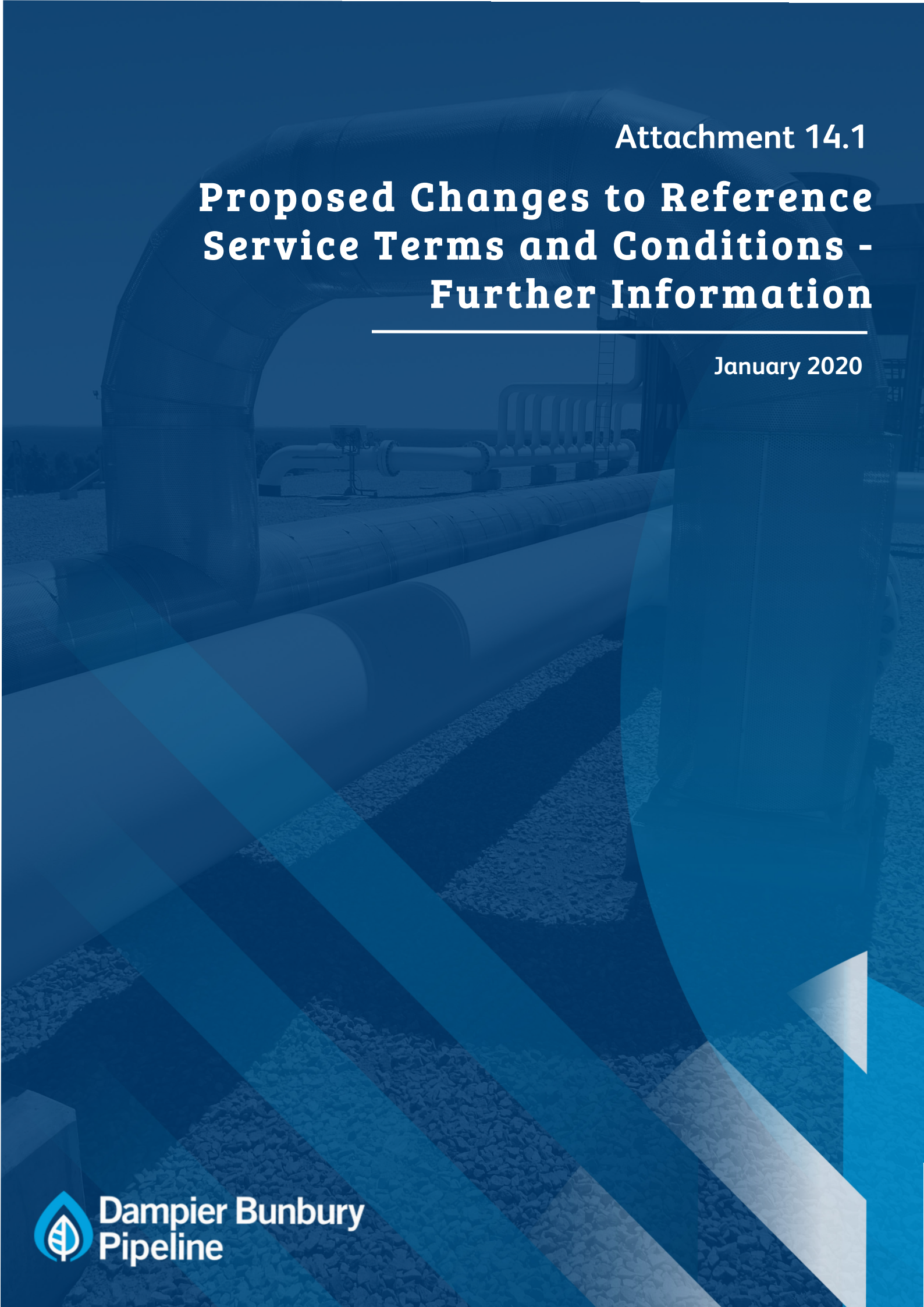
Attachment 14.1

Proposed Changes to Reference Service Terms and Conditions - Further Information

January 2020



Dampier Bunbury Pipeline

2021 – 2025 Access Arrangement Period

Submissions in support of Proposed Terms and Conditions for Reference Services

STATEMENT OF CONFIDENTIALITY

This submission is provided to the ERA to assist it in its assessment of the proposed revisions to the standard T1, B1 and P1 terms and conditions of service associated with the DBNGP Access Arrangement.

