Revised Final Plan
Attachment 7.2

Response to Pipeline and Reference Services

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PUBLIC

Dampier Bunbury Pipeline

1 Response to Draft Decision on Pipeline and Reference Services

Pipeline and Reference Services are the services we offer our shippers to meet their needs. These have been subject to a separate process of identifying services and assessing what type of services they should be through our Reference Service Proposal submitted 8 December 2023 and the ERA's Decision made June 2024 here.

1.1 Overview

This attachment sets out our response to the ERA's Draft Decision on aspects of our pipeline and reference services, outlined in Attachment 1 and Attachment 3 of the ERA's Draft Decision. In particular we are responding in this attachment to:

Required Amendment 1.1

DBP must amend the specification of the Pilbara Service to be a non-reference service only (rather than a non-reference rebateable service).

Following on from this, from Attachment 3:

Required Amendment 3.2

DBP must amend clause 18.19 of the proposed access arrangement to remove the reference to the Pilbara Service being a rebateable non-reference service.

Additionally, in respect of rebate proportions:

Required Amendment 3.5

DBP must amend clause 18.20 of the proposed access arrangement as follows:

- Amend the "Rebateable Amount" for rebateable services revenue to ninety per cent (90%).
- Amend the table in subclause (a) to include Periods 5 and 6 from the previous access arrangement period (AA5) and update Period 6 for the current access arrangement (AA6) to reflect the end date of the access arrangement period; as set out in paragraph 68 of Draft Decision Attachment 3.

As noted in Attachment 14.2, we respond here to the ERA's requirement that we allocate only 95 percent of our costs to reference services. This is one part of the steps the ERA takes towards its Amendment 3.3 which requires us to adopt the tariffs contained in Attachment 3 of the Draft Decision. Additionally, we respond to Amendment 3.4, which requires us to address a number of administrative errors in Annexure A of the Access Arrangement in Attachment 15.5, where we agree to the ERA's changes from Table 9 of Attachment 3 of the Draft Decision.

1.2 ERA Draft Decision

We summarise these four aspects, as well as the ERA's conclusions in respect of the final amount for depreciation in Table 1-1. We note that the ERA's views in respect of the Pilbara Service, along with relevant amendments, are spread across two parts of its Draft Decision.

Additionally, there are some differences between us and the ERA in respect of where we deal with issues. This Attachment should be read in conjunction with Attachment 14.2 to cover the major issues associated with the ERA's Attachments 1 and 3 of its Draft Decision.

Table 1-1: Summary of ERA's Daft Decision on Pipeline Services

	ERA Draft Decision	ERA Comment
Pilbara Service status (Amendments 1.1 and 3.2)	Reject	There is substantial daily variability in the service, but annual variability is small and further, the service has a reservation charge which is take-or pay, most demand for it is from two shippers with established operations and DBP's forecasts for throughput are not materially different from 2024/25 actual throughput.[1] Revenue from the Pilbara Service has also been fairly stable through AA5.[2] On these bases, the ERA has rejected the proposal that the Pilbara Service be made rebateable.
Rebate proportion for Rebateable Non-Reference Services (amendment 3.5)	Reject	The ERA considers that circumstances have changed since determining in AA5 that a 70/30 rebate was appropriate as the energy sector is in a period of change, giving DBP a strong incentive to fully utilise its pipeline which currently has spare capacity.[3] Given this environment, the ERA considers that DBP is sufficiently incentivised to offer non-reference service, and that its focus should be on cost recovery rather than providing additional incentives.[4] The relevant costs are SUG, and a reasonable contribution to any shared costs which are incurred to provide rebateable services, and that a reasonable estimate of the provision of SUG costs is 10 percent.[5] This means that the rebate portion should be 90/10. The ERA also requires amendments to the table in Clause 18.20 which defines the periods over which income earned from rebateable services should be returned to shippers via reference tariffs to better reflect changes from one Access Arrangement period to the next.[6]
Allocation of costs between reference and non-reference services (part of Amendment 3.2)	Reject	The ERA has followed the same approach to allocating costs (by revenue) but includes more non-reference revenues than are included in the Final Plan. Specifically, it includes Pilbara Service revenues and revenue from overrun charges. The inclusion of Pilbara service revenues is a direct consequence of the ERA determining (see above) the Pilbara Service as non-rebateable, and no further reasoning is provided.[7] The inclusion of overrun charges is based upon an observation that revenue from such charges has been rising, which the ERA believes gives DBP a reasonable opportunity of recovering "the costs incurred in providing overrun services (sic)".[8] On the basis that non reference services (in total) comprise roughly 5 percent of total revenues, the ERA allocates 5 percent of total costs to non-reference, non-rebateable services.[9]

Note: In this 'traffic light' table, green shading represents the ERA's acceptance of our Final Plan, orange represents the ERA's modification of our Final Plan and red shading represents the ERA's rejection of our Final Plan.

