

20 May 2011

The Dampier to Bunbury Natural Gas Pipeline  
Gas Access  
Economic Regulation Authority  
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## PROPOSED REVISIONS TO THE ACCESS ARRANGEMENT FOR THE DAMPIER TO BUNBURY NATURAL GAS PIPELINE

Alinta Pty Ltd (**Alinta**) appreciates the opportunity to comment on:

1. the Economic Regulation Authority's (**Authority**) Draft Decision published on 14 March 2011 on proposed revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) submitted by DBNGP (WA) Transmission Pty Ltd (**DBP**) ('the Draft Decision'); and
2. DBP's response to the Draft Decision (published 19 April 2011), including its amended proposed Access Arrangement and amended proposed Access Arrangement Information and its supporting Submission (**DBP Response**).

Alinta makes these comments in its own capacity and on behalf of its wholly owned subsidiary Alinta Sales Pty Ltd (**Alinta Sales**), a major shipper on the DBNGP.

Alinta has commented only on certain issues arising from the Authority's Draft Decision and the DBP Response, and the absence of a comment on any specific issue should not be taken to indicate that Alinta supports, or does not support, that particular aspect of the Authority's Draft Decision and/or the DBP Response.

Alinta's submission is structured as follows.

- Summary comments on a number of key issues are provided below.
- Attachment A provides detailed comments on aspects of the Authority's Draft Decision and the DBP Response.
- Attachment B comments on the Authority's Draft Decision and the DBP Response in respect of the R1 Terms and Conditions.

## **Consultation**

As DBP's Submission 47 merely assigns an "A" for "accepted" or a "C" for "addressed" in relation to the Authority's 109 required amendments from the Draft Decision, there is no explanation at all to justify the changes (or rather, lack of changes) in the DBP Response.

By not providing the Authority with its supporting submissions together with its Amended Proposed Revisions on 18 April 2011, DBP has effectively ensured that interested parties have been precluded from providing further submissions to the Authority in response to information that may be contained in DBP's supporting submissions (which DBP has treated simply as submissions from an 'interested party' that are due to be made by 20 May 2011).

This approach severely compromises the effectiveness of the regulatory review process, and prejudices the interests of users and the broader public alike and is, Alinta believes, inconsistent with the achievement of the national gas objective.

For these reasons, Alinta requests that the Authority provide a further consultation period in which interested parties may comment on any submission made by interested parties by 20 May 2011 (or a later date that might be approved by the Authority). The critical aspect of the further consultation period is that third parties are given the opportunity to respond to DBP's further submissions supporting the DBP Response.

## **Protection of certain pre-existing contractual rights**

Alinta notes that DBP's Proposed Revisions (as maintained by the DBP Response) would, if approved by the Authority, have the effect that the Access Arrangement would deprive shippers under Standard Shipper Contracts (including Alinta Sales) of relevant protected contractual rights in breach of section 321 of the National Gas Law (NGL).

Alinta submits that the Authority must, in its final decision in relation to the Access Arrangement, reject the Proposed Revisions and the DBP Response for reasons that include that the revisions would deprive shippers of relevant protected contractual rights under section 321 of the NGL. The relevant contractual rights are, without limitation, those under clause 20.5(f) of the Standard Shipper Contract to have submissions made, and Authority approvals sought, by DBP which are entirely inconsistent with the outcomes in DBP's Proposed Revisions and the DBP Response.

## **Reference Services**

Alinta strongly supports the amendments required by the Authority, being that the T1 Service, P1 Service and B1 Service as described in the current Access Arrangement be included as Reference Services in the proposed Access Arrangement and that the single full haul R1 Reference Service be removed.

To the extent that DBP has maintained its proposal for the single R1 Reference Service in the DBP Response, Alinta repeats the relevant submissions from its Original Submissions and requests that the Authority reject DBP's proposal again in the Authority's final decision.

Further, in order to support the development of the Mondarra Gas Storage (MGSF) Facility as both a storage facility and a secondary trading hub, Alinta submits that the transport of gas from the MGSF to Perth and downstream should be a separate part-haul Reference Service – P2.

### Conforming capital expenditure

One of Alinta's key concerns in respect of the Authority's Draft Decision is that while it is made clear that DBP did not provide evidence to satisfy the Authority that DBP's actual capital expenditure met the requirements of rule 79(2) of the NGRs, the Authority arrived at an alternative justification on the grounds of positive economic value. The Authority's justification appears to be on the basis that:

- the Authority considered positive inferences could be drawn from the existence of Standard Shipper Contracts;
- the contractual arrangements are *prima facie* evidence that benefits outweigh costs to users; and
- despite there being weaknesses in the argument, the contractual commitments made by users to expansion of the DBNGP provide sufficient evidence to conclude the overall economic value is positive.

Alinta considers this alternative justification to be fundamentally flawed for several irrefutable reasons, which are discussed in detail in the attachment.

- There is no liberty under the NGRs that allow the Authority to abrogate its duties to require the service provider to satisfy it that one or more of the requirements of rule 79(2) of the NGRs have been met. The Draft Decision makes it clear that DBP has not satisfied the Authority in this regard.
- The existence and provisions of the Standard Shipper Contract compel conclusions that are precisely the **opposite** of the Authority's inferences and assumptions from very limited *prima facie* evidence.

### Operating expenditure

Alinta supports the Authority's required amendments to DBP's forecast operating expenditure given it has failed to establish that its forecast operating expenditure is consistent with the prudence and efficiency requirement of rule 91 of the NGRs.



Should the Authority require further information on any of the above issues, or those discussed in the attachment, I can be contacted on 9486 3749.

Yours sincerely

**Corey Dykstra**  
Manager Regulatory Affairs  
Alinta Pty Ltd  
Alinta Sales Pty Ltd

Att.

**PROPOSED REVISIONS TO THE ACCESS ARRANGEMENT FOR THE DAMPIER TO BUNBURY  
NATURAL GAS PIPELINE**

**1. OVERVIEW**

Alinta Pty Ltd (**Alinta**) appreciates the opportunity to comment on:

1. the Economic Regulation Authority's (**Authority**) Draft Decision on proposed revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) submitted by DBNGP (WA) Transmission Pty Ltd (**DBP**) ('the Draft Decision'); and
2. DBP's response to the Draft Decision, including its amended proposed Access Arrangement and amended proposed Access Arrangement Information and its supporting Submission (**DBP Response**).

Alinta makes these comments in its own capacity and on behalf of its wholly owned subsidiary Alinta Sales Pty Ltd (**Alinta Sales**), a major shipper on the DBNGP.

Alinta has commented only on certain issues arising from the Authority's Draft Decision and the DBP Response, and the absence of a comment on any specific issue should not be taken to indicate that Alinta supports, or does not support, that particular aspect of the Authority's Draft Decision and/or the DBP Response.

**1.1. Definitions of terms used in this submissions**

Relevant capitalised terms in these submissions have the following meanings unless the context requires otherwise:

**Access Arrangement** means the access arrangement in relation to the DBNGP.

**Access Arrangement Information** means the document required by rule 43 in relation to the Access Arrangement proposal.

**AER** means Australian Energy Regulator.

**Amended Proposed Revisions** means DBP's amended proposed revisions to the Access Arrangement (including the Access Arrangement Information) dated 18 April 2011 and published by the Authority on 19 April 2011.

**Authority** means the Economic Regulation Authority.

**DBNGP** means the Dampier to Bunbury Natural Gas Pipeline.

**DBP** means DBNGP (WA) Transmission Pty Ltd, the operator of the DBNGP.

**DBP Response** means DBP's response to the Draft Decision which includes the further proposed Access Arrangement and Access Arrangement Information proposals dated 18 April 2011 and published by the Authority on 19 April 2011.

**Draft Decision** means the Authority's draft decision in relation to the Proposed Revisions published on 14 March 2011.

**National Gas Code** means the National Third Party Access Code for Natural Gas Pipeline Systems.  
**NGL** means the National Gas Law as contained in the *National Gas Access (WA) Act 2009* as the *National Gas Access (Western Australia) Law*.

**NGR** means the National Gas Rules made and published under the NGL, as amended from time to time, and reference to a **rule** is to a rule of the NGRs.

**Original Submissions** means Alinta's submissions in relation to the Proposed Revisions lodged with the Authority dated 9 July 2010.

**Proposed Revisions** means DBP's initial proposed revisions to the Access Arrangement (including the Access Arrangement Information) dated 1 April 2010 and published by the Authority on 15 April 2010.

**Reference Service** means a reference service for the DBNGP to be included in the Access Arrangement as required by rules 48 and 101.

**Standard Shipper Contract** means the form of standard shipper contract for the T1 service available on DBP's website and negotiated between shippers and DBP as part of the re-commercialisation of the DBNGP in 2004.

## **2. FURTHER CONSULTATION PERIOD**

On 14 March 2011, the Authority published its Draft Decision on Proposed Revisions to the access arrangement for the DBNGP submitted by DBP. In its notice accompanying the Draft Decision, the Authority required that DBP respond to its Draft Decision and submit revisions to its Proposed Revisions by no later than 18 April 2011. The notice also invited interested parties to make submissions by 20 May 2011.

The DBP Response was submitted to the Authority on 18 April 2011, and was published by the Authority on 19 April 2011. In its accompanying public notice, the Authority indicated that DBP had advised it that a public version of its tariff model would be available after Easter (and this was subsequently published on 2 May 2011), and that it would provide the Authority with nine supporting submissions as soon as possible, but by no later than 20 May 2011.

DBP's Revised Access Arrangement Proposal (**Submission 47**) indicates it has 'accepted' 39 of the 109 amendments required by the Authority in its Draft Decision, and that it has 'addressed' the remaining required amendments. DBP also commented that the supporting submissions, none of which were publicly available as at 18 May 2011, will "...explain and substantiate the amendments and additions in the Amended AA Proposal that have been made to address various matters raised in the Draft Decision."

However, it is clear that many of the amendments required by the Authority in its Draft Decision have not been reflected in DBP's Response.

As DBP's Submission 47 merely assigns an "A" for "accepted" or a "C" for "addressed" in relation to the Authority's 109 required amendments from the Draft Decision, there is no explanation at all to justify the changes (or rather, lack of changes) in DBP's Response.

By not providing the Authority with its supporting submissions together with its Amended Proposed Revisions on 18 April 2011, DBP has effectively ensured that interested parties have been precluded from providing further submissions to the Authority in response to information that may be contained in DBP's supporting submissions (which DBP has treated simply as submissions from an 'interested party' that are due to be made by 20 May 2011).

This is because rule 8 of the NGR only requires that the Authority must, within 20 business days after the end of the period allowed for making submissions and comments on its Draft Decision (i.e. 20 May 2011), consider all submissions and comments made within the time allowed and make its final decision. That is, it is unclear whether the Authority is permitted to take account of any submissions made by interested party after the closing date of 20 May 2011 on submissions that may be lodged by DBP as late as 20 May 2011 outlining the basis on which it has 'addressed' the amendments required by the Authority.

Alinta notes that the general practise of the Authority and the Australian Energy Regulator has been to prescribe timeframes for submission by service providers of revised Access Arrangement proposals that facilitate interested parties making submissions on both the regulator's draft decision on the service provider's original access arrangement proposal and the revised access arrangement proposal (including supporting submissions) submitted by the service provider in response to the regulator's draft decision. It appears this was also the Authority's intent when it required DBP to provide revisions to its Proposed Revisions no later than 18 April 2011, while allowing interested parties to make submissions by 20 May 2011.

While it may be arguable that DBP could be considered to be an 'interested party' in its own access arrangement proposal, a more reasonable view is that the NGR clearly intends to distinguish between the obligations imposed on service providers, in this case DBP, and the rights of 'interested parties'. It is therefore unclear that any submissions that may be made by DBP in respect of its Amended Proposed Revisions after 18 April 2011 should be considered by the Authority in its Final Decision.

However, given the nature of DBP's Amended Proposed Revisions, and the clear distance between its access arrangement proposal and the amendments required by the Authority in its Draft Decision, any further submissions by DBP that explain the basis for its amended proposal may well be critical to the Final Decision made by the Authority, and therefore the terms on which users might gain access to the DBNGP.

Through DBP treating submissions it might make in support of its Amended Proposed Revisions as submissions from an 'interested party' (rather than as forming part of its response to the Authority's Draft Decision and its Amended Proposed Revisions), DBP is potentially also denying other interested parties the opportunity to respond to these submissions – an opportunity it had in respect of submissions made by interested parties to its Proposed Revisions.

The current process severely compromises the effectiveness of the regulatory review process, and prejudices the interests of users and the broader public alike and is inconsistent with the achievement of the national gas objective.

For these reasons, Alinta request that the Authority provide a further consultation period in which interested parties may comment on any submission made by interested parties by 20 May 2011 (or a later date that might be approved by the Authority). ). The critical aspect of the further consultation period is that third parties are given the opportunity to respond to DBP's further submissions supporting the DBP Response.

### 3. SPECIAL CIRCUMSTANCES

#### 3.1. Alinta's Original Submissions

Alinta made comprehensive submissions in relation to the serious deficiencies in DBP's Proposed Revisions in its Original Submissions. In particular, Alinta made submissions in relation to certain matters that arise because of the special circumstances of the DBNGP.