Some information contained in the submission is confidential and commercially sensitive. This information has been redacted [redacted] in this version. The reasons for DBP's claim of confidentiality are that the information is confidential to one of its shippers and DBP is prevented from disclosing it to the public under the terms of its contract with that shipper.

A public version of this submission will be provided separately with the relevant paragraphs redacted.

Accordingly, this version of the submission is provided to the ERA on the following conditions:

i) it is to be used by the ERA solely for the purposes of assessing the proposed revisions to the standard T1, B1 and P1 terms and conditions of service associated with the DBNGP Access Arrangement;

ii) it is not to be disclosed to any person other than the following without DBP's prior written approval:

   a. those staff of the ERA who are involved in assisting the ERA in its assessment process; and
   b. those of the ERA's consultants who are involved in assisting the ERA in its assessment process and who have appropriate confidentiality undertakings in place.

INTRODUCTION TO SUBMISSIONS IN SUPPORT OF PROPOSED TERMS AND CONDITIONS FOR REFERENCE SERVICES

On 2 January 2020, DBNGP (WA) Transmission Pty Ltd (**DBP**) submitted the following documents with the Economic Regulation Authority (**ERA**):

i) proposed revised Access Arrangement (**Proposed Revised AA**); and
ii) proposed revised Access Arrangement Information (**Proposed Revised AAI**).

These documents are proposed to cover the access arrangement period commencing on 1 January 2021 and ending on 31 December 2025 (**AA Period**).

As required by NGR 48(1)(d), the Access Arrangement must specify for each reference service the reference tariff and the other terms and conditions on which the reference service(s) will be provided. As is outlined in the Proposed Revised AA, DBP has proposed to retain the three reference services in the current access arrangement – T1, B1 and P1 reference services.

DBP has taken the opportunity to undertake a review of the T1, B1 and P1 reference services. The review has focussed upon (1) correcting typographical errors and anomalies contained in the Reference Contracts; (2) adjusting the Reference Contracts to correct references to matters that are no longer relevant due to the passage of time and changes to legislation and standards; (3) changes arising due to changes in the ownership structure of DBP since the last Access Arrangement; and (4) aligning the Reference Contracts to the Negotiated Contracts to enhance the Operator's ability to administer all of its contracts in a consistent manner, particularly in relation to aggregation rights and curtailment priorities.

Arising from this review, DBP has proposed a number of drafting changes to the terms and conditions for each reference service in the current access arrangement. Clean versions of proposed T1, P1 and B1 Service terms and conditions are provided as Attachments 2, 3 and 4 to the Access Arrangement. Marked up versions of proposed T1, P1 and B1 Service terms and conditions showing the changes in comparison with the current AA terms and conditions (provided in word as the ERA approved corrigenda Word versions to DBP by the ERA on 20 July 2016) are contained in the following appendices to this submission:

i) T1 Service terms and conditions – Appendix A
ii) P1 Service terms and conditions – Appendix B
iii) B1 Service terms and conditions – Appendix C

DBP has provided very thorough submissions in relation to the proposed changes in order to explain the requirement for each proposed change, identifying any flow through impacts of the change to ensure that there are no unintended consequences of the proposed change, and explain how, where necessary, the change promotes the national gas objective.

Where a change has been proposed just to address an Anomaly, DBP has not addressed how the change promotes the national gas objective on the basis that it is self-evident that correcting erroneous clause references and typographical or grammatical errors clarifies the operation of the agreements and accordingly aids Shippers and the Operator to use the documents efficiently.

Defined terms used in these Submissions:

- "**Negotiated Contracts**" means existing contracts with shippers for T1 Service, P1 Service or B1 Service which are based upon the Standard Shipper Contracts rather than the Reference Service Terms and Conditions under the current or any previous Access Arrangement.
- "**Reference Contract**" means the proposed Terms and Conditions for Reference Services in respect of any one of the T1 Service, P1 Service and B1 Service (and "**Reference Contracts**" means any two or all three of them as the case requires).
- "**Standard Shipper Contracts**" means the contracts for T1 Service, P1 Service and B1 Service currently published on DBP's website.

- "**Time**" refers to an amendment required to be made arising from or as a result of the passage of time.
- "**Anomaly**" refers to an amendment made to correct cross referencing, typographical or grammatical errors or other drafting anomalies.
- "**Best Practice**" refers to an amendment made to ensure the Reference Service is consistent with best operating practices.

