CITIC PACIFIC MINING

Public Submission

by CITIC Pacific Mining Management Pty Ltd

in response to

the Economic Regulation Authority's *Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021* – 2025

PART A - INTRODUCTION

1 Background

In January 2020, DBNGP (WA) Transmission Pty Limited (**AGIG**) submitted to the Economic Regulation Authority (**Authority**) proposed revisions to its access arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) and proposed amendments to the reference services agreements terms and conditions, for the period 1 January 2021 to 31 December 2025 (**AA5 period**) (**Proposed Revisions**).

In March 2020, the Authority published its Issues Paper on Proposed Revisions to the Dampier to Bunbury Natural Gas Pipeline Access Arrangement 2021 – 2025 (**Issues Paper**).

This submission is made by CITIC Pacific Mining Management Pty Ltd (**CPM**) in relation to AGIG's Proposed Revisions and in response to the Authority's Issues Paper.

2 About CPM

CPM is an existing shipper on the DBNGP. CPM operates a world-class magnetite mine and processing facilities at Cape Preston in the Pilbara (**Sino Iron project**), utilising natural gas for on-site generation of electricity.

The Sino Iron project have six processing lines, producing 20 million tonnes of magnetite concentrate annually. The Sino Iron Project also includes large-scale supporting infrastructure and the Pilbara's first greenfield port development in 40 years and is classed as a critical industry in the present COVID-19 impacted business environment.

The Sino Iron project is China's largest-ever overseas investment in the resources sector, delivering wide-ranging socio-economic benefits including the creation of a new downstream processing industry for Australia, significant long-term revenue streams to government, local employment, international technology transfer, and an overall strengthening of the Sino-Australian economic relationship.

Production of magnetite concentrate is energy intensive. To meet project requirements, CPM has invested in a 480MW, low-emission combined cycle gas-fired power station. The provision of economically efficient and reliable gas transport services is critical to the Sino Iron Project.

Due to the short amount of time available for submissions to be provided by CPM on the Proposed Revisions and the Issues Paper, taking in to consideration the impacts COVID-19 has had on resources and the requirements to keep costs to a minimum; CPM are submitting a summarised submission and hereby offer the Authority the ability to discuss these matters in more detail with CPM (at a convenient time) should they need additional information.

CPM wish to use this section to applaud AGIG on the path they chose to develop their Proposed Revisions. CPM believe it provided an opportunity to provide inputs for AGIG consideration in finalising their Proposed Revisions. With this statement in mind together with the rush to get a response submitted in the current business environment, CPM advise that it has generally restricted this submission to those areas needing focus by the Authority and does not necessarily acknowledge the areas of the Proposed Revisions that CPM are comfortable with and so offers a general statement that those areas not discussed in this response as acceptable to CPM.

3 Summarised Submission Inputs

CPM requests that the Authority consider the following issues in its decision making in relation to the Proposed Revisions. A fundamental concept adopted by CPM in developing this submission is one that takes a position that the gas shippers are effectively the owners of the pipeline as shippers pay for the capital, the opex costs and generously pay AGIG a profit for operating their assets “Owners”. Accordingly we as an Owner, want the operator to make a profit so they don’t go broke (as has occurred in the past) BUT they must operate in the most efficient manner possible whilst maintaining performance metrics that meet all Owners requirements (100% reliability). We as Owners need the pipe to continue to operate for the life of the Sino Iron Project (50+ years = 2070) and CPM must strive to ensure that the operators business drivers remain fundamentally aligned with the Owners business drivers to ensure a suceesful outcome.

3.1 **Economic Climate:** a number of AGIG’s submissions are now obsolete due to the substantial changes to Western Australia’s economic climate since AGIG submitted its Proposed Revisions with the Authority.

3.2 **Throughput:** AGIG’s forecast throughput does not reflect the current actual throughput of the DBNGP. The graph on page 107 of AGIG’s submission shows an un-realistic step change from 2020 to 2021 which continues throughout AA5. With domestic gas daily production capacity in WA over double daily consumption, low gas prices compared to the east coast, ample available land in WA for east coast business to relocate to get access to lower priced energy, TOGETHER with new gas fields being discovered and major LNG projects to come on stream and deliver more gas to the WA domestic gas market AND a number of new mining and existing mining projects that anticipate constructing new gas fired power stations or relacing existing diesel burning power stations with gas fired generation – all are relevant for the AA5 period and so reflect a more likely increase in throughputs compared to current; CPM ask the Authority to consider whether the demand numbers used by AGIG are realistic.

3.3 **Operating Expenditure:** AGIG’s Proposed Revision highlight their “Real opex reduction of 4% compared to actual opex incurred in AA4”. Their allowance in AA4 of A$366m is expected to come in under at $334m. This is clear evidence that further reductions will come through AA5 as new technology and economic driving forces incentivise further cost reductions to be targeted (like any progressive and intellectually astute business will target. Targeted cost reduction together with the significant reductions in domestic gas prices, AGIG could potentially target future opex reductions of 10% and 50% for fuel gas volumes. The operating expenditure does not reflect lower labour costs that are also likely to result from changes to the economic climate in WA and the globe generally. Consider a business that may not have commercial drivers to focus on cost reductions where ever possible, with motivation comes improved outcomes. CPM request the Authority to ensure there are commercial incentives in reduced cost targets to ensure business driver alignment with the pipeline Owners.

