

DAMPIER TO BUNBURY NATURAL GAS PIPELINE

SUBMISSION#21 RESPONSE TO THIRD PARTY SUBMISSIONS

PUBLIC VERSION

APRIL 2005

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1. EXECUTIVE SUMMARY

1.1 On 21 January 2005, DBNGP (WA) Transmission Pty Ltd ("Operator") filed public versions of the following documents with the Economic Regulation Authority ("Regulator"):

- (1) Proposed Revised Access Arrangement; and
- (2) Proposed Revised Access Arrangement Information.

1.2 The Regulator subsequently released an issues paper and requested submissions from interested parties by 14 March 2005.

1.3 As at the date of this Submission, 14 submissions were made to the Regulator by third parties which have been made publicly available. These submissions cover the following topics:

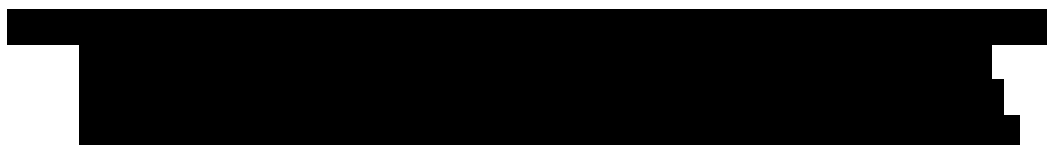
- (1) In relation to the Services Policy:
 - a. Whether it is appropriate to include a Tf service as a reference service
 - b. Whether other services should be included as reference services, including a T1 Service, a Part Haul Service, a Back Haul Service and a Spare Capacity Service
- (2) In relation to the Reference Tariff and Tariff Policy:
 - c. What should be the level of the reference tariff for other reference services;
 - d. The proposed incentive mechanism;
 - e. the allocation of costs amongst users;
 - f. the tariff path;
 - g. the level of the reference tariff for the proposed reference tariff;
 - h. the proposed fixed principles;

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- i. the concept of rebateable revenue; and
 - j. the values of some of the parameters used to determine the proposed Rate of Return;
 - (3) in relation to the proposed Terms and Conditions for the reference service:
 - k. whether they should be comparable to the terms and conditions of certain pre-existing contracts;
 - l. the priority of the reference service;
 - m. the gas specification provisions;
 - n. the curtailment provisions; and
 - o. the level of the behavioural charges;
 - (4) the Capacity Management Policy;
 - (5) the Extensions / Expansions Policy;
 - (6) in relation to the proposed Trading Policy, whether a secondary market should be established; and
 - (7) in relation to the proposed queuing policy:
 - p. the priority of access amongst different access requests; and
 - q. various issues relating to the process for dealing with access requests.
- 1.4 Operator responds to each of these issues in turn in the following sections of this submission



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2. SERVICES POLICY

2.1 The following issues are raised in submissions from third parties to the Regulator:

- (1) Whether it is appropriate to include a Tf service as a reference service
- (2) Whether other services should be included as reference services, including a T1 Service, a Part Haul Service, a Back Haul Service and a Spare Capacity Service

Should a Tf Service be included as a reference service

2.2 In relation to whether it is appropriate to include a Tf service as a reference service, the following submissions are made:

- (1) Tf Service is materially different to, and less certain and more restrictive than, the service the subject of contracts renegotiated with shippers in 2004.
- (2) There is doubt as to whether the Tf service is a service likely to be sought by a significant part of the market.
- (3) No evidence is given to support claim that Tf is likely to be sought by a significant part of market.

2.3 As mentioned in prior submissions, the Tf Service proposed by Operator has been designed in light of the following circumstances:

- (1) There is currently no Firm Service or T1 Service capacity on the DBNGP that is uncontracted.
- (2) The T1 Service capacity of the pipeline (as it is currently configured) is fully contracted. There is not Firm Service Capacity because:
 - a. the existing the contracts that were renegotiated in 2004 by the new owners of the DBNGP are for a T1 Service that requires it to be made available 98% of the time;

