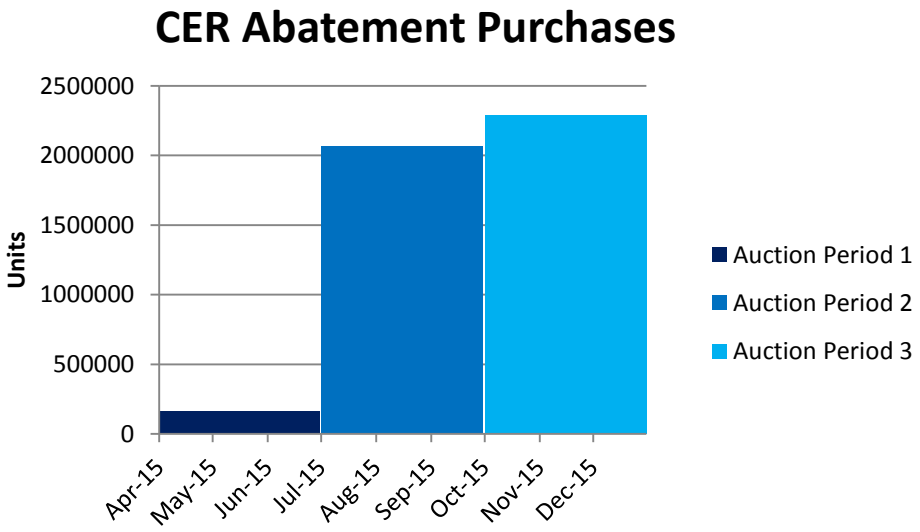


Figure 1: Purchased volume of abatement by the Clean Energy Regulator[1]

2.11 The disclaimer on the Clean Energy Regulator's website itself[2] states that the Commonwealth of Australia and the Clean Energy Regulator make no representations as to the future nature, characteristics or performance of ACCUs. With the new carbon abatement regime in its infancy, and with uncertainty over future Government policy, there can be no certainty as to the availability of ACCUs to entities to surrender in a given period to achieve their applicable baseline emissions number and avoid the levy of statutory penalties.

2.12 DBP does not seek a unilateral right to pass through penalties where such costs could have been avoided through reasonable and prudent management, nor should it be expected to undertake projects under the Emissions Reduction Fund to generate its own ACCUs where such projects are not part of DBP's standard business practices. However, DBP does not expect that it ought to be liable for an exposure to costs where such reasonable and prudent management for whatever reason fails to yield a quantity of ACCUs from the market to mitigate against any issue of penalties.

[1] *Data available from http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/carbon-abatement-contract-register*
[2] *See http://www.cleanenergyregulator.gov.au/OSR/ANREU/types-of-emissions-units/australian-carbon-credit-units*

2.13 For the reasons above, DBP proposes that the term "Carbon Cost", under clause 1 of the proposed terms and conditions, should be amended as follows (shown as a mark up against the Draft Decision terms and conditions):

> "***Carbon Cost*** means any costs ~~(excluding penalties or any other cost, charge or expense (including interest) arising due to breach of any Law)~~ arising in relation to the management of and complying with any obligations or liabilities that may arise under any Law in relation to greenhouse gas emissions. For the avoidance of doubt, such costs may include the costs reasonably incurred by the Operator or its Related Bodies Corporate of actions taken by it to reduce greenhouse gas emissions or mitigate their effect ~~and~~, the costs incurred in acquiring and disposing of or otherwise trading emissions permits and any penalties reasonably incurred in managing or complying with such obligations and liabilities."

Response to Required Amendment #29 – "Major Works"

2.14 Draft Decision Amendment #29 provides that the term "major works", under clause 1 of the proposed terms and conditions, should be amended to exclude planned maintenance, and consequential amendments to clauses 17.2(d), 18(e) and 18(g) should not be made.

2.15 DBP accepts the decision of the ERA.

Response to Required Amendment #30 – "Original Capacity"

2.16 Draft Decision Amendment #30 provides that the term "original capacity", under clause 1 of the current terms and conditions applying to the AA3 period, should not be deleted from the proposed terms and conditions.

2.17 Consistent with DBP's response to Draft Decision Amendment #35 as outlined below, DBP accepts the decision of the ERA.

Response to Required Amendment #31 – "Outlet Station" and "Gate Station"

2.18 Draft Decision Amendment #31 provides that:

(a) the term "outlet station", under clause 1 of the proposed terms and conditions, should be amended as follows:

> "***Outlet Station*** means either a Gate Station or the Metering Equipment site associated with an Outlet Point, and includes ~~gate stations as well as~~ any facilities installed at the site to perform overpressure protection, reverse flow protection, excessive flow protection, Gas quality monitoring, Gas metering and measurement, and telemetry, and all standby, emergency and safety facilities, and all ancillary equipment and service."

(b) the term "gate station" should be added to clause 1 of the proposed terms and conditions, using the same terms that are used in the Standard Shipper Contract, that is:

> "***Gate Station*** means the Metering Equipment site Associated with a Physical Gate Point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, Gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services."

2.19 DBP accepts the decision of the ERA.

Response to Required Amendment #32 – "Part Haul"

2.20 Refer to Submission 51 in relation to DBP's response to Draft Decision Amendment #32.

2.21 DBP further notes that the term “gas” has been replaced with the defined term “Gas” to ensure consistency with the definitions of Full Haul and Back Haul.

Response to Required Amendment #33 – Compliance with ring fencing

2.22 Draft Decision Amendment #33 provides that clause 2.5(e) of the proposed terms and conditions, relating to ring fencing compliance, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.23 DBP accepts the decision of the ERA.

Response to Required Amendment #34 – Capacity Service

2.24 Draft Decision Amendment #34 provides that clause 3.2 of the proposed terms and conditions, relating to capacity service, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.25 DBP accepts the decision of the ERA.

Response to Required Amendment #35 – Options to renew contract

2.26 Draft Decision Amendment #35 provides that the following clauses of the current terms and conditions applying to the access arrangement for the AA3 period, which set out provisions relating to the duration of the contract, should not be deleted from the proposed terms and conditions:

(a) Clause 4.3 (Option to renew contract);

(b) Clause 4.4 (Conditions to be satisfied before exercising an option);

(c) Clause 4.5 (Notice exercising an option);

(d) Clause 4.6 (First option period); and

(e) Clause 4.7 (Second option period).

2.27 DBP is of the view that the decision of the ERA does not address the requirements of the NGO (including promoting the efficient operation and use of the DBNGP for the long term interest of gas consumers) and is of the view that the ERA’s decision has failed to adequately appreciate the views of DBP and submissions made by shippers.

2.28 DBP reiterates its views that the options to renew contracts applying under the AA3 framework create the risk that DBP may be compelled to expand the pipeline to provide capacity for a prospective shipper in circumstances where existing capacity is reserved for the exercise of options by an existing shipper. If these options are not exercised, this will result in a surplus capacity on the pipeline and an additional capital expenditure that was not incurred efficiently.

2.29 The submission of CPMM correctly identifies the tension and need for balance under the NGO between the operator’s ability to plan future demand and expansions with the needs of shippers to match gas transport capacity to project life spans and future demand requirements. As per DBP’s previous submissions, the current framework does not achieve this balance; rather, it creates inefficiencies in the operator’s ability to allocate available capacity to prospective and existing shippers. CPMM notes that the risk of DBP being left with surplus capacity where an existing shipper does not exercise its options to renew its contract term and proposes that the option be exercised in advance to precede the construction start date of any expansion.

2.30 DBP is of the view that this risk may be mitigated by granting existing shippers with ‘put and call’ options to extend the duration of their contract which will make available spare capacity on the

pipeline when required by prospective shippers and no longer required by existing shippers. This mechanism will operate as follows:

(a) Operator will receive a reference service access request form from a prospective shipper for capacity on the DBNGP commencing at the Requested Reference Service Start Date as specified in the access request form;

(b) Operator will identify all shippers with tranches of reference service contracted capacity for the applicable reference service expiring more than 12 months prior to the Requested Reference Service Start Date (given the latest date that a Shipper can exercise an Option under clause 4.5 is 12 months before the Shipper's Capacity End Date);

(c) Operator will issue notices to all shippers identified in paragraph (b) requiring each shipper to either relinquish or exercise its option(s) to extend the duration of its reference service;

(d) Shippers will respond to operator confirming their election or relinquishment of their option(s) within 15 days (noting that third party shippers may request a Requested Reference Service Start Date 30 days after the date the access request is submitted) or otherwise such option(s) are deemed to have lapsed (consistent with the current regime in clause 4.5); and

(e) Operator, now having knowledge of the level of capacity available as at the Requested Reference Service Start Date, will be able to offer spare capacity to the prospective shipper or otherwise undertake an expansion of the DBNGP to secure additional capacity.

2.31 In accordance with the above methodology, DBP proposes retaining clause 4.5 as per the current terms and conditions applying to the access arrangement for the AA3 period, amending clauses 4.3, 4.4, 4.6 and 4.7 as outlined below:

"4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, ~~and~~ 4.7 and 4.8, Shipper has two options to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (*Original Capacity*) each for a period of 1 year (*Option*)."

"4.4 Conditions to be satisfied before exercising an Option

Shipper may only validly give notice exercising an Option if Shipper:

(a) is not in default (within the meaning of clause 22.1) under this Contract in a way which is material in the context of this Contract as a whole at the time Shipper gives notice; and

(b) complies with the requirements of clauses 4.5 or 4.8 of this Contract."

"4.6 First Option Period

If Shipper gives a notice in accordance with clauses 4.5 or 4.8 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year and:

(a) the Capacity End Date for the Original Capacity (as defined in clause 4.1) is amended to 08:00 hours on that date; and

(b) this clause 4.6 (relating to the exercise of the Option) will have no effect after 08:00 hours on the date originally specified in the Access Request Form as the Capacity End Date."

"4.7 Second Option Period

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clauses 4.5 or 4.8 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year and:

(a) the Capacity End Date for the Original Capacity (as amended by the previous operation of clause 4.6(a)) is amended to 08:00 hours on that date; and

(b) clauses 4.3, 4.4, 4.5 and this clause 4.7 (all relating to the exercise of the Option) will have no effect after 8:00 hours on the date that is one year after the date that was originally specified in the Access Request Form as the Capacity End Date."

