Your Ref: Gas Access - DBNGP
Our Ref:
Enquiries: Frank Tanner
Telephone: (08) 9424 1824

BY EMAIL: publicsubmissions@erawa.com.au

20 May 2011

The Dampier to Bunbury Natural Gas Pipeline
Gas Access
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

Dear Sir/Madam

SUBMISSIONS IN RESPONSE TO THE ERA'S DRAFT DECISION ON THE PROPOSED REVISED ACCESS ARRANGEMENT FOR THE DBNGP

Please find attached with this letter submissions by the Electricity Generation Corporation trading as Verve Energy (**Verve**) in response to the draft decision by the Economic Regulation Authority (**ERA**) dated 14 March 2011 on the proposed Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline for the period 2011 to 2015 (**Draft Decision**).

The attached submissions also include comments in relation to the Amended Revised Access Arrangement Proposal lodged by DBPNG (WA) Transmission Pty Ltd (**DBP**) published by the ERA on 19 April 2011 (**DBP Response**).

DBP Response and supporting submissions

Verve notes that the DBP Response included only the following documents:

- DBP Submission 47: Revised Access Arrangement Proposal;

- Amended Revised Access Arrangement (clean and marked-up versions), including:
    - Terms and conditions of the reference service; and
    - DBNGP description of the gas transmission system; and
- Amended Revised Access Arrangement Information (clean and marked-up versions).

The DBP Response shows that DBP has not accepted a large number of very material amendments required by the ERA in the Draft Decision, including (without limitation) as to the reference services to be offered, the rate of return, operating expenditure, opening capital base and conforming capital expenditure.

However, Verve notes that due to the summary nature of the Amended Revised Access Arrangement and the Amended Revised Access Information, and the fact that DBP's Submission 47 merely assigns an "A" for "accepted" or a "C" for "addressed" in relation to the ERA's 109 required amendments in the Draft Decision, there is almost no explanation at all by DBP to justify the changes (or lack of changes) in the revised proposal.

DBP stated in its Submission 47 that nine further submissions will be provided by DBP in support of its amended proposal, including in relation to the fundamental matters referred to above. Importantly, DBP further stated that the submissions will be filed as soon as possible, and in any event before the public submission deadline of 20 May 2011. As at 18 May 2011, none of the nine further supporting submissions had been lodged by DBP and published by the ERA. Verve notes that one DBP submission on non-tariff matters was published on 19 May 2011, but considers that interested parties cannot be expected to comment on submissions published the day before the final lodgement date.

As a result of the failure by DBP to lodge supporting submissions, Verve's submissions have (where appropriate) noted that the DBP Response has not given effect to the ERA's required amendments, but obviously do not discuss DBP's reasons for such failure to give effect to the required amendments.

Given the substantial differences between the proposal contained in the DBP Response and the ERA's required amendments in the Draft Decision, any further submissions that DBP has to make in relation to its revised proposal will obviously be material to submissions made by third parties in relation to the Draft Decision and access to the DBNGP.

Verve considers that it is unacceptable, and inconsistent with the achievement of the national gas objective, that users of the DBNGP and the broader public have been required to make submissions in relation to the Draft Decision and the DBP Response without having had an opportunity to consider and

respond to DBP's supporting submissions (particularly where DBP has indicated that there will be nine separate submissions, each addressing critical aspects of the revised access arrangement proposal).

Verve requests that the ERA provide third parties (including Verve) the opportunity, by way of a further consultation period, to respond to any further supporting submissions lodged by DBP, before the ERA makes its final decision in relation to the proposed revisions to the access arrangement.

Draft Decision

In addition to the issue of DBP's further submissions discussed above, and without limitation, Verve raises the following as key issues arising from the Draft Decision:

- the ERA has incorrectly and unacceptably determined that DBP's expansion capital expenditure is conforming for the purposes of the National Gas Rules simply because shippers entered into the standard shipper contracts in 2004;

- the ERA has not addressed the fact that DBP's proposed revisions would deprive shippers of relevant protected contractual rights in breach of section 321 of the NGL; and

- the ERA incorrectly concludes that the P1 service is adequate to allow the meaningful development of the Mondarra gas storage facility.

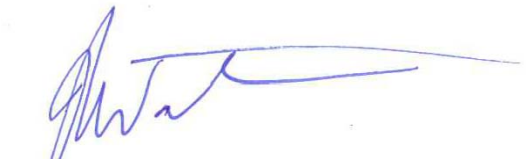
The key issues listed above are addressed in greater detail in the submissions attached as Annexure 1. The submissions in Annexure 1 also deal with various other matters arising from the Draft Decision and the DBP Response.

Terms and conditions of the Reference Contract

The submissions in Annexure 2 relate specifically to the terms and conditions of the Reference Contract, the ERA's comments and required amendments from the Draft Decision and DBP's amended version included in the DBP Response.

Please do not hesitate to contact Frank Tanner on (08) 9424 1824 with any queries.

Yours faithfully



JASON WATERS
GENERAL MANAGER TRADING AND FUEL

ANNEXURE 1

Submissions on the ERA's Draft Decision on the Revised DBNGP Access Arrangement Proposal and DBP's response

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
N/A	Definitions of terms used in these 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. **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 ERA on 19 April 2011. **Draft Decision** means the ERA's draft decision in relation to the Proposed Revisions published on 14 March 2011. **ERA** means the Economic Regulation Authority. **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 Verve's submissions in relation to the Proposed Revisions lodged with the ERA dated 9 July 2010.