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- b. the existing T1 contracts require the T1 Services to be curtailed and interrupted in a specified order, which in particular, gives T1 Service priority over the Firm Service;
 - c. while the Firm Service is able to be interrupted 1% of a shipper's MDQ (without liability to Operator), because it must be curtailed or interrupted before a T1 Service (in order to ensure that Operator does not breach its obligations under the T1 contracts) and the T1 Service can be interrupted 2% over time (without liability), if a Firm Service contract were entered into, Operator would do so knowing that it would be at risk of immediately exposing itself to curtailing the T1 Service more than 1% of MDQ. This is an unacceptable risk to the Operator and accordingly, means that it can not offer Firm Service capacity.
- (3) The fact that the existing firm full haul capacity of the DBNGP (as it is currently configured) is fully contracted for the duration of the proposed access arrangement period means that there is no such capacity on the DBNGP (as it is currently configured) which could be (let alone would likely be) sought and accessed by any part of the market (let alone a significant part of it).
- (4) While the firm full haul capacity of the DBNGP is fully contracted, other capacity on the DBNGP is likely to be available during the proposed access arrangement period. The nature of the tranche capacity determination methodology (with respect to which the T1 Service is an outworking) is such that there is a tranche of less reliable capacity (relative to the T1 and Firm Service reliability) between the T1 capacity and the maximum capacity of the DBNGP.
- (5) The proposed reference service is therefore an attempt to design a service that reflects the forecast available capacity on the DBNGP which can be accessed by shippers.
- (6) It is noted that in making a decision, "the Relevant Regulator must not approve revisions to an Access Arrangement (or draft and approve its own revisions to an Access Arrangement) if a provision of the Access Arrangement as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted (or were required to be submitted),....".
- (7) Accordingly, to provide for a right to curtail on terms different to those proposed (in connection with the nature of the Tf service)

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would potentially deprive shippers of rights under contracts that were in existence at the date of filing of the proposed revised access arrangement.

Should a T1 Service be included as a reference service

- 2.4 In relation to whether it is appropriate to include a T1 Service as a reference service, the following submissions are made:
- (1) The contracts that were renegotiated in 2004 are evidence that the T1 Service is a service to be used by users both now and in the foreseeable future.
 - (2) T1 Service should be included as a reference service no later than 1 January 2016.
- 2.5 Operator's prior submissions already have outlined why it is not appropriate to include a T1 Service as a reference service now.
- 2.6 In addition, to the extent that it might be a service that is required in respect of developable capacity, it is noted that all existing shippers have an existing contractual right to require Operator to expand the pipeline on the basis of a T1 Service. When coupled with the obligation under various agreements to make this right available to prospective shippers seeking a T1 Service, it is submitted that no party will be prejudiced as a result of a T1 Service not being included in any access arrangement prior to 2016.
- 2.7 Operator will consider whether it is appropriate to propose revisions to the access arrangement on and from 1 January 2016 including a T1 Service as a reference service.

Should a Part Haul Service be included as a reference service

- 2.8 In relation to whether it is appropriate to include a Part Haul Service as a reference service, the following submissions are made:
- (1) It will be required by a significant number of shippers and potential shippers.
 - (2) New owners committed to proposing or offering part haul distance related tariffs.

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- (3) The tariff for both part haul and back haul services should be distance based and apply from the 0km mark down to at least CS9. It should replace the zonal pricing structure of the current access arrangement.
- (4) The reference service ought to cover all services that are currently used and are likely to continue to be sought by existing or new shippers or are necessary to maximise utilisation of the pipeline.
- (5) Without part haul as a reference service, users may be vulnerable to the extraction of monopoly rents when negotiating an access contract.
- (6) There is a conflict of interest for Operator because part haul from CS1 to Mondara also relies on the user negotiating a service from Mondara downstream on the Parmelia pipeline. If there is no regulatory oversight of part haul on DBNGP, it is in DBNGP's interest to make sure full haul is more attractive than the combination of part haul and Parmelia pipeline tariff.
- (7) The lack of a part haul reference tariff will result in an immediate exposure to a significant tariff increases over a short period for users in the Pilbara region and Carnarvon.

2.9 Operator responds to these submissions as follows.

2.10 The claim that operator has an interest to ensure that the full haul tariff is more attractive than the cost of a part haul service (at least to) Mondarra is without foundation. In fact, there is evidence to the contrary. Operator has already entered into part haul contracts for deliveries to Mondarra at a tariff that reflects the distance based nature of the services that are contracted.