[1] *ERA Draft Decision Attachment 1 [50]*
[2] *ERA Draft Decision Attachment 1 [52]*
[3] *ERA Draft Decision Attachment 3 [63]*
[4] *ERA Draft Decision Attachment 3 [64]*
[5] *ERA Draft Decision Attachment 3 [67]*
[6] *ERA Draft Decision Attachment 3 [68]*
[7] *ERA Draft Decision Attachment 3 [40]*
[8] *ERA Draft Decision Attachment 3 [43]*
[9] *ERA Draft Decision Attachment 3 [44]*

1.3 Our Response to the Draft Decision

Our response to the ERA's Amendments are shown in Table 1-2.

Table 1-2: Summary of our response to the ERA's Draft Decision on Pipeline Services

	ERA Draft Decision	Our Response	Our Comment
Pilbara Service status (Amendments 1.1 and 3.2)	Reject	Accept	We accept the ERA"s conclusion that the Pilbara Service should not be rebateable. To give this effect, we have made the following changes to the Access Arrangement document: • In clause 3.1(b)(i)(G), we have reversed our proposed insertion of the reference to "Rebateable"; • In clause 3.6(e), we have reversed our proposed deletion of the description of the Pilbara Service; • In clause 3.7(e), we have reversed our proposed insertion of the description of the Pilbara Service; and • In clause 18.19, we have reversed our proposed insertion of "Pilbara Service" (and a comma)."
Rebate proportion for Rebateable Non-Reference Services (Amendment 3.5)	Reject	Reject	We accept the second portion of the Required Amendment which adjusts the table in Clause 18.20 of Annexure A5 of the Access Arrangement to better manage the transition from one Access Arrangement period to the next. We reject the requirement to change the rebate proportion to 90/10. This proportion is inappropriate as it does not enable us to recover our costs for the provision of these services and frequently provides no incentive for us to provide these services. If it is based on cost, as the ERA contends, then the appropriate allocation should be 80/20 and not 90/10, as the ERA has missed out some key costs. However, we contend that the ERA is incorrect in its assertion that we require limited incentive to offer additional services due to large amounts of spare capacity and consider that the best proportion to use is 75/25. We have amended Clauses 18.19 and 18.20 of the proposed Access Arrangement to reflect this 75/25 split.
Allocation of costs between reference and non-reference services (part of Amendment 3.2)	Reject	Reject	We note that, if the Pilbara Service is not rebateable, then it logically follows that its revenues should be considered as part of the cost allocation process, which would result in a ratio of 98/2 (reference/non-reference) rather than 99.5/0.5 as per our Final Plan, or 95/5 as per the Draft Decision. We believe that 98/2 is the appropriate allocation. Our rejection of the ERA's required amendment comes from our rejection of the ERA's proposal to include overrun charges in its considerations. We consider the ERA's process by which it has come to this conclusion, in effect creating an "overrun service" (which does not currently exist) raises a host of unforeseen problems the Draft Decision does not contemplate, and that a better solution is to change the overrun charge itself, so that it functions as a genuine behavioral charge, reducing revenues earned from this charge. Accordingly, we propose to change the Overrun Rate in Clause 11.1(b)(i) of the Terms and Conditions from 115% to 200%, and to change the Unavailable Overrun Charge in Schedule 2 of the Terms and Conditions from 250% to 300%. Further details are provided in Section 1.4.3.

Note: In this 'traffic light' table, green shading represents the acceptance, orange represents a modification and red shading represents a rejection.

1.4 Detailed reasoning

In this section, we provide our detailed reasoning on the following topics:

- The rebate proportion of 90 percent for rebateable non-reference services.
- The cost split between reference and non-reference services

We do not provide detail on the Pilbara Service as we have agreed with the ERA's conclusion.

1.4.1 Rebate Portion

The ERA has based its position in the Draft Decision on two key positions:

- That there is significant uncertainty in respect to the future of the energy sector, meaning we have a strong incentive to pursue new demand where we can; and
- We have significant spare capacity available to service new demand.

On this basis, the ERA concludes that it does not need to provide any additional incentives via rebate proportions and can base rebates solely on the costs we incur in providing rebateable non-reference services.[10] There are three issues associated with this stance by the ERA, and the resultant 90/10 split:

- Capacity is not something we simply have but is something which needs to be created. It's creation involves risk for DBP which is not included in the ERA's pricing mechanism.
- The 90/10 split does not cover all variable costs associated with the provision of non-reference services.
- The incentive argument is much more complex than the ERA supposes.

We cover each of these issues in more detail below. We note that, based on the arguments outlined below, if the ERA were to base the rebate portion solely on variable costs, the appropriate proportion would be 80/20 (based on current tariffs and costs). We note also that a cost-based rebate proportion would need to change each time any of the building block costs change and explain why this is the case.