DBP also proposes incorporating the following new clause 4.8 into the proposed terms and conditions:

"4.8 Put and call of Options

(a) If Operator receives an access request form from a shipper (other than the Shipper) which specifies a Requested Reference Service Start Date occurring more than 12 months prior to the Shipper's Capacity End Date and at the time of receipt of the access request form there is insufficient Contracted Capacity to meet the needs of the access request and Shipper has one or more Options that it has not exercised, then Operator must give a written notice to the Shipper as soon as practicable after receipt of the access request form from the shipper:

(i) confirming receipt of the access request form, the Requested Reference Service Start Date and the amount of Contracted Capacity which is the subject of the access request form; and

(ii) requiring Shipper to confirm whether Shipper intends to exercise its available Options or wishes for those Options to lapse;

(b) No later than 15 days after receipt of the Operator's notice issued under clause 4.8(a) and notwithstanding clause 4.5, a Shipper may give written notice to the Operator that it wishes to exercise its available Options. If such notice is not given before such time or the Shipper confirms that it wishes for those Options to lapse, the Options lapse, are of no force and effect whatsoever, and cannot be exercised."

Response to Required Amendment #36 – Operator may refuse to receive gas

2.32 Draft Decision Amendment #36 provides that clause 5.3(e) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should be amended as follows:

"~~subject to determination by the Operator as a Reasonable and Prudent Person~~to the extent that it is reasonably necessary to do so (as determined by the Operator acting as a Reasonable and Prudent Person), by reason of, or in response to a reduction in Gas Transmission Capacity caused by the negligence, breach of contractual term or other misconduct of the Shipper;"

2.33 DBP is of the view that the decision of the ERA not only fails to clarify the drafting of clause 5.3(e) but also creates an additional test to be undertaken by operator which further limits DBP's ability to exercise its contractual rights to refuse to receive gas from shippers at an inlet point.

2.34 Relevantly, the ERA's proposed amendments now require the operator to determine whether such refusal by the operator is "*reasonably necessary to do so*" which, in turn, must be "*determined by the Operator acting as a Reasonable and Prudent Person*".

2.35 The imposition of this limitation on DBP's rights was not advocated in any submission by third parties or by DBP. DBP considers that the ERA's amendment is not achievable in practice, given that DBP may be required to act instantaneously to restore integrity to pipeline service given that this right is triggered by a shipper reducing capacity through negligence, breach of contractual term or other misconduct. In such circumstances where the Shipper is potentially in breach of contract, DBP ought to have an ability to unilaterally and instantaneously take action to mitigate against such breach for the benefit of other third party users of the pipeline.

2.36 Even if achievable to implement in practice, the ERA's proposed amendments would create significant administrative burden, through the requirement to implement further controls into its pipeline control system, to determine whether such refusal is "*reasonably necessary*" in the circumstances. The proposed wording also adds to administrative burden by increasing the grounds for potential disputes as to whether or not a refusal is '*reasonably necessary'*.

2.37 For the reasons above, the amendments proposed by the ERA will not promote efficient operation or use of the DBNGP for the long term interests of gas consumers. DBP has considered the submissions of its shippers and requests that clause 5.3(e) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

Response to Required Amendment #37 – Operator may refuse to receive gas

2.38 Draft Decision Amendment #37 provides that clause 5.3(g) of the proposed terms and conditions, relating to the circumstances in which the operator may refuse to receive gas from the shipper at an inlet point, should retain the words: "*to the extent that the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all of the Shipper's Contracted Capacity in respect of that Inlet Point for that Gas Day,*".

2.39 DBP notes that CPMM and the ERA have identified that DBP's proposed amendment will lower the substance of the test that DBP must satisfy before it can refuse to receive gas under clause 5.3(g). DBP remains of the view that its proposed amendment is consistent with the NGO in promoting efficient operation and use of the DBNGP for the long term interests of gas consumers.

2.40 The current test in clause 5.3(g) relevantly requires that DBP may only exercise its right to refuse to receive gas where:

(a) the shipper has received in excess of the aggregate of all of its contracted capacity at the relevant inlet point on that gas day; and

(b) the receipt of such gas would interfere with other shippers' rights to their contracted firm capacity.

2.41 Accordingly, where a shipper is interfering with other shippers' rights to their contracted firm capacity, DBP is presently unable to exercise its right to refuse to receive that shippers' gas until such time as that shipper has received the aggregate of its contracted capacity at the inlet point. In these circumstances, a number of third party shippers will experience interference and interruptions to their service delivery. DBP questions how such an arrangement can be consistent with the NGO given that it prioritises the rights of one shipper to the potential detriment of many.

2.42 DBP notes that there are multiple situations where the activities of one shipper at an inlet point may interfere with other shippers' rights to their contracted firm capacity, such as receipt of high intraday flows of gas from a producer during commissioning of a production facility or through other unforeseen events. DBP's behavioural charges (such as imbalance, peaking and overrun charges) are low relative to other pipelines in Australia and globally and do not always act as a sufficient deterrent against such shipper behaviour. DBP encounters circumstances of shippers ignoring the impost of such charges on the basis that it is financially beneficial for that shipper to incur such charges rather than suffer asset outages.

2.43 In these circumstances, DBP ought to be able to exercise its rights to refuse to receive gas to protect third party shippers during the occurrence of the event interrupting service delivery, rather than being restricted from acting until such time as the interfering shipper has received the aggregate of its contracted capacity on that gas day.

2.44 DBP notes that this may reduce certainty of service delivery for the particular shipper that is interfering with other shipper's rights, however such rights will enable DBP, acting as a Reasonable and Prudent Person, to provide greater certainty of service delivery to all other shippers who are not causing interference on the pipeline.

2.45 For these reasons, DBP is of the view that its proposed amendments to clause 5.3(g) as set out in its proposed revised Access Arrangement are consistent with promoting efficient operation and use of the DBNGP for the long term interests of gas consumers and ought to be accepted by the ERA.

Response to Required Amendment #38 – Refusal to receive gas is a curtailment in limited circumstances

2.46 Draft Decision Amendment #38 provides that clause 5.5 of the proposed terms and conditions, relating to the circumstances in which the refusal to receive gas is to be considered a curtailment under the contract and taken into account in determining whether the permissible curtailment limit has been exceeded, should retain the cross reference to clause 5.3(d).

2.47 DBP notes the views of the ERA that the "reasonable and prudent person" requirement is an important safeguard and should be applied to all such situations to determine whether such situations are genuinely beyond DBP's prevention or control.

2.48 DBP reiterates the rationale for this amendment in its submission that in all such plausible situations, it is beyond DBP's prevention or control to mitigate against an event of maximum allowable operating pressure (**MAOP**) occurring. Relevantly:

(a) MAOP is set by the design of the pipeline;

(b) other than system use gas (which forms an insignificant quantum of daily gas receipts and deliveries), all gas transported on the pipeline is supplied by, and at pressures controlled by, the shippers on the DBNGP;

(c) DBP ought to be entitled to refuse receipt in such circumstances without risk of penalty.

2.49 For these reasons, DBP is of the view that its proposed amendments to clause 5.5 as set out in its proposed revised Access Arrangement ought to be accepted by the ERA.

Response to Required Amendment #39 – Operator may refuse to deliver gas

2.50 Draft Decision Amendment #39 provides that clause 5.7(b) of the proposed terms and conditions, relating to the circumstances whereby the operator may refuse to deliver gas to the shipper at an outlet point, should retain the words: "*to the extent that the Operator assesses as a Reasonable and Prudent Person that a reduction in Gas Transmission Capacity is required and decides to refuse to Receive Gas,*".

2.51 DBP reiterates its submissions in relation to Draft Decision Amendment #36 above but in relation to deliveries of gas rather than receipt of gas.

2.52 DBP notes the ERA's comments that the SSC does not contain the equivalent of clause 5.7(b) of the reference service but reiterates that the SSC is a different service to that of the reference service. In any event, DBP intends on undertaking a review of its SSC following the completion of the current Access Arrangement process to identify and incorporate any potential omissions from the SCC such as that identified by the ERA.

2.53 Consistent with DBP's approach in relation to Draft Decision Amendment #36, DBP accepts the decision of the ERA.

Response to Required Amendment #40 – No liability for refusal to deliver gas

2.54 Draft Decision Amendment #40 provides that clause 5.10 of the proposed terms and conditions should be amended as follows:

> "Subject to clause 23.2, ~~and clause 17 when a Refusal to Receive Gas is deemed a Curtailment,~~ the Operator is not liable for any Direct Damage or Indirect Damage caused by or arising out of any refusal to Deliver Gas under clause 5.7, unless the refusal is deemed to be a Curtailment under clause 5.9, in which case clause 17 applies."

2.55 DBP accepts the decision of the ERA.

Response to Required Amendment #41 – Additional rights to refuse to receive or deliver gas

2.56 Draft Decision Amendment #41 provides that clauses 5.13(b) and 5.13(c) of the proposed terms and conditions, relating to additional rights to refuse to receive or deliver gas, should be amended to replace references to "clause 5.12(a)" with references to "clause 5.13(a)".

2.57 DBP accepts the decision of the ERA.

Response to Required Amendment #42 – Shipper's gas installations

2.58 Draft Decision Amendment #42 provides that clause 5.14 of the proposed terms and conditions, relating to shipper's gas installations, should be amended as follows:

(a) Clause 5.14(a) should be amended to replace a reference to "clause 5.13" with a reference to "clause 5.14".

(b) Clauses 5.14(b)(ii) and 5.14(c) should be amended to replace references to "clause 5.13(b)(i)" with references to clause "5.14(b)(i)".

2.59 DBP accepts the decision of the ERA.

Response to Required Amendment #43 – Multi-shipper inlet and outlet points

2.60 Draft Decision Amendment #43 provides that clause 6.3(e) of the proposed terms and conditions, relating to multi-shipper inlet and outlet points, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.61 DBP accepts the decision of the ERA.