2.11 The fact that there are commitments by Operator to provide a part haul service on particular terms and conditions, does not of itself, mean that the service should be a reference service.

2.12 Moreover, it should be noted that the terms and conditions of these part haul contracts are entirely different to the terms and conditions for part haul as set out in the existing access arrangement.

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- 2.13 The fact that there are services that the Operator has contracted for on the pipeline does not, of itself, warrant their inclusion in the access arrangement as a reference service. If that were the basis for determining whether a service should be included as a reference service, then Operator would be required to include 20 services as reference services, being the number of different services the Operator has entered into contracts for on the DBNGP. [REDACTED]

- 2.14 In relation to the pricing issues for part haul service, it should be noted that because of the tranche methodology, the impact on capacity downstream of Mondarra of delivering to Mondarra is the same as if the Operator were to deliver to Kwinana Junction. Therefore there is no spare part haul capacity for part haul deliveries to Mondarra and downstream. Therefore, in developing any new capacity for part haul deliveries to Mondarra, Operator and prospective shippers will need to consider the effect on downstream capacity and therefore the cost of providing such a service when negotiating the terms of access for a part haul service to Mondarra.

- 2.15 The claim that not having the part haul or back haul service as reference service will immediately expose shippers in the Pilbara and Carnarvon to a significant tariff increases over a short period is without foundation. [REDACTED]

- 2.16 In the case of prospective part haul and back haul shippers, if they were unable to negotiate access with Operator (and there is no evidence that this has occurred or will occur), they would be able to have recourse to arbitration, in which case, arbitrator would be required to have regard to the access requirement which, if the Regulator approves the revisions proposed by Operator, provides for Operator to make available such services subject to operational feasibility.

Should a Back Haul service be included as a reference service

- 2.17 In relation to whether it is appropriate to include a Part Haul Service as a reference service, the following submissions are made:

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- (1) It will be required by a significant number of shippers and potential shippers.
- (2) Tariff should be distance based and apply from the 0km mark down to at least CS9. It should replace the zonal pricing structure of the current access arrangement.

2.18 Operator responds as follows to these submissions.

Of the forecast volumes that have been attributed to the backhaul service, almost all are the subject of existing contracts. These contracts (like the part haul contracts referred to above) contain terms and conditions (including tariff) which have been commercially negotiated

2.20 Therefore, notwithstanding the existence of a backhaul service under the existing access arrangement, it has not been used as the basis for the terms and conditions for the existing backhaul contracts.

2.21 In relation to the submission as to the tariff structure that should be imposed for part haul and back haul services should they be included as reference services (the case for which Operator does not believe has been made out when applying the provisions of the Code), Operator queries whether it would be appropriate to structure a back haul tariff that applies a tariff from the 0km point on the pipeline.

3. REFERENCE TARIFF AND TARIFF POLICY

3.1 The following elements of the proposed Reference Tariff and Tariff Policy were the subject of submissions from third parties:

- (1) the level of the reference tariff for other requested reference services;
- (2) The proposed incentive mechanism;
- (3) The methodology for the allocation of costs amongst users;
- (4) The tariff path;
- (5) The level of the reference tariff for the proposed reference tariff;
- (6) The proposed fixed principles;
- (7) The concept of rebateable revenue; and
- (8) The values of some of the parameters used to determine the proposed Rate of Return;

The level of the reference tariff for other requested reference services

3.2 Operator's submissions on this issue are set out in section 2 of this submission.

The proposed incentive mechanism

3.3 One submission argues that the proposed mechanism is too heavily weighted in favour of Operator in 3 key areas:

- a. Operator should only be able to include a share of Relevant Cost Savings in the forecast Total Revenue for the 2011-2015 Period to the extent that those cost savings continue to be realised in the 2011-2015 Period.
- b. Operator should only be entitled to continue to reap the Ongoing Savings in the 2011- 2015 Period for a maximum of 5 years from the year that such savings were first realised.