As discussed in the Original Submissions, the special circumstances include the following.

- The T1 service or its equivalent has been the pipeline service required by full-haul shippers on the DBNGP since third party access to the pipeline commenced in 1995.
- In 2004, DBP and shippers entered into critical arrangements of a contractual nature outside the National Gas Code but clearly linked to the National Gas Code and any successor regime (including the NGL and NGRs) (**Applicable Regime**).
- The most important links between the 2004 contractual arrangements (embodied most particularly in clause 20.5 of the Standard Shipper Contract) and the Applicable Regime are as follows.
  - DBP is required to offer the T1 Service as a reference service from 2005 (**T1 Reference Service**).



- The split between the capacity reservation charge and the commodity charge for the T1 Reference Service is to be 80 per cent / 20 per cent.
- The cost of equity as an input into the calculation of the reference tariff for the T1 Reference Service is to be determined by applying the Capital Asset Pricing Model, consistent with the Reference Tariff Policy for the Access Arrangement in place in 2004.
- Expansion capital expenditure incurred in meeting DBP's obligations under the 2004 contractual arrangements between 2004 and 2016 is:
  - required to meet pre-agreed budgeted levels (or approved variations to those budgeted levels); **or**
  - to be approved by the relevant regulator (the Authority) under the Applicable Regime applying the usual tests of prudent operator and efficient investment/expenditure (not an abridged version, or part, of those tests).
- The T1 Reference Service is to have a reference tariff calculated in accordance with the requirements of the Applicable Regime (including approval by the Authority), so that in 2016 the T1 Service held by the Shippers under the Standard Shipper Contracts will be accurately priced under the Applicable Regime, although this reference tariff may, and is likely to, be different to the 2004 contractual tariff.
- The links with the Applicable Regime are an essential part of the 2004 contractual arrangements because the arrangements provide for the T1 Service provided to Shippers to return to pricing under the Applicable Regime in 2016.

The links with the Applicable Regime are necessary to ensure that the transition of the contractual pricing of the T1 Service under the 2004 contractual arrangements to pricing under the Applicable Regime is meaningful and is based on the elements that were agreed by the parties in 2004.

These elements are all entirely consistent with the requirements of the NGL and NGRs and there is no basis on which those elements should and can be excluded under the NGL and NGRs.

Alinta submitted in the Original Submissions that the special circumstances of the DBNGP required certain outcomes under the Access Arrangement. Alinta's comments in respect of those outcomes under the Draft Decision and the DBP Response are set out below.

### **3.2. Draft Decision and the DBP Response**

In the Draft Decision, the Authority agreed with Alinta's submissions (and those of third parties) requesting the removal of the R1 service as a Reference Service and the reinstatement of the T1, P1 and B1 services as Reference Services.

DBP's Response submitted on 18 April 2011 reveals it has not accepted the Authority's required amendments 2 and 3 from the Draft Decision. Instead, the amended proposed AA again includes the R1 service as the only Reference Service (as was the case in the Proposed Revisions).

Alinta strongly supports the Authority's required amendments 2 and 3, and reiterates the reasons given in its Original Submissions for rejecting the proposal for the R1 service to be the only Reference Service. While DBP's Submission 47 indicates that the matter is addressed in its Submission 50, this submission had either not been submitted to the Authority or been published as at 19 May 2011.

Alinta does not propose to set out its comments in relation to the special circumstances of the DBNGP again in full in these submissions, but notes that its submissions in relation to the Proposed Revisions apply equally to the DBP Response. DBP has maintained its proposal for revisions to the access arrangement that are completely inconsistent with its obligations under the NGL and NGRs, and to shippers who are party to a Standard Shipper Contract.

### *3.2.1. Special circumstances and protection of certain pre-existing contractual rights*

The Authority included a discussion of the special circumstances of the DBNGP near the beginning of the Draft Decision (paragraphs 14 to 20), and set out extracts of the relevant clause 20.5 and Schedule 9 from the Standard Shipper Contract that set out DBP's obligations regarding (among other things) Reference Services to be proposed by DBP to the Authority in relation to the Access Arrangement.

As stated above, clause 20.5 of the Standard Shipper Contract imposes obligations on DBP in proposing revisions to the access arrangement for the DBNGP to the Authority and in seeking the Authority's approval in relation to the following.

- The services DBP is required to offer as Reference Services (the T1 Service).
- The reference tariff to apply to the T1 Service (the contractual tariff as adjusted in accordance with the Standard Shipper Contract).
- The methodologies to be applied in calculating the rate of return on the Reference Service (CAPM for the cost of equity).
- The split between capacity reservation and commodity charges (to be 80 per cent / 20 per cent).

Of course, the Standard Shipper Contract could not, and does not purport to oblige DBP to achieve these outcomes under the Applicable Regime; but it does oblige DBP to submit and seek approval accordingly, and not to make inconsistent submissions.

Schedule 9 of the Standard Shipper Contract (and in particular the price path diagram included as Figure 1 in the Draft Decision) sets out the expectations held by the relevant parties in 2004 as to the price path for the contractual or negotiated tariff under the Standard Shipper Contract against the expected reference tariff.

The Authority summarised the effect of Schedule 9 as follows (paragraph 16 of the Draft Decision):

*"Schedule 9 of the standard shipper contract illustrates the expectations of the parties as to the time profile of pipeline tariffs, with the contract tariff being in excess of the reference tariff for the period to 2016 and thereafter decreasing to the value of the reference tariff (Figure 1)."*

The Authority's specific reference to clause 20.5 and Schedule 9 would appear to evidence an understanding and acknowledgement from the Authority that DBP has clear contractual obligations that arose from the heavily negotiated re-commercialisation process for the DBNGP, which allowed the bottled up demand for further capacity on the DBNGP to be met.

Importantly however, the Authority stopped short of acknowledging that the terms of the Standard Shipper Contracts impose specific, enforceable obligations on DBP with respect to the Access Arrangement, other than in respect of making submissions and seeking approvals consistent with specific desired outcomes.

The Authority stated in paragraph 20 of the Draft Decision:

*"The Authority considers that the existence and terms of the standard shipper contract do not have a direct bearing on the access arrangement for the DBP. However, the Authority has had regard to the terms of the standard shipper contract as evidence relevant to the Authority's assessment of some elements of the proposed revised access arrangement, such as the demand for certain pipeline services."*

Alinta does not agree with the Authority that the existence and terms of the Standard Shipper Contracts agreed by shippers as part of the 2004 re-commercialisation of the DBNGP do not have a direct bearing on the Access Arrangement. Clause 20.5(f)(vi) of the Standard Shipper Contract (which was included by the Authority in the extracts in the Draft Decision referred to above) expressly provides that:

*"the Parties intend this clause 20.5 to have effect as a contractual right for the purposes of clauses 2.47 and, if applicable, 6.18(c) of the Gas Access Code in Schedule 2 to the Access Regime".*

Clause 2.47 of the Code is the equivalent Code provision to section 321 of the NGL.

While the effect of the Authority's Draft Decision is the same as if DBP had made submissions and sought Authority approval as required by its relevant obligations under the Standard Shipper Contract (including by rejecting the R1 service and requiring the T1 service as a Reference Service and by calculating the cost of equity using CAPM) these outcomes do not result from a specific decision by, or view of, the Authority that approving the Proposed Revisions would deprive shippers of relevant protected contractual rights in breach of section 321 of the NGL.

Alinta again submits that DBP's Proposed Revisions (as maintained by the DBP Response) would, if approved by the Authority, have the effect that the Access Arrangement would deprive shippers under Standard Shipper Contracts (including Alinta Sales) of relevant protected contractual rights in breach of section 321 of the NGL.

Alinta submits that the Authority must, in its final decision in relation to the Access Arrangement, reject the Proposed Revisions and the DBP Response for reasons that include that the revisions would deprive shippers of relevant protected contractual rights under section 321 of the NGL. The relevant contractual rights are, without limitation, those under clause 20.5(f) of the Standard Shipper Contract to have submissions made, and Authority approvals sought, by DBP which are entirely inconsistent with the outcomes in DBP's Proposed Revisions and the DBP Response.

### *3.2.2. DBP's obligations under certain pre-existing contractual rights*

DBP, in its Submission 26 in response to third party submissions (including the Original Submissions) dated 6 August 2010 (published by the Authority on 3 November 2010) argues (as summarised by the Authority in paragraph 19 of the Draft Decision) that:

- there are no contractual obligations owed by DBP in the Standard Shipper Contract to include anything in the Access Arrangement at any point in time unless DBP "considers this appropriate";
- the Standard Shipper Contract envisages the possibility of future changes and therefore that reference services and tariffs may differ due to different inputs and methodology; and
- the Standard Shipper Contracts do not bind the Authority in any way to make certain decisions in relation to the Access Arrangement.

Alinta agrees that the Standard Shipper Contracts do not serve to restrict or limit any discretion that the Authority has under the NGRs, save for protection of the contractual rights under section 321 of the NGL as discussed above.

However, Alinta strongly disagrees with DBP's assertions that it effectively has a discretion as to whether to submit a T1 service as a Reference Service as part of an access arrangement proposal on the basis set out in clause 20.5(f)(iii) of the Standard Shipper Contract and that contemplation in the Standard Shipper Contract that inputs and methodology regarding reference services and tariffs mean DBP can unilaterally propose revisions to the Access Arrangement that are completely inconsistent with the outcomes agreed in and required by clause 20.5.

On a plain reading of clause 20.5(f)(iii), the wording "the Operator agrees as soon as it considers is appropriate" goes to the timing of the application to have the Authority approve the amendments to the Access Arrangement, and cannot be read to give DBP a right to not seek the amendments at all. Such a right would completely undermine a critical aspect of the arrangements agreed in 2004 in the Standard Shipper Contracts.

DBP's view that it has some discretion in complying with the requirements of clause 20.5 because relevant parts of clause 20.5 relating to the setting of tariffs are merely "expressed as a statement of present intention" only, and that in particular "the potential for change based on different inputs and methodology at 2016 is acknowledged in clause 20.5(f)(ii)" is incorrect. Alinta strongly disagrees with DBP's inference that the parties can effectively just change their mind as to the operation of such an important aspect of the Standard Shipper Contract. Clause 20.5(f)(ii) contemplates that the Authority may apply different inputs and/or methodologies which may affect, or even displace, aspects of the parties' stated intentions regarding the setting of reference tariffs. This should not be construed as reserving a right for DBP to simply and unilaterally resile from the clearly stated intention as to the inputs and methodologies that are to be the subject of submissions made and Authority approvals sought by DBP (as set out in the 2004 Reference Tariff Policy) unless the Authority determines otherwise.

The "present intention" of the parties stated in clause 20.5(f)(i) remains a binding statement in relation to the resetting of the contractual tariff to a reference tariff in 2016, and the basis on which that resetting is to occur, unless and until the intention of the parties is displaced by the proper operation of the matters outside the control of the parties but contemplated in the Standard Shipper Contract. Just because it is contemplated that some of the inputs and methodologies to determine the reference tariff may change because the then presently approved methodologies and inputs may be changed by the Authority does not give DBP liberty to disregard its critical role in implementing the 2004 contractual arrangements to the great disadvantage of shippers.

### **3.3. The Authority's requirement for a T1 Reference Service in 2005**

There are stark similarities between the Proposed Revisions now made by DBP and the revision process for the Access Arrangement that took place in 2005.

A T1 Reference Service was approved by the Authority in 2005, but only after DBP had sought approval of an alternative and lesser "Tf" service. Third parties made submissions to the Authority in relation to the Tf service that are very similar to the tenor of the submissions in relation to the R1 service, and the Authority's decisions (draft and final) in relation to the Access Arrangement in 2005 contain many similar observations and conclusions to those in the Draft Decision in relation to the R1 service.

The Authority, as part of its review during 2005, and in particular in its draft decision in May 2005, required that DBP include "a Reference Service in the nature of the T1 Service under the Standard Shipper Contract" in the revised access arrangement proposal. While there are elements of the T1 Reference Service that are different to the T1 Service provided by DBP under the Standard Shipper Contract, overall the T1 Reference Service is very closely linked to, and has the same fundamental characteristics as, the T1 Service under the Standard Shipper Contract (that being the service required by clause 20.5(f)(iii)A). The differences between the T1 Reference Service and the T1 Service have been approved by the Authority.

To the extent DBP considers the fact that the Authority required the T1 Service as a Reference Service in 2005 means that DBP still reserves the right to request a T1 Service as a Reference Service if and when “it considers it appropriate to do so” is misconceived and disingenuous. Alinta submits that a Reference Service having the characteristics intended as outcomes under clause 20.5(f)(iii) has occurred, and DBP can no longer contend that it continues to have a discretion whether to make a submission to achieve the outcomes or not. Clause 20.5 (f)(iv) applies to prevent DBP from making inconsistent submissions.

To the extent that the Authority did not, in requiring and approving a T1 Reference Service in 2005, fully achieve the outcomes set out in clause 20.5(f)(iii) (including by requiring a split between capacity reservation and commodity charges other than 80 per cent / 20 per cent) Alinta considers that DBP is still required to make submissions to seek amendments to bring about those outcomes.