3.4 **Capital Expenditure –** AGIG are proposing to invest $160m on the DBNGP in AA5 and have spent $8M more in AA4 for AGIG deemed necessary works. AGIG highlight that 75% of capex is “delivering for our customers”. CPM submit that 100% of AGIG’s capex is delivering for the Owners and so tremendous focus must be placed on the spending of that capex (as is normal for all businesses around the world) to ensure it is spent wisely, efficiently and delivers soundly evaluated economic benefits to both AGIG and the Owners. AGIG are smart sophisticated business and continue to deliver a return on investment greater than that generally accepted by pipeline operators around the world. Well done can be said, and it must be highlighted to the Authority that there is always ways to optimise capex spend whilst maintaining performance outcomes and delivering improved commercial outcomes to the business so CPM ask the Authority to consider this and build in some capex improvement targets to ensure business driver alignment remains a fundamental factor to ensuring the efficient use of the Owners capital to ensure benefits are delivered to both AGIG and the Owners.

3.5 **Reference Service and Tariff:** the tariffs proposed by AGIG are considered too high and do not account for the total of the expected fall in tariffs following the expiry of the negotiated inflated tariff resulting from the bail out of the DBNGP in 2004. AA4 submission went a ways to capture the removal of the recovery premium (historically referred to the “cliff” that would occur” however CPM believe AA4 reduction did not go low enough so there should be further reductions applied in AA5. AGIG’s submission highlights “a 4% increase compared to the current reference price and 6% below our 2014 negotiated prices”. CPM ask the Authority to consider finalising the “cliff adjustment” to reconcile fully to reduction and consider the increased profits taken by AGIG through AA4 and AA3 with their negotiated tariffs being higher than the reference tariffs and how those businesses that chose not to accept a reduced renegotiated price continued to pay the higher price in the last year of AA3 expecting the “cliff” to be applied so stayed with higher reference pricing.

3.6 **Cost of Debt –** as a home owner with a mortgage the editor knows the cost of his debt which is generally higher than business and banking debt costs (as someone needs to be profiting from giving credit). At present the editor’s home loan rate is at 2.80% and is mindful that there are lower rates in the current market, which are expected to be around for a long time to come. The reserve bank has dropped their rates to all time historic lows. CPM want the Authority to consider the current and forecast debt market and reduce the allowance made by AGIG in their submission (3.61%) to better reflect the true cost of debt expected in Dec 2020.

3.7 **Depreciation –** whilst is accepted that an accelerated depreciation may be applicable in the general sense, CPM believe that it is too early to adopt such for AA5 on the basis that our operations are expecting a gas supply will be available from the DBNGP for the long term way beyond that proposed by AGIG, therefore CMP request the Authority to consider a 2070 timeline for depreciation to apply for AA5 and for the acceleration to again be considered in the next review in AA6.

3.8 **Reference Service Terms and Conditions:** Many of the changes in AGIG’s proposed revisions to the reference serve agreements are considered reasonable, however, some will reduce operational flexibility for shippers, increase risk for shippers and there has been no changes proposed to remove discrimination currently present between part haul Shipper and full haul shippers in the B1 and P1 agreements. Additionally there is no contemplation within the P1 and B1 agreement terms and conditions to deal with the ever increasing likelihood that the north part of the DBNGP will become a bi-directional gas transport arena.

4 Economic Climate Additional Comments

4.1 The economic climate in Western Australia, and globally, has changed since AGIG submitted its Proposed Revisions. Anticipated long term impacts on business and the economy in WA, Australia and the world are difficult to foresee but one common theme is emerging, that is a fundamental economic down turn is currently in progress, many business are closing down, many need government assistance, many will have their returns slashed for several years to come. CPM request that the Authority take into account these factors, including the forecast average return on investment across all Australian business such that AGIG’s return through AA5 does not exceed that which will be the generally accepted return across other monopoly Australian businesses that have captive customers.

4.2 There has been a significant fall in the oil price, which has had a downwards impact on the price of LNG and may flow through to impact the price of domestic gas making it even lower than current, equally flowing through to fuel gas pricing, being a fundamental component of tariffs.

4.3 Furthermore, inflation is slowing and the costs of labour, parts, steel and pipe are expected to fall and are likely to continue falling over the coming years. There has been a corresponding fall in debt raising costs and inflation is expected to go backwards with an impending recession/depression of a scale which the world has not seen for a century.

4.4 CPM requests that the Authority take into account the above factors, in particular in relation to:

(a) the cost of debt;

(b) operating expenditure

(c) capital expenditure;

(d) return on investment;

(e) depreciation; and

(f) the reference tariff.

4.5 CPM submits that the DBNGP faces a lower level of risk than that faced by transmission pipelines on the East Coast of Australia (**East Coast**). East Coast gas haulage pipelines face more risk from competition due to the ever increasing number of pipelines, in response to the coal seam gas ‘boom’ activities, shortages of gas supply and the general economic climate in relation to gas supply on the East Coast.

4.6 Furthermore, very few pipelines on the East Coast are covered pipelines, subject to regulation under the National Gas Law, indicating that they are subject to higher levels of competition and risk.

4.7 In AA4 CPM analysed three Australian pipeline businesses similar to AGIG (APA Group, AGL Energy Ltd and Duet Group) and found that the average beta across the three companies was 0.67 This average beta is lower than the beta proposed by AGIG (0.7).

4.8 CPM submits that DBNGP is a low risk business because:

(a) it links multiple supply areas in WA to a single market, being the Western Australian market traversed and serviced by gas delivery in DBNGP; and

(b) counter party risk is negligible as the majority of shippers on the DBNGP are large reputable organisations with excellent credit credentials.

4.9 Accordingly, CPM submits that, because DBNGP is a regulated monopoly with relatively long-term firm demand with reputable businesses contracted on a firm basis for the duration of AA5 period, the risk associated with its business is relatively low

5 Forecast Throughput Additional Information

5.1 CPM submits that the trend in increasing gas volumes shown from 2019 to 2020 will continue for at least the next 5 years (which coincides with the AA5 period) with additional gas volumes coming into the market from Gorgon 1 & 2, Wheatstone 1 & 2 and new gas consumers and or projects moving from diesel fuelled generation to gas fuelled (and hybrid gas & renewables) supporting an increase in demand through AA5.