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- c. Operator should share the Relevant Cost Savings with the users of the Reference Services. It is suggested that Operator should receive only 50% of the relevant Relevant Cost Savings in the 2011-2015 Period.

3.4 Items (1) and (2) have been discussed in submission #4.

3.5 In relation to the submission that only the portion of the Relevant Cost Savings that relate to that portion of the Total Revenue used to derive the relevant Reference Tariff for a particular Reference Service may be added to the relevant Total Revenue figure when deriving such Reference Tariff, Operator submits that given the methodology used to determine the proposed reference tariff, it would be unreasonable to impose such a limitation.

The methodology for allocation of costs amongst users

3.6 It is submitted that Operator's methodology for allocating costs amongst users/shippers is inconsistent with the provisions of the Code.

3.7 While Operator does not understand the basis for this claim, it notes however, that the proposed methodology is consistent with the methodology adopted by the Regulator in the existing access arrangement.

3.8 The submissions in respect of the proposed tariff path have been responded to in submission #4.

Fixed Principles

3.9 Operator's prior submissions on fixed principles in prior submissions deal largely with the 3rd party submissions made in relation to fixed principles.

Rebateable Revenue

3.10 Operator notes a degree of inconsistency with the submissions of third parties on this point. [REDACTED]

4. PROPOSED TERMS AND CONDITIONS FOR REFERENCE SERVICE

4.1 The following elements of the proposed terms and conditions were the subject of submissions from third parties to the Regulator:

- (1) whether they should be comparable to the terms and conditions of certain pre-existing contracts;
- (2) the priority of the reference service;
- (3) the gas specification provisions;
- (4) the curtailment provisions; and
- (5) the level of the behavioural charges.

4.2 Issues raised in submissions in connection with the gas specification provisions are responded to in section 5 of this submission.

Should terms and conditions be consistent with the terms and conditions of the suite of contracts renegotiated in 2004

4.3 This has been the subject of prior submissions from Operator.

Term of Contract

4.4 Various submissions have been made as to the minimum term of the reference service access contract. Shippers clearly have no uniform view on the minimum term.

4.5 Operator's submissions on this issue have been outlined in prior submissions. The only additional point is that with at least one shipper requesting a minimum term of 15 years and others not being definitive about the minimum term, the proposed minimum term of 5 years would appear to be a reasonable compromise.

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Priority of Service

- 4.6 A submission has been made that a new clause 14.3 should be inserted into the proposed terms and conditions as follows in order to make the order of priority clearer amongst shippers:

“For the avoidance of doubt, for the purposes of existing capacity contracts the Tf Service is an ‘Other Reserved Service’ and shall be curtailed accordingly.”

- 4.7 Subject to the outcome of the draft and final decisions, Operator will consider the inclusion of this provision.

Behavioural Provisions

- 4.8 Operator submits that there are no grounds given to justify a change of the behavioural provisions and charges, which provisions and charges are consistent with those approved by Regulator in the existing access arrangement.

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5. GAS QUALITY SPECIFICATION

5.1 In summary, the issues raised by parties in respect of the issue of the gas quality specification for the reference service on the DBNGP can be broadly grouped into the following categories of issues:

- (1) Whether a move to the broadest gas specification, as set out in the Dampier to Bunbury Pipeline Regulations 1998 ("DBP Regulations Specification") is necessary for true gas on gas competition
- (2) Whether there was a legitimate expectation that from 1 July 2005 the gas specification for the DBNGP would be moved to the DBP Regulations Specification.
- (3) The impact on upstream and downstream industries and the Operator as a result of a move to a broader gas specification;
- (4) The impact on upstream and downstream industries, the Operator and other impacts as a result of no move to a broader gas specification;
- (5) Whether the issue is more about which part of the value chain should bear the costs of more gas with a broader specification being developed;
- (6) Whether it is necessary to have a national gas standard or at least one that ensures there is alignment with the specifications for the major pipelines in Western Australia;
- (7) Certain drafting issues associated with the proposed provisions; and
- (8) The need to have regard to pre-existing contractual rights of parties under contracts that pre-date the proposed access arrangement.

5.2 While Operator considers many of the issues raised above have been adequately dealt with in its Submission #7, there are some issues which require a further response.