Response to Required Amendment #44 – Allocation of gas at outlet points

2.62 Draft Decision Amendment #44 provides that clause 6.5 of the proposed terms and conditions, relating to the allocation of gas at outlet points, should be amended as follows:

(a) Subclause 6.5(c) should be amended to remove the words "*at a constant rate over that Gas Day*"; and

(b) Subclause 6.5(d) should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.63 In respect of the ERA's amendment in respect of subclause 6.5(c), DBP advises that the rates of gas delivery at outlet points is not administered on an hourly basis, but is rather aggregated over a

given gas day. DBP at present does not have systems in place to determine the different consumption profiles of multiple shippers at an outlet point on an hourly or intraday basis or have access to such information, as CPMM alleges in its submission. The implementation of such systems would require additional capital and operating expenditure by DBP which it considers is not an efficient operation or use of the DBNGP for the long term interest of gas consumers when alternative contractual arrangements are able to address the uncertainty.

2.64 In respect of the ERA's amendment in respect of subclause 6.5(d), DBP is of the view that its proposed amendment should be approved. Notwithstanding the submissions from interested parties, DBP notes that the amendment to clause 6.5(d) has been proposed to simplify the drafting and remove uncertainty that currently exists.

2.65 Relevantly, Capacity Service is defined in clause 1 to mean "*any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided*". This definition relevantly includes any available Capacity under any Spot Transaction, and accordingly it is unnecessary to separately refer to Capacity under any Spot Transaction in clause 6.5(d).

2.66 This intention is made clear given that clause 6.5(d)(ii) ranks available Capacity Services "*in the order set out in clause 8.8(a)*". Clause 8.8(a) in turn prioritises the scheduling of capacity services according to the "Point Specific Curtailment" set out in Schedule 6. Relevantly, the Point Specific Curtailment hierarchy in Schedule 6 makes reference to Spot Capacity, and therefore the deemed order of receipt of gas, as specified in DBP's proposed amendment, addresses the receipt of gas for any available Capacity under any Spot Transaction.

2.67 For the reasons set out above, DBP is of the view that its proposed amendments to subclauses 6.5(c) and 6.5(d) as set out in its proposed revised Access Arrangement ought to be accepted by the ERA.

Response to Required Amendment #45 – Certain installations taken to comply

2.68 Draft Decision Amendment #45 provides that clause 6.16 of the proposed terms and conditions, relating to the compliance of certain installations, should be amended to replace the cross-referencing to "clauses 6.6 to 6.11" with cross-referencing to "clauses 6.6 to 6.9".

2.69 DBP accepts the decision of the ERA.

Response to Required Amendment #46 – Shipper's liability for out-of-specification gas

2.70 Draft Decision Amendment #46 provides that clause 7.8 of the proposed terms and conditions, relating to the shipper's liability for out-of-specification gas, should be amended to indicate that if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

2.71 In its Draft Decision, the ERA considered that:

(a) DBP should have the flexibility to vent, burn or flare out-of-specification gas as it thinks fit (acting as a reasonable and prudent person and consistently with the NGO); and

(b) if DBP chooses to burn or otherwise use out-of-specification gas delivered by (or on behalf of) a shipper as system use gas, then DBP should pay the shipper for that system use gas and (as the shipper did not supply the gas for that purpose) the shipper should not have any liability for loss or damage to the extent caused by that use of the gas, or arising out of the gas not meeting the gas specification.

2.72 In its submission, CPMM advises that the addition of the option to "burn" out-of-specification gas could have broader commercial consequences as it would include the burning of such gas in a

compressor turbine. CPMM submits that "*if the gas is good enough to be allowed into the pipeline for use as compressor fuel, then it should not be treated as undelivered [gas] under clause 7.8(b)(ii)*".

2.73 DBP agrees with the ERA's decision that DBP should have the flexibility to vent, burn or flare out-of-specification gas as it sees fit. DBP however does not consider it is appropriate to create a mechanism to reimburse shippers for out-of-specification gas that is used or dealt with by the operator for the following reasons:

(a) Multiple inlet points are physically connected at compressor stations on the DBNGP, limiting DBP's ability to control the passage of out-of-specification gas through compressor stations;

(b) The delivery of out-of-specification gas into the DBNPG is totally within the control of the shipper and is outside the control of DBP. The onus is on the shipper to ensure that gas entering the pipeline system complies with the gas specifications;

(c) Receipt of out-of-specification gas into the DBNGP can create severe operational integrity issues to the detriment of other users of the pipeline and should not be encouraged or incentivised through financial means;

(d) DBP is mandated by legislation, in particular the *Gas Supply (Gas Quality Specifications) Act 2009* (WA), to accept short term risk on all gas excursions before a Pipeline Impact Agreement is required to be entered into by the shipper and operator;

(e) Pipeline operators require a mechanism that facilitates immediate decision making in respect of the treatment of out-of-specification gas. This should not include the making of financial decisions as part of that process;

(f) Notice requirements already exist in the terms and conditions under clause 7.7 which permit the operator, at its own risk, to agree to receive out-of-specification gas from a shipper at an inlet point and to agree on terms and conditions (including the terms of any financial reimbursement) appropriate for the receipt of that gas;

(g) Clause 7.8 governs the liability regime where out-of-specification gas enters the pipeline without the Operator's agreement under clause 7.7. In this situation, shippers indemnify DBP for the impact of out-of-specification gas that DBP has not consented to or agreed terms in relation to acceptance of on the pipeline. It is anomalous in the context of this accepted regime for DBP to pay a shipper for out-of-specification gas burnt by the Operator;

(h) DBP expects that out-of-specification gas delivered by the shipper at an inlet point would be deemed to not have been delivered, and the shipper would not be financially liable, under the terms of its Gas Sales Agreements with the relevant producer. Whilst DBP is not privy to such agreements, it notes that clause 11.4 of the AMPLA Model Gas Sales Agreement (Version 1) provides the following:

> "**11.4 Consequences of Buyer rejection of Off-Specification Gas**
>
> If the Buyer notifies the Sellers' Representative that it rejects the proposed delivery of Off-Specification Gas, then:
>
> (a) the Sellers must, if possible, stop making available Off-Specification Gas;
>
> (b) the quantity of Off-Specification Gas so rejected is deemed not to be Delivered Gas and the Buyer is not liable to pay for that Off-Specification Gas; and
>
> if Off-Specification Gas which has been rejected by the Buyer is actually delivered to the Buyer, title to that Off-Specification Gas passes to the Buyer but, subject to any limitation of liability under this agreement, the Seller is liable to the Buyer, and must recompense the Buyer for, for any Direct Loss incurred by the Buyer, including Direct Loss incurred by a Transporter which the Buyer is required to pay to that Transporter."

2.74 The retention of DBP's ability to vent, flare or burn out-of-specification gas as set out in its proposed revised Access Arrangement ensures DBP is capable of quickly managing gas excursions on the pipeline to promote efficient operation and use of the DBNGP. The current regime also provides a disincentive for shippers to permit out of specification gas from entering the pipeline system. For the reasons above, DBP is of the view that its proposed amendment to clauses 7.8 as set out in its proposed revised Access Arrangement ought to be accepted by the ERA.

Response to Required Amendment #47 – Request for advance information

2.75 Draft Decision Amendment #47 provides that clause 8.2(a) of the proposed terms and conditions, relating to requests for advance information, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.76 DBP accepts the decision of the ERA.

Response to Required Amendment #48 – Accumulated imbalance limit

2.77 Draft Decision Amendment #48 provides that clauses 9.5(c) and 9.5(d), relating to the accumulated imbalance limit, should not be deleted from the proposed terms and conditions.

2.78 DBP has identified an anomaly in its proposed revised Access Arrangement in relation to clause 9.5, under which some amendments made by DBP under its Submissions 1 and 4 appear to not have been shown in tracked changes in its proposed terms and conditions which may have not been identified by the ERA or interested parties. For full disclosure, DBP has illustrated in mark-up the changes proposed to clause 9.5 of the proposed revised Access Arrangement in its attachments.

2.79 These amendments are consistent with DBP's submissions to the ERA to date. DBP reiterates its views that the deletion of clauses 9.5(c) and 9.5(d) and the balance of the amendments to clause 9.5 are:

(a) needed because current terms are ineffectual and unworkable in practice;

(b) necessary to provide a more efficient utilisation of the DBNGP; and

(c) justified based on the NGO.

Ineffectual and unworkable in practice

2.80 DBP notes the submissions by CPMM which advise that DBP has operated in accordance with the notice requirements in clause 9.5 for over 10 years and contests that the provisions are unworkable.

2.81 DBP notes that it has, for some time, advocated for a change to the imbalance regime. The current notification regime requires DBP to coordinate with and issue a notice to the shipper to address the shipper's imbalance position and attempt to ameliorate the impact of the shipper's imbalance position. In practice, many imbalance events occur outside business hours. Given a significant number of shippers do not have representatives available outside of business hours, the notice does not result in any immediate change to shipper behaviour and therefore limits the ability of the pipeline operator to mitigate the impact of that shipper's imbalance position.

2.82 Without an ability to effectively levy Excess Imbalance Charges on shippers, DBP is of the view that the current provisions in clause 9.5 are inadequate to incentivise and motivate shippers to comply with the imbalance regime set out under the proposed terms and conditions.

2.83 DBP is of the view that, under the access arrangement terms and conditions proposed by DBP, shippers hold sufficient rights to manage imbalances and to control their imbalance positions, for the following reasons:

(a) **Notification of Imbalances:** By way of clause 9.4 of the terms and conditions, every shipper is notified of its Accumulated Imbalance and Daily Imbalance by way of an Accumulated Imbalance Notice issued to shippers before 13:30 hours on each Gas Day. Accordingly, each shipper on the DBNGP is expressly informed of its daily and cumulative imbalance position to enable it to modify its behaviour and remain within the relevant imbalance limits.

(b) **Trading of Imbalances:** Clause 9.9 of the terms and conditions provides each shipper with an ability to exchange all or part of its Accumulated Imbalance with another shipper on the DBNGP, by 12:00 hours on the next Working Day, on any terms that those parties may agree. Accordingly, this provides an ability for each shipper to unilaterally agree, outside of any involvement with the pipeline operator, to exchange and thereby reduce its imbalance position with other shipper to mitigate its potential exposure to imbalance charges.

