

## ANNEXURE A

### SUBMISSIONS

Unless otherwise defined in these submissions, a reference to a capitalised term shall be to that term as defined in the relevant part of the Proposed Access Arrangement.

Proposed Access Arrangement Provision	Issue	Comment
Proposed AA5 AAD Clause 5	Access Requests	<p>Under the Access Arrangement Document for the 2016-2020 period (<b>AA4 AAD</b>), it was reasonably clear that a Reference Service was required to be provided on the terms and conditions of the Access Contract Terms and Conditions attached to the AA4 AAD. For example:</p> <ul style="list-style-type: none"><li>• The Prospective Shipper was required to state that it accepted the relevant Access Contract Terms and Conditions (Clause 5.2(c)(viii)(A) and execute Access Request Form.</li><li>• The Operator could then accept the Access Request for a Reference Service by executing the Access Request Form executed by the Shipper (Clause 5.3(d)(i)).</li><li>• Negotiation of terms and conditions was only contemplated for Non-Reference Services (Clause 5.3(c)).</li></ul> <p>The AA4 AAD did not contemplate that there could be any negotiation of the Access Contract Terms and Conditions (beyond the details to be filled in by the Prospective Shipper in the Access Request Form).</p> <p>Synergy is concerned that under the amendments contained in the Proposed AA5 AAD the Operator would no longer be required to offer the Access Contract Terms and Conditions for Reference Services and there could be negotiation of the terms and conditions for Reference Services. For example under the Proposed AA5 AAD:</p> <ul style="list-style-type: none"><li>• Clause 5.2(c)(viii)(A) has been amended to provide that the Prospective Shipper seeking a Reference Service must state “whether” it accepts the Access Contract Terms and Conditions (rather than that it does accept them);</li><li>• the revised Clause 5.3 (Assessment of Access Requests) now no longer distinguishes between an Access Request for a Reference Service and an Access Request for a Non-Reference Service, and applies the same assessment procedure to both types of Access Requests, including the following:</li></ul>

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		<ul style="list-style-type: none"> <li>○ If the Operator is able to provide the requested service, the Operator must provide to the Prospective Shipper the terms and conditions on which the Operator “is prepared to provide the requested service” (Clause 5.3(d)(i)). This drafting seems to allow the Operator the discretion to not offer the Prospective Shipper the Access Contract Terms and Conditions set out in the Access Arrangement Document for a Reference Services and instead notify the Prospective Shipper of completely alternative terms and conditions on which the Operator is “prepared to provide” the Reference Service. In Synergy’s view this is inappropriate - the Operator should be obliged to offer a Prospective Shipper seeking a Reference Service the Access Contract Terms and Conditions set out in the Access Arrangement Document to provide certainty for Prospective Shippers seeking access to the DBNGP. It also conflicts with Clause 4.1 of the Proposed AA5 AAD, which states that the terms and conditions of any Reference Service granted under the Access Arrangement are the Access Contract Terms and Conditions, only as varied in the specific circumstances contemplated in Clause 4.3. Synergy also notes that if the Operator and a Prospective Shipper seeking a Reference Service were to negotiate different terms and conditions, then the requested service should no longer be considered a Reference Service, but rather a Non-Reference Service.</li> <li>○ Within 15 business days after receiving terms and conditions from the Operator under clause 5.3(d)(i), the Prospective Shipper must notify whether it wants to seek access on those terms and conditions or requests amendments to those terms and conditions (together with the requested amendments). The Operator must then respond within 15 business days, and if the parties have not agreed on terms and conditions or negotiated amendments within a further 20 business days of that response, the Operator is taken to have rejected the Prospective Shipper’s request (clause 5.3(d)(ii)). This suggests that even if the Operator offers the Access Contract Terms and Conditions to a Prospective Shipper seeking a Reference Service, those terms and conditions could be subject to negotiation. In Synergy’s view, it should be made clear that if any service is not provided on the Access Contract Terms and Conditions (whether as a result of negotiation or otherwise), then the service provided to the Prospective Shipper is a Non Reference Service, rather than a Reference Service. This distinction is important, particularly in light of non-discrimination provisions contained in clause 45.1 of DBP’s “standard shipper contracts”, which contain an</li> </ul>