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		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 ERA 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 of the NGRs. **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.
Draft Decision paragraphs 14-20	Special circumstances of the DBNGP and general comments	**Special Circumstances of the DBNGP** Verve made comprehensive submissions in relation to the serious deficiencies in DBP's Proposed Revisions in its Original Submissions. Verve made submissions in relation to certain matters that arise because of the special circumstances of the DBNGP in particular. As discussed in the Original Submissions, the special circumstances include: • the T1 service or its equivalent has been the 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: o DBP is required to offer the T1 Service as a reference service from 2005 (**T1 Reference Service**). o The split between the capacity reservation charge and the commodity charge for the T1 Reference Service is to be 80%/20%. o The cost of equity as an input into the calculation of the reference tariff for the T1 Reference Service is to

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		be determined by applying the Capital Asset Pricing Model, consistent with the Reference Tariff Policy for the Access Arrangement in place in 2004. o 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 is to be approved by the relevant regulator (the ERA) under the Applicable Regime applying the usual tests of prudent operator and efficient investment/expenditure (not an abridged version, or part, of those tests). o The T1 Reference Service is to have a reference tariff calculated in accordance with the requirements of the Applicable Regime (including approval by the ERA), 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. Verve submitted in the Original Submissions that the special circumstances of the DBNGP required certain outcomes under the Access Arrangement. Verve's comments in respect of those outcomes under the Draft Decision and the DBP Response are set out below. **Draft Decision and the DBP Response** In the Draft Decision, the ERA agreed with Verve'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.

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		DBP has not accepted the ERA's required amendments 2 and 3 from the Draft Decision, and the DBP Response again includes an Access Arrangement proposal where the R1 service is the only Reference Service (as was the case in the Proposed Revisions). Verve supports the ERA's required amendments 2 and 3, and reiterates its Original Submissions in rejecting the reintroduction of the R1 service as the only Reference Service in the DBP Response. Verve 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 that are completely inconsistent with its obligations under the NGL and NGRs and to shippers who are party to a Standard Shipper Contract in particular. The ERA included a discussion of the special circumstances of the DBNGP right at 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, which set out DBP's obligations regarding (among other things) Reference Services to be proposed by DBP to the ERA in relation to the Access Arrangement. As stated above, clause 20.5 of the Standard Shipper Contract imposes obligations on DBP in making submissions to the ERA and seeking the ERA'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 80/20). Of course the Standard Shipper Contract could not, and did 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.

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		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 ERA 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 ERA's specific reference to clause 20.5 and Schedule 9 evidence an understanding and acknowledgement from the ERA that DBP has clear contractual obligations that arose from the heavily negotiated re-commercialisation process for the DBNGP that allowed the bottled up demand for further capacity on the DBNGP to be met. Importantly however, the ERA 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 ERA 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."* Verve does not agree with the ERA 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 ERA 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".*

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		Clause 2.47 of the Code is the equivalent Code provision to section 321 of the NGL. While the effect of the ERA's Draft Decision is the same as if DBP had made submissions and sought ERA 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 ERA that approving the Proposed Revisions would deprive shippers of relevant protected contractual rights in breach of section 321 of the NGL. Verve submits again that DBP's Proposed Revisions (as maintained by DBP's Response) would, if approved by the ERA, have the effect that the Access Arrangement would deprive shippers under Standard Shipper Contracts (including Verve) of relevant protected contractual rights in breach of section 321 of the NGL. Verve submits that the ERA 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 ERA approvals sought, by DBP which are entirely inconsistent with the outcomes in DBP's Proposed Revisions and the DBP Response. DBP, in its Submission 26 in response to third party submissions (including the Original Submissions) dated 6 August 2010 (published by the ERA on 3 November 2010) argues (as summarised by the ERA 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. Verve agrees that the Standard Shipper Contracts do not serve to restrict or limit any discretion that the ERA has

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		under the NGRs, save for protection of the contractual rights under section 321 of the NGL as discussed above. However, Verve strongly disagrees with DBP's assertions that it effectively has a discretion as to whether to seek a T1 service as a Reference Service under the Access Arrangement 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 ERA 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. Verve 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 ERA 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 ERA approvals sought by DBP (as set out in the 2004 Reference Tariff Policy) unless the ERA 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 ERA does not give DBP liberty to disregard its critical role in

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		implementing the 2004 contractual arrangements to the great disadvantage of shippers. **The ERA's requirement for a T1 Reference Service in 2005** There are stark similarities between DBP's Proposed Revisions in 2010/2011 and the revision process for the Access Arrangement that took place in 2005. A T1 Reference Service was approved by the ERA in 2005, but only after DBP had sought approval of an alternative and lesser "Tf" service. Third parties made submissions to the ERA in relation to the Tf service that are very similar to the tenor of the submissions in relation to the R1 service, and the ERA'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 ERA, 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 ERA. To the extent DBP considers the fact that the ERA 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. Verve 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 ERA 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 80/20) Verve considers that DBP is still required to make submissions to seek amendments to

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		bring about those outcomes.
Draft Decision paragraphs 35-98	Pipeline Services (ERA Required Amendments 2 and 3)	As discussed above, Verve agrees with and supports the ERA's decision to reject DBP's proposal that the existing T1, P1 and B1 Reference Services be replaced with a single full haul R1 Reference Service. To the extent that DBP has repeated its proposal for the single R1 Reference Service in the DBP Response, Verve repeats the relevant submissions from its Original Submissions and requests that the ERA reject DBP's proposal again in the ERA's final decision. Verve notes in particular that DBP is required to seek that the T1 service is included as a Reference Service under the provisions of the Standard Shipper Contract discussed above. DBP has not provided any evidence that the proposed R1 service is one that would be sought by a significant part of the market and is therefore required to be a Reference Service under the NGRs. Third party submissions overwhelmingly disagree with DBP's Proposed Revisions, 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. Verve agrees with the ERA'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. Verve agrees with the ERA 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. In paragraph 72 of the Draft Decision the ERA 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 contacts which would enable the relevant shippers to pay the reference tariff instead of the contractual or negotiated tariff for the T1 Service