(c) **Control over Transportation Usage**: DBP is of the view that each shipper has a myriad of options to adjust its usage of gas transportation services and gas demand requirements to ensure that it does not exceed its Accumulated Imbalance Limits. These include, but are not limited to:

(i) direct control over its gas demand requirements through the management of its end user or asset;

(ii) Advance Nomination rights under clause 8.18 of the reference service terms and conditions which provide an ability for each shipper to provide advance notice of its forecast gas transportation requirements; and

(iii) Initial Nomination and Renomination rights under clauses 8.9 and 8.11 which provide an ability for each shipper to adjust its nomination requirements, up to 20:00 hours on each Gas Day, to mirror its gas transportation requirements with its gas demand usage on any given Gas Day.

(d) **Imbalance Limits:** As outlined in DBP's Submission 4, DBP management is of the view that DBP's imbalance limits are set at a very high level, in contrast to Australian and global averages, which already provide substantial, generous margins of flexibility for shippers before any imbalance charges are incurred. CPMM alleges in its submissions to the ERA that the Accumulated Imbalance is, at times, arbitrary in nature and submits that each shipper ought to be able to exceed this limit where it can do so without harm, rather than reducing plant output. This example highlights the approach and views that shippers currently take to the present imbalance regime. DBP notes that a shipper has no transparency over the intermittent state of the DBNGP and is not in a position, and ought to not be in a position, to unilaterally determine whether its behaviour on the pipeline will, or will not, have any impact on pipeline operations or on the ability of other shippers to access their contracted capacity. The presence of imbalance limits and charges are crucial controls and disincentives that ought to be available to the operator to ensure pipeline integrity is maintained for the benefit of all customers.

Necessary to provide a more efficient utilisation of the DBNGP

2.84 The present imbalance regime, as discussed above, does not provide a sufficient disincentive to shippers to manage imbalances within the Accumulated Imbalance Limits, which can and has impacted on pipeline operations in the past. DBP is of the view that the NGO dictates a balance to be found between offering sufficient flexibility on the pipeline to shippers and ensuring shipper behaviour does not impact on pipeline operations and the capacity utilisation of other shippers.

2.85 This is a common view held by many pipeline operators in Australia. In APA's recent public submission to East Coast Gas Inquiry[3], APA advises:

> *"In determining the contractual limits, APA has to be mindful of effects on pipeline capacity and the subsequent impact on other shipper's contracted services and the ability to operate the pipeline. For example, if imbalance tolerances are high, then this may impact on transport services, storage capacity and line pack if used by all shippers at the same time."*

2.86 DBP considers that the current imbalance regime is currently sterilising pipeline utilisation that the pipeline operator can otherwise offer to shippers through other services which is reducing the efficient utilisation of the asset.

2.87 The impact caused by over-restrictive gas balancing requirements through the offering of generous pipeline flexibility rights is well documented. For example, the authors of the paper *Gas Balancing Rules Must Take into account the Trade-off between Offering Pipeline Transport and Pipeline Flexibility in Liberalized Gas Markets* note[4]:

> *"The European practice of providing a longer balancing interval and offering free tolerances actually means giving free short term storage or free short term flexibility. Free in this context means that the costs are socialized in the balancing tariff. So, shippers who need more flexibility, especially intra-day, pay less than the costs they cause to the network system. Shippers who require less flexibility pay more than the costs caused by their actual use of the flexibility. Consequently, this free line-pack flexibility may inhibit the development of other less costly short term flexibility sources…"*

2.88 Those same authors[5] highlight that the adoption of restrictive gas balancing requirements by certain European Union members have enabled the utilisation of balancing services for shippers that have specific balancing needs to be met. The authors note that this unbundling of pipeline services from line-pack flexibility allows the pipeline operator to share the costs between shippers in a more correct way.

2.89 In addition to the inefficiencies created by restrictive gas balancing regimes, bodies of literature also exist demonstrating that such regimes can have substantial impacts on pipeline operations to the detriment of services for all pipeline users, as DBP has experienced to date under the current imbalance regime. For example, the authors of the following quotation noted that during a particular December 1989 cold spell, various US pipelines were owed more than twice the amount of gas that they owed others[6]:

> *"Pipelines also express concern that such imbalances can be used as a substitute for firm sales service during peak periods, an incentive that is encouraged by low financial penalties for imbalances and long make-up periods to correct imbalances. This incentive can become a serious problem if the entire system exhibits an aggregate imbalance during a peak period, which is highly likely. In effect, there is a 'run on the bank,' where all accounts are motivated to exercise overdraft privileges. Under the pipeline's sales service obligation, the pipeline is bound to have the inventory of gas to honor such aggregate imbalances up to its contract demand level for firm sales."*

2.90 Typically, the imbalance of one shipper needs to be viewed as a whole over the imbalances of all shippers on the DBNGP to determine the effect that imbalances are having on the integrity of the asset. At its best, a small overall imbalance position may cause an increase in fuel costs and may

---

[3] *East Coast Gas Inquiry – APA Group submission responding to the ACCC issues paper, 2 July 2015, at paragraph 7.3 of page 18*

[4] *Gas Balancing Rules Must Take into account the Trade-off between Offering Pipeline Transport and Pipeline Flexibility in Liberalized Gas Markets, Center for Energy and Environmental Policy Research, Nico Keyaerts, Michelle Hallack, Jean-Michel Glachant and William D'haeseleer, September 2010 at paragraph 3.3.3 of page 11*

[5] *Ibid, Table 4 on page 10*

[6] *Regulatory Risk: Economic Principles and Applications to Natural Gas and Other Industries, A Lawrence Kolbe, William B. Tye, Stewart C. Myers, Springer Science & Business Media, 6 December 2012 at page 232*

limit the abilities of some Other Reserved Services, such as the ability for shippers to utilise storage services. At its worst, such as during a producer outage where shippers will typically take more gas from the DBNGP than they deliver at the producer inlet point, this can drastically reduce linepack over a number of hours in a Gas Day which can result in unavailability of Overruns, service unavailability of some Other Reserved Services, such as storage agreements, and Operational Balancing Agreements, and potential curtailment of gas transportation services.

2.91 To date, every single producer outage, and resulting shipper behaviour through imbalances and other behavioural activities, has resulted in substantial depletions of DBNGP line pack which has resulted in the above impacts to service delivery. This has included the Public Utilities Office (**PUO**) activating the Gas Supply Disruption Response Plan, through the initiation of the Operations Management Group, on 6 June 2014 and 20 January 2015 in response to DBP's depleted line pack. These events arose not due to the production outage itself, given sufficient gas production capacity remained unutilised by Shippers from other production facilities, but rather arose due to shippers continuing to take gas from DBNGP line pack during the production outage in excess of the quantity of gas being received into the DBNGP, causing substantial negative imbalance positions on the DBNGP.

Justified based on the NGO

2.92 For the reasons set out above, DBP is of the view that its proposed terms and conditions relating to the imbalance regime under clause 9.5 will promote the efficient operation and use of the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

2.93 DBP acknowledges that the proposed changes to terms and conditions present a greater probability that Excess Imbalance Charges may be payable by shippers on the DBNGP. However, for the reasons set out above, DBP is of the view that the imposition of such charges is unlikely to occur in practice given the shipper's current myriad of options presently available to manage imbalance positions on the DBNGP. DBP is, however, of the view that the change to imbalance regime will incentivise positive shipper behaviour.

2.94 As highlighted above, such positive changes in behaviour will have a corresponding positive impact on the ability of the pipeline operator to manage future producer outages and other imbalance events to ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.

2.95 Lastly, DBP notes the views of the ERA that the proposed imbalance regime is not present in DBP's current SSC contracts. Notwithstanding the dichotomy of services offered under the SSC and the reference service, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC. DBP is of the view that, given the current low level of utilisation of reference services on the DBNGP, the transition of imbalance regimes under the current access arrangement will reduce the impact on service delivery.

2.96 For the reasons above, DBP is of the view that its proposed amendments as described above in relation to clauses 9.5 of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #49 – Accumulated imbalance limit

2.97 Draft Decision Amendment #49 provides that clause 9.5(e) of the proposed terms and conditions, relating to the payment of an excess imbalance charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.98 DBP notes that, with its amendments to the anomalies set out under its response to Draft Decision Amendment #48 above, clause 9.5(e) has now been renumbered to clause 9.5(c).

2.99 DBP reiterates its justifications for modifications to the imbalance regime as set out in respect of its response to Draft Decision Amendment #48 and its supporting information to justify the consistency of these amendments with the aspirations of the NGO.

2.100 For these reasons, DBP is of the view that its proposed amendments in relation to clauses 9.5(c) (formerly 9.5(e)) of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #50 – Accumulated imbalance limit

2.101 Draft Decision Amendment #50 provides that clause 9.5(a) of the proposed terms and conditions, relating to the shipper's accumulated imbalance limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.102 The ERA advises in its Draft Decision that "[c]learly, DBP's proposed "minor/drafting change" to clause 9.5(a) on the face of it has the potential to exclude spot transactions from calculating the imbalance limit and may cause uncertainty and/or conduction" and that its proposed amendment, if seeking to preserve the current intention of clause 9.5(a), would seem to have failed to achieve this. This position was supported by submissions from interested parties.

2.103 DBP remains of the view that its proposed amendment to clause 9.5(a) is consistent with the intention to not remove Spot Capacity from the imbalance limit and is implemented to simplify the content of clause 9.5(a).

2.104 Clause 9.5(a), as proposed to be amended by DBP, is as follows:

> The Shipper's ***Accumulated Imbalance Limit*** for a Gas Day is 8% of the ~~sum of the Shipper's Capacity under Spot Transactions and quantities referred to as~~ Shipper's Contracted Capacity across all of the Shipper's Capacity Services ~~(including T1 Service and any Capacity under Spot Transactions)~~ for that Gas Day.

2.105 DBP has relevantly removed the references to Spot Transactions from the quantity of Shipper's Contracted Capacity. Contracted Capacity is defined in both DBP's proposed access arrangement terms and conditions and the AA3 terms and conditions as follows:

> ***Capacity Service*** *means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided.*

2.106 This definition includes Spot Transactions for the purchase of Spot Capacity, being Gas Transmission Capacity on the DBNGP. The original wording in clause 9.5(a) originates from the SSC version of clause 9.5(a), under which it is necessary to expressly refer to Spot Transactions in clause 9.5(a) given Spot Transactions are carved out from the SSC definition of Capacity Service. Relevantly, Capacity Service is currently defined under the SSCs is as follows (emphasis added):

> ***Capacity*** *Service means any service offered by the Operator on the DBNGP by which access to Gas Transmission Capacity is provided, other than under a Spot Transaction.*

2.107 DBP considers that there is potential confusion, from an interpretation point of view, to expressly refer to Spot Transactions in clause 9.5(a) but to omit references to Spot Transactions in other parts of the reference service terms and conditions where references to Shipper's Capacity Services are made.