However, we do not propose this proportion as the appropriate response because we believe that it is inappropriate to give zero weight to incentives. We discuss why incentives still remain important. Taking into account this discussion, it is our view that a reasonable compromise between the Final Plan and (correctly considered) costs, which still provides some incentive for the innovation and flexibility needed to meet the evolving energy future, is 75/25.

We now turn to the detail of our arguments.

Available spare capacity

The nameplate capacity of the DBNGP is 845 TJ/d, but this is not a statement of how much empty space there is in the pipeline to be filled simply by opening a valve at one end. The free flow capacity of the pipeline is roughly 250 TJ/d, and capacity beyond this point needs to be created by us by running compressors. Moreover, since gas, unlike electricity, does

[10] *See ERA Draft Decision Attachment 3 [63] to [67].*

not move instantaneously from one part of the pipeline to another, we need to create capacity ahead of revealed demand, as not all demand is tied up in take-or-pay contracts.

For example, take Spot. The day before a given gas day, we plan pipeline operations based on what we think total demand for services is likely to be (contracted and otherwise). We then notify shippers how much of the capacity on the following day will be available for spot and invite bids. As with any auction, the highest bid wins. However, shippers are not then held to a take-or-pay requirement on their nominated spot capacity. They are if all the spot capacity has been taken up, but if it is not, then they only pay for what they actually use. So DBP faces two separate risks; shippers might not take up all of the capacity we have provided above and beyond that in existing contracts on a given day and, even if they nominate that capacity in a Spot Service, they might not use it, and we might not be paid for it.

These risks need to be accounted for. If they are not, then our rational response is to limit exposure to these risks by planning our day-to-day operations to take into account only fully contracted (by reference or non-reference services) demand; ignoring, for example, weather forecasts which suggest cloud which might mean that Spot demand might be high that day. This reduces the flexibility which our customers value in using the pipeline (something we address below), but it also means that the amount of available capacity for sale is much smaller than the nameplate capacity of 845 TJ/d suggests might be the case. In fact, it will depend on the contracts we have for capacity and the incentives we have to plan for additional demand on a given day. In many cases, this will be a very small amount of capacity.

Variable costs of providing non-reference services

The ERA suggests that the only variable cost which is relevant for non-reference services is SUG citing a response to an information request where we noted that this was the most material cost.[11] Setting aside whether our identification of this being the most material cost leads logically to the conclusion drawn by the ERA that SUG is the *only* cost that should be compensated,[12] we point out that the ERA disagrees with us elsewhere in this same attachment in respect of which costs are variable, but does not reflect this disagreement in its consideration of the appropriate rebate share.

In Attachment 3 [50] of the Draft Decision, the ERA, noting agreement with WesCEF and NewGen, states that turbine and GEA overhaul are also variable costs, which causes the ERA to shift our proposed capacity/commodity split (which included only SUG costs in the commodity charge) from 95/5 to 94/6. It is unclear why the ERA would consider turbine and GEA overhaul to be variable costs for all services except rebateable non-reference services, and we rather suspect that this is an unintended omission, meaning that the rebate mechanism in the Draft Decision should be 89/11, not 90/10.

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[11] *Attachment 3 [65].*
[12] *In Attachment 3[66], the ERA notes that users of rebateable services "should cover their SUG costs and make a reasonable contribution to cover the shared costs that are incurred to provide rebateable services", but then in [67] the ERA notes that 10 percent is a reasonable estimate of SUG costs (noting in a footnote that the Ullage Service may lead to a lower SUG requirement), and it proposes a 90/10 rebate mechanism, from which we can only conclude that the ERA intends to allow only for SUG costs.*

Further, the ERA then goes on to note:[13]

> *The ERA has also assessed additional costs that could be considered variable and notes WesCEF's submission that there might be costs related to the quick ramp up and ramp down of compressors to meet variable demand. It appears that this is more of a problem with non-reference service demand, which can be more variable and is an issue with cost allocation and not reference tariff structure.*

If this is true, then it should be reflected in the rebate portion, and it does not appear to have been. This would take the proportion further away from 90/10.

More importantly, we do not consider that the ERA has considered all of the relevant costs. In particular, although SUGis important, the amount of SUG usage when the pipeline is operating in a steady state, providing firm reference services is quite different from the amount of SUG required when the pipeline is providing non-reference services, at higher and more peaky levels of demand. We analyse this issue below.

The analysis focuses on spot market dynamics. For the purpose of illustrating the most optimistic profit scenario, the Draft Decision 2026, pre-rebate tariff is used.

[redacted]

[redacted]

	[redacted]		
[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]

[13] *Attachment 3 [51].*

[redacted]

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As a final consideration, an economically rational pipeline owner would only make spot services available up to the throughput level where compressor fuel costs are being recovered. This is shown in the stylised example in Figure 1-4 where demand for spot is virtually inelastic over the relevant price range on high gas-powered generation dispatch days and supply is analogous to the compressor fuel curve shown in Figure 1-3. This has important implications for the incentives a tight cost-based rebate mechanism may induce, and the consequences of those incentives.