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		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. Verve 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 Verve considers the inclusion of the T1 Service as a Reference Service manifestly complies with its obligations to propose the T1 service as a Reference Service under the NGRs and contractually under the Standard Shipper Contract. Verve's responses to DBP's submissions on these issues are as follows: • Verve agrees with the ERA's view that contractual difficulties (if they arise 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 ERA 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 ERA 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

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		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*** • ***CONFIDENTIAL*** Verve notes that the ERA has 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.
Draft Decision paragraphs 88-92	Pipeline Services – Mondarra Reference Service	Consistent with the Original Submissions, Verve 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**). Verve also supports the ERA'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. DBP, in its Submission 26 (paragraph 8.14), 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 Verve 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 that case it is not possible to test DBP's statement that the part haul service allows for exit and re-entry at Mondarra. The ERA should require DBP make the particular

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		contract 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. This however 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. 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 the transport of gas from the MGSF to Perth and downstream should be a separate part-haul Reference Service – P2.
Draft Decision paragraphs 76-98	Non-reference pipeline services ERA Required Amendment 4	Verve agrees with and supports the ERA's required amendment 4 that the Access Arrangement should be amended to include all services that DBP is making available or will offer during the relevant access arrangement period. Verve agrees with the ERA that whether there is additional capacity available for a particular service is not a relevant consideration under rule 48(1)(b) of the NGRs in determining the services that need to be described in the Access Arrangement. Verve notes that DBP has not included all of the services required by the ERA in the DBP Response.
Draft Decision paragraph 106	Indexation ERA Required Amendment 13	Verve notes and agrees with the ERA's approach in using real values for financial information calculated by applying escalation factors derived from December quarter values of the CPI (All Groups, Eight Capital Cities), and that relevant financial calculations are undertaken using values of financial information expressed in dollar values of 31 December 2010. Verve notes that DBP has continued to use CPI (All Groups, Perth) in the DBP Response.
Draft Decision paragraphs 123-292 AAI Sections	Conforming Capital Expenditure ERA Required Amendment 6	Verve has three key concerns with the ERA's Draft Decision and the DBP Response in relation to the assessment of conforming capital expenditure for the 2005-2010 access arrangement period, namely: • the ERA's rationale in assessing the prudence and efficiency of DBP's expansion capital expenditure under rule 79(1) of the NGRs; • the ERA'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; and

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3 and 6		• the significant discrepancies between the ERA'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. **ERA's approval of conforming capital expenditure** Verve raised a number of issues in the Original Submissions in relation to DBP's Revisions Proposal and treatment of capital expenditure in particular. Verve 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. Verve acknowledges that in preparing the Draft Decision, the ERA has 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 Verve's initial concerns that there was simply not enough information provided by DBP to properly assess whether the expansion capital expenditure was conforming under rules 79(1) and 79(2) of the NGRs. Verve notes that on 13 May 2011 the ERA published certain of DBP's submissions in response to information requests from the ERA and its engineering consultant Halcrow Pacific (originally lodged by DBP in June and July 2010). In most cases the relevant detailed information in the responses is redacted, or contained in attachments that have not been published. The ERA also published on 18 May 2011 a redacted version of the draft technical report prepared by Halcrow Pacific, which includes certain conclusions relating to DBP's operating and capital expenditure and compliance with the NGRs. All of the substantive analysis in the technical report has been redacted in the version published by the ERA. Verve considers DBP's submissions and the redacted technical report to be indicative of the process undertaken by the ERA, but not necessarily informative from a financial or technical perspective. Verve notes that unless and until complete (or at least less redacted) submissions are made publicly available Verve is required to rely on the ERA's assessment of the information obtained rather than being able to assess, analyse and test the information itself. This is less than satisfactory. Verve notes the following in relation to the draft technical report:

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		• the report contains tables that Halcrow Pacific refers to as "Halcrow's recommended NGR Rule 79 compliant expansion capital expenditure". This description is misleading as Halcrow Pacific's scope was limited to reviewing capital expenditure in the context of rules 79(1)(a) and 79(2)(c). 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. Halcrow Pacific's conclusions do not indicate that all capital expenditure is justified under rule 79(2)(c) (or any other justification contained in rule 79(2)), which is what is implied in the description of the tables. Further consideration of this issue by Verve is hampered by the fact that all of the consultant's substantive analysis and discussion is redacted in the published report. • Notwithstanding the ERA appears to have relied on the technical report as a basis for finding that historical capital expenditure was prudent and efficient, Halcrow Pacific 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*". • Halcrow Pacific has raised a number of issues in relation to operating expenditure that result in recommendations to reduce allowable forecast operating expenditure. These issues appear to have been noted and accepted by the ERA and are discussed below in relation to ERA's required amendment 10 in the Draft Decision. Verve notes that the ERA 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). Verve assumes the interim audit report is in fact for Stage 5B. Verve agrees with and supports the ERA's approach of approving only audited values of expenditure, given the concerns the ERA has (which are shared by Verve) as to the accuracy and reliability of DBP's stated values of expenditure. However this is subject to the submissions following on the ERA's role and duties. *Prudence and efficiency* Verve does not agree with the ERA'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