2.108 DBP is therefore of the view that DBP's proposed amendment to clause 9.5(a) retains the intention, and simplifies the drafting, of the clause and ought to be accepted by the ERA.

Response to Required Amendment #51 – Cashing out imbalances

2.109 Draft Decision Amendment #51 provides that clause 9.9 of the proposed terms and conditions, relating to the cashing out of imbalances, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.110 DBP accepts the decision of the ERA.

Response to Required Amendment #52 – Consequences for exceeding hourly peaking limit

2.111 Draft Decision Amendment #52 provides that clause 10.3 of the proposed terms and conditions, relating to the consequences of exceeding an hourly peaking limit, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.112 DBP refers to its submissions above in relation to Draft Decision Amendment #48, noting that the concepts discussed in relation to that amendment are equally applicable to the management of peaking behaviour on the DBNGP and to DBP's proposed amendments to clause 10.3.

2.113 In particular, DBP reiterates that its amendments to clause 10.3 are:

(a) **needed because current terms are ineffectual and unworkable in practice**: DBP highlights its submissions which note the difficulties with deliveries of notices to and coordinate with shippers outside business hours and the generous peaking limits afforded to shippers under the current terms and conditions.

Figure 2 below illustrates the 95th percentile of hourly gas flows south of CS9 on the DBNGP. As demonstrated below, gas peaking is most evident between 18:00 hours and 21:00 hours. In accordance with the current notification regime under clause 10.3, DBP would be required to first identify all peaking shippers, prepare relevant notices and issue these notices to peaking shippers once shippers have exceeded their hourly peaking limit (being at some point in time after 18:00 hours).

Upon receipt of this notice, shippers are required to use best endeavours to comply with or procure compliance with the notice. As previously discussed, most shipper representatives are not available outside of business hours and accordingly are unlikely to act before peaking naturally subsides. In the event that a shipper representative is available to act on the notice, clause 10.3(a) only requires each shipper to use best endeavours and typically, by such time, the peaking event has passed.

Practically, and as demonstrated above, the current peaking regime does not enable DBP to influence peaking behaviour because shippers are not incentivised to act on the notices and, in any event, by the time DBP is able to comply with the relevant notice regime, the peaking event is in decline or has passed.

(b) **necessary to provide a more efficient utilisation of the DBNGP**: Where a shipper's rate of peaking is beyond its average hourly contracted capacity entitlement, the pipeline operator is required to make spare capacity available to satisfy the peaking service requirements of that shipper. This can involve temporary utilisation of another shipper's contracted capacity rights on the DBNGP to meet this requirement. This is supported by the academia referred to in DBP's response to Draft Decision #48 above and is supportive of a more regimented regime to ensure security of natural gas supply for the long term interests of all shippers on the pipeline;

(c) **justified based on the NGO**: DBP reiterates its views that, given the shipper's current options presently available to manage peaking behaviours on the DBNGP, the change to the peaking regime will incentivise positive shipper behaviour which will have a corresponding positive impact on the ability of the pipeline operator to manage peaking events and corresponding impacts on pipeline service availability. DBP is of the view that its proposed amendments ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.

2.114 For the reasons above, DBP is of the view that its proposed amendments in relation to clause 10.3 of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #53 – Outer hourly peaking limit

2.115 Draft Decision Amendment #53 provides that clause 10.5 of the proposed terms and conditions, relating to the concept of an outer hourly peaking limit, should be deleted from the proposed terms and conditions.

2.116 The ERA, in its Draft Decision, misconstrues the intention of DBP's submission and reaches the view that clause 10.5 amounts to a penalty that will be unenforceable and therefore ought to be deleted from the proposed terms and conditions. DBP does not consider that the outer hourly peaking limit constitutes a penalty, but rather that it is "penalty-like" in that it is intended to act as a disincentive to shippers to ensure shippers remain within their peaking limits.

2.117 DBP is of the view that its comments in respect of Draft Decision Amendments #48 and #52 adequately illustrate the potential issues caused to pipeline operations from overly flexible pipeline usage rights afforded to shippers. Relevantly, the costs of pipeline operations to restore and maintain pipeline integrity increases drastically as peaking rights are utilised on the pipeline.

2.118 DBP also notes that under clause 20.4(b) of the current reference service terms and conditions (as approved by the ERA), the operator and shippers have agreed that the outer hourly peaking limit is a genuine pre-estimate of the unavoidable costs, losses and damages that the Operator will incur and that such charges are not a penalty.

2.119 DBP advises the ERA that it only maintains its amendment of clause 10.5 as set out in its proposed terms and conditions in circumstances where the ERA approves, in whole or in substantially the same form of, its proposed amendments to clause 10.3 as referred to in Draft Decision Amendment #52. For the reasons above, DBP is of the view that its proposed amendments in relation to clause 10.5, in conjunction with the acceptance of its proposed amendments to clause 10.3, of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #54 – Overrun

2.120 Draft Decision Amendment #54 provides that clause 11.2(a) of the proposed terms and conditions, relating to the issuing of an unavailability notice, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.121 DBP refers to its submissions above in relation to Draft Decision Amendment #48, noting that the concepts discussed in relation to that amendment are equally applicable to the management of overrun on the DBNGP and to DBP's proposed amendments to clause 11.2(a).

2.122 In particular, DBP reiterates that its amendments to clause 11.2(a) are:

Needed because current terms are ineffectual and unworkable in practice

2.123 The current limitation on DBP's right to issue overrun unavailability notices to shippers is overly prescriptive and unable to be complied with in practice. Relevantly, it is not possible for the pipeline operator to ascertain the impacts of an overrun event until some time after the event has transpired. In particular, the ability to utilise additional capacity on the DBNGP at any given time, being overrun gas, is constantly developing. The state of the pipeline at any given time is dynamic in nature, which depends on the quantity and timing of the use of overrun gas against the current gas transportation demands on the asset, peaking levels, imbalance levels, gas quality and pressure and environmental, seasonal variables.

2.124 It is therefore not possible to determine whether "Shipper overrun will impact or is likely to impact on any other shipper's entitlement" to its pipeline services until after the overrun run event has concluded.

2.125 DBP again notes that each shipper has constant access to CRS information to manage its gas flows and has various options to adjust its usage of gas transportation services, gas demand requirements and contracted capacity levels to ensure that it doesn't need to utilise overrun gas.

2.126 DBP appreciates the concerns of WESCEF in relation to the issue of overrun notices to other shippers. As outlined above, DBP is unable to practically issue overrun notices specifically to shippers that are taking overrun and therefore proposes that it issue overrun notices to all shippers of the relevant reference service.

Necessary to provide a more efficient utilisation of the DBNGP

2.127 DBP issues unavailability notices to shippers in circumstances where significant distress has occurred or is occurring on the pipeline. This may include loss of linepack due to natural gas production facility outages, loss of compression on the pipeline or other emergency state

conditions. In such circumstances, the utilisation of overrun gas by shippers results in a direct loss of linepack used to support other pipeline services on the DBNGP and increases the probability of curtailment of these services. DBP has recently experienced an incident of one shipper electing to take overrun gas in such circumstances, despite the existence of the unavailability notice and the imposition of an unavailability overrun charge on the basis that the losses that would otherwise at its downstream asset due to reduced gas supply would outweigh the costs incurred through the unavailability overrun charge.

2.128 Whilst the inadequacy of DBP's behavioural charges is not directly relevant to DBP's proposed terms and conditions under clause 11.2(a), DBP considers that this example is supportive of DBP's intention to seek a more balanced overrun regime which permits greater control over shipper behaviour.

2.129 This is again reinforced by the academia referred to in DBP's response to Draft Decision #48 above which is supportive of a more regimented regime to ensure security of natural gas supply for the long term interests of all shippers on the pipeline

Justified based on the NGO

2.130 DBP reiterates its views that, given the shipper's current options presently available to manage overrun behaviours on the DBNGP, the change to the overrun regime will incentivise positive shipper behaviour which will have a corresponding positive impact on the ability of the pipeline operator to better manage overrun events and corresponding impacts on pipeline service availability. DBP is of the view that its proposed amendments ensure safety of the asset, reliability of service and security of supply of natural gas for the long term interests of consumers.

2.131 DBP also notes that it is presently required under clause 11.2(a) of the reference service terms and conditions to only give an unavailability notice acting as a reasonable and prudent person, which provides protections to shippers that DBP cannot unilaterally issue such notices at its unfettered discretion, but rather must exercise that discretion as a reasonable and prudent person.

2.132 For the reasons above, DBP is of the view that the following proposed amendment in relation to clause 11.2(a) of the proposed terms and conditions ought to be accepted by the ERA:

> "a) The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an ***Unavailability Notice***) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days~~, but only to the extent that Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, any Other Reserved Service or allocated Spot Capacity.~~. The Operator must, at the same time, give an Unavailability Notice to all other shippers ~~that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers~~."

Response to Required Amendment #55 – Refund of capacity reservation charge

2.133 Draft Decision Amendment #55 provides that clause 17.4 of the proposed terms and conditions, relating to the refund of the capacity reservation charge, should remain as currently drafted in the current terms and conditions applying to the access arrangement for the AA3 period.

2.134 The ERA advises that Draft Decision Amendment #55 was made having regard to the submissions of interested parties, noting that DBP has not provided adequate justification for its proposed amendment.

2.135 CPMM, in its submission, acknowledges that the operator ought to have an entitlement to carry out maintenance and major works for a certain amount of time up to the permissible curtailment limit but that DBP's proposed amendment to clause 17.4 ought to not entitle the shipper to a refund of

the capacity reservation charge if the time taken for such activities exceed the relevant curtailment limit for the following reasons:

(a) Under clause 17.2, the operator may curtail capacity services whenever it needs to undertake Major Works, which under the operator's proposed change, includes planned maintenance;

(b) Under clause 17.3, a curtailment in the circumstances set out in clause 17.2(b) is not to be aggregated with other curtailments in determining whether the accumulation duration of its curtailments in a gas year cause the relevant permissible curtailment limit to be exceeded; and

(c) To achieve the objective described in DBP's rationale for change, the reference to clause 17.2(b) should be deleted from clause 17.3(c)(i).