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Legitimate Expectations as to the specification from 1 July 2005

5.3 Several submissions seek to substantiate a claim that there is a legitimate expectation that the specification would move to the DBP Regulations Specifications from 1 July 2005 be reference to the reasoning of the Regulator in the draft and final decisions for the Original Access Arrangement.

5.4 Operator submits that the Regulator's reasons in prior access arrangement approvals processes can not be used to substantiate this claim. In a submission made by Operator in response to the Draft Decision, Operator confirmed the Regulator's reasons for an amendment in the Draft Decision as follows:

"The intention of Draft Decision Amendment 9 is to officially record that consideration will be given, as from 1 July 2005, to amend the gas quality specification at that time, although, the only element of the gas specification that will definitely be amended at that time will be the LPG content requirement which will be amended so as to remove the requirement that there be a minimum LPG content.

Subject to the first bullet point above, it is not the intention of Draft Decision Amendment 9 to finalise now the overall gas quality specification that is to apply for gas to be received into, transported on and delivered from the DBNGP as from 1 July 2005. Exactly what the gas specification after this date shall be is to be determined after a full debate and public consultation at the time that the revised access arrangement for that period is assessed by the Regulator."

5.5 This was confirmed by the Regulator in the Final Decision, a point which the submission of North West Shelf Gas acknowledges, although then uses the Regulator's reasoning for another purpose.

5.6 Accordingly, given that at the time of the Final Decision, the Regulator had before it all the information which stakeholders have relied on to substantiate the claim that there was a legitimate expectation, Operator submits that there is no legitimate expectation as to what is to be the gas specification for the DBNGP from 1 July 2005, other than the removal of any minimum LPG content requirement.

5.7 Operator's proposed revisions to the access arrangement in so far as the gas specification provisions are concerned, are entirely consistent with this position.

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Impact on Operator if specification is to move to DBP Regulations Specification

- 5.8 Other submissions have sought to outline the impact on the Operator and the DBNGP of a move to the DBP Regulations Specifications. Operator cautions the Regulator against relying on these submissions as they are incorrect.
- 5.9 Operator refers to a submission made in response to the Draft Decision for the Original Access Arrangement where Operator outlined the impact of a move to the DBP Regulations Specifications.
- 5.10 As previously outlined, the DBP Regulations Specifications will have a significant impact on the available capacity of the pipeline which will impact adversely on the Operator, users and prospective users of the pipeline.
- 5.11 The move would adversely impact on existing contracts in that it will deny the capacity entitlements of parties under the contracts.
- 5.12 The move would require Operator to incur significant capital expenditure to make up any shortfall in capacity, although it is noted that it is entitled to a claim of compensation in the event that such a move occurs. However, such a process is not likely to be easy or quick.
- 5.13 For the above reasons, should the Regulator impose such a specification, in Operator's view, it would demonstrate a failure to have regard to the following factors under section 2.24 of the Code:
- The Service Provider's legitimate business interests and investment in the DBNGP; and
 - The interests of Users and Prospective Users.
 - Firm and binding contractual obligations of the Service Provider or other persons already using the covered pipeline.
 - The operational and technical requirements necessary for the safe and reliable operation of the covered pipeline.
 - The public interest, including the public interest in having competition in markets.

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Adverse Impact on Capacity

5.14 A move to the DBP Regulations Specifications will result in a significant reduction in the forward haul capacity of the pipeline at most delivery points downstream of CS9. Operator would not be able to provide all Shippers with their current contracted capacity.

5.15 The current capacity level of the DBNGP has been determined using the current operating gas specification which is based on the past 12 months' throughput data. [REDACTED]

[REDACTED] It will require significant enhancement to the DBNGP to restore this "lost" capacity.

[REDACTED]

	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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[REDACTED]

[REDACTED]

Clause 2.10 Drafting Issues

Meaning of "corresponding change"

5.19 One submission argues that the meaning of a "corresponding change" to a delivery point specification in clause 2.10(a) of the proposed terms and conditions is unclear.

5.20 Operator submits that the ordinary meaning of the words "corresponding change" is not ambiguous. Rather, clause 2.10(a) prescribes a variation to the delivery point specification which is "equivalent" to the amount by which the receipt point specification is varied. This interpretation is consistent with a change in delivery point specifications under clause 2.8(e).