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		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 obtained 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 ERA. 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. A significant incentive for the shippers, in addition to debottlenecking the DBNGP in committing to the 2004 contractual arrangements, was that for the period commencing 1 January 2016, the high bespoke tariff would return to a regulated tariff, set by the ERA in accordance with the requirements of the NGL and NGR (or the National Gas Code as was the case at that time). The provisions of the Standard Shipper Contract should not be used by the ERA in any way to determine whether capital expenditure meets the prudence and efficiency test required to be applied by the NGL and NGRs. *Expert advice* There is relatively little discussion in the Draft Decision on the process undertaken by the engineering experts Halcrow Pacific 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 the engineers, and their conclusions that the expenditure was prudent and efficient, but there is no discussion as to how they actually tested specific components or projects within the overall expansions (Stages 4, 5A and 5B). 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

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		the redaction, it is difficult to draw definitive conclusions. Verve acknowledges that the ERA 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). This is concerning to Verve particularly where the engineers' conclusions are relied upon by the ERA in concluding that the expenditure is prudent and efficient, which is obviously a threshold test for approval of the expenditure under the NGRs. Verve notes that there is substantially more detail in the Draft Decision in relation to Halcrow Pacific'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). *Project Management and Retainer Fees* Verve notes the ERA'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. Verve shares the ERA's concerns in relation to the fee, and supports the ERA'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 offending fee from its calculation of conforming capital expenditure in the Access Arrangement and Access Arrangement Information. If it has not, the ERA should require the amendment as part of its Final Decision. *Justification of capital expenditure under rule 79(2)* As set out in the Original Submissions, Verve 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. Verve notes that the ERA has concurred with Verve's view, and rejected DBP's justification on these grounds. Verve also notes the ERA'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. DBP submitted a consultant's report (that was not made public), which the ERA has decided did not support the justification of the expenditure. In the absence of the report Verve cannot agree with or support the ERA's

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		analysis but welcomes the ERA's conclusions in this regard. The ERA states that DBP used the same consultant's report referred to above to justify the capital expenditure on the basis that the overall economic value of the expenditure is positive. The ERA 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. The ERA concluded that: "*The Authority therefore considers that DBP has not presented a reliable quantification of economic benefits from the expansions in capacity of the DBNGP".* Verve supports the ERA in its conclusion that DBP has failed to justify the capital expenditure on any of the grounds in rule 79(2). *The ERA's conclusion that capital expenditure is justifiable* Notwithstanding the ERA's conclusions as to DBP's failure to justify capital expenditure under NGR 79(2), Verve notes that the ERA has arrived at an alternative justification for the expenditure on the grounds of positive economic value on the following basis: • the ERA 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. This alternative justification is fundamentally flawed for several irrefutable reasons. First there is no liberty under the NGRs to abrogate its duties to require the service provider to satisfy it that the overall economic value of the capital expenditure is positive. The service provider has not satisfied the ERA. Secondly the existence and provisions of the Standard Shipper Contract compel conclusions that are the opposite of the ERA'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

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		requirements of the shippers. Future capital expenditure, provided it was shown by audit to have been 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 which are to have the approval of the ERA 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, they would not have done so. They would have found other more prudent and economically efficient ways to debottleneck the DBNGP. As previously submitted a significant incentive 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. This regulation includes ensuring that the regulated asset base, at every regulatory reset, is only increased by capital expenditure which meets the tests in the Applicable Regime. The ERA 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 to satisfy 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 NGR 71, which gives the ERA limited rights to infer compliance with the NGRs, the leap taken by the ERA in paragraphs 266 -270 of the Draft Decision seems extraordinary to Verve. By its own admission, the ERA's arguments provide prima facie evidence only, and there are weaknesses with the argument. Verve has provided reasons why the ERA's inferences cannot be made, and why its assumptions from weak prima facie evidence are wrong. The ERA must require DBP to satisfy it that the capital expenditure in question was justifiable under rule 79(2), or the ERA must conclude that the capital expenditure was not justifiable and remove it from the capital base for the DBNGP.
Draft Decision paragraphs	DBP's Conforming Capital Expenditure Required Amendment	The ERA's required amended values of conforming capital expenditure for the 2005 to 2010 access arrangement period (in real 31 December 2010 dollars) is set out in Table 15 of the Draft Decision. DBP has included a table of conforming capital expenditure (by asset class) made during the 2005-2010 access

<table>
<tr><th>Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)</th><th>Provision / Issue</th><th>Comment</th></tr>
<tr><td>273-277

AAI Section 3</td><td>5</td><td>arrangement period (also in real 31 December 2010 dollars) as Table 2 in Section 3 of the Access Arrangement Information forming part of the DBP Response.

Verve notes that there are very substantial, unexplained differences between the ERA's required Table 15 and DBP's Table 2.

At an aggregate level, the differences are as follows:

<table>
<tr><th>Year</th><th>ERA ($M)</th><th>DBP ($M)</th><th>Difference ($M) (DBP – ERA)</th></tr>
<tr><td>2005</td><td>0.793</td><td>55.71</td><td>54.917</td></tr>
<tr><td>2006</td><td>57.713</td><td>437.07</td><td>379.357</td></tr>
<tr><td>2007</td><td>405.274</td><td>10.84</td><td>-394.434</td></tr>
<tr><td>2008</td><td>641.905</td><td>657.31</td><td>15.405</td></tr>
<tr><td>2009</td><td>11.466</td><td>6.96</td><td>-4.506</td></tr>
<tr><td>2010</td><td>682.657</td><td>623.29</td><td>-59.28</td></tr>
</table>

DBP has not provided any supporting information as part of the DBP Response. Verve does not know why there is such divergence in the numbers, particularly when the amounts are meant to be audited amounts. It is clear that DBP's Table 2 is very different from its equivalent table in the original Revised Provisions of April 2010, including as set out in its supporting Submission 9 dated 14 April 2010.

Verve notes that DBP's Table 2 also 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 Access Arrangement Information forming part of the DBP Response.