2.136 DBP notes that it has accepted the ERA's Draft Decision Amendment #29 such that planned maintenance does not form part of the definition of "Major Works" and therefore does not contribute towards the T1 Permissible Curtailment Limit under the proposed terms and conditions, addressing part of the concerns raised by CPMM in its submission.

2.137 DBP is also of the view that the amendment proposed by CPMM, relevantly to delete the reference to clause 17.2(b) from clause 17.3(c)(i), will achieve DBP's stated intention.

2.138 DBP also notes the submission received from another interested party, which notes that the submission by DBP does not provide any NGO-based justification for why the clause 17.4 refund should only apply where the curtailment exceeds the two per cent T1 permissible curtailment limit.

2.139 DBP considers that its proposed amendment to clauses 17.3(c)(i) and 17.4 are consistent with the NGO. Relevantly, DBP is of the view that it is reasonable to afford a certain period of "downtime" to a pipeline operator to undertake needed major work activities. Such works are crucial for ensuring that pipeline integrity and asset life is preserved in the long term for the benefits of its long term gas users. DBP ought to be able to undertake such works without liability and without risk of revenue losses to ensure that such major works are undertaken diligently, without haste, so as to ensure all necessary rectification works are carried out to required standards, as a reasonable and prudent person, and in accordance with all pipeline licences and approvals. The preservation of capacity reservation revenue during this period provides the correct incentives to the operator to ensure major works are undertaken to this standard.

2.140 Furthermore, as set out in clause 17.7 and in the definition of "Curtail", a curtailment is any reduction in a shipper's contracted capacity. Accordingly, during a curtailment a shipper may still receive part of its service offering (whether that be under a regulated transportation service, storage service or other service). In these circumstances, it is reasonable that the shipper ought to still contribute to the delivery of those services. DBP submits that its proposed amendment to clauses 17.3(c)(i) and 17.4 set a reasonable cap on DBP's ability to recover reservation charges whilst providing consideration for the provision of part service.

2.141 For the reasons above, DBP is of the view that its proposed amendment in relation to clause 17.4, and the following proposed amendment in relation to clause 17.3(c)(i) of the proposed terms and conditions ought to be accepted by the ERA:

"The T1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:

(i) a Curtailment in circumstances set out in clause 17.2(a)~~ or 17.2(b)~~; …"

Response to Required Amendment #56 – Operator's rights to refuse to receive or deliver gas

2.142 Draft Decision Amendment #56 provides that:

(a) clause 17.5 of the proposed terms and conditions, relating to the operator's rights to refuse to receive or deliver gas, should retain the cross reference to clause 5.9 of the proposed terms and conditions; and

(b) clause 5.9 ("Refusal to Deliver Gas is a Curtailment in limited circumstances") of the proposed terms and conditions should not be deleted from the proposed terms and conditions.

2.143 DBP accepts the decision of the ERA.

Response to Required Amendment #57 – Priority of curtailment

2.144 Draft Decision Amendment #57 provides that clause 17.9(c)(iii) of the current terms and conditions applying to the access arrangement for the AA3 period, relating to the priority of curtailment, should not be deleted from the proposed terms and conditions.

2.145 The ERA notes that the removal of clause 17.9(c)(iii) from the proposed terms and conditions would arguably be irrelevant if the same right was enshrined in separate regulated terms that may apply for a spot capacity service, however if this right isn't located in such an instrument then it potentially creates a material change and should therefore be retained.

2.146 DBP again reiterates, which the ERA appears to have accepted, that the rights of shippers applying to spot transactions (which formerly existed under clause 3.5) was removed from the 2010 AA and this clause is no longer relevant to the reference service. DBP also notes that the definitions for "Daily Bids" and "Daily Spot Bid Price", as referred to in clause 17.9(c)(iii) are not provided for in the proposed terms and conditions.

2.147 DBP is of the view that there is no necessity to retain the spot transaction curtailment mechanism within the proposed reference service on the basis that:

(a) the reference service does not apply to spot transactions and such rights will be contained in a separate (potentially regulated) agreement;

(b) shippers have no rights to exercise such priority of curtailment rights under the proposed reference terms and conditions and it is inappropriate to include irrelevant rights in this instrument;

(c) there is substantial uncertainty whether shippers could, in any event, exercise their rights under this spot transaction curtailment mechanism in respect of their rights to acquire spot capacity under a separate agreement; and

(d) at a practical level, a separate spot capacity agreement will need to contain a mechanism for administering any potential curtailment of spot capacity to assist with the administration of pipeline operations.

2.148 DBP is therefore of the view that its proposed amendment in relation to clause 17.9(c)(iii) of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #58 – Adjustment to T1 tariff

2.149 Draft Decision Amendment #58 provides that clause 20.5(a)(ii) of the proposed terms and conditions, relating to the adjustment of the T1 tariff, should be amended to read:

> "the T1 Tariff may be further varied from time-to-time in accordance with the Reference Tariff Variation Mechanism; and"

2.150 DBP accepts the decision of the ERA. DBP assumes that the ERA also intends for the definitions of "New Costs" and "Tax Change", which were proposed to be inserted and amended by DBP in its proposed terms and conditions, are to be deleted as a consequence, given those definitions are no longer referred to in the terms and conditions. DBP has removed these definitions from its annexed terms and conditions.

Response to Required Amendment #59 – Pipeline Trustee's acknowledgement and undertakings

2.151 Draft Decision Amendment #59 provides that clause 25.5(f) of the current terms and conditions applying to the access arrangement for the AA3 period, relating to the Pipeline Trustee's acknowledgements and undertakings, should not be deleted from the proposed terms and conditions.

2.152 DBP accepts the decision of the ERA.

Response to Required Amendment #60 – General right of relinquishment

2.153 Draft Decision Amendment #60 provides that clause 26 of the current terms and conditions applying to the access arrangement for the AA3 period, relating to the general right of relinquishment, should not be deleted from the proposed terms and conditions.

2.154 The ERA notes that the proposed change to clause 26 must require justification to demonstrate the promotion of the NGO and to demonstrate corresponding improvements in efficiency arising from the change. CPMM also advised that it would be supportive of DBP's proposed amendment if DBP could offer assurances that flexible access contract periods will be offered to prospective shippers seeking access to avoid such shippers committing to excessively long contracts for capacity services.

2.155 DBP responds to these concerns as follows:

Promotion of NGO and efficiencies

2.156 DBP is of the view that its proposed amendment is consistent with the NGO and promotes the efficient operation and use of the DBNGP for the long term interest of gas consumers. DBP considers that the achievement of the NGO in these circumstances requires the achievement of balance between offering flexibility in capacity commitments to shippers and retaining a certain level of commitment from shippers to underpin utilisation and financial support for the DBNGP.

2.157 In respect of flexibility in capacity commitments, DBP reiterates its views that there are a number of existing mechanisms under the proposed reference service terms and conditions that already provide shippers with rights to manage their commitments to capacity under the reference service. These include the shippers' rights to trade spare, unutilised capacity to existing and prospective shippers, to assign its reference service to another entity and to waive renewal options under the reference service.

2.158 In respect of capacity commitments from shippers on the DBNGP, DBP advises that a minimum contractual commitment from shippers (absent of relinquishment rights) provides greater revenue certainty to the asset which provides DBP with a greater ability to fund future expansions of the assets for the long term interests and utilisation of gas users. DBP has a strong history of undertaking expansions of the DBNGP. Each expansion was underpinned and funded through long term contracts on the DBNGP. The inclusion of relinquishment rights in the reference service terms and conditions will accordingly remove any certainty of term of those reference services and have a material impact on the pipeline operator's ability to facilitate any expansions of the asset in the future.

2.159 Furthermore, the omission of relinquishment rights will provide greater certainty in capacity utilisation levels on the pipeline which will promote the following further efficiencies on the DBNGP:

(a) allow certainty in forecasting of capacity utilisation levels and availability of spare capacity on the asset to determine potential timing and necessity for pipeline expansions and enhancements;

(b) allows for longer term forecasting in SUG requirements which will ensure greater efficiencies in costs through daily SUG use and enable more competitive SUG price negotiations through longer term contracts; and

(c) allow the pipeline operator to plan maintenance activities around utilised and unutilised pipeline assets based on certainty of transportation and pipeline service demands.

2.160 The ERA notes that the SSC retains the right of relinquishment as enshrined in clause 26. Notwithstanding the dichotomy of services offered under the SSC and the reference service, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC.

Flexibility in duration of contracts

2.161 DBP notes that it is mandated, by way of the definition of "reference service" in clause 3.3(d) of the Access Arrangement, to offer a minimum term of 2 years to prospective shippers where spare capacity is available, inclusive of options for extension of this term.

2.162 DBP notes that this commitment is substantially less than the 15 year minimum term required under DBP's SSC terms and conditions and that this commitment in term is also able to be renegotiated outside of the access arrangement regime to accommodate different shipper requirements in contract duration.

2.163 For the reasons set out above, DBP is of the view that its proposed amendment in relation to clause 26 of the proposed terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #61 – Information received by operator

2.164 Draft Decision Amendment #61 provides that clause 28.6 of the proposed terms and conditions and conditions, relating to information received by the operator, should be amended to replace a reference to "clauses 0 and 28.5" with a reference to "clauses 28.4 and 28.5".

2.165 DBP accepts the decision of the ERA.

Response to Required Amendment #62 – Notices generally

2.166 Draft Decision Amendment #62 provides that clause 29.3 of the proposed terms and conditions, relating to the communication of notices generally, should be amended to:

(a) make expressly clear that while a dedicated email address must be used, the dedicated email address can be changed by subsequent notice;

(b) at clause 29.3(a), use the words "or is sent by email to the Dedicated Email Address" instead of the words "or is sent by email to"; and

(c) at clause 29.3(b), use the words "Dedicated Email Addresses" instead of the words "email addresses".