#### **4. ACCESS ARRANGEMENT**

##### **4.1. Reference Services**

- *The proposed access arrangement should be amended to remove the proposed R1 Service as a reference service (Required amendment 2).*
- *The proposed access arrangement should be amended to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement (Required amendment 3).*
- *The proposed access arrangement should be amended to include descriptions of the Tp, Tx and Ty Services and any other pipeline services that DBP is making available or will offer during the relevant access arrangement period (Required amendment 4).*

##### *4.1.1. Removal of the R1 Service and inclusion of the T1 Service, P1 Service and B1 Service*

Alinta strongly supports the amendments required by the Authority, being that the T1 Service, P1 Service and B1 Service as described in the current Access Arrangement be included as Reference Services in the proposed Access Arrangement and that the single full haul R1 Reference Service be removed.

To the extent that DBP has maintained its proposal for the single R1 Reference Service in the amended proposed AA, Alinta repeats the relevant submissions from its Original Submissions and requests that the Authority reject DBP's proposal again in the Authority's final decision.

DBP' Submission 50, which its Submission 47 indicates contains its response to the Authority's required amendments 2, 3 and 4, was not available to interested parties as at 19 May 2011 and it is therefore unclear whether there is any additional evidence above that available to the Authority prior to its Draft Decision to support a conclusion that the proposed R1 service is a pipeline service that would be sought by a significant part of the market and is therefore required to be offered as a Reference Service under the NGRs. Third party submissions to date overwhelmingly disagree with DBP's Proposed Revisions in respect of pipeline services, and in so doing reject the introduction of the R1 service and require that the T1, P1 and B1 services are included as Reference Services.

Alinta agrees with the Authority's interpretation of rules 48(1)(b) and 101 of the NGRs as to the relevant services (including Reference Services) to be included in the Access Arrangement. Alinta agrees with the Authority that the question, under rule 101(2) of the NGRs, whether a pipeline service is likely to be sought by a significant part of the market requires consideration of the nature of services sought by users and prospective users, unconstrained by the availability of pipeline capacity to expand the provision of services during the course of the relevant access arrangement period. As the T1, P1 and B1 services continue to be the primary services required by shippers on the DPNGP during the period 2011 to 2015, it is clear that those services are likely to be sought by a significant part of the market and are therefore required to be Reference Services under rule 101 of the NGR.

#### *4.1.2. DBP's obligations under certain pre-existing contractual rights*

In paragraph 72 of the Draft Decision the Authority discusses confidential submissions by DBP that inclusion of the T1 Service as a Reference Service under the Access Arrangement creates contractual difficulties for DBP under the terms of the Standard Shipper Contract. The contractual difficulties are stated to include:

- the potential for triggering "most favoured nations" clauses in at least two contracts which would enable the relevant shippers to pay the reference tariff instead of the contractual or negotiated tariff for the T1 Service under the relevant Standard Shipper Contract; and
- that DBP would be in breach of clause 20.5 of the Standard Shipper Contract if DBP were to propose revisions to the Access Arrangement which if adopted would have the outcome of including the T1 Service as a Reference Service but with something other than the negotiated or contractual tariff as the reference tariff for the T1 service.

Alinta does not agree that the inclusion of the T1 service as a Reference Service under the Access Arrangement creates contractual difficulties for DBP.

On the contrary, Alinta considers the inclusion of the T1 Service as a Reference Service manifestly complies with DBP's obligations to propose the T1 service as a Reference Service under:

- the NGRs, because it is a pipeline service that is likely to be sought by a significant part of the market; **and**
- under the Standard Shipper Contract, where it is contractually bound to propose that a T1 service is included as a Reference Service.

Alinta's responses to DBP's submissions on these issues are as follows.

- Alinta agrees with the Authority's view that contractual difficulties (if they were to arise or exist at all) do not constitute a basis for not including the T1 service as a Reference Service.

- The obligation under the Standard Shipper Contract to submit the T1 service as a Reference Service and that the Reference Tariff should be the tariff under the Standard Shipper Contract does not mean that DBP is in breach of any contractual obligation if this is not the ultimate outcome of the regulatory process. The Standard Shipper Contract recognises that the parties cannot contract for any particular outcomes; the obligations are limited to steps in pursuance of desired outcomes.

The parties to the Standard Shipper Contract contemplated that the contractual tariff and the reference tariff approved by the Authority were likely to be different. This is clearly shown in the diagram depicting the expected price path of the tariffs in Schedule 9 of the Standard Shipper Contract referred to above. Indeed, the fundamental proposition in clause 20.5 that a higher transitional tariff payable until 1 January 2016 would then be reset to a lower reference tariff is premised on the fact that the two tariffs would be different.

DBP's obligations under clause 20.5 are to propose that the T1 service has a reference tariff equivalent to the contractual tariff, but it is open to the Authority to determine otherwise, based on the requirements in the NGL and NGR.

For DBP to argue that such an outcome would constitute a breach of clause 20.5, and require it to undertake such actions as proposing the R1 Service (or the Tf Service in 2005) rather than to actually comply with its obligations to propose a T1 service as a Reference Service under clause 20.5 is simply untenable. This is particularly the case where the consequences of having a Reference Service that is not the T1 service are so significant in terms of resetting the contractual tariff in 2016 (as described above and in the Original Submissions).

- [CONFIDENTIAL INFORMATION REDACTED]
- [CONFIDENTIAL INFORMATION REDACTED]

In its Draft Decision, the Authority rejected DBP's arguments just as it did in 2005 when DBP made the same arguments in support of its proposal that the Tf service be the Reference Service.

As noted earlier, DBP's Submission 50, which its Submission 47 indicates contains its response to the Authority's required amendments 2, 3 and 4, has not been made available to interested parties. Consequently, in the absence of any additional evidence above that available to the Authority prior to its Draft Decision, Alinta considers that the Authority must continue to reject the inclusion of the proposed R1 service, and instead require that DBP amend the access arrangement proposal to include, as reference services, the T1 Service, P1 Service and B1 Service as described in the current access arrangement.

#### *4.1.3. Additional reference service – Mondarra Reference Service*

Consistent with the Original Submissions, Alinta supports the APA Group's submission that additional Reference Services should be included to support development and use of the Mondarra Gas Storage Facility (MGSF). Alinta also agrees with the Authority's conclusion in the Draft Decision that there is a reasonable prospect of increased use of the MGSF between 2011 and 2015, and that such use is likely to constitute a significant part of the market, particularly given indications of Government policy in this area.



In its Submission 26 (paragraph 8.14) DBP states that the part haul service that is provided for as a negotiated service allows for provision for exit from the DBNGP at Mondarra and re-entry at Mondarra (from the MGSF). DBP refutes APA's statement that there is no specific part haul contract available on DBP's website – however Alinta agrees with APA that there is not a specific P1 standard shipper contract for a negotiated service on the DBP website in the way that there is for the T1 or B1 services. In these circumstances, it is not possible to test DBP's statement that the part haul service allows for exit and re-entry at Mondarra.

Alinta considers that the Authority should require DBP to make the particular contract publicly available, so shippers can ensure and fully test the P1 and B1 Reference Services and any negotiated services with respect to use of the MGSF.

However, this only deals with shippers who wish to exit and re-enter at Mondarra. Shippers may require the flexibility to transport gas only to, or separately, from the MGSF. Transport to the MGSF is a P1 Reference Service, whereas transport from the MGSF is not a P1 Reference Service.

To support the development of the MGSF as both a storage facility and a secondary trading hub, Alinta submits that the transport of gas from the MGSF to Perth and downstream should be a separate part-haul Reference Service – P2.

#### *4.1.4. Other pipeline services*

Alinta agrees with and supports the Authority's required amendment 4 that the Access Arrangement should be amended to include all pipeline services that DBP is making available or will offer during the relevant access arrangement period. Alinta agrees with the Authority that whether there is additional capacity available for a particular pipeline service is not a relevant consideration under rule 48(1)(b) of the NGRs in determining the pipeline services that need to be described in the Access Arrangement.

Alinta notes that DBP has not included all of the services required by the Authority in the DBP Response.

## **4.2. Capital expenditure**

- *The value of conforming capital expenditure for the 2005 to 2010 access arrangement period must be amended to values as indicated in Table 15 of this draft decision (\$1,799.8 million) (Required amendment 5).*
- *The forecast of conforming capital expenditure for the 2011 to 2015 access arrangement period must be amended to values shown in Table 17 of this draft decision (\$114.048 million) (Required amendment 6).*

#### *4.2.1. Authority's approval of conforming capital expenditure*

Alinta raised a number of issues in the Original Submissions in relation to DBP's Revisions Proposal and treatment of capital expenditure in particular. Alinta noted that based on the information that had been made publicly available, it was very difficult to undertake any degree of testing or analysis in relation to the expansion capital expenditure and whether the expenditure satisfied the relevant NGRs sufficiently to be rolled into the capital base for the DBNGP.

Alinta acknowledges that in preparing the Draft Decision, the Authority requested further information from DBP and engaged expert engineering consultants to review DBP's proposal in relation to conforming capital expenditure. This has gone at least some of the way in satisfying Alinta's initial concerns that there was simply not enough information to properly assess whether the expansion capital expenditure was conforming under rules 79(1) and 79(2) of the NGRs.

Further, Alinta notes that on 13 May 2011 the Authority published certain of DBP's submissions in response to information requests from the Authority and its engineering consultant Halcrow Pacific Pty Ltd and Zincara Pty Ltd (Halcrow and Zincara) (originally lodged by DBP in June and July 2010). However, in most cases the relevant detailed information in the responses is redacted, or contained in attachments that have not been published.

On 18 May 2011, the Authority also published a redacted version of the draft technical report prepared by Halcrow and Zincara, which includes certain conclusions relating to DBP's operating and capital expenditure and compliance with the NGRs. However, all of the substantive analysis in the technical report has been redacted in the version published by the Authority.

Alinta also notes that the Authority refers to receipt of audit reports for capital expenditure for the Stages 4 and 5A expansions and an interim audit report for the Stage 5A expansion (paragraph 183 Draft Decision). Alinta assumes the interim audit report is in fact for Stage 5B. Alinta agrees with and supports the Authority's approach of relying only on audited values of expenditure, given the concerns the Authority has (which are shared by Alinta) as to the accuracy and reliability of DBP's stated values of expenditure.

Nevertheless, Alinta has three key concerns with the Authority's Draft Decision and the DBP Response in relation to the assessment of conforming capital expenditure for the 2005-2010 access arrangement period.

- The Authority's rationale in assessing the prudence and efficiency of DBP's expansion capital expenditure under rule 79(1)(a) of the NGRs.
- The Authority's rationale in approving expansion capital expenditure as conforming on the basis that the overall economic value of the expenditure was positive in accordance with rule 79(2)(a) of the NGRs.
- The significant discrepancies between the Authority's required amended values of conforming capital expenditure in Table 15 of the Draft Decision and DBP's Table 2 in section 3 of its amended Access Arrangement Information proposal lodged as part of the DBP Response.

These concerns are discussed in more detail below.

#### *4.2.2. Justification of capital expenditure under rule 79(1)(a)*

##### Inferences drawn from the Standard Shipper Contract

Alinta does not agree with the Authority's suggestion in paragraphs 192-197 of the Draft Decision that the terms of the Standard Shipper Contract for the provision of pipeline services would provide commercial incentives for prudence and efficiency in capital expenditure, and that those incentives may actually be stronger than the incentives under the regulatory regime established by the NGL and NGRs.

In practice, DBP has simply been able to make adjustments in the contractual tariff under the Standard Shipper Contracts to the extent actual capital costs have been higher than budgeted costs. The actual costs are audited, but this simply verifies that the money has actually been spent – there is no element of assessing the prudence or efficiency of the expenditure as is required by the NGRs, and to the extent the charges are increased by any capital cost overruns, the opposite is likely to apply.

The contractual tariff paid under the Standard Shipper Contract is a bespoke and unregulated tariff, agreed to by shippers to unblock major capacity constraints that were having significant consequences for development in South West Western Australia. The contractual tariff is not subject to the same considerations or tests that the regulatory tariff is, and contains elements that, as was then generally recognised, may not be approved by the Authority. The elements were required by financiers of DBP to achieve a specific return on the pipeline in the period to 2016. Without a tariff that satisfied the financiers, the necessary expansion could not occur.

While committing to the 2004 contractual arrangements was necessary to achieve the debottlenecking of the DBNGP, a significant contractual protection for the shippers was that for the period commencing 1 January 2016, the high bespoke tariff would return to the regulated tariff, set by the Authority in accordance with the requirements of the NGL and NGR (or the National Gas Code as was the case at that time).

For this reason, the provisions of the Standard Shipper Contract should not, and cannot, be used by the Authority in any way to determine whether capital expenditure meets the prudence and efficiency test required to be applied by the NGL and NGRs.