There are very significant differences between the ERA and the DBP proposals, even at the aggregate level, and</td></tr>
</table>

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		setting aside the similarly concerning differences at the lower asset class level. Verve requests that the ERA 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 ERA to date then the ERA must conduct an additional and separate review, and require that DBP makes all relevant information available to ensure that third parties such as Verve are able to conduct their own review of the capital expenditure levels. In any event, Verve 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. Verve submits that the differences highlighted above result in even greater concern as to the robustness of the information DBP has provided to the ERA and the extent to which the expenditure can properly be classified as conforming capital expenditure in accordance with the NGRs.
Draft Decision paragraphs - 278-292 AAI Section 7	Forecast Capital Expenditure ERA Required Amendment 6	Verve notes that the ERA, together with the 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 have been found by the ERA to be excessive or unsubstantiated, and therefore not in compliance with the NGRs, Verve supports such conclusion and the requirement that DBP's forecast capital expenditure be amended to reflect the ERA's Table 17 in the Draft Decision. Verve notes that DBP has not made the amendments in the DBP Response to its forecast as required by the ERA, and in fact 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, Verve has no information available to it to assess whether DBP's changes are justified under the NGRs. Verve requests that the ERA requires DBP provide relevant explanatory information as soon as possible, and that the information is made available to the public.
Draft Decision	Rate of Return ERA Required	Verve notes that on balance, subject to its comments below, Verve agrees with the ERA's conclusion in the Draft Decision as to the parameter values for determination of the rate of return shown in Table 45 of the Draft Decision.

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
paragraphs 325-759 AAI Section 11	Amendments 7 and 8	The ERA's conclusions as to the rate of return are consistent with Verve's Original Submissions, and notwithstanding DBP has rejected the ERA's required amendments 7 and 8, Verve does not propose to repeat its submissions in relation to the determination of the rate of return. Verve submits that the ERA's final decision should reflect its approach in the Draft Decision. Verve submits that the ERA's decision as to the rate of return is largely consistent with recent regulatory decisions, including the AER's draft decision for the Amadeus Gas Pipeline (April 2011) where a nominal vanilla WACC of 9.72% was determined by the AER using a similar methodology to the ERA (albeit with different parameter values in certain instances). *Financial models* Verve supports the ERA's conclusion in paragraph 395 of the Draft Decision that there is insufficient evidence from both theoretical and practical grounds to confirm that the Fama-French three factor model is a well accepted financial model, and that as such Sharpe-Lintner CAPM is used to estimate the cost of equity for Australian regulated businesses. *DBP market risks and the equity beta* Verve agrees in particular with the ERA'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. Verve 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. Due to the very stable nature of DBP's revenue, which extends well beyond the expiry of the Access Arrangement period in 2015, Verve submits that an equity beta of 0.8 is high, and should be within the range of 0.4 to 0.7 discussed by the AER as appropriate based on market data in its draft decision on the Amadeus Gas Pipeline (April 2011). Verve submits that the equity beta should be selected using a neutral, not conservative, basis so that DBP is not unreasonably favoured in the selection.

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Debt risk premium
Verve 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 mention the ERA'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).
Verve notes that in paragraph 611 of the Draft Decision the ERA states that the adoption by the ERA of a debt risk premium of 3.124% would reflect a conservative position. Verve 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.
Cost of debt
In relation to calculating the cost of debt, DBP has relied on advice from a markets advisor. In this process a mixture of debt instruments in term (5, 7 and 10 year), credit market (Australian or US) and source (bank or bond markets, public or private placement markets) is used as an appropriate borrowing mix. The amended Access Arrangement Information document dated 18 April 2011 indicates the relevant mix recommended by the advisor has changed quite substantially, as shown in the table below:
<table>
<tr><td>Composition in %</td><td>1 April 2010</td><td>18 April 2011</td></tr>
<tr><td>5-year Australian Bank Market</td><td>28.6</td><td>26.2</td></tr>
<tr><td>7-year Australian Bank Market</td><td>9.5</td><td>9.5</td></tr>
<tr><td>5-year Australian Bond Market</td><td>0</td><td>23.8</td></tr>
<tr><td>7-year Australian Bond Market</td><td>9.5</td><td>0</td></tr>
<tr><td>10-year US Public Market</td><td>33.3</td><td>28.6</td></tr>
<tr><td>10-year US Private Placement Market</td><td>19</td><td>11.9</td></tr>
<tr><td>Cost of debt</td><td>9.73%</td><td>9.52%</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)</th><th>Provision / Issue</th><th>Comment</th></tr>
<tr><td></td><td></td><td>
The term composition in particular has changed as follows:
<table>
<tr><td>Term</td><td>1 April 2010</td><td>18 April 2011</td></tr>
<tr><td>5-year</td><td>28.6%</td><td>50%</td></tr>
<tr><td>7-year</td><td>19%</td><td>9.5%</td></tr>
<tr><td>10-year</td><td>52.3%</td><td>40.5%</td></tr>
</table>
In addition to the matters highlighted by the ERA in the Draft Decision concerning DBP’s cost of debt calculations, Verve submits that the significant change in the debt composition mix under the markets advisor methodology (which clearly depend on the advisor used and the time at which the calculation or composition recommendation is made) results in greater volatility in the calculation of the cost of debt, and serves as further reason to reject DBP’s approach.
Gamma
Verve agrees with the ERA’s general observations in paragraph 658 of the Draft Decision that imputation credits are likely to have some value to non-resident investors, and that shares can be sold by non-residents to domestic investors who are able to utilise imputation credits. Verve agrees with the ERA’s determination that 0.53 is a reasonable point estimate for gamma.
Inflation rate
Verve notes that the ERA agrees with DBP’s general approach of using the geometric mean of the RBA’s 10 year inflation forecast. Verve notes that the ERA’s forecast of 2.65% is higher than the AER’s forecast in the Amadeus Gas Pipeline (April 2011) of 2.57%, due to the fact that the ERA uses a 5 year rather than 10 year forecast period. Verve accepts that the 5 year forecast period is used to ensure consistently with the estimates of the nominal risk free rate and the debt risk premium.
</td></tr>
</table>