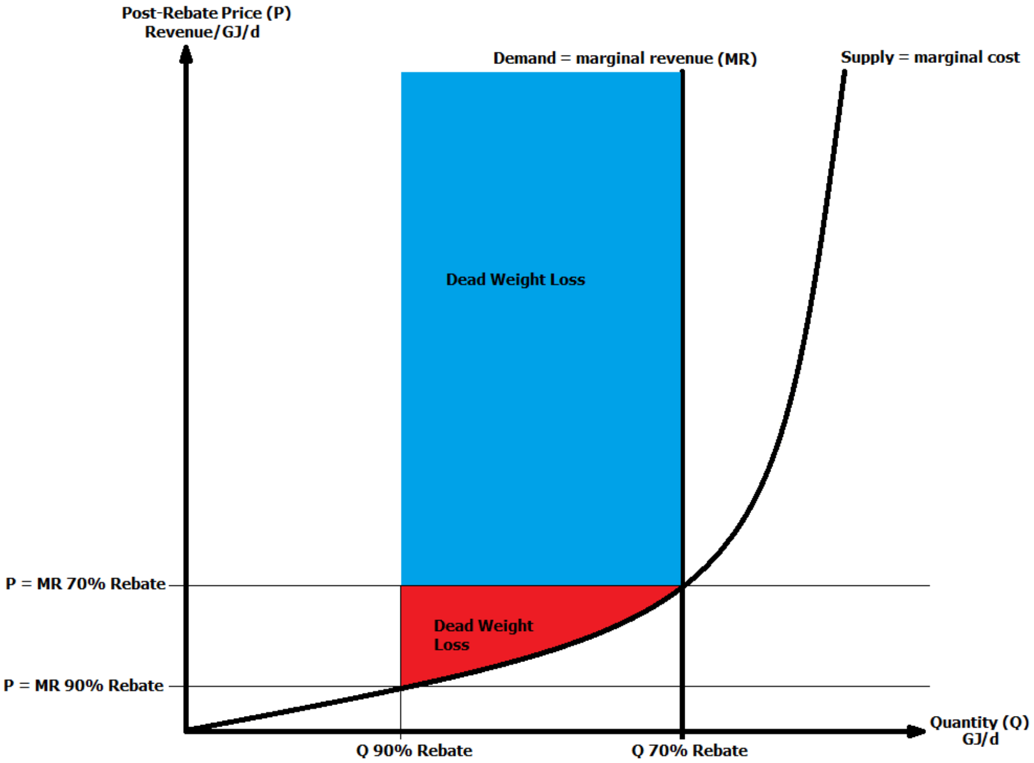
Under a 90% rebate the quantity of spot 'Q 90% Rebate' is lower than 'Q 70% Rebate' because the pipeline owner will only supply spot up to the point where marginal revenue equals marginal cost or 'breakeven' at point (P = MR 90% Rebate, Q 90% Rebate').

The reduced spot offered on these days causes dead weight loss equal to both the red and blue segments. The red segment is the loss of profitable GJ/d of spot that would have been offered by the pipeline owner under the 70% rebate. The blue segment is the loss of value to society who value the dispatch of gas on during these peak days, presumably to avoid blackouts, much more than the relevant price range shown on the graph.

This dead weight loss is a measure of economic inefficiency induced by rebates that curtail any profit and recovery of costs.

[14] *The average fuel cost is a more appropriate measure than the modal fuel cost as it balances both the frequency and dollar deviation from the mean, rather than just the frequency. This is important because theoretically one large 'overshoot' of the mean (dollar distance) could require many 'undershoots' to rebalance losses.*

Figure 1-4: Rebates and Economic Inefficiency: Spot Daily Demand and Supply



As a final point, we note that the tariffs for many rebateable non-reference services are often tied to reference services, which are driven by different costs than the incremental costs which we incur when providing non-reference services. This has important implications for a proportional rebate mechanism that is cost-based.[15]

For example our best current estimate of compressor SUG, as per the discussion above,, is [redacted] If reference tariffs are the same as the ERA's Draft Decision ($2.19/GJ), and spot is a 15 percent premium on this ($2.52/GJ), then the incremental costs compressor SUG [redacted] percent of the revenue we get from selling it. However, if the incremental costs remain at [redacted], but the reference tariffs are the 2025 reference tariffs ($1.39/GJ), then Spot Services would be priced at $1.57/GJ, and incremental costs would represent [redacted] of revenues.