##### Expert engineering advice

There is relatively little discussion in the Draft Decision on the process undertaken by the Authority's engineering consultants Halcrow and Zincara in assessing the prudence and efficiency of DBP's capital expenditure. Paragraph 204 of the Draft Decision outlines, at a very high level, the matters considered by Halcrow and Zincara, and its conclusions that the expenditure was prudent and efficient, but there is no discussion as to how it actually tested specific components or projects within the overall expansions (Stages 4, 5A and 5B).

As noted earlier, the Authority published a redacted version of the draft technical report prepared by Halcrow and Zincara on 18 May 2011. While all of the substantive analysis in the technical report has been redacted in the published version, the report contains tables that Halcrow and Zincara refer to as its “recommended NGR Rule 79 compliant expansion capital expenditure”.

Alinta considers this description to be misleading as it appears that Halcrow and Zincara’s scope was limited to reviewing capital expenditure in the context of rules 79(1)(a) and 79(2)(c) of the NGRs. In fact, section 3.1.1 of the technical report in relation to review methodology indicates an even narrower scope in relation to capital expenditure in the 2005-2010 period, being an assessment as to rule 79(1)(a) only.

As a result, it would appear that Halcrow and Zincara’s conclusions cannot extend to whether capital expenditure can be justified under rule 79(2)(c) (or any other justification contained in rule 79(2)), which is nevertheless what is implied in the description of the tables. Unfortunately, further consideration of this issue by interested parties is hampered by the fact that all of the consultants’ substantive analysis and discussion is redacted in the published report.

Alinta also notes that Halcrow and Zincara heavily qualified its conclusions, with the report highlighting that its assessment had been undertaken **only** on the basis of information and material provided by DBP, meetings/discussions held with DBP representatives and information provided by DBP subsequent to those discussions. It stresses that no independent verification had been undertaken of the reliability, accuracy or completeness of the source data and information provided by DBP. The report goes on to note that:

*“...it should not be construed that Halcrow and Zincara has carried out any form of audit or other verification of the adequacy, completeness, or accuracy of the specific information provided by DBP [emphasis added]”.*

The disclosure of the DBP submissions in response to information requests (published 13 May 2011), and the redacted technical report (published 18 May 2011), provides some indication of the process, although given the nature of the disclosure, and the redaction, it is difficult to draw definitive conclusions. Alinta acknowledges that the Authority has attempted to make at least some disclosure in this regard, but that disclosure is still very limited (particularly by the degree of redaction of the technical report).

The reliance by Halcrow and Zincara on information supplied by DBP is concerning given the Authority itself comments at paragraph 239 on the inconsistencies in information provided by DBP. Further, and notwithstanding that the Authority appears to have relied on Halcrow and Zincara’s technical report as a basis for finding that historical capital expenditure was prudent and efficient, which is obviously a threshold test for approval of the expenditure under the NGRs, Halcrow and Zincara also conclude that:

*“Whilst an extensive amount of information was provided by DBP, it has not in all cases provided clear basis for assessment of the prudence and efficiency of the expenditure”.*

Alinta considers DBP's submissions and the redacted technical report to be indicative of the process undertaken by the Authority, but not necessarily informative from a financial or technical perspective. Alinta notes that unless and until complete (or at least less redacted) submissions are made publicly available, shippers including Alinta Sales and interested parties are required to rely on the Authority's assessment of the information obtained rather than being able to assess, analyse and test the information itself. This is less than satisfactory.

Alinta also notes that there is substantially more detail in the Draft Decision in relation to Halcrow and Zincara's review and conclusions on specific elements of the forecast conforming capital expenditure for the 2011-2015 period (in aggregate approximately \$115 million compared to the capital expenditure for the period 2005-2010, which is closer to \$1.8 billion). Importantly, the Authority reduced DBP's proposed forecast conforming capital expenditure by around 16.5 per cent (or \$22.308 million), and concluded that DBP had not provided sufficient information to demonstrate that all of the proposed expenditure was prudent and efficient, as required by rule 79(1)(a) of the NGRs.

As noted above, a significant contractual protection for the shippers that entered into the Standard Shipper Contract as part of the 2004 contractual arrangements was that for the period commencing 1 January 2016, the high bespoke tariff would return to the regulated tariff, set by the Authority in accordance with the requirements of the NGL and NGR (or the National Gas Code as was the case at that time).

For this reason, Alinta submits that the more detailed information provided in relation to the forecast capital expenditure should also be given in relation to the past capital expenditure.

#### Project Management and Retainer Fees

Alinta notes the Authority's discussion in paragraphs 208-240 of the Draft Decision of the project management retainer fee paid by DBP to Alinta Asset Management and Westnet Energy Services. Alinta shares the Authority's concerns in relation to the fee, and supports the Authority's requirement that the expenditure be removed from the conforming capital expenditure.

Given the nature of the information provided in the DBP Response, and the lack of any detailed submissions, it is not possible to assess whether DBP has actually removed the fee in question from its calculation of conforming capital expenditure in the Access Arrangement and Access Arrangement Information. If it has not, the Authority should require the amendment as part of its Final Decision.

#### *4.2.3. Justification of capital expenditure under rule 79(2)*

As set out in the Original Submissions, Alinta did not agree that the expansion capital expenditure could be justified under NGR 79(2)(c)(iii) as being necessary to comply with a regulatory obligation or requirement. Alinta notes that the Authority has concurred with Alinta's view, and rejected DBP's justification on these grounds.

Alinta also notes the Authority's comments in paragraphs 251-257 of the Draft Decision in relation to DBP's contention that the expansion capital expenditure could be justified on the basis that the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the expenditure itself.

It appears that DBP submitted a consultant's report by Marsden Jacobs & Associates to support its claim that all of the capital expenditure associated with expansion program (i.e. expansion Stages 4, 5A and 5B) met the requirements of rule 79(2)(b). While the report has not been made public, the Authority found that Marsden Jacobs' analysis actually concluded that for each of the three stages of expansion, the present value of the expected incremental revenue was less than the present value of the capital expenditure by some \$662 million (over 35 years).

Given the report has not been made public, Alinta cannot comment in detail on the Authority's analysis and conclusions but based on the available information, supports the Authority in its conclusion that DBP has failed to justify the capital expenditure under rule 79(2)(b).

It also appears that DBP used the Marsden Jacobs' report to support its alternative claim that the capital expenditure was conforming on the basis that the overall economic value of the expenditure is positive, and therefore meets the requirements of rule 79(2)(a).

The Authority states in paragraph 264 of the Draft Decision that the consultant's analysis is too simplistic and inexact to be relied on as an indication of the values of economic benefits. At paragraph 265, the Authority concludes that:

*"The Authority therefore considers that DBP has not presented a reliable quantification of economic benefits from the expansions in capacity of the DBNGP".*

Again, in the absence of the ability to review the Marsden Jacobs report, Alinta cannot comment in detail on the Authority's analysis and conclusions, but based on the available information, supports the Authority in its conclusion that DBP has failed to justify the capital expenditure on any of the grounds in rule 79(2).

The Authority's conclusion that capital expenditure is justifiable under rule 79(2)

Notwithstanding the Authority's conclusions as to DBP's failure to justify capital expenditure under rule 79(2) of the NGRs, Alinta notes that the Authority has arrived at an alternative justification for the expenditure on the grounds of positive economic value on the following basis:

- the Authority considers positive inferences can be drawn from the existence of Standard Shipper Contracts;
- the contractual arrangements are *prima facie* evidence that benefits outweigh costs to users; and
- despite there being weaknesses in the argument, the contractual commitments made by users to expansion of the DBNGP provide sufficient evidence to conclude the overall economic value is positive.

Alinta considers this alternative justification to be fundamentally flawed for several irrefutable reasons.

Firstly, there is no liberty under the NGRs that allow the Authority to abrogate its duties to require the service provider to satisfy it that one or more of the requirements of rule 79(2) of the NGRs have been met. The Draft Decision makes it clear that DBP has not satisfied the Authority in this regard.

Secondly, the existence and provisions of the Standard Shipper Contract compel conclusions that are precisely the **opposite** of the Authority's inferences and assumptions from very limited prima facie evidence.

The bespoke tariff from 2004 – 2016 was designed to meet the requirements of the financiers and purchasers of the DBNGP in 2004: it was not designed to meet the requirements of the shippers. Future capital expenditure, provided it was shown by audit to have been actually spent, was agreed to be automatically rolled into the asset capital base for the calculation of the bespoke tariff only. It was intentionally separate from the additions to the regulated asset base that are to have the approval of the Authority applying the properly mandated tests, in a regulatory process to be undertaken over the same period but without reference to the adjustments to the bespoke tariff in the period to 2016.

If shippers had been asked to commit to paying the contractual tariff from 2004 to the expiration of their shipper contracts on the basis that the contractual tariff was calculated on an asset base where unregulated capital expenditure subject to no financial discipline other than an audit confirming the money had actually been spent was automatically rolled into the capital asset base, it is highly improbable that they would have done so. Instead, it is much more likely that they would have found other more prudent and economically efficient ways to debottleneck the DBNGP.

As previously submitted, a significant protection afforded by the Standard Shipper Contract for shippers agreeing to pay the higher, bespoke tariff from 2004 to 2014 was that it would be paid only for that period. From 2016 shippers would pay a regulated, Reference Tariff, which protected shippers by ensuring that the regulated asset base, at every regulatory reset, only increased by capital expenditure that met the tests in the Applicable Regime.

The Authority is now merging the two distinct processes without any basis for doing so under the NGL and the NGRs. To clothe the process for calculating the bespoke tariff with any regulatory status at all, let alone use it as an alternative justification in meeting a critical threshold test, or a proxy for a full and thorough regulatory assessment and approval (or rejection) is a fundamental mistake.

Even in light of rule 71 of the NGRs, which gives the Authority limited rights to infer compliance with the NGRs, the leap taken by the Authority in paragraphs 266 -270 of the Draft Decision appears extraordinary. By its own admission, the Authority's arguments provide prima facie evidence only, and there are significant weaknesses with the argument.

For the reasons given in this submission, Alinta considers that the Authority's inferences cannot be made, while its assumptions from weak prima facie evidence are wrong.

The NGRs clearly require that the Authority be satisfied that the capital expenditure in question was justifiable under rule 79(2) of NGRs, or otherwise the Authority must conclude that the capital expenditure was not justifiable and remove it from the capital base for the DBNGP.

#### *4.2.4. Amount of DBP's actual capital expenditure that is conforming capital expenditure*

DBP has included a table of conforming capital expenditure (by asset class) made during the 2005-2010 access arrangement period (also in real 31 December 2010 dollars) as Table 2 in Section 3 of the AAI forming part of the DBP Response.

Notwithstanding that the aggregate amount of capital expenditure claimed to be conforming by DBP appears to be slightly less than that assessed as being conforming by the Authority (possibly due to the use of a different CPI to adjust nominal values), the DBP Response is entirely inconsistent with the Authority's required amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period (in real 31 December 2010 dollars) that were set out in Table 15 of its Draft Decision. This is shown in Table 1 below.

**Table 1 DBP's Conforming capital expenditure 2005-2010**

<b>Year</b>	<b>Authority (\$M)</b>	<b>DBP (\$M)</b>	<b>Difference (\$M) (DBP – Authority)</b>
2005	0.793	55.71	54.917
2006	57.713	437.07	379.357
2007	405.274	10.84	-394.434
2008	641.905	657.31	15.405
2009	11.466	6.96	-4.506
2010	682.657	623.29	-59.28
<b>Total</b>	<b>1,799.808</b>	<b>1,791.18</b>	<b>-8.541</b>

It is also apparent that the profile of claimed conforming capital expenditure in DBP's Table 2 is very different from the equivalent table in its original Revised Provisions of April 2010, including as set out in its supporting Submission 9 dated 14 April 2010. That said, the Authority's required amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period set out in Table 15 of its Draft Decision appears largely consistent with, albeit slightly less than, than Proposed Revisions originally submitted by DBP (presumably due to the use of a different CPI to adjust nominal values).



The reason for the now very substantial, unexplained differences between the Authority's required Table 15 and DBP's Table 2 are unclear given DBP has not provided any supporting information as part of the DBP Response to explain the differences in individual years. It is unclear why there should be such divergence in these numbers, particularly when the amounts were understood to be audited figures. Further, Alinta also notes that DBP's Table 2 differs from the amounts of conforming capital expenditure for the same period that is included in its Tables 8 and 9 in Section 6 of the AAI forming part of the DBP Response.

Given the very significant differences between the profile of conforming capital expenditure in the Authority's Draft Decision and the DBP proposals, Alinta requests that the Authority seek an explanation from DBP as to the differences as soon as possible. If the differences cast doubt over the numbers that have been reviewed by the Authority to date, then the Authority should conduct an additional and separate review, and require that DBP make all relevant information available to ensure that third parties including shippers such as Alinta Sales are able to conduct their own review of the capital expenditure levels.

Notwithstanding that DBP has not satisfied the Authority that the capital expenditure in question was justifiable under rule 79(2) of NGRs, Alinta requires an opportunity to respond to any submissions DBP make in relation to the conforming capital expenditure numbers, particularly if it stands by the numbers shown above.

Alinta submits that the differences highlighted above result in even greater concern as to the robustness of the information DBP has provided to the Authority to date and the extent to which the expenditure can properly be classified as conforming capital expenditure in accordance with the NGRs.