2.167 DBP accepts the decision of the ERA and, in relation to paragraph (a) above, offers the following proposed amendment to clause 29.3(c) of the proposed reference service terms and conditions:

> *"(c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State, of a Dedicated*

Email Address and a facsimile number which are to take effect in substitution for the details set out in this clause."

Response to Required Amendment #63 – Non-discrimination clause

2.168 Draft Decision Amendment #63 provides that clauses 45.1 and 45.2 of the existing terms and conditions applying to the access arrangement for the AA3 period, relating to non-discrimination, should not be deleted from the proposed terms and conditions.

2.169 DBP confirms the ERA's understanding that the drafting of clause 45.1 and 45.2 originated from undertakings given by DBP and others to the ACCC in 2004 under section 87B of the *Trade Practices Act 1974* (Cth). Those undertakings, and the need to maintain ringfencing, was removed due to the departure of Alinta and WestNet from the ownership and operation of the DBNGP. Accordingly, the necessity to retain the provisions of clause 45.1 no longer exists.

2.170 In relation to clause 45.1, DBP notes that the rights afforded to shippers under clause 45.1 are superfluous to the numerous bundles of rights existing under the reference service terms entitling each shipper to information relevant to that shipper. Without limitation, these include access to the following:

(a) outlet metering equipment signals, under clause 15.5(a)(i);

(b) any other form of metering data requested from shipper from time to time, under clause 15.5(a)(ii);

(c) accumulated imbalance notices, under clause 9.4;

(d) gas delivery quantities delivered to each shipper at relevant outlet points via CRS, under clause 15.5(d);

(e) gas delivery quantities received by a shipper at physical gate points, under clauses 15.5(e), 15.5(f) and 15.5(g);

(f) records and information produced by primary metering equipment, under clause 15.15(c);

(g) information substantiating the issue of any curtailment notice, under clause 17.6(e);

(h) information relevant to substantiate any charges invoiced to a shipper, under clause 21;

(i) books, accounts, records and inventories of all matters connected with or relating to the reference service contract, under clause 31;

(j) gas market information publicly available from tie IMO bulletin board; and

(k) other such information made available to shippers from time to time through the good faith of the operator.

2.171 For the reasons above, DBP is of the view that the redundant provisions of clause 45.1 ought to be removed from the reference service terms and conditions as per DBP's proposed terms and conditions.

2.172 In relation to clause 45.2, DBP reiterates its views as set out in its Submission 4, noting the lifting of the ACCC undertakings with the departure of Alinta and WestNet from the ownership and operation of the DBNGP business. DBP also notes that clause 45.2 replicates the statutory obligations mandated on DBP under sections 140 and 147 of the National Gas Law. These provisions place restrictions on DBP to prevent the disclosure of information to a person who is carrying on a related business and prevents the entry into associate contracts. Such associate contracts can only be entertained with consent from the regulator, thereby preserving arms' length dealings.

2.173 DBP suggests that the standards dictated by the National Gas Law ought to apply to pipeline operator. In these circumstances, it is not appropriate to couch legislation in contract when changes can be made to legislation beyond the control of the pipeline operator.

2.174 The ERA notes that the SSC retains the right of discrimination as enshrined in clause 26. Notwithstanding the dichotomy of services offered under the SSC and the reference service, and proceeding on the basis that there are sufficient protection measures contained elsewhere in the SSCs, DBP is to undertake a review of the terms of the SSC following the completion of the access arrangement process to make relevant modifications to the SSC.

2.175 For the reasons above, DBP is of the view that the redundant provisions of clause 45.2 ought to be removed from the reference service terms and conditions as per DBP's proposed terms and conditions.

Response to Required Amendment #64 & #65 – P1 Service

2.176 Further to the above amendments to the terms and conditions that will apply to the T1, P1 and B1 reference services, DBP proposed two additional amendments to the proposed terms and conditions that will apply to the P1 Service. The ERA has proposed two amendments in relation to DBP's proposed amendment.

2.177 Draft Decision Amendment #64 provides that clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 Service, relating to the number of working days in which a fault should be remedied, should be amended so that the default rectification periods are the same for both the operator and shipper, and being 20 working days.

2.178 Furthermore, Draft Decision Amendment #65 provides that clauses 22.3 and 22.7 of the proposed terms and conditions applying to the T1 service and B1 service, relating to the number of working days in which a fault should be remedied, should be amended to be consistent with clauses 22.3 and 22.7 of the proposed terms and conditions applying to the P1 service.

2.179 The ERA has amended clauses 22.3 and 22.7 of the T1, P1 and B1 reference services adopting a query raised by CPMM. DBP notes that no substantiation or justification for the amendment was proposed by CPMM and is surprised that the ERA has adopted this amendment without making proper inquiry into the purpose or rationale for the dichotomy between the two default periods.

2.180 In its Submission 4, DBP indicated that the proposed amendment was inadvertently omitted from the current terms and conditions for the P1 reference service as it applied to the current AA3 access arrangement. DBP's proposed amendment aligned the P1 service terms and conditions with the terms and conditions for the T1 and B1 reference services, reducing the costs associated with administering contracts by aligning the terms.

2.181 In response to the query raised by CPMM, DBP responds as follows. The pipeline operator and the shippers have inherently different obligations to meet under the terms and conditions of the reference services that are the subject of clauses 22.3(b)(ii) and 22.7(b)(ii). This is evident from the differences in events concerning the shipper and operator that give rise to potential events of default.

2.182 For instance, the obligations of the shipper under clauses 22.1(b), 22.1(c) and 22.1(f), as referred to in clause 22.3(b)(ii) are materially different from the obligations of the operator under the reference services. These obligations of the shipper include the following:

Provision of Gas that meets the Operating Specification or the temperature or pressure specifications in the Contract (clauses 7.1 & 7.4)

2.183 Shippers are required under clauses 7.1 and 7.4 of the reference terms and conditions to provide gas that meets the operating specifications, temperature and pressure specifications mandated by

the contract. The contract contemplates circumstances where a shipper fails to provide gas that meets these requirements.

2.184 Such events require rectification as soon as possible to ensure integrity of pipeline linepack and operations for all shippers. For such events, 20 Working Days is an ample period of time in these circumstances which ensures attention is maintained on restoring gas quality to required contractual specifications to ensure pipeline services can continue to be provided to third party shippers.

Compliance with Curtailment Notice (clause 22.1(c)

2.185 A shipper is required to strictly comply with the directions of a curtailment notice issued under clause 17.8. Such compliance is required to ensure linepack can be maintained to offer pipeline services for relevant pipeline services.

2.186 As per a default for out-of-specification gas, such events require rectification as soon as possible to ensure integrity of pipeline linepack and operations for all shippers. Whilst DBP has rights to curtail shipper's deliveries at the inlet point, the absence of such gas deliveries can have an impact on linepack availability and must be restored as soon as possible. Again, a period of 20 Working Days to restore any default with clause 22.1(c) is sufficient in these circumstances.

Parts with Possession of its undertaking relating to the use of Gas Delivered under the Contract (clause 22.1(c)

2.187 This obligation is unique to the shipper and requires the shipper to comply with and remain responsible for its undertakings relating to the use of Gas Delivered under the Contract. Similarly, a default remediation period of 20 Working Days disciplines the shipper to restore any undertakings that were sold or transferred.

2.188 As can be shown from above, in all conceivable circumstances a period of 20 Working Days is ample time to afford to a shipper to remedy any default occurring under the reference service terms and conditions.

2.189 In contrast, the obligations of the operator under clause 22.5(a), as referred to in clause 22.7(b)(i), present a decidedly different level of risk that calls for a separate remediation period. Such defaults of the operator may arise, for example, due to a failure of the operator to meet required standards of gas delivery under the relevant reference service. As previously disclosed to the ERA, the operation of a pipeline is dependent on a multitude of variables which can add numerous complexities to any remediation of default events.

2.190 For example, in circumstances where the default relates to a physical fault of the pipeline (and force majeure rights are not available), the rectification of that default may depend on equipment lead times for relevant replacement parts, on contractor availability and the duration of installation works, weather conditions on site and on other shipper and landowner activities. Such events require a remediation period in the order of 40 Working Days to resolve or implement.

2.191 As indicated by CPMM in its submission[7], the majority of the current terms of the reference service contract emerged from the arms-length 2004 renegotiations. The default times applicable to both shipper and operator were negotiated by the parties on an independent, arms' length basis to ensure the remediation periods reflected the potential exposure and risk matrices of each party.

2.192 The operator highlights that the changes proposed by the ERA have not been analysed against the NGO and, by shortening the current remediation period from 40 Working Days to 20 Working Days, greatly increase the potential exposure to the operator to default and disputes. Such material

[7] *CITIC Pacific Mining Management Pty Ltd, Public Submission in response to the Economic Regulation Authority's Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2016-2020, at pp. 42-44*

changes cannot be in the interests of long term users of the pipeline, the efficient operation of the pipeline or to facilitate the aspirations of the NGO in any way.

2.193 For the reasons above, DBP is of the view that its proposed amendment in relation to clauses 22.3 and 22.7 of the proposed T1, P1 and B1 reference service terms and conditions ought to be accepted by the ERA.

Response to Required Amendment #69 – Capacity Trading Requirements

2.194 Draft Decision Amendment #69 provides that clause 27 of the proposed terms and conditions, relating to the trading or transferring of contracted capacity, should be consistent with the proposed amendments to clause 6 ("Capacity Trading Requirements") of the proposed revised access arrangement.

2.195 The ERA's Draft Decision Amendment #69 notes that clause 27 of DBP's proposed terms and conditions, contain provisions for dealing with capacity trading that need to be consistent with the amended capacity trading provisions under clause 6 of the proposed revised access arrangement. DBP advises it considers the following amendments to clause 6 of the access arrangement to be consistent with clause 27 and do not require amendments to be made to clause 27:

(a) Those changes made to clause 6.1: Clause 6 of the access arrangement and clause 27 of the proposed terms and conditions are consistent in this respect, because the National Gas Law and National Gas Rules cannot be contracted out of.

(b) Those changes made to clause 6.2: Clause 6 of access arrangement and clause 27 of the proposed terms and conditions are consistent in this respect, because there can be no pre-existing contractual right in a reference service contract, given the definition of "pre-existing contractual right".