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		<p>exemption from the Operator’s non-discrimination obligations in relation to “Access Contracts for a T1 Service provided pursuant to the Access Arrangement”.</p> <p>Synergy also notes that the amended clause 5(d)(ii) also deems the Operator to have rejected a Prospective Shipper’s Access Request if the Prospective Shipper seeks amendments to the terms and conditions offered by the Operator and those amendments are not agreed within (at most) 35 days of the Prospective Shipper seeking such amendments. Synergy does not consider this regime to be reasonable as:</p> <ul style="list-style-type: none"> <li>• this restriction represents a large departure from the AA4 AAD, which only permitted the Operator to reject an Access Request that required negotiation of terms and conditions if the Prospective Shipper failed to negotiate in good faith (rather than if the negotiations were not concluded within a specified period);</li> <li>• commercial negotiation of terms and conditions for substantial contracts will often take more than 35 days, despite the best efforts of parties; and</li> <li>• although clause 5.3(d) contemplates that the timeframes may be varied by agreement in writing between the Operator and the Prospective Shipper, the Operator has the discretion to not ever agree to any extended time frame.</li> </ul>
<p>Proposed T1, P1 and B1 Reference Contracts Clauses 6.11(d), (e) and (f) and Clause 6.12(b)</p>	<p>Apportionment of Maintenance Charges</p>	<p>DBP has proposed charges to the apportionment of the Maintenance Charge for existing Inlet Stations, Outlet Stations and Gate Stations so that apportionment is made on the basis of the greater of:</p> <ul style="list-style-type: none"> <li>• the proportion of the Shipper’s Contracted Capacity at that Inlet Point/Outlet Station/Gate Station to the aggregate Contracted Capacity for all Shippers at that Inlet Point during the previous calendar month; and</li> <li>• where the Shipper does not have Contracted Capacity at that Inlet Point/Outlet Station/Gate Station or delivers a quantity of Gas at that Inlet Point/Outlet Station/Gate Station which is greater than its Contracted Capacity during the previous calendar month, the proportion that the sum of the Shipper’s deliveries of gas bears to the sum of all shipper’s delivery of Gas at that Inlet Point/Outlet Station/Gate Station during the previous calendar month,</li> </ul> <p>provided that if that would result in the Operator recovering from all shippers an amount greater than the Maintenance Charge for the relevant month, the Operator must rebate a proportion of the excess to the Shipper in proportion to its Contracted Capacity at that Inlet Point/Outlet Station/Gate Station.</p>

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		<p>In Synergy's view, it would be more appropriate for rebates to be given to Shippers in proportion to the respective amounts charged to each Shipper in the first instance (excluding any rebate), rather than only in proportion to the Shipper's Contracted Capacity.</p> <p>Synergy further notes that DBP's proposed apportionment and rebate methodology may still ultimately result in the Operator retaining more than the Maintenance Charge. The rebate mechanism is only contained in the proposed Access Contract Terms and Conditions, and not under the Operator's Non Reference contracts (including the "standard shipper contracts" published on DBP's website). Accordingly, if the Operator only provides rebates to those Shippers who have Reference Services by reference to their proportion of the Contracted Capacity held by all Shippers (including Shippers who do not have Reference Services), then the Operator will still ultimately retain some of the excess amount, which is not appropriate. Given this issue, it would be preferable if the apportionment mechanism did not allow the Operator to recover more than the Maintenance Charge from all shippers in the first place.</p> <p>Equivalent issues arise in relation to Clause 6.12(b), which apportions certain incremental costs on the same basis as under Clause 6.11(e) or (f).</p>
Proposed T1, P1 and B1 Reference Contracts Clause 11.1(b)(i)	Overrun Rate	<p>Under clause 11(b), the Overrun Rate is the greater of:</p> <ul style="list-style-type: none"> <li>the 115% of the T1/P1/B1 Tariff (as applicable); and</li> <li>the highest price bid for Spot Capacity which was accepted for that Gas Day, other than where the highest price bid was not a bona fide bid, in which case the highest bona fide bid.</li> </ul> <p>Synergy submits that where the Shipper has made the highest price bid for Spot Capacity, Clause 11(b)(ii) should refer to the highest price bona fide bid by a party other than the Shipper to avoid the Shipper effectively bidding against itself.</p>
Proposed T1, P1 and B1 Reference Contracts Clause 28.3(b)(i)(C)	Confidentiality - Permitted Disclosure	<p>DBP are seeking to amend Clause 28.3(b)(i)(C) so that rather than being restricted from disclosing Confidential Information to any person directly involved in the generation or sale of electricity in Western Australia, the restriction only applies to disclosure to a person directly involved in the generation or sale of electricity in the South West Interconnected System (SWIS) of Western Australia.</p> <p>DBP has stated that one of the reasons it is seeking this amendment is that the Operator's operations provide it no advantage in terms of electricity generation operations that are isolated from the SWIS. Synergy does not agree with this assertion. The DBNGP transports gas to locations which are outside the</p>

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		<p>SWIS and it would be entirely possible for power stations outside the SWIS to be supplied with gas which is transported (whether partly or entirely) on the DBNGP. Accordingly, the Operator may have information which provide it with advantages in respect of electricity generation options that are outside the SWIS. Synergy therefore does not support the proposed amendment.</p>
Proposed P1 and B1 Reference Contracts Schedule 2	Charges	<p>The Excess Imbalance Charge, Hourly Peaking Charge and Unavailable Overrun Charge in Schedule 2 of the P1 and B1 Reference Contracts are each determined by reference to a multiple of the T1 Reference Tariff. Synergy submits that it would be more appropriate for these charges to be determined by reference to multiples of the P1 Tariff or B1 Tariff (as applicable), which apply a distance factor to the T1 Reference Tariff reflecting the nature of the service being provided. Where Gas is being transported over relatively short distances, imposing Excess Imbalance Charges, Hourly Peaking Charges and Unavailable Overrun Charges on the basis of the T1 Reference Tariff produces an entirely disproportionate result and is onerous. Amending the charges so that they are based on a multiple of the P1 Tariff or B1 Tariff would also align with the position under Clause 11.1(b)(i) which charges an Overrun Rate by reference to the P1 Tariff or B1 Tariff (as applicable).</p>