5.21 The submission further argues that on the above interpretation, clause 2.10 is likely to result in a general broadening of the DBNGP gas specifications, which will adversely affect the quality of gas received by other shippers.

5.22 Operator submits that any change to the gas specifications for one shipper will only be able to be effected if Operator is satisfied that it would not put it in a position where it could be in breach of an existing contractual obligation. Accordingly, a general broadening of the specification could only occur in circumstances where shippers are not adversely affected.

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Effect of clause 2.10

- 5.23 One submission argues that the test in clause 2.10(a) is unsound because gas processing or blending means Operator will never be incapable of complying with a delivery point specification. In addition, clause 2.10(c) overlooks that gas processing may become necessary as a result of changes to gas specifications.
- 5.24 Operator submits that this submission is incorrect because Operator, acting as a Reasonable And Prudent Person, would not be obliged under clause 2.10(a) to undertake blending or processing so as to render it capable of moving to the broadest specification, if to do so would compromise Operator's obligation to another shipper(s) to deliver gas in accordance with that shipper's specification.
- 5.25 Clause 2.10(c) reinforces clause 2.10(a): the intention of clause 2.10 being to offer flexibility and protection to Operator and shippers. Clause 2.10 protects Operator and shippers who do not want to vary their pre-existing contractual specification, while simultaneously giving Operator the flexibility to allow a shipper(s) to move to a broader specification if Operator is still able to deliver gas to all shippers at the varied specifications.
- 5.26 One submission argues that Operator's entitlement under clause 2.10(d) to refuse receipt of gas in certain circumstances once the existing gas specification has changed is financially impractical, and it will be difficult for Operator to prove those circumstances have arisen.
- 5.27 Operator submits this is a misleading interpretation of the clause. The tense used in clause 2.10(d) makes it clear that Operator's entitlement to refuse to receive gas under the varied gas specification requested in clause 2.10(a) is permitted before (and not after) the existing gas specification has been changed; therefore the financial impracticalities of a subsequent refusal do not exist. Clause 2.10(d) (like clause 2.10(c)) operates to define the scope of clause 2.10(a) as to whether a Reasonable And Prudent Person would vary the gas specifications as requested. Further, clause 2.10(d) does not require Operator to prove that receipt of the varied gas specification will give rise to the specified adverse circumstances; rather, the refusal to receive the varied gas specification is at the discretion of Operator if Operator believes those circumstances will occur.

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6. EXTENSIONS EXPANSIONS POLICY

- 6.1 The only issue raised in connection with the proposed extensions / expansions policy in submissions from third parties to the Regulator was that there is inadequate information to enable user to predict:
- (1) If an expansion or extension will or won't take place;
 - (2) If it does, whether it will be part of covered pipeline;
 - (3) Whether the user may be required to make a capital contribution;
and
 - (4) How the extension or expansion will affect the reference tariff.
- 6.2 In relation to the first issue above, it is submitted that it is not a requirement of the Code for the extensions / expansions policy to contain information to enable a user to predict if an expansion will or will not take place.
- 6.3 Notwithstanding that, it is noted that the proposed access arrangement revisions do outline when Operator will fund an expansion or extension.
- 6.4 In relation to the second, third and fourth submissions above, the access arrangement is clear on all points.

7. QUEUING POLICY

7.1 The following issues in connection with the proposed queuing policy were raised in submissions from third parties to the Regulator:

- (1) the priority of access amongst different access requests; and
- (2) various issues relating to the process for dealing with access requests.

Priority amongst differing access requests

7.2 One submission argues that the proposed Queuing Policy has insufficient detail in respect of how access requests for different services will be processed as against each other.

7.3 It is submitted that there is a single queue to apply for all access requests. However, there is scope for operator to deal with access requests out of order, as is the case in the existing access arrangement. Accordingly, if a back haul request were to be lodged following the lodgement of a Tf service access request, the backhaul service could be dealt with immediately, subject to their being capacity in the pipeline to deal with it.