5.2 CPM submits that domestic gas supply volumes are likely to be further assisted by the reduction in global LNG spot prices making sale of domestic gas in WA as profitable as sale of international LNG spot cargoes and therefore encouraging producers to divert natural gas to their domestic gas facilities as opposed to their LNG production facilities. This ability is evidenced by spare production capacity in existing facilities as shown in the Independent Market Operator's Gas Statement of Opportunities (**GSOO**).

5.3 Despite iron ore operations being scaled back, oil price reductions and the state's economy slowing; the steady throughput in gas volumes appears to have been driven partly by a fall in the spot price of gas. Moreover, demand throughput is therefore even more likely to increase as new projects come on line over the next 2 to 5 years.

5.4 Furthermore, it is likely that over the AA5 period a carbon emissions reduction scheme will be introduced. Such a scheme would encourage use of gas over coal or diesel in power generation in the South West Interconnected System and remote mine sites, which would in turn further increase the volumes of gas through the only pipeline spanning the distance between Dampier and Bunbury which is the master pipeline for the many subservient pipelines servicing Western Australia.

6 Operating Expenditure Additional Comments

6.1 Under the NGR, operating expenditure will not be added to total revenue unless it is 'such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost' (**Prudency Test**).[1]

6.2 During the current access arrangement period, AGIG spent $22M less on operating expenditure (**AA4 Opex**) than it budgeted for. For the next access arrangement period, AGIG has forecast a significant increase from its AA4 Opex. CPM submits that AGIG's proposed operating expenditure does not satisfy the Prudency Test as, amongst other reasons, its forecast does not reflect current (relatively) low gas prices and labour costs.

6.3 Domestic gas prices are at a historical lows and are forecast to continue at relatively low prices for the next 5 years. Gas can be purchased on the spot market to capture the benefits of low gas prices and a portion of spot gas purchases should be factored into opex costs going forward as would be accepted as a good industry practice. CPM also submits that AGIG's forecast gas prices for SUG may not pass the Prudency Test, as a prudent service provider would take advantage of low gas prices at least by diversifying its gas portfolio to purchase some gas on the spot market and some under medium term contracts.

6.4 CPM concedes that AGIG has to have access to a reliable source of gas to meet its obligations. However, AGIG has some flexibility in that it can manage the line pack and SUG to effectively bid on the gas spot market or take advantage of low priced gas supply as an when it becomes available in the market for at least some of its SUG requirements. CPM submits that the gas spot market and available excess production capacity opening up opportunities to secure some low priced gas are representative of the lowest sustainable cost and should be considered for inclusion in to AGIG's forecast gas prices. Accordingly, CPM submits the average price allowed for SUG should be between $3.50 to $4.50/GJ.

7 Reference Tariff additional Comments

7.1 CPM submits that the proposed tariff is too high, and should actually be reduced to $1.32/GJ as at 1 January 2021 (calculated using AGIG's model but substituting

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[1] National Gas Rules, rule 91.

adjustments to all components to properly reflect aligned business drivers with a tariff aligned with business objectives of the Owners and AGIG cooperatively.

7.2 CPM submits that the reference tariff at the time AGIG submitted its Proposed Revisions may not be an appropriate baseline from which to judge AGIG's proposed reference tariff going forward because the current reference tariffs, whilst adjusted somewhat for AA4 due to them being artificially inflated as a result of the negotiated rescue of the DBNGP in 2004 following the insolvency of its then owner, Epic Energy. As part of the rescue deal, it was agreed that:

(a) contracted tariffs would be artificially inflated in order to enable Epic's banks to recover the full amount owing to them and effectively release the DBNGP from Epic Energy's insolvency;

(b) the tariffs would significantly fall in 2016 in order to return to the reference tariff path; and

(c) CPM hold the view that the reduction applied for AA4 did not fully adjust the tariff to where it should have dropped.

7.3 For a history of the rescue deal referred to above and the tariff see Appendix 1.

7.4 On the subject of tariff escalation, CPM acknowledges that a supplier cannot reasonably foresee changes in law and taxes and make allowances for these changes in tariff pricing. Accordingly, CPM supports tariff adjustment mechanics to permit AGIG to pass through to customers, on a non-discriminatory basis, its direct and mitigated costs or cost reductions incurred as a result of an unforeseen changes in law or tax or other economic factors resulting in an interim change in costs. A sound example would be the introduction of a carbon tax that resulted in AGIG incurring costs that it did not allow for in its pricing (recontracted or reference). In this example, AGIG should be entitled to recover its mitigated costs of complying with the new carbon tax via an increase in the tariff at the time those increased. Similarly if the economy was to go into a recession the application of the rise and fall mechanics applying CPI as a pricing adjustment factor must be applied both to adjust for negative cost movements.

7.5 CPM submits that the AGIG reference tariff variation mechanism should apply an adjustment to only that proportion of their costs that are not fixed, separating the fixed and variable costs within the price adjustment mechanisms such that only the variable costs incurred by AGIG in delivering the services be adjusted by costs being impacted through AA5. Giving consideration to the above, CPM submits the portion of AGIG's costs that will actually be exposed to tariff variation mechanisms should be very low and the escalation formulae used in the Authority's final decision should take this into consideration.