2.196 DBP proposes the following amendment to clause 27.10 of the reference services and is otherwise of the view that clause 27 is consistent with the proposed amendments to clause 6 of the proposed revised access arrangement:

> *"The Shipper must, when requested by the Operator, reimburse the Operator for all reasonable expenses incurred by the Operator (including legal costs, internal costs and other costs as reasonably determined) by reason of the Request for Approval and any Resumption."*

3. FURTHER ADDITIONS AND AMENDMENTS TO TERMS AND CONDITIONS

3.1 In accordance with rule 60(1) of the National Gas Rules, a service provider may, within the revision period, submit additions or other amendments to the access arrangement proposal to address matters raised in the access arrangement Draft Decision.

3.2 DBP wishes to propose further additions and amendments to its proposed terms and conditions in its access arrangement which were not the subject of any express amendment raised by the ERA but were nonetheless the subject of the proposed terms and conditions as lodged as part of DBP's access arrangement proposal.

3.3 In the alternative, DBP seeks the approval of the ERA under rule 60(2) of the National Gas Rules to implement the following further additions and amendments.

Clause 5.3(a)(ii) – Operator may refuse to Receive Gas

3.4 DBP notes that clause 5.3(a)(ii) contains a reference to "clause 0 (Accumulated Imbalance Limit)" in the P1 and B1 reference service terms and conditions, which appears to be a drafting error resulting from DBP's proposed amendments to clause 9.5.

3.5 DBP considers that clause 5.3(a)(ii) should be changed so that it refers to "clause 9.5(b)~~0~~ (Accumulated Imbalance Limit);".

Clause 5.7(b)(ii) – Operator may refuse to Deliver Gas

3.6 Similarly to clause 5.3(a)(ii) described above, DBP notes that clause 5.7(b)(ii) contains a reference to "clause 0 (Accumulated Imbalance Limit)" in the B1 reference service terms and conditions, which appears to be a drafting error resulting from DBP's proposed amendments to clause 9.5.

3.7 DBP considers that clause 5.7(b)(ii) should be changed so that it refers to "clause 9.5(b)~~0~~ (Accumulated Imbalance Limit);".

Clause 5.7(b)(iv) – Operator may refuse to Deliver Gas

3.8 Similarly to clause 5.3(a)(ii) described above, DBP notes that clause 5.7(b)(iv) contains a reference to "clause 0 (Consequences of exceeding Hourly Peaking Limit)" in the B1 and P1 reference service terms and conditions, which appears to be a drafting error resulting from DBP's proposed amendments to clause 10.3.

3.9 DBP considers that clause 5.7(b)(iv) should be changed so that it refers to "clause 10.3(a)(ii)~~0~~ (Consequences of exceeding Hourly Peaking Limit);".

Clause 14.7 – Charges for relocation

3.10 DBP notes that clause 14.7 of the P1 and B1 reference services contain a mechanism for the relocation of Contracted Capacity under the P1 and B1 reference services which mirrors the relocation regime under the T1 reference service.

3.11 Given the nature of the P1 and B1 reference services, in contrast to the T1 reference service, DBP considers it is not appropriate to apply a regime for relocating Full Haul T1 capacity to a part haul or back haul service. DBP is of the view that the T1 relocation regime may have been inadvertently included in the P1 and B1 reference services.

3.12 DBP proposes amending clause 14.7 of the P1 and B1 reference services to incorporate the appropriate relocation mechanism that applies to the P1 and B1 SSC services, as follows:

For the P1 reference service:

"14.7 Charges for relocation

(a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.

(b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), in addition to the matters described in clause 14.7(c), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.

(c) Without limiting clause 14.7(b), ~~i~~If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point ~~up~~-down stream of Compressor Station 9 on the DBNGP so that a ~~Full~~Part Haul service becomes a ~~Part~~Full Haul service, any Capacity so relocated is to:

(i) ~~remains~~be treated as if it were on the same terms and conditions as Full Haul Capacity for T1 Service, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and

(ii) ~~is~~be treated under this Contract as though it was Full Haul Capacity.

For the B1 reference service:

"14.7 Charges for relocation

(a) Unless the Parties agree in writing to the contrary, no Charges payable under this Contract must be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance~~, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul~~.

(b) If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), in addition to the matters described in clause 14.7(c), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.

(c) Without limiting clause 14.7(b), ~~i~~If a relocation of Capacity under this clause results in:

(i) ~~remains on the same terms and conditions as Full Haul Capacity, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges~~the New Inlet Point being downstream of the

Existing Inlet Point or the New Outlet Point being upstream of the Existing Outlet Point (or both), the Charges under this Contract must be calculated and paid using the Distance Factor applicable to that New Inlet Point or New Outlet Point (or both), as the case may be; or~~; and~~

(ii) ~~is treated under this Contract as though it was Full Haul Capacity~~the New Inlet Point being upstream of the Existing Inlet Point or the New Outlet Point being downstream of the Existing Outlet Point, the Charges under this Contract must be calculated and paid using the Distance Factor applicable to that Existing Inlet Point or Existing Outlet Point (or both), as the case may be."

Clause 17.7(b)(i) – Content of a Curtailment Notice and Initial Notice

3.13 DBP notes that clause 17.7(b)(i) was removed from its proposed access arrangement terms and conditions, however the mark-ups indicating the removal of that clause were omitted from its submitted terms and conditions.

3.14 The substance of DBP's proposed amendment is to remove the requirement that an Initial Notice issued in respect of a curtailment contains "the reasons for the Curtailment".

3.15 DBP considers that it is impractical to provide for this requirement under an Initial Notice because:

(a) at the time of issuing an Initial Notice to Shippers, the specific reasons for and details of the Curtailment are unlikely to be known by DBP;

(b) DBP is already required to provide the reasons for a Curtailment separately under a Curtailment Notice, as set out in clause 17.7(a)(i); and

(c) the inclusion of clause 17.7(b)(i) creates additional administrative burden on pipeline resources.

Clause 20.4(a)(v) – Other Charges

3.16 DBP notes that clause 20.4(a)(v) contains a reference to "…clauses 0 , 6.6, 14.7 and 15.11…" in the reference service terms and conditions, which appears to have previously been a reference to clause 5.11(d) (System Use Gas) under which shippers indemnified the operator in respect of the cost of additional gas incurred by the Operator in supplying system use gas.

3.17 Given there is no such indemnity under the reference service terms and conditions in clause 5, DBP considers that the reference to this provision in clause 20.4(a)(v) should be removed such that clause 20.4(a)(v) reads "…clauses ~~0~~6.6, 14.7 and 15.11…;".

Clause 20.4(c) – Other Charges

3.18 DBP notes that clause 20.4(c) was removed from its proposed access arrangement terms and conditions, however the mark-ups indicating the removal of that clause were omitted from its submitted terms and conditions.

3.19 Whilst an equivalent provision does not existing under the SSC contracts, DBP is of the view that the provision was removed in error and has restated the provision into its proposed terms and conditions.

Clause 28.3(b)(iv) – Permitted Disclosure

3.20 DBP notes that a reference to "WestNet" was removed from clause 28.3(b)(iv) and consequential changes made to its proposed access arrangement terms and conditions, however the mark-ups indicating the removal of that reference were omitted from its submitted terms and conditions.

3.21 DBP notes that WestNet no longer has any interest in the DBNGP group of companies and accordingly the reference to WestNet in clause 28.3(b)(iv) is no longer relevant.

Clause 38 – Revocation, Substitution and Amendment

3.22 DBP notes that clause 38(b), as it exists under the SSC contracts, has been previously removed from reference service terms and conditions under earlier access arrangements.

3.23 That clause 38(b) provides that a shipper may not amend its contract to increase the shipper's contracted capacity under the contract, unless the increase in contracted capacity is made in accordance with clause 16. This provision was removed given that reference service contracts do not feature expansion rights provided under clause 16.

3.24 Clause 38(c) of the SSC contracts, incorporated as clause 38(b) in the reference service contracts, provides that the limitations on increasing contracted capacity under clause 38(b) of the SSC contracts does not prevent the shipper from undertaking certain other activities associated with its contracted capacity.

3.25 Given clause 38(b) of the SSC contracts has been removed from the reference service terms and conditions, it is no longer necessary or relevant to include the current clause 38(b) in the reference service terms and conditions. DBP has accordingly removed clause 38(b) from the proposed reference service terms and conditions and made consequential changes to clause 38(a).

Clause 41 – Stamp Duty

3.26 Clause 41 provides that a shipper must pay all stamp duty payable in respect of a reference service contract.

3.27 DBP notes that, with the abolition of stamp duty, clause 41 should now refer to "duty".

Schedule 7 – Form of Tripartite Deed

3.28 DBP notes that the hyperlink reference in Schedule 7 to the proforma form of tripartite deed is broken as a result of DBP updating its website. DBP has updated the hyperlink with the correct link.

APPENDIX A: PROPOSED T1 SERVICE TERMS & CONDITIONS

APPENDIX A.1: PROPOSED T1 SERVICE TERMS & CONDITIONS (CLEAN COPY)

APPENDIX A.2: PROPOSED T1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST AA3 TERMS AND CONDITIONS)

APPENDIX A.3: PROPOSED T1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST DBP AA4 REVISED ACCESS ARRANGEMENT)

APPENDIX B: PROPOSED P1 SERVICE TERMS & CONDITIONS

APPENDIX B.1: PROPOSED P1 SERVICE TERMS & CONDITIONS (CLEAN COPY)

APPENDIX B.2: PROPOSED P1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST AA3 TERMS AND CONDITIONS)

APPENDIX B.3: PROPOSED P1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST DBP AA4 REVISED ACCESS ARRANGEMENT)

APPENDIX C: PROPOSED B1 SERVICE TERMS & CONDITIONS

APPENDIX C.1: PROPOSED B1 SERVICE TERMS & CONDITIONS (CLEAN COPY)

APPENDIX C.2: PROPOSED B1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST AA3 TERMS AND CONDITIONS)

APPENDIX C.3: PROPOSED B1 SERVICE TERMS & CONDITIONS (MARKED UP AGAINST DBP AA4 REVISED ACCESS ARRANGEMENT)

APPENDIX D: CONFIDENTIALITY CLAIMS TABLE