Importantly, the incremental costs of providing non-reference services can vary for different reasons than tariffs. For example, a large portion of the incremental costs of Spot Services is system use gas, but the major driver between AA5 and AA6 tariffs is WACC. This means that a cost-based rebate mechanism, when set as a proportion of revenues from rebateable non-reference services should, in theory, be changed each and every time any building block cost changes; in reality, the more precise is the estimate of what the "correct" cost-reflective

[15] A 70/30 rebate scheme could give rise to exactly the same issues, if incremental costs rise sufficiently, but there is much more of a buffer, meaning the issue is less important in practice. Instead, what changes is, essentially, the power of the incentive mechanism.

portion should be, the greater the need to change the proportion in the face of any cost changes in the Access Arrangement decision.

Based upon our assessment of costs and the tariffs contained in this response to the ERA's Draft Decision, and the points outlined above, a cost-based rebate of 80/20 would appear to reasonably reflect the current incremental costs of providing rebateable non-reference services in aggregate. However, we point out that:

- Estimates of some of the incremental costs are only a very rough approximation of the costs we would incur for the line item involved in many instances. For example, SUG costs are based on fuel curves. These are not deterministic but based on data. This means that, for higher levels of demand for the pipeline as a whole where we have less data historically, the SUG estimates are less accurate. This represents an uncompensated risk in the rebate proportions both we and the ERA put forward.
- Accurately estimating the incremental costs of any business with very high fixed costs is an imprecise science; something which has been well known to regulators for more than 100 years.[16] For this reason, we have not sought to be precise down to the last fraction of a cent, as such precision is spurious.
- If it transpires that actual costs differ from those we have considered, either because a given rebateable non-reference service does not have incremental costs that are 20 percent of revenues, or because the level of demand for all services means that fuel gas costs are high, our incentives to offer a service at a point in time will be impacted. This is an inevitable consequence of focusing solely on costs; which requires having perfect information to operate as intended.

Incentives

If the only non-reference services we had on offer were the current set of rebateable non-reference services, if the ERA's estimate of variable costs was exactly right and if spare capacity could be created in the pipeline for zero risk or cost, then the ERA is correct in assuming that we would have every incentive to offer as much as we can of these services.[17] However, this is a very narrow view of incentives, and how the rebate mechanism interacts with these. In particular:

- The rebate mechanism at present gives us more flexibility overall in respect of how we interact with all our shippers across all services. As we discuss below, we have invested some portion of the returns from rebates into building a "goodwill asset" with shippers, rather than managing each service exactly to contract.
- If the energy sector is indeed undergoing substantial change, what we need to do going forward is not rely only on the current rebateable non-reference services, but to design new services to meet changing demand. Cost based approaches severely limit incentives to do this as they cannot compensate the costs of developing a service.

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[16] Hoogenboom and Hoogenboom note the case in US railways when, in circa 1910, the Interstate Commerce Commission gained new powers over railways and began holding hearings on rates that would bind, and the difficulty railway executive had in apportioning incremental costs to particular services, as well as the difficulty the ICC had in believing that costs could not be so apportioned (see Hoogenboom AA and Hoogenboom O, 1976, The Interstate Commerce Commission: From panacea to palliative, Norton NY pp60-6, available here . The challenge of apportioning costs remains today.

[17] Technically, if we received in revenues exactly our incremental costs, we would be indifferent between offering the service or not, but would offer as much as we could as soon as revenues were even $1 about incremental costs.

We cover these issues below. Considering them does not lead to an "optimal" rebate proportion, but rather, each provides a strong argument to move away from solely cost-based rebates. Our proposal for a 75/25 split reflects our view of a reasonable compromise between the current proportion and a more reasonable cost-based proportion, , outlined above.

Incentives and current customer flexibility

Our relationships with shippers are important and involve continuous interaction at an operational level. This means we don't simply manage exactly to contract (any contract), but instead operate flexibly, creating goodwill with shippers as we seek to meet what they need each day. We provide three brief case studies below to illustrate what we mean.

[redacted]

[redacted]

[redacted]

These examples are not shipper-specific but simply serve to illustrate the point that all shippers, from time to time, need us to act flexibly.   Where we are only rewarded for our actual costs in delivering a service, not only do we have no buffer to act with flexibility, but we have no incentive to do so either. One key role the rebate services play, in giving us a small buffer, is in providing us with funds to invest in the goodwill which is created by acting more flexibly. Absent of such an incentive, our incentive to invest in goodwill will be reduced, and we consider that this will be to the detriment of shippers in the long term.

Incentives and new services

The ERA's approach to the rebate mechanism provides very little incentive to develop new non-reference services. Even if the actual cost of each service as delivered formed the basis of the rebate mechanism (a separate issue we address below), there is no scope for us to recover the costs of developing new services; particularly in an environment where not every potential new service offering makes its way through the funnel of project development to be delivered to a shipper. These development costs can be substantial.