8 Proposed P1 and B1 Terms and Conditions Amendments

8.1 CPM submits that the amendments made to the Terms and Conditions are generally acceptable as described by AGIG in their "table of explanations" and all can be accepted except those that reduce a shippers flexibility, increase risk to the shipper and changes needed to remove discrimination against part haul shippers. CPM has completed a review of the proposed amendments to the B1 and P1 terms and conditions (no review of T1 as CPM are not a T1 Shipper) and found several provisions that CPM request the Authority must adjust as requested by CPM. For this purpose CPM provide a marked up P1 reference agreement which has "accepted" all AGIG mark ups and shows only those changes CPM require ERA to make to the B1 and P1 reference agreements relevant to AA5. CPM request ERA to refer to Appendix 2 being CPM requested amendments to AGIG AA5 P1 & B1 ref contracts and CPM specifically refers the ERA to the externally provided memo from Allen & Overy Legal providing their opinion on required adjustment to the overrun provisions within B1 and P1 draft contracts.

9 ERA Issues Paper Responses

9.1 Depreciation of pipeline assets - Further to the comments and inputs provided elsewhere in this submission on depreciation CPM advise it is accepting of AGIG's re-categorisation of economic lives of existing and future assets, however CPM is not accepting of the accelerated depreciation and the rationale offered by AGIG. CPM submits that a middle position should be taken by ERA in its , opting for a depreciation regime that sees a more realistic position be taken by ERA in its review, one where a target economic life of the pipeline ending in 2070.

9.2 Incentive Mechanism – provided that ERA take in to consideration and adopt the adjustments to capex and opex as requested by CPM in this submission, CPM submit that they would be comfortable with ERA accepting the proposed Incentive mechanism. CPM holds a view that a prudent operator of a major state wide pipeline will have conducted a detailed opportunity assessment on what such an incentive scheme would/could deliver their business through AA5 and accordingly have submitted this component of the Proposed Revisions fully aware of their expected outcomes. With that in mind AGIG's corporate business drivers can therefore be deemed to be aligned with the Proposed Revisions which may be somewhat misaligned with their customers (considering customers are the Owners of our pipeline), however, with the requested driver alignment adjustment requested in this submission the business drivers across both shippers and AGIG become better aligned and therefore a supporting position can be taken on the proposed incentive scheme.

Appendix 1 – AGIG Tariff History

1. In 1998, Epic Group purchased the DBNGP for approximately $2.4 billion as part of the then State Government's privatisation process.[2]

2. The Authority determined, in its approved Access Arrangement for the period of 2000-2004, that the initial capital base of the DBNGP was approximately $1.55 billion[3] – roughly $300 million less than the debt Epic owed to the consortium of banks to finance the purchase of the pipeline. Epic consequently entered insolvency which created the need for an acquisition of the pipeline on terms that would see the banks recover the debt owing to them.

3. Macquarie developed a pipeline "rescue deal" that featured the following:

   a) the DBNGP Consortium (comprising DUET, Alinta Limited and Alcoa of Australia Limited), referred to here as " AGIG", purchased the pipeline for $1.86 billion.[4] The purchase allowed the banks to recover the full amount owing to them and effectively released the pipeline from Epic Energy's insolvency; and

   b) the major shippers on the DBNGP entered negotiations with AGIG to secure long term capacity rights in the DBNGP and major capacity expansions. The negotiations continued intensively up to the execution of a new suite of contracts by all major shippers and AGIG in October 2004 which came to be known as the "standard shipper contracts" (**SSC's**).

4. The SSC's accounted for approximately 95% of the then current pipeline capacity, and specified an agreed tariff profile for a term of 11 years until 2016, after which the tariff was to revert to the Reference Tariff established by the Authority under an approved Access Arrangement at that time.[5]

5. Three important outcomes of the rescue deal were that:

   a) the tariff payable by shippers under their SSC's was higher than the reference tariff forecast to be approved by the Authority for the period from 2004 to 2016; [6]

   b) the quantum of the tariff over-payment was intended to equal the roughly $300m shortfall;[7] and

   c) the intention of the parties entering into the SSC's on the date of executing the SSC was that, with effect from 1 January 2016, the base tariff would be adjusted so that the base T1 tariff, T1 capacity reservation tariff and T1 commodity tariff fell back to the level of the firm service Reference Tariff.[8] It was expected that on 1 January 2016 the

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[2] Alcoa World Alumina Australia, *Submission to the Productivity Commission on the Review of the National Third Party Access Regime for Natural Gas Pipelines*, 15 September 2003, available at: http://www.pc.gov.au/inquiries/completed/gas/submissions/alcoa_world_alumina_australia/sub065.pdf

[3] Economic Regulation Authority, *Approved Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 30 December 2003, page 13

[4] The Age, *Pipeline epic to end*, 26 October 2004, available at: http://www.theage.com.au/articles/2004/10/25/1098667688219.html?from=moreStories

[5] Diversified Utility and Energy Trusts (DUET), *Product Disclosure Statement*, 19 November 2004, pages 45, 47