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		The inflation rate for the ERA's final decision should be based on the most recent forecast information available. *Market Risk Premium* Verve agrees with the ERA's determination (paragraphs 754-755 of the Draft Decision) that a market risk premium of 6% 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).*" DBP has proposed a market risk premium of 6.5% in the DBP Response. This should be rejected by the ERA, for the reasons set out in the Draft Decision and to ensure consistency with the most recent relevant regulatory decision (including for the Amadeus Gas Pipeline). *DBP Response* Verve notes that in the DBP response DBP has amended its original proposal from the Proposed Revisions as to the rate of return. DBP has proposed a real pre-tax rate of return of 10.03%, compared to the ERA's required 7.16%. Verve 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 ERA should reject the amended proposal for the reasons set out in the Draft Decision. In particular, and without limitation, Verve submits that DBP's continued proposal that a cost of equity commensurate with prevailing conditions that is 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 ERA), namely 12.5%, must not be accepted by the ERA.

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		Verve agrees with the ERA'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*". DBP's proposal does not comply with rules 87(1) or 87(2)(b) of the NGRs.
Draft Decision paragraphs 765-786 AAI Section 13	Incentive Mechanism ERA 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 ERA 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.*" Verve supports the ERA's decision in relation to carryover values under the inventive mechanism. Verve's submissions in relation to operating expenditure in general are set out below.
Draft Decision paragraphs 787-919	Operating Expenditure ERA Required Amendment 10	As a major shipper on the DBNGP, Verve is very concerned with the ERA's observations in relation to DBP's operating expenditure for the 2005 – 2010 access arrangement period. The concerns include:

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AAI Section 9		• the observation by the ERA's expert engineering consultants 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 ERA is left to make assumptions about which information is actually correct Notwithstanding Verve 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 Verve 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. Verve supports the ERA'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, including in relation to: • consultancy expenses • IT expenses • repairs and maintenance expenses • self insurance costs • compressor overhaul expenses • regulatory expenses • fuel gas expenses

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		Carbon Pollution Reduction Scheme Verve supports the removal of costs for a carbon pollution reduction scheme from forecast operating expenditure as discussed in paragraph 883 of the Draft Decision. Verve's comments on the ERA's proposed reference tariff variation mechanism are set out below. *DBP Response* The ERA'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. Verve 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 ERA'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 ERA in its final decision. Verve 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.
Draft Decision paragraphs 929-945 AAI 14	Reference Tariffs ERA Required Amendment 11	Verve notes to the extent that DBP has included only the R1 service as a Reference Service in the DBP Response, Verve 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

Draft Decision paragraph number and Access Arrangement (AA) or Access Arrangement Information (AAI) Section Number (where applicable)	Provision / Issue	Comment
		allocate costs directly attributable to non-reference services (which will be the vast majority if T1, P1 and B1 are not reference services). Verve 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. Verve supports the ERA'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 ERA makes its own revisions to the Access Arrangement (consistent with the Draft Decision). The ERA 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. Verve 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. Verve supports the ERA's assessment that the commodity charge should relate to a variety of operating costs over and above fuel gas costs.
Draft Decision paragraphs 965-974	Tariff Variation Mechanism ERA Required Amendments 13 - 15	Verve supports the ERA'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 ERA • deletion of the "new costs pass through variation". Verve notes that the ERA's rejection of a general "new costs" pass-through is consistent with the AER's draft decision in relation to the Amadeus Gas Pipeline. Verve notes that DBP has not made the ERA's required amendments in the DBP Response.