[redacted]

[redacted]

[redacted]

The incentives for new non-reference services proposed by the ERA stand in stark contrast to the rest of the incentive regulation regime. Under a price-cap regime, we have a strong incentive to accommodate new demand while on the cost side, we have a strong incentive to pursue operational cost savings and to invest in activities which may deliver operational cost savings. In an environment of significant market change, which requires flexibility from gas pipelines, new services to meet new types of demand ought to be provided with the strongest incentives. Under the ERA's proposed approach, they would be given the weakest incentives. We do not think this is appropriate.

As a final point, we note that the rebate share currently proposed is a single share for all services. Where a new service which we might develop has incremental costs above this share (so incremental costs greater than 10 percent of revenues in the case of the Draft Decision), then we have no incentive to develop this service, regardless of how much demand there might be, because we would lose money on every unit of the service sold.[18] Rather, we would be incentivised to develop services with low incremental costs rather than

[18] *This applies to entirely new services, and bespoke versions of existing services; for example, an adaptation of the Peaker Service to meet the needs of a given shipper, or an Other Reserve Service.*

seeking to meet what shippers need. We consider this to be a poor incentive to innovation.[19]

1.4.2 Cost Allocation

We have accepted the ERA's conclusion in respect of the Pilbara Service; that it remain a rebateable non-reference service. The logical extension of this is that the Pilbara Service should be considered in the assessment of cost allocation, and the result is that 98 percent of our efficient costs would be recovered from reference services, following the methodology both we and the ERA have followed.[20] This differs from 99.5 percent in our Final Plan.

Where we have issue is with the overrun charge, which we do not consider should be part of the cost allocation process; just as it has remained outside this process in previous AAs. We consider that the allocation approach the ERA has followed leads to unforeseen consequences, and treats the symptoms of the issue at hand, rather than its cause. We outline our objections, and our solution to overrun charge revenues the ERA is attempting to solve, in the discussion below.

The process for determining services compared with the lack of process in the ERA's Draft Decision in respect of its proposed "overrun service" and its proposed use

To begin, overrun charges are *not* a service. Overrun Gas is defined in the reference service terms and conditions as an amount of gas taken which is in excess of that for which the relevant shipper has contracted capacity. The charge which is levied for Overrun Gas is defined in Clause 11.1(b) or, when an Unavailability Notice has been issued under Clause 11.2 to 11.4 DBP can either refuse to deliver any Overrun Gas (Clause 11.5) or levy an Unavailable Overrun Charge under Clause 11.6 (with the charge specified, along with other charges which are part of the reference service contract, in Schedule 2.

The ERA quotes a statement from DBP (see Attachment 3 [42]) from our basis of preparation for our Regulatory Information Notice where we say that overrun has "all the characteristics of a service", and appears to use this as the basis for later referring to "overrun services" (ibid [43]) and then including the revenue from the charges in the revenue generated from non-reference services (ibid[44]). There is no other basis provided for defining this revenue as non-reference service revenue.

The quotation from our Regulatory Information Notice is taken out of context. For the purposes of reporting revenue, and for clearly showing where revenue has come from, overrun charges have "all the characteristics of a service" because they can be tied to specific TJs of demand and have defined tariff, and because they can be grouped most easily in the manner we have put forward in our RIN.

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[19] *We note that, under the current approach, we would not offer a service whose incremental costs were 40 percent of the tariff, so the same issue applies. However, it is much stronger when the rebate share is higher, and hence much more likely to be lower than the incremental costs of more services.*

[20] *Based on the proportion of total revenues accounted for by non-reference, non-rebated services (excluding overrun charges from revenues) using the RIN data submitted to the ERA; the same approach both we and the ERA have used in the Final Plan and Draft Decision respectively.*

In our reference service terms and conditions, Overrun Gas is defined as the amount of gas received by a shipper, across all of its outlet points and all of its services (reference and non-reference) in excess of its nominated capacity.[21] There is no such thing as "T1 Overrun Gas", for example, by definition, and this is why we report only revenues from all overrun charges together. This in no way suggests, or should be taken to suggest, that such a thing as an "overrun service" exists. The ability to overrun a capacity nomination is part of other services a shipper may have.

The process by which services are created and approved is clear, and we followed it as part of the preparation of this AA proposal. On 8 December 2023, as we are required to do under NGR 47A, we provided to the ERA a Reference Service Proposal. In it, as we are required to do, we listed out all of the services which are available to shippers on the DBNGP, assessing them against the Reference Service Criteria (as required by NGR 47A(15)), giving rise to a table (see Table 3 here). The ERA then assessed these services, and their delineation into Reference and Non-Reference Services in its decision (here). At no point during the process, not in our original proposal, nor in submissions, nor in the ERA's decision, are overrun charges mentioned in the context of being a service.

Moreover, during this process, DBP proposed to exclude data, storage and ancillary services, listed during AA5 as services from the services available during AA6. The ERA rejected our arguments in respect of data and storage services, but accepted them in respect of ancillary services, stating:[22]

> *In respect of the ancillary services (seasonal service, metering and temperature service, and odorization service), DBP explained in its submission that these services are already included as part of the three listed references services and DBP earns no additional revenue from these services. The ERA accepts DBP's position and considers that these ancillary services do not need to be specified as pipeline services*.