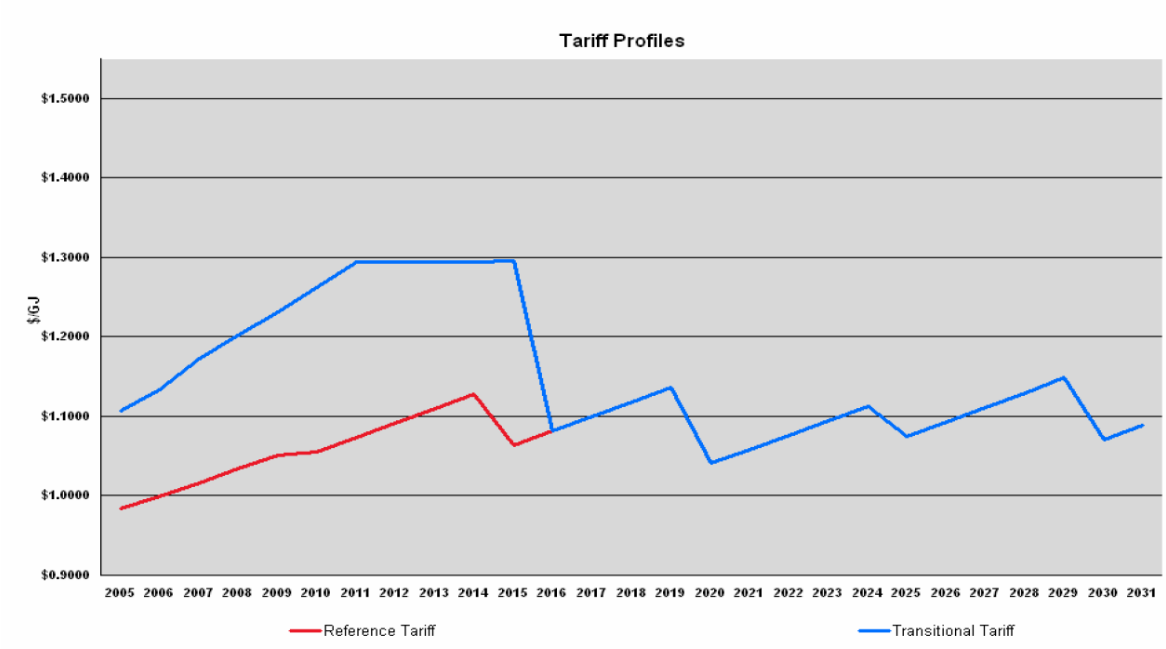
[6] Ibid, page 46.

[7] Ibid, page 46.

[8] Ibid, page 153.

applicable regulated tariff would be substantially lower than the inflated contractual tariff.

6. The expectation of the parties entering into the SSC's as to the future tariff path was enshrined by including the tariff model in the SSC's themselves - the "tariff cliff" that shippers and the pipeline owner expected to occur at the beginning of 2016 was represented in the following graph that has been taken from the 2004 SSC:



7. From one perspective, the 2004 negotiations and parties' expectations are ancient history, and the ERA's job is simply to apply the NGL and NGR in this reset to determine the appropriate reference tariff for the coming access arrangement period.

8. But CPM submits that the history is relevant for 2 reasons:

   a) First, it is important to remember that the contractual tariff being paid by most shippers before this reset (or immediately before the 2014 recontracting), is an artificially inflated tariff imposed to allow the pipeline's rescue from insolvency, and is a wholly inappropriate comparator for determining whether there is an upwards or downwards "tariff shock" as a result of the current reset.

   b) Second, more generally, CPM submits that the NGO will be best served if AGIG is held to the spirit of the 2004 rescue. The essence of the deal in 2004 was that shippers would pay an upfront premium tariff to pay out the banks, with a promise of tariff relief from 2016 onwards. The concern among shippers at the time was that AGIG may try to capture the up-front benefit but avoid the post-2016 cost, by shaping its tariff path and regulatory activity in the intervening years in a way which caused the post-2016 result to be more favourable to it than the original bargain. CPM submits that if the ERA were to allow that outcome, it would undermine the reason for the shippers' paying the premium tariff in the early years, would undermine the commercial deal and hence disincentivise other such commercial transactions in the future, and it would certainly not be in the long term interests of shippers as required by the NGO. CPM also submit that the AA4 tariff adjustment did not fully capture the full reduction needed to correct fully.

Appendix 2 CPM Requested Amendments to B1 and P1 T&Cs

AMENDMENTS TO P1 AND B1 REFERENCE CONTRACTS

CPM have completed a review of the 'P1 Reference Service Terms and Conditions' (**P1**) and 'B1 Reference Service Terms and Conditions' (**B1**) and the amendments proposed (the **Proposed Amendments**) by the Australian Gas Infrastructure Group (**AGIG**).

We have set out below our suggested adjustments and additional changes in respect of the Proposed Amendments and the P1 and B1 terms and conditions proposed for the AA5 period, where we considered them material and necessary from a B1 and P1 Shippers perspective. Where AGIG has provided an explanation for an amendment in its 'Table of comments to assist shippers' consideration of changes to Reference Service terms and Conditions (T1, P1 and B1)' (**AGIG Explanation Table**) we have included this explanation (or a reference for where it was lengthy) in the column titled 'Explanation' to ease your review and also included our contextual consideration to for understanding our comments and suggestions.

As the P1 Reference Contract and B1 Reference Contract are substantially identical and have been amended by AGIG in a substantially identical manner, we have consolidated our comments and changes for both contract types in the review table below and have indicated in the column titled 'Clause / Contract' which contract the relevant amendment applies to.

#	Clause / Contract	AGIG Explanation	Comments / Rationale / Considerations	Change requested
1.	Definition of Gas Transmission Capacity P1 & B1	Not altered in Proposed Amendments	With DBNGP northern looping expanding the Capacity in the northern section of the pipe and new production now delivering large amounts of gas further south, the northern part of the pipe has much more capacity to transport gas in that section without impacting T1 Shippers transporting gas to the southern end of the pipe.	Amend the definition to expressly bring Outlet location into the Operators deliberations and Good Gas Industry Practice when determining Shipper Outlet curtailments. Consideration should also be given to enhancing the definition of T1 Capacity in 3.2 (b) (iv) to capture this concept.
2.	3.2(a) (Capacity Service) P1 & B1	Row 3 paragraph 4 of the AGIG Explanation Table	With the removal of "can only be Curtailed in the circumstances in clause 17.2" it is no longer clear and express that 17.2 contains the only rights of curtailment. This creates a risk that the Operator could argue that a right to curtail is implied by another part of the contract when it is not.	CITIC request to have the words "can only be Curtailed in the circumstances in clause 17.2" re-instated.