Annexure 2

Response to Draft Decision and DBP Response on R1 Terms and Conditions

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
1 Interpretation Draft Decision at [995 – 1000]	The definition of **B1 Service** is inconsistent with the ranking of the B1 service in the Curtailment Plan in Schedule 6.	Required amendment 16 The ERA required that this definition be amended to be the B1 Service described as a reference service in the access arrangement (**PRAA**), as amended by the Draft Decision. The PRAA was to be amended to include the B1 Service as described in the current assess arrangement (**CAA**).	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions. Separately, Verve 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 ERA required that the definition of Contracted Firm Capacity be amended to have the same meaning as in the existing terms and conditions (**ET&Cs)**.	Not incorporated.	Verve supports the ERA's required amendment.
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 **Force Majeure** 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 ERA accepted DBP's amendments.		Verve 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.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
1 Interpretation Draft Decision at [1019 – 1022]		Required amendment 20 The ERA 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.	Verve supports the ERA's required amendment.
1 Interpretation Draft Decision at [1027 – 1030]	Definitions of a **Related Body Corporate** and **Related Entity** should incorporate the meanings given to those terms in the Corporations Act as apply from time to time.	Required amendment 22 The ERA accepted Verve's submission.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.
1 Interpretation Draft Decision at [1033 – 1037]	The definition of **T1 Service** should be retained as it is still a term used in the Terms and Conditions (including in the Curtailment Plan).	Required amendment 24 The ERA required that the definition of T1 Service be amended to have the same meaning as in the ET&Cs.	Not incorporated.	Verve supports the ERA'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]	**Tp Service** 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 ERA required that the definition of Tp Service be amended to identify the characteristics of the service.	Not incorporated.	Verve supports the ERA'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	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
3.2(a) Capacity Service Draft Decision at [1054 – 1064]	Clause 3.2(a)(i): 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". Clause 3.2(a)(ii): 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.	Required amendment 29 The ERA required that this clause be amended to be materially the same as clause 2 of the current terms and conditions for the T1 service.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.
3.2(b) Capacity Service – R1 Capacity Draft Decision at [1054 – 1064]	There is no support for the quantification methodology. The term "critical" should be clarified.	Required amendment 29 See above.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
3.5 Spot Capacity Draft Decision at [1065 – 1072]	The Spot Capacity service does not offend Rule 109 of the National Gas Rules and should be retained. Spot Capacity should be available on the same terms as under the ET&Cs where the Shipper only pays when it uses capacity unless the Operator would have sold the Spot Capacity to another shipper.	The ERA approved the deletion of clause 3.5 on the basis that: (i) access to a spot capacity service is provided in clause 3.6 of the PRAA; and (ii) the use of spot capacity is a separate service from reference services and the ERA 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.		Verve 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&Cs. 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.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
4.1 Capacity Start Date and 4.2 Term Draft Decision at [1076 – 1086]	The term "Access Request Form" is the form in the Schedule, which does not specify dates and does not link with R1 Service contract. 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. The terminology is inconsistent between this clause and the form; the form refers to "Reference Services" and the clause refers to "Capacity".	Required amendment 30 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. 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". Required amendment 31 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.	DBP adopted the ERA's required amendment.	Verve 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). Further, Verve 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.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve supports the ERA's required amendment. Verve 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	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
5.2 Operator must Receive and Deliver Gas Draft Decision at [1103 – 1106]		Required amendment 33 The ERA 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.	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".	Verve supports the ERA's required amendment. Verve 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.
5.3 Operator may refuse to Receive Gas Draft Decision at [1107 – 1113]	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. The provision should be deleted from clause 5.3 and reinstated in clause 17.2. 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.	Required amendment 34 Clause 5.3(e) should be deleted and clause 17.2(c) of the ET&Cs should be reinstated. Clause 5.3(g): ERA required that this clause be amended as recommended by Verve.	DBP adopted the ERA's required amendment in relation to clause 5.3(g) but it has not incorporated the amendments relating to clause 5.3(e).	Verve supports the ERA's required amendment and reiterates its previous submissions. Clause 5.3(e) should be deleted.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
5.5 No liability for refusal to Receive Gas Draft Decision at [1118 – 1124]	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. 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.	Required amendment 36 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&Cs for the T1 Service.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.
5.6(b) Operator may refuse to Deliver Gas Draft Decision at [1125 – 1129]	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. The provision should be deleted from clause 5.6, or deleted and reinstated in clause 17.2.	Required amendment 37 Clause 5.6(b) should be deleted.	Not incorporated.	Verve supports the ERA's required amendment.
5.9 No change to Contracted Capacity Draft Decision at [1134 – 1139]	This clause provides that a refusal to Deliver Gas under clause 5.6 does not affect the calculation of Charges payable by the Shipper. 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. 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.	Required amendment 38 Clause 5.9 should be amended to: (i) include provisions that are materially the same as those in clause 5.9 of the ET&Cs; and (ii) reflect situations where the capacity reservation charge must be refunded under clause 17.4 for a refusal to deliver gas.	Not incorporated.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
5.10 System Use Gas Draft Decision at [1140 – 1158]	The auditor should be nominated by the Shipper (& 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). 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. "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. 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.	Required amendment 39 Clause 5.9 should be amended by: (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 (ii) deleting clauses 5.10(c) to (h).	DBP adopted the ERA's required amendment.	Verve supports the ERA's required amendment. Verve submits that further amendments could be made to clarify that the Operator must supply all System Use Gas for no additional charge.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
5.11 Additional Rights to Refuse to Receive or Deliver Gas Draft Decision at [1159 – 1163]	An additional paragraph has been added referring to the *Emergency Management Act 2005* (WA) which refers to the Minister or other persons declaring a state of emergency. 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).			Verve reiterates its previous submissions as the ERA appear to have overlooked Verve's submissions on this clause.
5.12 Shipper's gas installations Draft Decision at [1164 – 1165]	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). 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).	Required amendment 40 The ERA 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.	Not incorporated.	Verve reiterates its previous submissions as it is unclear whether the ERA has taken its submission on this clause into consideration. DBP should only be able to require the inspection of gas installations to which Gas is supplied directly from the DBNGP.
6.4(d) Allocation of Gas at Inlet Points Draft Decision at [1173 – 1177]	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.	Required amendment 41 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&Cs.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
6.8 Design and installation of Outlet Stations Draft Decision at [1186 – 1189]		Required amendment 43 Clause 6.8(a) should be amended by: (i) inserting the words "Subject to clause 6.13" at the commencement of the second sentence; and (ii) 6.8(a)(i) reading "to pay the costs reasonably incurred by the Operator in accordance with good industry practice…".	DBP adopted the first but not the second limb of the ERA's required amendment 43.	Verve supports the ERA's required amendment.