Obligation to respond to access request on a timely basis

7.4 One submission argues that section 5.3(a) of the access arrangement should be amended to require Operator to assess and respond to an Access Request as a reasonable and prudent pipeline operator.

7.5 Operator submits that the provisions of the Code already impose such obligations on a service provider, including, the requirement to provide information and respond to access requests within a certain timeframe.

7.6 Accordingly, Operator submits that there is no need to insert such a provision – to do so would amount to “double legislating”.

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Obligation to notify position in queue

- 7.7 One submission argues that Operator should notify Shipper of its position in the queue in addition to its obligations under 5.4(o).
- 7.8 Operator would be concerned that to provide this information might enable a shipper first in the queue to unnecessarily delay its negotiations for a service, therefore preventing Operator from providing capacity to other prospective shippers with later access requests.

Obligation to negotiate access T&Cs in good faith

- 7.9 One submission argues that clause 5.3(c) must be amended to require Operator to negotiate the terms and conditions of an access contract in good faith in order to impose a reciprocal obligation on Operator.
- 7.10 Operator will consider inserting such a provision in the access arrangement subject to the outcome of the draft and final decisions.

Time periods for negotiating access

- 7.11 One submission argues that the periods for negotiations should be changed from 40 and 60 Business Days to 60 and 80 Business Days
- 7.12 Operator's key aims in revising the queuing policy, as stated in submission 7, are as follows:
- (1) obliging Operator to deal with access requests on a timely basis;
 - (2) imposing a discipline on Shippers and Prospective Shippers to negotiate on a timely basis so as to not be able to act as a bottleneck to other shippers;
 - (3) preserving the contractual rights and obligations of parties under pre-existing contracts; and
 - (4) affording Operator with the flexibility to deal with access requests out of order following a certain period, provided that prospective shippers ahead in the queue are not disadvantaged.

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7.13 Operator notes that an 80 Business Day timeframe is in effect 4 months.



7.15 In addition, it is in the interests of prospective shippers to conclude negotiations on a timely basis given the pre-existing rights of shippers under the suite of contracts that were renegotiated last year to compel Operator to fund the expansion of the pipeline in certain circumstances. If a negotiation is unnecessarily delayed, prospective shippers may miss out on the opportunity of accessing developable capacity that is to be built for existing shippers. If Operator is locked in to funding the expansion of the pipeline under these contracts, it must make that capacity available within a certain timeframe. Given the long lead time required for ordering line pipe and compressors, Operator will need to settle on a certain configuration. Any late change to the configuration, could result in significant additional costs being incurred in connection with the expansion project.

7.16 In addition to the above points, given the desire for Operator to create consistency in its operations, Operator considers that 3 months is sufficient time to negotiate access to developable capacity for a non reference service.

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8. TRADING POLICY

- 8.1 The only issue raised in connection with the proposed Trading Policy in submissions from third parties to the Regulator is that the Secondary Market described in the existing Access Arrangement should be continued in the revised Access Arrangement.
- 8.2 The secondary market proposed by Operator in 2000 was part of a total package including the proposed original access arrangement. It was not intended as a stand alone aspect.
- 8.3 However, this was never accessed by Shippers who instead relied on their rights to trade capacity as set out in their pre-existing contracts
- 8.4 In developing the proposed revisions to the access arrangement, Operator consulted with Shippers as to their willingness to:
- (1) Participate in a market for trading capacity that was coordinated by Operator; and
 - (2) Fund the establishment of the systems required to ensure the efficient operation of this market.
- 8.5 The response from Shippers was that the market for “spot” type capacity was functioning effectively through:
- (1) The spot market, the systems for which were carried over from those established under the Access Manual and Gas Transmission Regulations; and
 - (2) bi-lateral trading arrangements arranged directly between shippers.
- 8.6 Accordingly, Operator does not believe that the establishment of a secondary market, in the form envisaged by Operator in its original proposed access arrangement in 2000, would be utilised by shippers and therefore would replicate the outcome in a workably competitive market.

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- 8.7 Having said that, if the Operator were to be guaranteed a return on and return of the capital costs associated with the establishment of the systems and processes required to ensure a secondary market functions efficiently, it would consider establishing the secondary market.

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[REDACTED]

[REDACTED]

[REDACTED]

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