#	Clause / Contract	AGIG Explanation	Comments / Rationale / Considerations	Change requested
			Having an express, clearly set out list of circumstances where curtailment is permitted is fundamental for a shipper to understand their rights in relation to the service provided. The explanation provided AGIG is incorrect, as it is based on the concept that referencing 17.2 in clause 3.2 would prevent contracts which do not have the exact curtailment circumstances as set out in 17.2 from being a 'B1 Service'. However, retaining the words in clause 3.2 places no limitation on the curtailment provisions in a different contract and has no effect on whether a backhaul service under a negotiated contract is a 'B1 Service'. This is because clause 3.2 only describes the B1 Service for the particular shipper under this contract and does not prevent a service with different curtailment rights under other contracts also being a 'B1 Service'. The definition of 'B1 Service' clearly states that clause 3.2 only describes the 'the Shipper's Capacity Service under this Contract' and goes on to say give a different, much broader, meaning for other shippers and contracts – all are 'B1 Services' (the reference to cl 17.2 has been removed from the 'B1 Service' definition so will not apply to other shippers and contracts). The same is true for 'P1 Service' in the P1 Reference Contract.	
3.	4.3 (Option to renew Contract) P1 & B1	Not applicable to this requested enhancement.	Why should Shippers have to contract capacity for periods it does not need capacity. Why does a pipeline owner seek to take cash from shippers through a period when they will not be using the contracted capacity? As an example – a shipper contracts for the supply of gas under a contract with a set term of 30 months. The shipper puts in place a P1 or B1 reference contract to cover the fixed 30 month supply, the Shipper subsequently extends to the term of supply by 3 months. The shipper should be able to extend the term of the P1 or B1 service for 3 months and NOT be forced to take capacity for 12 months because capacity will be payable when that shipper will not use that capacity.	Change 4.3 to conclude with the words: "for a period chosen by the Shipper but not exceeding 1 year (***Option***)"

#	Clause / Contract	AGIG Explanation	Comments / Rationale / Considerations	Change requested
4.	4.5 Notice exercising an Option & 4.6 and 4.7 as necessarily updated to align P1 & B1	Not applicable to this requested enhancement	With abundant spare capacity in the northern part of the DBNGP, and the Operators other rights in the contract (see clause 4.8) there is no reasonable explanation of why a shipper should have to provide more than 6 months notice to exercise an Option on their P1 or B1 service, particularly where they may not have decided they need to extend the term of a gas supply agreement 12 months prior (as they may not need to recover inventory gas at that time (inventory gas is generally delivered in the months after GSA term has ended) and if it's not an issue to agree to exercise after the 6 month curfew, why then should a shipper lose that right, they "own" the pipe as they pay for it in their fees, notwithstanding it should still be the Operators choice but they should act reasonably in making that decision. No one wants to pay for capacity that they will not utilise and if they have to establish another contract for a short term then they may be forced to take term longer then their gas supply runs when they shouldn't have to, they pay their application fee they should be entitled to a term of their choice (being reasonable to the Operators capacity management position).	Change "12 months" to "6 months" and make the last part of the clause say: "….the Option lapses and cannot be exercised without the express approval of the Operator acting reasonably."
5.	4.8 (Put and call of Options) P1 & B1	None provided.	With abundant spare capacity in the northern part of the DBNGP, and the expected decline on throughputs over the coming 30 years, the ambiguity on what the additional words of "or prospective shipper" have created needs to be removed, and can be done by simply making sure the Third Party Access Request stems from a formally submitted Access Request where fees are paid and a contract (where capacity is available) will be the eventual outcome.	Make the start of the clause say: "If the Operator receives a duly completed access request form from a shipper or prospective shipper in the form of a lodged Access Request (**Third Party Access Request**)"
6.	6.11 (Maintenance Charge for Inlet Stations and Outlet Stations) generally P1 & B1	Row 13 of the AGIG Explanation Table	Separating Inlet Station and Outlet Station Maintenance charges is silly and make these contracts unnecessarily complex. A gas distribution network cannot distribute gas without Inlet Stations and Outlet Station. It stands to reason then that Inlet Stations and Outlet Station are part of the pipeline, just as much as the pipe is. The costs of maintaining the pipe are included in the tariffs and are regulated. Why then cant the Station maintenance costs be included in the Tariffs also? Such would	CITIC Request a change to make P1 and B1 contracts structure generally such that the provisions for O&M charges get bundled into tariffs where Producers get charged for Inlet Station O&M costs based on their delivered gas volumes and Shippers for Outlet Stations based on consumption.

#	Clause / Contract	AGIG Explanation	Comments / Rationale / Considerations	Change requested
			be a standard in a "normal" market and changing now will take us a step closer to a "normal" market. Extending on the normal market concepts; it is considered un-fair that Maintenance Charges are recoverable from Shippers only. Producers gain significant benefits from connecting their projects to the DBNGP and yet it appears that they pay nothing for the maintenance of their Inlet Station connection point. Accordingly the status quo should be challenged citing that Shippers should only cover costs to maintain their Outlet Station and Inlet Station O&M costs be covered by Producer(s) as they are selling gas to their customers and delivery costs to the "market" are commonly covered by Producers in all local markets around Australia and global markets around the world.	
7.	6.11 (a) (Maintenance Charge for Inlet Stations and Outlet Stations) P1 & B1	Row 13 of the AGIG Explanation Table	Subject to our Item 6 above taking priority, clause 6.11(a) added words by AGIG bring confusion in to O&M charges and open up the potentially for multiple Inlets Stations O&M costs being charged to shippers that do not use them (under aggregation), but have them listed in a schedule of Inlet Points on a P1 contract that are listed on a "just in case basis" for possible use. Just because they are listed does not mean they're used. Being responsible for paying a share is reasonable but only where that capacity is used. Maintenance charges therefore should be allocated on a daily basis for the purposes of calculating on a user pays basis (if O&M is not covered by regulated tariffs). It needs to be clear that there is no amortisation of costs where such has been paid by others. Additionally as O&M is amortised over the "life of the Inlet Station or Outlet Station for transparency's sake those "life" periods should be transparent.	CITIC, subject to item 6 above if ERA choose not to progress Inlet Station O&M costs to be charged to the Producers, request: • clause 6.11 (a) be amended to add the words: "use, have Contracted Capacity and" between new words "who pay"; • clause 6.11 (a) be amended by changing: "Relevant Construction Costs as are not already paid" to "Relevant Construction Costs which are not already paid"; and • clause 6.11 (a) last paragraph be amended by adding words in brackets after the word "life" as follows: "(life periods provided in Schedule [??]), leaving the editor to add the applicable Schedule and reference it in the square brackets.