#### *4.2.5. Forecast capital expenditure*

Alinta notes that the Authority, assisted by its engineering consultants Halcrow and Zincara, appear to have closely reviewed DBP's forecast capital expenditure proposal for the 2011-2015 access arrangement period. To the extent forecast costs were found by the Authority to be excessive or unsubstantiated, and therefore not in compliance with the NGRs, Alinta supports such a conclusion and the requirement that DBP's forecast capital expenditure be amended to reflect the Authority's Table 17 in the Draft Decision.

Alinta notes that DBP has not made the amendments in the DBP Response to its forecast as required by the Authority. Rather, it has substantially increased its own aggregate forecast capital expenditure levels from approximately \$133 million to \$214 million, including a change for 2011 from \$70 million to \$156 million. Again, without any supporting submissions, Alinta has no information available to it to assess whether DBP's changes are justified under the NGRs.

Alinta requests that the Authority requires DBP provide relevant explanatory information as soon as possible, and that the information be made available to the public.

Again, Alinta requests an opportunity to respond to any submissions DBP might make in relation to the forecast conforming capital expenditure numbers, particularly if it stands by its revised numbers.

### 4.3. Rate of Return

- *In relation to Rate of Return, Table 67 of the proposed revised access arrangement should be amended to reflect the values of CAPM and WACC parameters in Table 45 of this Draft Decision (Required amendment 7)*
- *DBP's Proposed Revisions should be amended to adopt a real pre-tax rate of return of 7.16 per cent (Required amendment 8)*

Alinta notes that the Authority's conclusions as to the rate of return are consistent with Alinta's Original Submissions, and notwithstanding DBP has rejected the Authority's required amendments 7 and 8, Alinta does not propose to repeat its submissions in relation to the determination of the rate of return.

However, Alinta makes the following further submissions.

#### *4.3.1. Capital Asset Pricing Model parameters*

##### DBP market risks and the equity beta

Alinta agrees in particular with the Authority's conclusion in paragraph 350 that DBP's argument that regulated businesses that operate in the Western Australian gas market are exposed to commercial risks that are additional to and different from those which operators in the Eastern States gas markets face is not substantiated. Alinta maintains that DBP has minimal exposure to market risks due to the fact that the pipeline is fully contracted with take or pay contracts that ensure stable and predictable revenues, with very little counter-party credit risk due to the nature and financial capacity of the major users of the pipeline.

##### Debt risk premium

Alinta notes that in relation to the cost of debt, DBP in its amended Access Arrangement Information document lodged as part of the DBP Response does not even acknowledge the Authority's intended approach to the debt risk premium, being a bond-yield approach. DBP only refers to the AER's decision in connection with Victorian electricity distribution businesses and advice from a senior debt advisor (AMP Capital Investors).

Alinta notes that in paragraph 611 of the Draft Decision the Authority states that the adoption by the Authority of a debt risk premium of 3.124 per cent would reflect a conservative position. Alinta submits that the debt risk premium should be calculated on a neutral, not conservative, basis so that DBP is not unreasonably favoured in the calculation.

### Market Risk Premium

Alinta agrees with the Authority's determination (paragraphs 754-755 of the Draft Decision) that a market risk premium of 6 per cent is appropriate in setting the rate of return. The AER has stated in its draft decision for the Amadeus Gas Pipeline (April 2011) that:

*"The AER has used its judgement to interpret the evidence currently before it and considers the available evidence both prior to, and following, the GFC supports 6 per cent as the best estimate of the forward looking 10 year MRP in the current market circumstances. The AER considers that a MRP of 6.5 per cent proposed by NT Gas is not the best estimate possible in the circumstances (rule 74(2) of the NGR) and is not consistent with the requirement that the rate of return is to be commensurate with prevailing conditions in the market for funds (rule 87(1) of the NGR)."*

The proposed market risk premium of 6.5 per cent in the DBP Response should be rejected by the Authority, for the reasons set out in the Draft Decision and to ensure consistency with the most recent relevant regulatory decisions (including for the Amadeus Gas Pipeline).

#### *4.3.2. DBP Response*

Alinta notes that DBP has amended its original proposal from the Proposed Revisions as to the rate of return, now proposing a real pre-tax rate of return of 10.03 per cent in the DBP response, which remains materially higher than the Authority's required 7.16 per cent.

Alinta submits the DBP's proposal in the DBP Response (most particularly in section 11 of the Access Arrangement Information) still does not comply with the NGRs, and the Authority should reject the amended proposal for the reasons set out in the Draft Decision. In particular, and without limitation, Alinta submits that DBP's continued proposal that a cost of equity commensurate with prevailing conditions should be based on analysts' reports and should be higher than that ascertained using various financial models (including Black's CAPM and the Fama-French three factor model which was rejected as a well-accepted model by the Authority), namely 12.5%, must not be accepted by the Authority.

Alinta agrees with the Authority's comments in paragraph 457 of the Draft Decision where it states that:

*"Given the poor record of economic forecasting on which the brokers' research reports are based, the Authority is of the view that it is inappropriate to use the brokers' research reports to derive an estimated cost of equity, particularly for a period with a high level of uncertainty".*

For the above reasons, Alinta considers that DBP's proposal does not comply with rules 87(1) or 87(2)(b) of the NGRs.

#### 4.4. Incentive mechanism

- *The proposed revised access arrangement should be amended to exclude from total revenue the increment amounts determined under the incentive mechanism that applied in the 2005 to 2010 access arrangement period (Required amendment 9).*

In relation to the determination of carryover amounts to be included in allowable Total Revenue under the operation of the incentive mechanism for the 2005-2010 access arrangement period, the Authority states at paragraphs 777 and 778 of the Draft Decision:

*"A further matter of relevance to the determination of carryover amounts under the incentive mechanism is that the Authority is not satisfied that DBP's determination of carryover values under the incentive mechanism is based on accurate and verified records of actual operating expenditure in the 2005 to 2011 access arrangement period. There are significant discrepancies in statements of operating expenditure provided to the Authority, in particular values stated by DBP in the revised access arrangement information and values provided by DBP to the Authority's expert technical advisor in more detailed breakdowns of operating costs for 2008 and 2009 (Table 48).*

*Taking into account the absence of verification of reported values of operating expenditure and deficiencies in DBP's calculation of amounts under the incentive mechanism, the Authority is not satisfied that the DBP's proposed increments to total revenue comply with the incentive mechanism. The Authority has therefore excluded the carryover amounts from the determination of total revenue for the 2011 to 2015 access arrangement period."*

Alinta supports the Authority's decision in relation to carryover values under the incentive mechanism. Alinta's submissions in relation to operating expenditure in general are set out below.

#### 4.5. Operating expenditure

- *The forecast of operating expenditure for the 2011 to 2015 access arrangement period must be amended to vales as indicated in Table 73 of this draft decision (\$450.43 million) (Required amendment 10).*

##### 4.5.1. 2005 to 2010 operating expenditure

As a major shipper on the DBNGP, Alinta is very concerned with the Authority's observations in relation to DBP's operating expenditure for the 2005 – 2010 access arrangement period. The concerns include the following.

- The observation by the Authority's expert engineering consultants, Halcrow and Zincara, that DBP does not currently adopt activity based costing, which would provide greater clarity of the allocation of DBP's operating expenditure to different activities or drivers.
- The fact that DBP has not explained the difference between actual and forecast operating expenditure, despite being requested to do so.

- That there are differences between information provided separately by DBP and its own proposed Access Arrangement Information, such that the Authority is left to make assumptions about which information is actually correct.

Alinta agrees with the approach adopted by the Authority to scrutinise the extent to which actual and forecast operating expenditure during the last two years of the current access arrangement should inform the level of operating expenditure for the upcoming regulatory period.

#### *4.5.2. 2011 to 2015 operating expenditure*

Notwithstanding Alinta does not currently pay the Reference Tariff, the fact that the tariff under the Standard Shipper Contract will be reset to the Reference Tariff in 2016 means it is very important to Alinta that the process undertaken and systems implemented by DBP in managing and reporting its operating expenditure are satisfactory and result in approval of expenditure that complies with the NGRs.

Alinta supports the Authority's required amendments to DBP's forecast operating expenditure for failure to establish that the expenditure is consistent with the prudence and efficiency requirement of rule 91 of the NGRs, including in relation to:

- consultancy expenses
- IT expenses
- repairs and maintenance expenses
- self insurance costs
- compressor overhaul expenses
- regulatory expenses
- fuel gas expenses

#### Carbon Pollution Reduction Scheme

Alinta supports the removal of costs for a carbon pollution reduction scheme (CPRS) from forecast operating expenditure as discussed in paragraph 883 of the Draft Decision. Alinta's comments on the Authority's proposed reference tariff variation mechanism are set out below.

## DBP Response

The Authority's required amendment 10 requires that the forecast of operating expenditure for the 2011-2015 access arrangement period must be amended to the values indicated in Table 73 of the Draft Decision. Alinta notes that DBP has not made the required changes in its Table 19 of the Access Arrangement Information forming part of the DBP Response. DBP's aggregate forecast operating expense for the period 2011-2015 in nominal dollars is \$566.4 million, compared to the Authority's requirement (in real, 2010 dollars) of \$450.43 million. Even given the difference between nominal and real values, the difference between the two amounts is extremely high, and must be rejected by the Authority in its final decision.

Alinta also submits that (as it did in its Original Submissions), to ensure consistency throughout the Access Arrangement documentation as required by rule 73(3), DBP's forecast operating expenditure in its Access Arrangement Information should be provided in real 2010 dollars, and not nominal values.

### **4.6. Reference Tariffs**

- *The proposed revised access arrangement should be amended to include a statement that services for gas transportation that are other than services in the nature of reference services are rebateable services within the meaning of rule 93(4).*

*The access arrangement should also include a rebate mechanism that provides for a share of revenue from rebateable services to be rebated to users of services that are in the nature of reference services. The rebate mechanism should provide for the share of revenue to be rebated as:*

*Value of revenue to be rebated =  $0.8 \times (R - (C \times Q))$*

*Where:  $R$  is the revenue from the rebateable service (\$);*

*$C$  is the commodity tariff of the full haul, part haul or back haul reference service, as relevant (\$/GJ); and*

*$Q$  is the throughput quantity of the rebateable service. (Required amendment 10)*

Alinta notes to the extent that DBP has included only the R1 service as a Reference Service in the DBP Response, Alinta does not accept DBP's tariff setting approach in section 14 of the Access Arrangement Information.

Section 14.2 of the Access Arrangement Information provides that:

*"In determining the Reference Tariff for the R1 Service, costs have been allocated to the Services provided to Shippers with Access Contracts entered into prior to the commencement of the Current Access Arrangement Period, as if those Shippers had been provided with the Reference Service."*

In setting the R1 Reference Tariff therefore, DBP has allocated all of the total revenue to the costs of providing the R1 Service as if it were providing the T1, P1 and B1 services (i.e. the actual services that DBP provides). DBP is required to first allocate costs (and revenue) directly attributable to providing the Reference Service itself, and then allocate costs directly attributable to non-reference services (which will be the vast majority if T1, P1 and B1 are not reference services). Alinta considers DBP's approach does not comply with rules 93 and 95, and results in a proposed R1 Reference Tariff without any reference to, or basis in, the efficient costs of providing that Reference Service.

Alinta supports the Authority's decision to reject the R1 service as a Reference Service, and to require the T1, P1 and B1 services to be included as Reference Services, and DBP's errors in allocation of the costs should therefore be of no practical consequence if and when DBP proposes a compliant Access Arrangement, or the Authority makes its own revisions to the Access Arrangement (consistent with the Draft Decision). The Authority states in paragraph 954 of the Draft Decision that it has determined tariffs for the required (T1, P1 and B1) services rather than undertaking an assessment of DBP's proposed reference tariff for the R1 service. Alinta makes the above submissions in relation to allocation of costs in setting tariffs on the basis that DBP is still, at this stage, maintaining its proposal from the Proposed Revisions.

Alinta supports the Authority's assessment that the commodity charge should relate to a variety of operating costs over and above fuel gas costs.

#### 4.7. Tariff Variation Mechanism

- *The proposed revised access arrangement should be amended to change the definition of CPI in the reference tariff variation mechanism to "CPI means the Consumer Price Index, All Groups, Eight Capital Cities (Required amendment 13).*
- *The proposed revised access arrangement should be amended so that the variation of reference tariffs by way of a Tax Changes Variation:*
  - *is limited to costs of tax changes that satisfy the criteria governing operating expenditure set out in rule 91 of the NGR; and*
  - *is subject to the Authority's approval of the variation (Required amendment 14).*
- *The proposed revised access arrangement should be amended to remove provision under the reference tariff variation mechanism for the variation of reference tariffs by way of a "new costs pass through variation" (Required amendment 15).*

Alinta supports the Authority's required amendments in relation to tariff variation mechanisms, including:

- the "Tax Changes Variation" being (i) limited to costs of tax changes that satisfy criteria governing operating expenditure set out in rule 91 (namely costs such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services; and (ii) subject to approval by the Authority
- deletion of the "new costs pass through variation".