6.11 Design and installation of Gate Stations	DBP has deleted clause 6.11 in its amended terms and conditions.	Clause 6.11 was not addressed by the ERA in the Draft Decision.		Verve 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. Verve submits that it should be reinstated.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
6.12(a) (now 6.11(a)) Maintenance Charge for Inlet Stations and Outlet Stations Draft Decision at [1194 – 1199]	"…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…"	Required amendment 45 Clause 6.12(a) should be amended to: (i) include a mechanism to enable a shipper to ensure that only necessary refurbishments and upgrades are carried out; (ii) include a provision allowing a shipper to obtain a breakdown of the maintenance charge; (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 (iv) delete sub-clauses (iii) and (iv).	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous 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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA's required amendment.
8.15 and 8.16 (ET&Cs) Draft Decision at [1240 – 1248]	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. 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.	Required amendments 51 and 52 Clause 8 should be amended to include provisions that are substantially the same as: (i) clauses 8.15 and 8.16 in the ET&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 (ii) clause 8.16 in the ET&Cs in relation to full haul capacity upstream of CS9.	Not incorporated.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
9.5 Accumulated Imbalance Limit Draft Decision at [1255 – 1262]	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. There should be a qualification on the operator's discretion in clause 9.5(c). 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. Curtailment must remain an exception to the imposition of the Excess Imbalance Charge, and the Daily and Accumulated Imbalances must be calculated.	Required amendment 53 Clause 9 should be amended to include provisions that are substantially the same as those in clause 9.5 of the ET&Cs.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous 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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
9.9 Cashing out imbalances at the end of each Gas Month Draft Decision at [1268 – 1275]	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. 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.	Required amendment 55 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&Cs. It appears that the ERA's required amendment refers to clause 9.6 instead of clause 9.9.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.
10.3 Consequences of exceeding Hourly Peaking Limit Draft Decision at [1284 – 1287]	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. The provisions requiring adverse impacts on the integrity and operation of the DBNGP before Hourly Peaking Charges can be levied should be reinstated. 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.	Required amendment 56 Clause 10.3 should be amended to be substantially consistent with clause 10.3 of the ET&Cs, and the words "Shipper must use best endeavours to comply with a notice issued under clause 10.3" should be reinstated.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions on clauses 9 and 10.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment and reiterates its previous submissions on clauses 9 and 10.
11.1(b) Overrun Charge Draft Decision at [1298 – 1303]	There has been a dramatic, unjustified increase in the percentage in clause 11.1(b)(i). The Overrun Rate is twice the Unavailable Overrun Charge, which purports to deal with behaviour more detrimental to the pipeline. 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.	Required amendment 59 Clause 11.1 should be replaced by provisions that are substantially consistent with clause 11.1 of the ET&Cs.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous submissions.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
11.2(a) Unavailability Notice Draft Decision at [1304 – 1309]	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. 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.	Required amendment 60 Clause 11.2 should be replaced by provisions that are substantially consistent with clause 11.2 of the ET&Cs.	Not incorporated.	Verve supports the ERA's required amendment and reiterates its previous 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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA's required amendment.
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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA's required amendment.
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.	
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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
17.5 Operator's rights to refuse to Receive or Deliver Gas Draft Decision at [1389 – 1390]		Required amendment 69 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.	Not incorporated.	Verve supports the ERA's required amendment. Verve 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.
17.7(b) Content of a Curtailment Notice and Initial Notice Draft Decision at [1395 – 1400]	An Initial Notice should include the reasons for the Curtailment.	Required amendment 71 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).	DBP has incorporated a requirement for reasons for the Curtailment. This does not implement the required amendment.	Verve supports the ERA's required amendment. 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.
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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA's required amendment.
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 ERA); 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.	Verve supports the ERA'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, Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.
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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
22.2 Notice of Shipper's default and 22.6 Notice of Operator's default Draft Decision at [1453 – 1456]	Given their importance, the requirement to give Default Notices by certified mail should be reinstated.	The ERA has not required DBP to reinstate this requirement.		Verve 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.
22.3 When Operator may exercise remedy Draft Decision at [1457]		Required amendment 80 Clause 22.3 should be amended by replacing the reference to "20 Working Days" with a reference to "40 Working Days".	Not incorporated.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve supports the ERA's required amendment.
23.6 Shipper responsible for contractors' personnel and property and 23.7 Operator responsible for contractors' personnel and property Draft Decision at [1463 – 1466]	The exception for liability for acts or omissions of the other Party is an appropriate allocation of liability and should be reinstated.	Required amendment 82 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.	Not incorporated.	Verve supports the ERA's required amendment.
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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA's required amendment.
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.	Verve supports the ERA'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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
27.1(b) No transfer of Contracted Capacity other than by this clause Draft Decision at [1501 – 1503]	The reference to clause 25.6 should be deleted.	The ERA is of the view that clause 27 is consistent with the capacity trading requirements of the rules and provisions of the PRAA.		Verve submits that: • clause 25.6 is to be amended to delete the requirement for an Inlet Sales Agreement; • 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.
27.4(a) Transfer of Capacity by Shipper – Approval of transfer terms Draft Decision at [1504 – 1507]	Under the ET&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.	Required amendment 90 Clause 27.4 should be amended to be substantially consistent with the ET&Cs.	Not incorporated.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve supports the ERA'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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.
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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve's Further Submissions
Schedule 2 Charges Draft Decision at [1570 – 1574]		Required amendment 99 Schedule 2 should be amended to detail the: (i) "T1 Capacity Reservation Tariff" and "T1 Commodity Tariff", as determined under this Draft Decision; and (ii) rates at which other charges are determined under the proposed terms and conditions, being the: a) "Excess Imbalance Charge" at 200% of the T1 Reference Tariff; b) "Hourly Peaking Charge" at 200% of the T1 Reference Tariff; c) "Overrun Charge" at the rate specified in clause 11.1(b); and d) "Unavailable Overrun Charge" at the greater of: 1. 250% of the T1 Reference Tariff; and 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.	Not incorporated.	Verve supports the ERA's required amendment.

Clause and Draft Decision paragraph #	Issue	ERA's Draft Decision	DBP Amendments	Verve'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.	Verve 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.	[Verve supports the ERA's required amendment.?]
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.	Verve supports the ERA'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.	Verve supports the ERA's required amendment.