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8.	6.11(e) & (f) (Maintenance Charge for Inlet Stations and Outlet Stations) P1 & B1	Row 13 of the AGIG Explanation Table	Whilst amendments to clauses 6.11(e) & (f) clarify the wording so that both clauses provide that Shipper pays a proportion of the relevant Maintenance Charge for a month equal to the proportion that its Contracted Capacity bears to the sum of all shippers' Contracted Capacity except where the Shipper either does not have Contracted Capacity or it takes Gas in excess of its Contracted Capacity in which case it pays a proportion in relation to the amount it has taken against the amount taken by all other shippers. Again in line with item 7 above, the O&M charges should reflect the capacity utilised and not be strictly set on Contracted Capacity.	CITIC request the addition of the word "used" in 6.11.(e) to clearly allocate cost on use not Contracted Capacity.
9.	8.10 (b)	N/a	Given the penalty regime for exceeding imbalance limits, it is considered necessary that formal notice from the Operator to the Shipper be when the Operator triggers an Outlet Curtailment	Change the provisions from "the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service" to reflect the need to issue a formal notice, suggestion: "the Operator must issue a Curtailment Notice at the time it schedules that Capacity Service"
10.	8.16 (Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity) P1 & B1	None provided.	The new conditions must all be satisfied in order for Aggregated P1 Service to be provided at either an inlet point or outlet point (above CS9). However, clause 6.13 provides that agreements may be made in respect of not only outlet points but also inlet points, and, in certain circumstances, no agreement will be required. Accordingly, the last condition relating to "*an agreement in relation to the relevant outlet point*" may not be able to be satisfied if Aggregated P1 Service is required in respect of an inlet point.	CITIC request an amendment to clause 8.16(e) to clarify that the Shipper must have complied with its obligations under clause 6.13 in respect of the relevant outlet point or inlet point to ensure Aggregated P1 services are structured that it appears AGIG have attempted to structure such without conflicting against other provisions in the T&Cs.
11.	9.6 (Excess Imbalance Charge)	Concept introduced to better align the imbalance remedies	New clause 9.6 appears to introduce a new concept of an "*Outer Accumulated Imbalance Limit*" by locking in a 20% accumulated limit and provides that if the Shipper's Accumulated Imbalance exceeds this	Whilst CITIC consider the changes reasonable, it is concerned that some Shippers existing rights may be reduced if

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	P1 & B1	across the Negotiated Contacts, the Standard Shipper Contracts and the Reference Contracts. This is purportedly to avoid the situation where one shipper feels more free to unfairly take up significant imbalance capacity of the pipeline.	limit then the Shipper must pay the Excess Imbalance Charge regardless of whether that Shipper has agreed a different Imbalance Limit under a separate and valid contract for that Gas Day. This could be a reduction of the rights of a Shipper which should be considered as unfair to apply where an existing contract sets a separately agreed limit.	the change proceeds unaltered. Accordingly CITIC request the following words be added to the start of clause 9.6 (a) "Except where the Shipper has contracted with the Operator for a different Imbalance Limit" such that previously agreed rights are maintained through the AA5 access period. .
12.	9.8(a) (Remedies for breach of imbalance limits) P1 & B1	Additional remedy introduced to better align the imbalance remedies across the Negotiated Contacts, the Standard Shipper Contracts and the Reference Contracts. This is also purportedly to avoid the situation where one shipper feels more free to unfairly take up significant	New clause 9.8(a) provides additional remedy for the Operator to take against the Shipper for exceeding the Accumulated Imbalance Limit and in doing it turns a certain, well understood and easily calculated remedy (payment of the Excess Imbalance Charge) into an uncertain claim for damages, which has the potential to give rise to disputes. Excess Imbalance Charge act as, essentially, liquidated damages for the imbalance. Even though the damages claim is reduced by the Excess Imbalance Charges paid, having a separate damages claim defeats the utility of having the Excess Imbalance Charge at all. Leaving it as it was allows both the Operator and Shippers easily understood remedy provisions that can easily move forward with no dispute. In addition if 9.8(a) is retained, there is uncertainty as to the application to 9.2: • it is unclear based on the current wording whether such a reduction is applicable to an action for breach of clause 9.2. This should be	CITIC request the deletion of the new clause 9.8(a), on the basis that it brings confusion into the T&Cs and incorrectly creates pathways of dispute when the existing provisions meet the Operator requirements to seek damages through Excess Imbalance Charges as is the accepted norm for WA pipeline services.