Overrun charges are incurred by shippers as a behavioural charge under the terms of a shipper contract and by their nature are not able to be categorised as a service as they are not able to be separately accessed outside of an existing shipper contract, and cannot be nominated ahead of time but rather apply when a shipper has taken more gas than its contracts allow for.

As is the case for the ancillary services above which the ERA accepted to be excluded, as overrun charges also attach to an existing shipper contract, they should likewise be excluded. The ERA now appears to have reversed its position and has in effect created a new service which has never existed in the past - notwithstanding that the ability of a shipper to overrun is not actually a service and the terms of the shipper contracts expressly do not provide for overrun to be regarded as a service.

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[21] *See, for example, the T1 service terms and conditions, p17, here.*
[22] *ERA, 2024, Reference Service Proposal Decision, 1 July 2024 [38], available here.*

The ERA however appears to have done so only for the purpose of the cost allocation process; there is nothing in the ERA's Draft Decision which suggests that it intends that the "overrun service" is something it intends should be offered to shippers.

There are two issues with the ERA's approach:

- It is not clear that it is open for the ERA to simply create a "service" for the sole purpose of a cost allocation, subjecting it to none of the assessment and stakeholder consultation required for other services; and
- If it did so, and somehow managed to create a viable "overrun service" (we maintain our view that this cannot be done), the unintended consequences of creating a service would arguably be worse than the problem the ERA is attempting to solve.

Can an "overrun service" be created in the way the ERA has in this Draft Decision?

The process by which services are created and assessed is outlined in the summary of what we have done as part of this AA above. The process which is required to be followed is to:

- List all of the relevant services that could be provided on the pipeline.
- Assess whether they should be reference or non-reference services by following the reference service criteria in NGR 47A.
- For those services which are non-reference services, determine which services should be rebateable (via NGR 93) and how cost allocation is to be undertaken (via NGR 92).

Once this process is completed, we are required to produce a list of available services (which the ERA approves), and we are then required to publish this list of services on our website to inform negotiations with shippers. There is nothing in this process whereby any party, either ourselves or the ERA, is able to simply skip a step in the process, or to deem a particular service be used for one narrow purpose and not for other purposes.

There could be considerable confusion, for example, if a shipper came to us seeking an "overrun service", having read that such a thing exists in the ERA's Draft Decision. We could not offer that service, as it does not and, given how the remaining reference and non-reference services are structured, cannot exist.

The net result of this discussion is that, if the ERA wishes to propose an "overrun service", it must go through the same process of assessment and consultation we did, and then it must add it to our list of available pipeline services, sufficiently specified and with all of the relevant changes required in other services to allow this service to exist, fully specified. The Draft Decision process of "discovering" a service based on a reference in our Regulatory Information Notice Basis of Preparation, and then making very narrow use of this 'service' for cost allocation purposes we consider to be inconsistent with the National Gas Rules.

Consequences of a hypothetical "overrun service"

Noting that there has not been a process of developing and consulting upon an "overrun service", we do not think that the right response is to now start such a process. There is insufficient time to undertake all of the required development (including changing other services to take out overrun so it is a stand alone service), consult on it with shippers, gain their agreement to all of the changes this will impose on them and, finally, change all of our administrative and billing systems to ensure commencement from the 1st of January 2026.

Far more important than the timing aspect, however, is the issue of the consequences of the creation of a hypothetical "overrun service". These consequences, which are unexamined in the Draft Decision, are arguably much worse than the problem of revenue allocation which the ERA is trying to solve in respect of overrun charges.

If there is such a thing as an "overrun service", it can take one of three forms; it can be:

- A non-rebateable, non-reference service;
- A rebateable non-reference service; or
- A Reference Service

These are the options the National Gas Rules provide for a service. Each leads to poor consequences not anticipated by the Draft Decision. We outline these below.

If the service is determined to be non-reference and non-rebateable, the consequences of this would appear to be a contravention of the National Gas Objective, which requires the ERA to:[23]

> *…promote efficient investment in, and efficient operation and use of, covered gas services for the long term interests of consumers of covered gas with respect to—*
> *(a) price, quality, safety, reliability and security of supply of covered gas; and*
> *(b) the achievement of targets set by a participating jurisdiction—*
> *(i) for reducing Australia's greenhouse gas emissions; or*
> *(ii) that are likely to contribute to reducing Australia's greenhouse gas emissions.*

Operating the pipeline with overrun is highly inefficient. Overrun means that shippers are withdrawing more gas from their outlet points than we had planned for when creating the capacity in the pipeline for the day, which means that our control room needs to actively manage the pipeline to ensure that it can respond, effectively instantaneously, to unexpected sources of withdrawal. [redacted]