Alinta notes that the Authority's rejection of a general "new costs" pass-through is consistent with the AER's draft decision in relation to the Amadeus Gas Pipeline.

Alinta notes that DBP has not made the Authority's required amendments in the DBP Response.

**Alinta Pty Ltd**

**In its own capacity and for and on behalf of Alinta Sales Pty Ltd**

**20 May 2011**



## ATTACHMENT B

### PROPOSED REVISIONS TO THE ACCESS ARRANGEMENT FOR THE DAMPIER TO BUNBURY NATURAL GAS PIPELINE

#### Response to Draft Decision and Further Submissions on R1 Terms and Conditions

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
1  Interpretation  Draft Decision at [995 – 1000]	The definition of <b>B1 Service</b> is inconsistent with the ranking of the B1 service in the Curtailment Plan in Schedule 6.	Required amendment 16  The Authority required that this definition be amended to be the B1 Service described as a reference service in the access arrangement ( <b>PRAA</b> ), as amended by the Draft Decision.  The PRAA was to be amended to include the B1 Service as described in the current assess arrangement ( <b>CAA</b> ).	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.  Separately, Alinta notes that Schedule 6 does not work as drafted by DBP due to inconsistent references to T1 and R1 services.
1  Interpretation  Draft Decision at [1005 – 1009]		Required amendment 18  The Authority required that the definition of Contracted Firm Capacity be amended to have the same meaning as in the existing terms and conditions ( <b>ET&amp;Cs</b> ).	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
1 Interpretation  Draft Decision at [1010 – 1013]	The inclusion of an Insolvency Event in relation to a third party supplier of the Operator in the definition of <b>Force Majeure</b> should be rejected as the Operator should be able to, and required to, take steps in those circumstances to ensure its ability to perform its obligations under the Contract is not affected.	The Authority accepted DBP's amendments.		Alinta submits that an Insolvency Event in respect of a third party supplier to DBP will not prevent DBP from sourcing supplies from another supplier and such actions are always reasonably within its control. This is an unnecessary expansion of an already broad list of events.
1 Interpretation  Draft Decision at [1019 – 1022]		Required amendment 20  The Authority required that the definition of Overrun Gas be amended to have the same meaning as in the ET&Cs for the T1 service.	Not incorporated.	Alinta supports the Authority's required amendment.
1 Interpretation  Draft Decision at [1027 – 1030]	Definitions of a <b>Related Body Corporate</b> and <b>Related Entity</b> should incorporate the meanings given to those terms in the Corporations Act as apply from time to time.	Required amendment 22  The Authority accepted Alinta's submission.	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
1 Interpretation  Draft Decision at [1033 – 1037]	The definition of <b>T1 Service</b> should be retained as it is still a term used in the Terms and Conditions (including in the Curtailment Plan).	Required amendment 24  The Authority required that the definition of T1 Service be amended to have the same meaning as in the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions that the T1 Service should be the service the subject of the Terms and Conditions.
1 Interpretation  Draft Decision at [1038 – 1041]	<b>Tp Service</b> should be amended so that it is identified by its essential characteristics, and so that it is only available to Stage 5A shippers.	Required amendment 25  The Authority required that the definition of Tp Service be amended to identify the characteristics of the service.	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions. The Tp Service should only be available to Stage 5A shippers.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
3.2(a)  Capacity Service  Draft Decision at [1054 – 1064]	<p>Clause 3.2(a)(i):</p> <p>The R1 Service is a different type of Capacity Service and is lower in priority in the Curtailment Plan than the P1 and B1 Services. It is incorrect to say the R1 Service is “treated the same in the Curtailment Plan”.</p> <p>Clause 3.2(a)(ii):</p> <p>It is incorrect to say that the R1 Service is treated the same in the Nominations Plan as all other shippers with a R1, P1 or B1 Service, as the Nominations Plan is based on the Curtailment Plan.</p>	<p>Required amendment 29</p> <p>The Authority required that this clause be amended to be materially the same as clause 2 of the current terms and conditions for the T1 service.</p>	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.
3.2(b)  Capacity Service – R1 Capacity  Draft Decision at [1054 – 1064]	<p>There is no support for the quantification methodology.</p> <p>The term “critical” should be clarified.</p>	<p>Required amendment 29</p> <p>See above.</p>	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
3.5  Spot Capacity  Draft Decision at [1065 – 1072]	<p>The Spot Capacity service does not offend Rule 109 of the National Gas Rules and should be retained.</p> <p>Spot Capacity should be available on the same terms as under the ET&amp;Cs where the Shipper only pays when it uses capacity unless the Operator would have sold the Spot Capacity to another shipper.</p>	<p>The Authority approved the deletion of clause 3.5 on the basis that:</p> <ul style="list-style-type: none"> <li>(i) access to a spot capacity service is provided in clause 3.6 of the PRAA; and</li> <li>(ii) the use of spot capacity is a separate service from reference services and the Authority did not have any evidence that access to spot capacity would be routinely required as part of the reference service or that spot capacity is a necessary or intrinsic element of the reference service.</li> </ul>		<p>Alinta submits that the terms governing the Spot Capacity Service should be set out in the Terms and Condition and those terms should be substantially the same as the ET&amp;Cs.</p> <p>DBP's amendments to the terms of the Spot Capacity Service have substantially changed the nature of the service. DBP has provided no justification for why the shipper should have to pay for Spot Capacity that it had bid for but not used in circumstances where no other shipper has bid for Spot Capacity for that Gas Day. This undermines the nature of the service and removed the shipper's access to a true spot capacity service.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>4.1 Capacity Start Date and 4.2 Term  Draft Decision at [1076 – 1086]</p>	<p>The term "Access Request Form" is the form in the Schedule, which does not specify dates and does not link with R1 Service contract.</p> <p>The date requested in the form on which the request is made may not be the date agreed by the Operator for the start of Capacity.</p> <p>The terminology is inconsistent between this clause and the form; the form refers to "Reference Services" and the clause refers to "Capacity".</p>	<p>Required amendment 30</p> <p>Clause 4.1(a) in relation to the capacity start date, should be amended to include the words "as the Requested Reference Service Start Date" at the end of the sentence.</p> <p>The definition of Access Request Form is to be amended to read "means the access request form in the form set out in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended".</p> <p>Required amendment 31</p> <p>Clause 4.2(b) in relation to the term should be amended to include the words "as the Requested Reference Service End Date" at the end of the sentence.</p>	<p>DBP adopted the Authority's required amendment.</p>	<p>Alinta submits that the words " , unless otherwise agreed in writing between the operator and the shipper" should be added to the end of clauses 4.1(a) and 4.2(a).</p> <p>Further, Alinta submits that required amendment 31 should refer to clause 4.2(a). The addition of these words to the end of clause 4.2(b) does not make sense.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
4.3 to 4.7  Option provisions  Draft Decision at [1087 – 1100]		Required amendment 32  Clause 4.5 in relation to a shipper exercising an option to renew its contract should be amended to state "not later than 12 months before the capacity end date, a shipper may give written notice t the operator that it wishes to exercise an option".	DBP deleted clauses 4.3 to 4.7.	Alinta supports the Authority's required amendment.  Alinta submits that DBP's deletion of the option provisions is unacceptable and they should be reinstated in substantially the same form as the ET&Cs.  The option provisions are integral for the shipper's long term planning. The deletion of the option provisions undermines the shipper's ability to manage its business and its commercial stability. This will deter investment and result in inefficiencies.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>5.2</p> <p>Operator must Receive and Deliver Gas</p> <p>Draft Decision at [1103 – 1106]</p>		<p>Required amendment 33</p> <p>The Authority required that clause 5.2(b) be amended to require DBP to deliver gas at the nominated outlet points in the quantities required by the shipper at each point, up to a maximum across all points of the shipper's contracted capacity.</p>	<p>DBP amended clause 5.2(b) to provide that the Operator "must deliver to the Shipper at a Nominated Outlet Point a quantity of Gas up to the Shipper's Contracted Capacity at that Outlet Point".</p>	<p>Alinta supports the Authority's required amendment.</p> <p>Alinta submits that DBP's amendment do not implement required amendment 33. DBP's amendments do not accommodate the required concept of "Aggregated T1 Capacity". This is discussed further in relation to Required Amendment 52.</p>



Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>5.3</p> <p>Operator may refuse to Receive Gas</p> <p>Draft Decision at [1107 – 1113]</p>	<p>Clause 5.3(e): This clause is now a basis on which the Operator can refuse to accept/deliver Gas rather than Curtail. It is now outside the 2% allowance of Curtailments.</p> <p>The provision should be deleted from clause 5.3 and reinstated in clause 17.2.</p> <p>Clause 5.3(g): The words “the following” should be deleted and the words “all of the Shipper’s Contracted Capacity” moved up to replace those words.</p>	<p>Required amendment 34</p> <p>Clause 5.3(e) should be deleted and clause 17.2(c) of the ET&amp;Cs should be reinstated.</p> <p>Clause 5.3(g): Authority required that this clause be amended as recommended by Alinta.</p>	<p>DBP adopted the Authority’s required amendment in relation to clause 5.3(g) but it has not incorporated the amendments relating to clause 5.3(e).</p>	<p>Alinta supports the Authority’s required amendment and reiterates its previous submissions. Clause 5.3(e) should be deleted.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>5.5</p> <p>No liability for refusal to Receive Gas</p> <p>Draft Decision at [1118 – 1124]</p>	<p>Clauses 5.5 and 5.9 from the T1 Contract have been deleted. These clauses provided that, in certain circumstances where the Operator could have taken steps to avoid or minimise the magnitude and duration of a refusal to Receive and/or Deliver Gas, the refusal constitutes a Curtailment.</p> <p>The provisions are important in protecting against the impact of an unreasonable refusal by Operator to Receive and/or Deliver Gas and should be reinstated.</p>	<p>Required amendment 36</p> <p>Clause 5 should be amended to include terms and conditions that are materially the same as clause 5.5 and 5.9 of the ET&amp;Cs for the T1 Service.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment and reiterates its previous submissions.</p>
<p>5.6(b)</p> <p>Operator may refuse to Deliver Gas</p> <p>Draft Decision at [1125 – 1129]</p>	<p>This clause is now a basis on which the Operator can refuse to accept/deliver Gas rather than Curtail. It is now outside the 2% allowance of Curtailments.</p> <p>The provision should be deleted from clause 5.6, or deleted and reinstated in clause 17.2.</p>	<p>Required amendment 37</p> <p>Clause 5.6(b) should be deleted.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>5.9</p> <p>No change to Contracted Capacity</p> <p>Draft Decision at [1134 – 1139]</p>	<p>This clause provides that a refusal to Deliver Gas under clause 5.6 does not affect the calculation of Charges payable by the Shipper.</p> <p>Clause 5.9(a) should be subject to the reinstated clause 5.9 (from the T1 Contract) where refusal to Deliver Gas is a Curtailment in certain circumstances.</p> <p>Clause 5.9 should also be amended to reflect situations where the Capacity Reservation Charge must be refunded under clause 17.4 for a refusal to Deliver.</p>	<p>Required amendment 38</p> <p>Clause 5.9 should be amended to:</p> <ul style="list-style-type: none"> <li>(i) include provisions that are materially the same as those in clause 5.9 of the ET&amp;Cs; and</li> <li>(ii) reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.</li> </ul>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
5.10 System Use Gas Draft Decision at [1140 – 1158]	<p>The auditor should be nominated by the Shipper (&amp; agreed by the Operator) and required to hand down his or her decision within 30 days of receiving all relevant information from the Operator under clause 5.10(g).</p> <p>It should be clarified that the verification process in clause 5.10 is not a dispute over a Tax Invoice and no interest is payable by the Shipper for the period prior to the auditor's decision.</p> <p>"Share of System Use Gas" as defined in clause 5.10(c) has no role in clause 5.10. The indemnity over and above the obligation to pay "Other Charges" and Direct Damages is contentious, unnecessary and unreasonable and should be deleted.</p> <p>Clause 5.10(a): It should be clarified that the Operator must supply the Shipper's share of System Use Gas for no charge, as the SUG cost is included in the R1 Reference Tariff.</p>	<p>Required amendment 39</p> <p>Clause 5.9 should be amended by:</p> <ul style="list-style-type: none"> <li>(i) deleting sub-clauses 5.10(a) and (b) and replace these with a clause to the effect that the operator will provide such system use gas as is reasonably necessary to provide the service; and</li> <li>(ii) deleting clauses 5.10(c) to (h).</li> </ul>	DBP adopted the Authority's required amendment.	<p>Alinta supports the Authority's required amendment.</p> <p>Alinta submits that further amendments could be made to clarify that the Operator must supply all System Use Gas for no additional charge.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
5.11  Additional Rights to Refuse to Receive or Deliver Gas  Draft Decision at [1159 – 1163]	<p>An additional paragraph has been added referring to the <i>Emergency Management Act 2005</i> (WA) which refers to the Minister or other persons declaring a state of emergency.</p> <p>This paragraph should be amended by replacing the reference to “the Minister or any other person, regulatory authority or body” with “a hazard management agency”, and “a state of emergency” with “an emergency event”; and by deleting “or any successor, supplementary or similar Law” which is superfluous in the light of clause 2.1(e).</p>			<p>Alinta reiterates its previous submissions as the Authority appear to have overlooked Alinta's submissions on this clause.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
5.12  Shipper's gas installations  Draft Decision at [1164 – 1165]	<p>The words “to which Gas is supplied directly from the DBNGP” should be added after the words “gas installations” in 3 places in clause 5.12(b).</p> <p>The Operator should only be interested in policing the statutory requirement where gas is supplied directly to the gas installation from the DBNGP, as provided in section 13(1) of the Gas Standards Act 1972 (WA).</p>	<p>Required amendment 40</p> <p>The Authority required that this clause be amended from it being mandatory for a shipper, at its cost, to inspect its facilities to ensure it complies with applicable legislation to it being at the request of DBP acting reasonably.</p>	Not incorporated.	<p>Alinta reiterates its previous submissions as it is unclear whether the Authority has taken its submission on this clause into consideration.</p> <p>DBP should only be able to require the inspection of gas installations to which Gas is supplied directly from the DBNGP.</p>
6.4(d)  Allocation of Gas at Inlet Points  Draft Decision at [1173 – 1177]	<p>This provision provides that R1 Service will, in the absence of a Shipper specification, be treated as a priority to the T1 Service, which is not acceptable as a Shipper may have contracts for T1 and R1 Services.</p>	<p>Required amendment 41</p> <p>Clause 6.4 should be amended to include provisions that are substantially the same as those in clause 6.4(c) and (d) of the ET&amp;Cs.</p>	Not incorporated.	<p>Alinta supports the Authority's required amendment and reiterates its previous submissions.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>6.8</p> <p>Design and installation of Outlet Stations</p> <p>Draft Decision at [1186 – 1189]</p>		<p>Required amendment 43</p> <p>Clause 6.8(a) should be amended by:</p> <p>(i) inserting the words “Subject to clause 6.13” at the commencement of the second sentence; and</p> <p>(ii) 6.8(a)(i) reading “to pay the costs reasonably incurred by the Operator in accordance with good industry practice...”.</p>	<p>DBP adopted the first but not the second limb of the Authority's required amendment 43.</p>	<p>Alinta supports the Authority's required amendment.</p>
<p>6.11</p> <p>Design and installation of Gate Stations</p>	<p>DBP has deleted clause 6.11 in its amended terms and conditions.</p>	<p>Clause 6.11 was not addressed by the Authority in the Draft Decision.</p>		<p>Alinta does not understand how shippers with capacity at a Sub network will be able to obtain necessary physical connection to the Sub network if it became necessary to accommodate additional loads on the Sub network in the absence of clause 6.11. Alinta submits that it should be reinstated.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>6.12(a) (now 6.11(a))</p> <p>Maintenance Charge for Inlet Stations and Outlet Stations</p> <p>Draft Decision at [1194 – 1199]</p>	<p>"...across all shippers who pay a charge for substantially the same purpose" should be replaced with "...across all shippers who use the Inlet Station, Outlet Station or Gate Station associated with a Sub-network..."</p>	<p>Required amendment 45</p> <p>Clause 6.12(a) should be amended to:</p> <ul style="list-style-type: none"> <li>(i) include a mechanism to enable a shipper to ensure that only necessary refurbishments and upgrades are carried out;</li> <li>(ii) include a provision allowing a shipper to obtain a breakdown of the maintenance charge;</li> <li>(iii) replace the words "pay a charge for substantially the same purpose" with "use the inlet station, outlet station or gate station associated with a sub-network"; and</li> <li>(iv) delete sub-clauses (iii) and (iv).</li> </ul>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment and reiterates its previous submissions.</p>



Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
8.9  Scheduling of Daily Nominations  Draft Decision at [1231 – 1235]	The clause refers to “Capacity Services for” and “Capacity Services in respect of the Shipper's Daily Nomination for”.  As the only Capacity Service being scheduled under clause 8.9 is the R1 Services, these references are confusing, redundant and should be deleted.	Required amendment 49  Clause 8.9 should be amended to replace references to a R1 Service with references to a T1 Service.	Not incorporated.	Alinta supports the Authority's required amendment.
8.10  Scheduling where there is insufficient available Capacity  Draft Decision at [1236 – 1239]	A new clause 8.10(c) should be inserted where the Operator must endeavour as a Reasonable and Prudent Person to ensure that, where the scheduled Capacity Services in respect of Daily Nominations are less than the Initial Nomination (calculated across all of the Shipper's R1 Contracts), the difference is kept to the smallest amount possible.	Required amendment 50  Clause 8.10 should be amended by inserting a new clause 8.10(c) to read “the Operator shall use its best endeavours to minimise the extent of any Curtailment required under clause 8.10(b)”.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
8.15 and 8.16 (ET&Cs)  Draft Decision at [1240 – 1248]	<p>There is no “Aggregated R1 Service” for Services above Contracted Capacity at specific Inlet Points and Outlet Points, or provisions which govern the nomination, scheduling and curtailment of the R1 Service at Outlet Points where the Shipper does not have Contracted Capacity.</p> <p>The value of the R1 Service is, on this characteristic alone, significantly less than the T1 Service, which must be reflected in the R1 tariff being lower than the T1 tariff.</p>	<p>Required amendments 51 and 52</p> <p>Clause 8 should be amended to include provisions that are substantially the same as:</p> <ul style="list-style-type: none"> <li>(i) clauses 8.15 and 8.16 in the ET&amp;Cs in relation to an aggregated T1 service; and nominations at inlet points and outlet points where a shipper does not have sufficient contracted capacity; and</li> <li>(ii) clause 8.16 in the ET&amp;Cs in relation to full haul capacity upstream of CS9.</li> </ul>	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>9.5</p> <p>Accumulated Imbalance Limit</p> <p>Draft Decision at [1255 – 1262]</p>	<p>The threshold requirement for a material adverse impact on the integrity or operation of the DBNGP, or an adverse impact (or likely adverse impact) on any shipper's entitlement to its Daily Nomination for Capacity, before the shipper may incur an excess imbalance charge or the operator may refuse to accept or deliver gas should be reinstated.</p> <p>There should be a qualification on the operator's discretion in clause 9.5(c).</p> <p>The obligation to cooperate to ameliorate the impact of exceeding the Accumulated Imbalance Limit, and the concept of the Outer Accumulated Imbalance Limit of 20% should be reinstated.</p> <p>Curtailment must remain an exception to the imposition of the Excess Imbalance Charge, and the Daily and Accumulated Imbalances must be calculated.</p>	<p>Required amendment 53</p> <p>Clause 9 should be amended to include provisions that are substantially the same as those in clause 9.5 of the ET&amp;Cs.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment and reiterates its previous submissions.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
9.6  Balancing in particular circumstances  Draft Decision at [1263 – 1267]		Required amendment 54  Clause 9.6(c) should be amended to remove the requirement that the agreement be in writing.	Not incorporated.	Alinta notes the Authority's reasoning for its requirement, but considers that on balance if agreement in writing includes by email then such agreement can be reached as easily as by other means (including telephone) and provides greater certainty for the Parties. Alinta considers the requirement that the agreement be in writing should remain.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>9.9</p> <p>Cashing out imbalances at the end of each Gas Month</p> <p>Draft Decision at [1268 – 1275]</p>	<p>Cashing out imbalances on a monthly basis penalises the Shipper by mandating a sale of gas to the Operator at a hugely discounted price, unless the Shipper takes a Storage Service.</p> <p>On the other hand, the price at which the Shipper must buy the imbalance quantity is a commercial price, and the Shipper may have no capability (within the physical constraints of the DBNGP) to deliver Gas to the Operator at a sufficient rate to restore the imbalance to zero.</p>	<p>Required amendment 55</p> <p>Clause [9.9] in relation to cashing out imbalances at the end of each gas month should be amended to be substantially consistent with the ET&amp;Cs.</p> <p>It appears that the Authority's required amendment refers to clause 9.6 instead of clause 9.9.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment and reiterates its previous submissions.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
10.3  Consequences of exceeding Hourly Peaking Limit  Draft Decision at [1284 – 1287]	<p>The provisions governing Hourly Peaking Limits and Hourly Peaking Charges have been amended in much the same way as the Imbalance provisions in relation to clause 9 above.</p> <p>The provisions requiring adverse impacts on the integrity and operation of the DBNGP before Hourly Peaking Charges can be levied should be reinstated.</p> <p>A charge for breaching the Hourly Peaking Limit should not be imposed if it does not in any way impact on the integrity nor operation of the DBNGP, nor on any Capacity Services provided to any other Shipper. Such a charge cannot be a genuine pre-estimate of the loss or damage resulting from breaching the relevant threshold and should not be approved.</p>	<p>Required amendment 56</p> <p>Clause 10.3 should be amended to be substantially consistent with clause 10.3 of the ET&amp;Cs, and the words "Shipper must use best endeavours to comply with a notice issued under clause 10.3" should be reinstated.</p>	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions on clauses 9 and 10.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
10.4 (ET&Cs)  Outer hourly peaking limit  Draft Decision at [1288 – 1291]	The Outer Hourly Peaking Limit should be reinstated as its removal result in the Hourly Peaking regime being penal in nature.	Required amendment 57  A provision should be inserted that is substantially consistent with clause 10.4 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions on clauses 9 and 10.
10.7 (ET&Cs)  Permissible peaking excursion  Draft Decision at [1292 – 1295]		Required amendment 58  A provision should be inserted that is substantially consistent with clause 10.7 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions on clauses 9 and 10.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
11.1(b) Overrun Charge  Draft Decision at [1298 – 1303]	<p>There has been a dramatic, unjustified increase in the percentage in clause 11.1(b)(i).</p> <p>The Overrun Rate is twice the Unavailable Overrun Charge, which purports to deal with behaviour more detrimental to the pipeline.</p> <p>Without any justification, a more than four-fold increase in the Overrun Rate is completely unacceptable. Paying 750% of the reference tariff on the same quantity of Gas must be considered a penalty.</p>	<p>Required amendment 59</p> <p>Clause 11.1 should be replaced by provisions that are substantially consistent with clause 11.1 of the ET&amp;Cs.</p>	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.



Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
11.2(a)  Unavailability Notice  Draft Decision at [1304 – 1309]	<p>The Operator's ability to give an Unavailability Notice to the Shipper should be limited to the extent that the Shipper's overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity, Firm Service, any Other Reserved Service or scheduled Spot Capacity.</p> <p>Where penalties for breaching certain thresholds are not related at all to the actual impact on the DBNGP or other shippers' capacity, they cannot be accepted as a genuine pre-estimate of damage or loss suffered by Operator due to the relevant Gas usage.</p>	<p>Required amendment 60</p> <p>Clause 11.2 should be replaced by provisions that are substantially consistent with clause 11.2 of the ET&amp;Cs.</p>	Not incorporated.	Alinta supports the Authority's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
11.7(c)  Saving and damages  Draft Decision at [1314 – 1318]		Required amendment 61  Clause 11.7(c) should be amended to reinstate the word “not”.	Not incorporated.	Alinta supports the Authority's required amendment.
12.4  Delivery of Gas  Draft Decision at [1325 – 1329]	The requirement that the Operator may use any means other than the DBNGP for Delivery only where there is no extra cost or risk to the Shipper in doing so should be reinstated.	Required amendment 62  Clause 12.4 should be amended to include a provision that is substantially the same as clause 12.4(b) of the ET&Cs. Clause 12 should provide that the Operator may satisfy its obligation to enable gas to be delivered to the Shipper by using any means other than the DBNGP provided that it otherwise meets its obligations under the contract and only where there is no extra cost or risk to the Shipper in doing so.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
14.2(d)(i)  Assessment of Requested Relocation  Draft Decision at [1332 – 1344]	A New Outlet Point should be an Authorised Relocation if the New Outlet Point is upstream of the Existing Outlet Point or no greater than 2kms downstream of the Existing Outlet Point.	Required amendment 63  Clause 14.2 should be amended to include provisions that are substantially consistent with clause 14.2(d)(i) of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
15.3(a)(i)(A)  Metering uncertainty  Draft Decision at [1355 – 1360]	The previous maximum uncertainty of 1% should be retained.	Required amendment 64  Clause 15.3 should be amended to be substantially the same as the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
15.5(e) & 15.5(f)  Provision of information to Shipper  Draft Decision at [1366 – 1370]	The provisions which relate to the availability of information for Distribution Network Shippers should be reinstated.	Required amendment 66  Clause 15.5 should be amended to reinstate sub-clauses (e), (f) and (g).	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
15.13(b) & 15.13(c)  Inaccurate equipment  Draft Decision at [1373 – 1374]	Clause 15.13(a)(i) is referred to twice in clauses 15.13(b) and (c) – one of the references in each clause should be deleted.		DBP agreed that this should be amended but has not done so.	DBP should make the agreed change.
17.2(c)  Curtailment Generally  Draft Decision at [1380 – 1384]	The existing approach should be retained otherwise the R1 Service is devalued, which must be reflected in a lower tariff than the T1 tariff.	Required amendment 67  Clause 17.2 should be amended to reinstate sub-clauses (c) and (d) of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
17.3(b)(ii)  Curtailment without liability  Draft Decision at [1385 – 1388]	Planned Maintenance should not be included in Major Works for the purposes of Curtailments without liability.	Required amendment 68  Clause 17.3(b) should be amended to be substantially the same as clause 17.3(b) of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>17.5</p> <p>Operator's rights to refuse to Receive or Deliver Gas</p> <p>Draft Decision at [1389 – 1390]</p>		<p>Required amendment 69</p> <p>Clause 17.5 should be amended so that the words "Subject to clauses 5.5 and 5.9," are reinstated at the beginning of clause 17.5.</p>	Not incorporated.	<p>Alinta supports the Authority's required amendment.</p> <p>Alinta supports the reinstatement of clauses 5.5 and 5.9 as set out above. Clause 17.5 should also remain subject to these important clauses.</p>
<p>17.7(b)</p> <p>Content of a Curtailment Notice and Initial Notice</p> <p>Draft Decision at [1395 – 1400]</p>	An Initial Notice should include the reasons for the Curtailment.	<p>Required amendment 71</p> <p>Clause 17.7(b) should be amended to require an Initial Notice to specify the Operator's reasons for, and a description of, the Major Works that has initiated the need for an initial notice to be issued under clause 17.6(b)(i)(A).</p>	DBP has incorporated a requirement for reasons for the Curtailment. This does not implement the required amendment.	<p>Alinta supports the Authority's required amendment.</p> <p>DBP's amendment does not reflect the required amendment as a reason for the Curtailment may be as uninformative as "Major Works". The operator should be required to provide reasons for, and a description of any Major Works giving rise to an Initial Notice.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
17.9  Priority of Curtailment  Draft Decision at [1406 – 1409]		Required amendment 73  Clause 17.9 should be amended to be substantially the same as clause 17.9 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
17.10  Appointment of Shipper's Curtailments  Draft Decision at [1410 – 1415]	17.10(a): apportionments should be made as determined by the Shipper, unless standing requirements under clause 17.10(b) have been proposed by the Shipper.  Amendments to 17.10(a) suggested above make 17.10(e) redundant and it should be deleted.	Required amendment 74  Clause 17.10 should be amended to be substantially consistent with clause 17.10 of the ET&Cs.  An additional requirement should also be included requiring the Operator to notify the Shipper of apportionment as soon as practicable after the end of the relevant Gas Day.	Not incorporated.	Alinta reiterates its previous submissions. Alinta's suggested changes to cl 17.10(a) should be made, and 17.10(e) can then be deleted. Shippers must be given some control over the apportionments, and notification after the end of the Gas Day is not helpful in managing use of its available capacity.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
18  Maintenance and Major Works  Draft Decision at [1416 – 1419]	Any information provided by the Operator following a request under clause 18(d) should not limit the Operator's obligation to give an Initial Notice within the timeframes required by clause 17.6(b)(i)(A).	Required amendment 75  Clause 18 should be amended by:  (i) inserting "17.6(b)(i)(A)" after "clauses" in (g) (not (d) as referred to by the Authority); and  (ii) including terms that are substantially the same as clause 18(e) of the ET&Cs.	DBP has only incorporated the first limb of required amendment 75.	Alinta supports the Authority's required amendment.
20.4(b)  Other Charges  Draft Decision at [1423 – 1430]	See above in relation Excess Imbalance Charge, Hourly Peaking Charge and Overrun Rate.  Clause 20.4(b) should be deleted unless the imbalance, peaking and overrun regimes are returned to the position under the ET&Cs.	Required amendment 76  Clause 20.4 should be amended to:  (i) be substantially consistent with clause 17.10 of the ET&Cs; and  (ii) include a provision for all of the other charges to be rebateable to shippers.	Not incorporated.	It is unclear why the amendment refers to 17.10. Should this be a reference to clause 20.4 of the ET&Cs? If so, Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
20.5  Adjustment to R1 Tariff  Draft Decision at [1431 – 1436]		Required amendment 77  Clause 20.5 should be amended to be consistent with the structure of the reference tariff and reference tariff variation mechanism of the PRAA as required to be amended under the Draft Decision.	Not incorporated.	Alinta supports the Authority's required amendment.
20.7 (ET&Cs)  Other taxes  Draft Decision at [1437 – 1439]		Required amendment 78  Clause 20.7 of the ET&Cs should be reinstated.	Not incorporated.	Alinta supports the Authority's required amendment.



Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
21.4(a)  Default in Payment  and  21.6(a)  Correction of payment errors  Draft Decision at [1445 – 1448]	Interest should not be compounded.	Required amendment 79  Clauses 21.4 and 21.6 should be amended to remove the words “and compounded”.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>22.2</p> <p>Notice of Shipper's default</p> <p>and</p> <p>22.6</p> <p>Notice of Operator's default</p> <p>Draft Decision at [1453 – 1456]</p>	<p>Given their importance, the requirement to give Default Notices by certified mail should be reinstated.</p>	<p>The Authority has not required DBP to reinstate this requirement.</p>		<p>Alinta submits that it is important that Default Notices are required to be given by certified mail (delivery by courier where confirmation of receipt is given would also be acceptable). Given that time periods for remedying defaults and commencing disputes are dependent on the giving of a Default Notice, it is extremely important that Default Notices are not able to be sent by facsimile or email as these may not be brought to the attention of the Shipper.</p>
<p>22.3</p> <p>When Operator may exercise remedy</p> <p>Draft Decision at [1457]</p>		<p>Required amendment 80</p> <p>Clause 22.3 should be amended by replacing the reference to "20 Working Days" with a reference to "40 Working Days".</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
22.9  No Indirect Damages  Draft Decision at [1458 – 1462]	The blanket exclusion of liability for Indirect Damage is unreasonable and should be deleted.	Required amendment 81  Clause 22.9 should be deleted.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>23.6</p> <p>Shipper responsible for contractors' personnel and property</p> <p>and</p> <p>23.7</p> <p>Operator responsible for contractors' personnel and property</p> <p>Draft Decision at [1463 – 1466]</p>	<p>The exception for liability for acts or omissions of the other Party is an appropriate allocation of liability and should be reinstated.</p>	<p>Required amendment 82</p> <p>Clauses 23.6 and 23.7 should be amended to reinstate the liability for death or injury to a party's personnel or damage to a party's property.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
25.3(a)(iii) Assignment Draft Decision at [1476 – 1480]	There is no reason for the treatment of liability following assignment to be different between the Shipper and the Operator.  If the Operator, as assignor, is to be released from liability, then it must be by way of a formal deed of assumption or novation which the Shipper has approved or is a party to.	Required amendment 85  Clause 25.3 should be amended to be substantially the same as the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
25.4 Assignment: deed of assumption Draft Decision at [1481 – 1484]		Required amendment 86  Clause 25.4 should be amended to be substantially consistent with the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
25.5  Pipeline Trustee's Acknowledgements and undertakings  Draft Decision at [1485 – 1488]		Required amendment 87  Clause 25 should be amended to include terms and conditions that are substantially the same as clauses 25.5 and 25.6 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
25.6  Utilising other shipper's Daily Nominations  Draft Decision at [1491 – 1495]	The provision should be reinstated as previously drafted, or this is a further devaluation of the R1 Service from the T1 Services which must be reflected in a lower R1 tariff.	Required amendment 88  Clause 25.6 should be amended to include terms and conditions that are substantially the same as clause 25.6 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
26 (ET&Cs)  General Right of Relinquishment  Draft Decision at [1496 – 1499]	The provision enabling the Shipper to offer to relinquish Contracted Capacity should be reinstated.	Required amendment 89  Clause 26 should be amended to be substantially the same as clause 26 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
<p>27.1(b)</p> <p>No transfer of Contracted Capacity other than by this clause</p> <p>Draft Decision at [1501 – 1503]</p>	<p>The reference to clause 25.6 should be deleted.</p>	<p>The Authority is of the view that clause 27 is consistent with the capacity trading requirements of the rules and provisions of the PRAA.</p>		<p>Alinta submits that:</p> <ul style="list-style-type: none"> <li>clause 25.6 is to be amended to delete the requirement for an Inlet Sales Agreement;</li> <li>clause 27.1(b) and 25.6 are then practically in identical form. There is no need to make clause 27.1(b) subject to clause 25.6 and it is confusing and unhelpful to do so.</li> </ul>
<p>27.4(a)</p> <p>Transfer of Capacity by Shipper – Approval of transfer terms</p> <p>Draft Decision at [1504 – 1507]</p>	<p>Under the ET&amp;Cs, the Shipper can request that a transfer be for a duration less than, or equal to, the remaining duration of the Period of Supply. This should be reinstated.</p>	<p>Required amendment 90</p> <p>Clause 27.4 should be amended to be substantially consistent with the ET&amp;Cs.</p>	<p>Not incorporated.</p>	<p>Alinta supports the Authority's required amendment.</p>

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
28.3  Permitted Disclosure  Draft Decision at [1523 – 1526]		Required amendment 92  Clause 28.3 should be amended to expressly incorporate the Operator's obligations to comply with ring fencing provisions under the NGL and NGR.	Not incorporated.	Alinta supports the Authority's required amendment.
30.1(a)(i)  Operator's Representations and Warranties  Draft Decision at [1532 – 1536]	The Operator's warranty that it has complied with Environmental and Safety laws should be reinstated.	Required amendment 93  Clause 30.1 should be amended to be substantially consistent with the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
30.2  Shipper's Representations and Warranties  Draft Decision at [1537 – 1538]		Required amendment 94  Clause 30.2 should be amended to be substantially consistent with the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.



Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
30.4 (ET&Cs)  Draft Decision at [1541 – 1544]	The representations and warranties given by the DBNGP Trustee should be reinstated.	Required amendment 95  Clause 30 should be amended to be substantially the same as the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
31(b) (ET&Cs)  Draft Decision at [1545 – 1548]	The shipper's right to request information on planned expansions should be reinstated.	Required amendment 96  Clause 31 should be amended to be substantially the same as the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
38  Revocation, Substitution and Amendment  Draft Decision at [1552 – 1555]		Required amendment 97  Clause 38 should be amended to be substantially the same as the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
45 (ET&Cs)  Arm's length dealings  Draft Decision at [1556 – 1561]		Required amendment 98  Clause 45 should be amended to be substantially the same as clause 45 of the ET&Cs, which establish terms for non-discrimination.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
Schedule 2  Charges  Draft Decision at [1570 – 1574]		<p>Required amendment 99</p> <p>Schedule 2 should be amended to detail the:</p> <ul style="list-style-type: none"> <li>(i) "T1 Capacity Reservation Tariff" and "T1 Commodity Tariff", as determined under this Draft Decision; and</li> <li>(ii) rates at which other charges are determined under the proposed terms and conditions, being the: <ul style="list-style-type: none"> <li>a) "Excess Imbalance Charge" at 200% of the T1 Reference Tariff;</li> <li>b) "Hourly Peaking Charge" at 200% of the T1 Reference Tariff;</li> <li>c) "Overrun Charge" at the rate specified in clause 11.1(b); and</li> <li>d) "Unavailable Overrun Charge" at the greater of: <ol style="list-style-type: none"> <li>1. 250% of the T1 Reference Tariff; and</li> <li>2. the highest price bid for spot capacity that was accepted for that gas day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid.</li> </ol> </li> </ul> </li> </ul>	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
Schedule 3  Operating Specifications  Draft Decision at [1575 – 1578]		Required amendment 100  Schedule 3 should be amended to: (i) delete the table at Item 1 – Gas Specifications, and instead provide that the Operating Specifications are those as specified in the Gas Supply (Gas Quality Specifications) Regulations 2010; and (ii) amend Item 2 – Gas Temperature and Pressure so that it is the one measurement applying to all Inlet Points.	DBP has amended item 1 but not item 2 in accordance with required amendment 100.	Alinta has no objection to the Gas temperature at Inlet Point I1-O1 being at 60 degrees Celsius, higher than other Inlet Points.
Schedule 4  Pipeline Description  Draft Decision at [1579 – 1581]		Required amendment 101  Schedule 4 should be amended to include the pipeline description that is referenced in, and appended to, the PRAA.	Not incorporated.	Alinta supports the Authority's required amendment.

Clause and Draft Decision paragraph #	Issue	Authority's Draft Decision	DBP Amendments	Alinta's Further Submissions
Schedule 6  Curtailment Plan  Draft Decision at [1589 – 1591]		Required amendment 102  Schedule 6 should be amended to be substantially consistent with Schedule 8 of the ET&Cs.	Not incorporated.	Alinta supports the Authority's required amendment.
Draft Decision at [1594 – 1595]		Required amendment 104  The PRAA should be amended to include terms and conditions for the part haul service (i.e. the P1 Service) and back haul service (i.e. the B1 Service), as reference services, that are substantially the same as the terms and conditions established under existing contracts for part haul and back haul pipeline services negotiated with shippers.	Not incorporated.	Alinta supports the Authority's required amendment.

Alinta Pty Ltd  
In its own capacity and for and on behalf of Alinta Sales Pty Ltd  
20 May 2011