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		imbalance capacity of the pipeline.	clarified to ensure that a claim is not brought for only a breach of 9.2 as a means of circumventing the reduction mechanism; and • the reference to clause 9.2 in clause 9.8(a) may mean that a claim could be brought without regard to the existing process for dealing with Accumulated Imbalances under clause 9.5. On this basis, the reference to clause 9.2 should be removed. This, as with other amendments which are to assist in 'alignment' across contracts, means reducing rights under the reference agreements. There is no case of AGIG giving 'alignment' as a reason for their amendments where the shipper has increased rights under the reference agreement.so	
13.	11.1 (Overrun Charge) P1 & B1	N/a	Part haul Shippers are being discriminated against in respect to paying full haul shipper penalties for part haul over runs resulting in an unfair calculation of Overrun Charges for what is supposedly designed to be "behaviour modifying provisions" (as stated by AGIG) to commercially incentivise Shippers not to overrun. With Producers injecting large volumes of gas up and down the DBNGP in multiple locations and inference today that the north part of the pipe will flow bi-directionally there is an apparent abundance of spare un-used capacity on the northern section of the DBNGP which results in zero impact to full haul capacity availability in the southern part of the pipe. Add to this the fact that there is no economically viable part haul daily spot capacity market, the Spot Capacity market is being utilised by full haulers (requiring 11.1 (b) (ii) to apply to part haul over runs) the Overrun Charges payable by part haulers go materially beyond a behaviour modifier, they become an unfair penalty applying a 3000% + penalty on part haul Shippers compared to a 15% penalty to full haul Shippers and such is considered grossly unfair and inconsistent with ERA's stated principles for allocating costs and the National Gas Objective.	CITIC insist on a change to clause 11.1 (b) (ii) by adding the following words after "…bid,": "multiplied by the Distance Factor," AND CITIC insist on a change to item 4 (a) in Schedule 2 by adding the following words after "…bid.": "multiplied by the Distance Factor."

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			As stated by the ERA in the 2016-2020 Final Decision which noted the cost allocation principle should be that: "*….users of part haul and back haul reference services will have the same costs allocated to them (on a dollar per kilometre basis) as users of the full haul service.*" This rational has been investigated by external legal firm Allen & Overy and their explanatory memo ("A&O Memo") is attached as Annexure A to this T&C Review.	
14.	14.2(b)(iii) (Assessment of Requested Relocation) P1 & B1	Row 17 of the AGIG Explanation Table	Amendment provides that a Requested Relocation will not be an Authorised Relocation if the proposed relocation would result in an Inlet Point at which there is Contracted Capacity being downstream of an Outlet Point at which there was Contracted Capacity under the Contract. Formerly, a Requested Relocation would have to change the normal direction of Gas Flow in the DBNGP before it would be considered "*not an Authorised Relocation*".	CITIC suggest the entire B1 and P1 agreements be reviewed on the basis that forward haul and back haul may become obsolete within the AA5 period with the generally understood position that the north part of the DBNGP will become bi-directional in 2020 when / if NWS delivered volumes decrease.
15.	17.2(f) (Curtailment Generally) B1 only	New clause reflects the operational reality and common understanding that Back Haul service is only provided on the basis that there is sufficient actual Forward Haul gas flow to accommodate the provision of notional Back Haul service. New clause also aligns curtailment	New clause 17.2(f) provides that Operator may Curtail the provision of Contract Services in circumstances where actual Forward Haul gas flow is less than the B1 service demands across all shippers with a B1 Service. CITIC is concerned with these amendments as they essentially mean that curtailment of B1 Shippers is allowed with no liability to the Operator (see 17.3(b)). Two key implications are: • curtailment of any Forward Haul gas for any reason would be mean that a B1 Service could be curtailed with no liability (regardless of whether the Forward Haul curtailment meant there was sufficient gas flow from other forward hauls. So, even if there was negligence or misconduct that would entitle compensation for the Forward-Haul shippers, there would be none for B1 shippers; and	CITIC request that clause 17.2 (f) (B1 agreement only) be deleted in entirety and take into consideration how the B1 and P1 reference services will be impacted by the bidirectional flow of the DBNGP in the north part of the pipe and whether this clause will need further modification to address bidirectional outcomes. Alternatively if ERA accept the new B1 clause 17(f); CITIC request provisions be added such that the Operator will not contract additional B1 Services unless it reasonably considers there will be sufficient Forward Haul gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services).

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		provisions across the terms for B1 Services under Negotiated Contracts, the Standard Shipper Contract and the Reference Contract.	• it removes the incentive to not over-contract the pipeline capacity. This, as with other amendments which are advised by AGIG to assist in 'alignment' across contracts, again means reducing rights of Shippers under the reference agreements.	
16.	Part A & B Schedule 6 – Curtailment Plan and terms P1 & B1	Row 25 of the AGIG Explanation Table	With the DBNGP receiving gas in multiple locations along its entire length there is a risk that P1 & B1 Shippers may be subject to curtailment unnecessarily and therefore unfairly. Take a situation where North West Shelf are shut down and such may potentially cause a Curtailment Notice, triggering the Curtailment Plan which may see a Shipper like CITIC curtailed at its sole used Outlet Point even though it has its suppliers deliver the gas it requires into the pipe at multiple inlet points along the pipe to meet its operational needs.	Schedule 6, and generally throughout the contract, the T&Cs, including the definition of Gas Transmission Capacity, should expressly state that the Curtailment Plan and generally Capacity allocation by the Operator must take into consideration the available Capacity in the specific section of the DBNGP where the Shippers Outlet is located, as such may be vastly different to the available Capacity at the southern part of the DBNGP (where the Aloca capacity is key) where T1 Capacity relates. Such should not restrict or impact on Alcoa's Priority Quantity or Alcoa's Exempt Delivery Entitlement under their T1 services and it will be acceptable for Alcoa's priority services to remain the priority for the sake of the T&C's.