[redacted]

[23] *National Gas Law (23).*
[24] *This delta is actually the difference between the final nomination shippers make at 8pm before each gas day, which is their last opportunity to make changes.*
[25] *In the discussion in Section 1.4.1 we note that we need to create capacity and therefore face a risk when that capacity is not fully taken up. The negative delta days in the scatter plot provide an indication of this risk, and show also how shippers (who*

[redacted] [redacted]

[redacted]				[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

If overrun charges are included in the consideration of cost allocation in the way that the ERA has done, this effectively means that we have a revenue shortfall of three percent. This provides an incentive to keep allowing shippers to overrun to fill this gap (noting that, under Clause 11.5 of the Reference Service terms and conditions, we can refuse to deliver overrun gas if an unavailability notice has been provided) in order that we can recover all of our revenues, rather than issuing an unavailability of overrun notice and pushing shippers to better manage their own requirements so that their needs can be accommodated by the various (reference and non-reference) services that will enable us to efficiently operate the pipeline to its optimum based on the nominated capacity for that day.

For this reason, determining overrun as a service deciding it should be non-reference, and then deciding it should be non-rebateable leads to an incentive structure which acts directly against the requirements of the National Gas Objective to provide an incentive to efficient operation of the pipeline. This is not an appropriate outcome.

Making a potential "overrun service" a rebateable non-reference service may be even worse. The overrun charge is a behavioural charge, designed to provide a disincentive to shippers to go beyond their nominated capacity and impose costs on the efficient operation of the pipeline and, by extension, impose costs on all other pipeline users. The rebate approach requires us to return a large proportion (90 percent in the ERA's Draft Decision) of revenues earned from rebateable non-reference services to shippers.

This means that any shipper who causes overrun might suffer a cost today but can enjoy a benefit next year in the form of lower tariffs. This is a little like the Western Australian Police Force fining bad drivers but then passing the proceeds of fines back to drivers in subsequent years.[27] This makes for a very poor incentive for shippers to rein in their behaviour which leads to overrun occurring in the first instance. This impacts not only us, but all shippers on the pipeline.

Finally, making the overrun service a Reference Service would likely lead to the worst consequences of all. In this instance, the ability to overrun capacity would need to be removed from Reference Services and be built into a separate Reference Service. The T1, P1 and B1 services would then contain no flexibility at all for shippers to overrun their nominated capacity, unless they bought an additional service.[28] It is also unclear how we would price a hypothetical "Overrun Reference Service"; the charge is designed as a behavioural charge, which would mean that, rather than basing the price of this hypothetical service on the costs of providing it, we would need to base it on the costs which the behaviour imposes on other shippers which is much more challenging to estimate.

An alternative proposal

The overrun charge is a behavioural charge, intended to prevent behaviour which results in running the pipeline inefficiently and may have adverse consequences for other shippers. If revenues are increasing, this suggests, perhaps because the nature of demand is changing, that it much less effective as a behavioural charge than it has been in the past. The solution, therefore, is to make it an effective behavioural charge again, to reduce the revenue earned from overrun charges in the future. This is how a behavioural charge like the overrun charge is supposed to operate.

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[27] *With the exception that each driver is only a very small part of the total number of WA drivers, whereas each shipper is a large part of the total number of shippers, meaning the incentive problem is much worse in respect of shippers than it would be for drivers.*

[28] *We note that many of our shippers have Standard Shipper Contracts, which the ERA does not control. We would need to negotiate the flexibility these contracts (which also have overrun charges in them) currently have out of the contracts to make them the same as the Reference Services, and we believe it would be highly unlikely that shippers would willingly give up this flexibility. The end result would be a strong incentive for shippers to avoid Reference Services, diminishing their very purpose under the NGR.*

This would be given effect by altering Clause 11(b) of the Reference Service Terms and Conditions. Rather than the charge being the greater of 115% of the reference tariff or the current spot price, we consider a potential charge being the greater of 200% of Reference Service tariffs, is in keeping with other pipelines, such as those operated by APA, [29] and the spot price would be an appropriate behavioural charge.[30]

We consider that this would provide shippers with a very strong incentive to seek other, flexible services rather than finding themselves in a position of having Overrun Gas and facing a behavioural charge. Not only would this allow us to manage the pipeline more efficiently but we note that, since most of the flexible services they would likely choose are rebateable non-reference services, any revenues earned would be returned to shippers via the rebate mechanism. By contrast, revenues earned from an overrun charges that might not be acting as much of a behavioral modifier anymore are kept entirely by ourselves.

[29] *See APA's tariffs and terms for several of its East Coast pipelines here. We note that APA, like ourselves, makes it clear that overrun is not a service, but is a charge separate from all of its services.*
[30] *We note that this would require the Unavailable Overrun Charge in Schedule 2 to rise as well; we consider an increase from 200% to 300% would be appropriate.*