1. Generic Changes

1.1 Opening line in Interpretation Section:

Amended to read: "In this Contract, except where the context requires another meaning:"

The change is a minor drafting improvement that reflects normal principles of drafting and reflects the Negotiated Contracts.

1.2 Terms deleted as no longer used or relevant:

(a) **DBNGP Trustee**: The role of, and provisions regarding, the DBNGP Trustee (DBNGP Holdings Pty Ltd) were removed from the Reference Contract terms and conditions in a previous Access Arrangement, save that two references (this definition and in the definition of "Party") were left in by oversight. The removal of this definition does not have a net detrimental effect on shippers or consumers of gas

(b) **Inlet Sales Agreement**: The term "Inlet Sales Agreement" is not used in the Reference Contracts. For completeness, we note that it is also not used in the Negotiated Contracts.

(c) **P1 Contract**: The term "*P1 Contract*" is not used in the P1 Service Reference Contract (and therefore has been deleted from that document). And the terms "*T1 Contract*" and "*B1 Contract*" are not used in the T1 Service Reference Contract and the B1 Services Reference Contract respectively (and therefore each respective term has been deleted from the respective document).

(d) **REMCO**: references to REMCo (being the body previously referred to in clauses 6.2, 6.3(d) and 6.3(f)) have been replaced with references to AEMO, so as to refer to the body that has replaced REMCo in relation to the relevant functions.

(e) **Storage Service**: The term "Storage Service" is not used in the Reference Contracts. For completeness, we note that it is also not used in the Negotiated Contracts.

(f) **Tp Service**: the term "*Tp Service*" is not used in the Reference Contracts. For completeness, we note that it is also not used in the Negotiated Contracts.

1.3 Terms defined by reference to Corporations Act:

(a) The terms *Associate*, *Control*, *Controller*, *Related Body Corporate* and *Related Entity* were defined by reference to the meaning in the Corporations Act as at the Execution Date. For each of these definitions, "*as at the Execution Date*" as been deleted and "*as at 15 July 2019*" has been inserted.

(b) The reasons for this change are that:

(i) it is not appropriate that the meaning ascribed to this definition may be changed by future (unknown) changes to the Corporations Act 2001 (Cth). Rather, the definition should be fixed as if the concept presently in that Act were set out in the Reference Contracts in full; and

(ii) 15 July 2019 was selected as the date to fix the definition as this is the latest compilation of that Act as at the time of preparing the submitted changes to the Reference Contracts, containing amendments up to Act No. 50, 2019.

1.4 Corrections to update references to current legislation and standards:

(a) **Actual Mass Flow Rate**: definition amended to reflect the correct title of the current (April 2017) American Gas Association publication of Report No. 8 used to measure the Thermodynamic Properties of Natural Gas and Related Gases.[1] The definition is used in clause 15.3 of the Reference Contracts to define what is required by Primary Metering Equipment and Alternative Metering Equipment.

(b) **SI Units**: definition updated to align with Negotiated Contract and remove unnecessary reference to obsolete Australian Standard AS1000-1979.[2]

(c) **Clause 7.12** (Odorisation): reference to Gas Standards Regulations 1983 (WA) updated to Gas Standards (Gas Supply and System Safety) Regulations 2000 (WA).

1.5 Where a space has been added between two words to correct a typographical error (for example, clause 17.5), we have not provided a submission on the basis that the tracked change is self-evident.

2. Clause 1 – Interpretation

Definition of Accumulated Imbalance

Accumulated Imbalance means the accumulated imbalance calculated under clause 9.3 and, if applicable, adjusted under clause 9.9~~9.8~~.

Explanation/Submission

2.1 Update to cross reference (required as a result of addition of clause 9.6).

Definition of AEMO, a new definition has been added:

AEMO means Australian Energy Market Operator Limited ACN 072 010 327.

Explanation/Submission

2.2 Used in clauses 6.2, 6.3(d) and 6.3(f), so as to refer to the body that has replaced REMCo (being the body previously referred to in those clauses) in relation to the relevant functions.

Definition of AGIG, a new definition has been added:

AGIG means

(a) each of the following entities and any entity which is a Related Body Corporate of any of the following entities:

(i) the Operator;

[1] Copy of the American Gas Association publication of Report No. 8 can be provided if requested.
[2] AS1000-1979 superseded by AS ISO 1000-1998.

(ii) the Pipeline Trustee;

(iii) DUET Investment Holdings Pty Limited (ABN 22 120 456 573);

(iv) CK William Australia Holdings Pty Ltd (ABN 14 613 690 243);

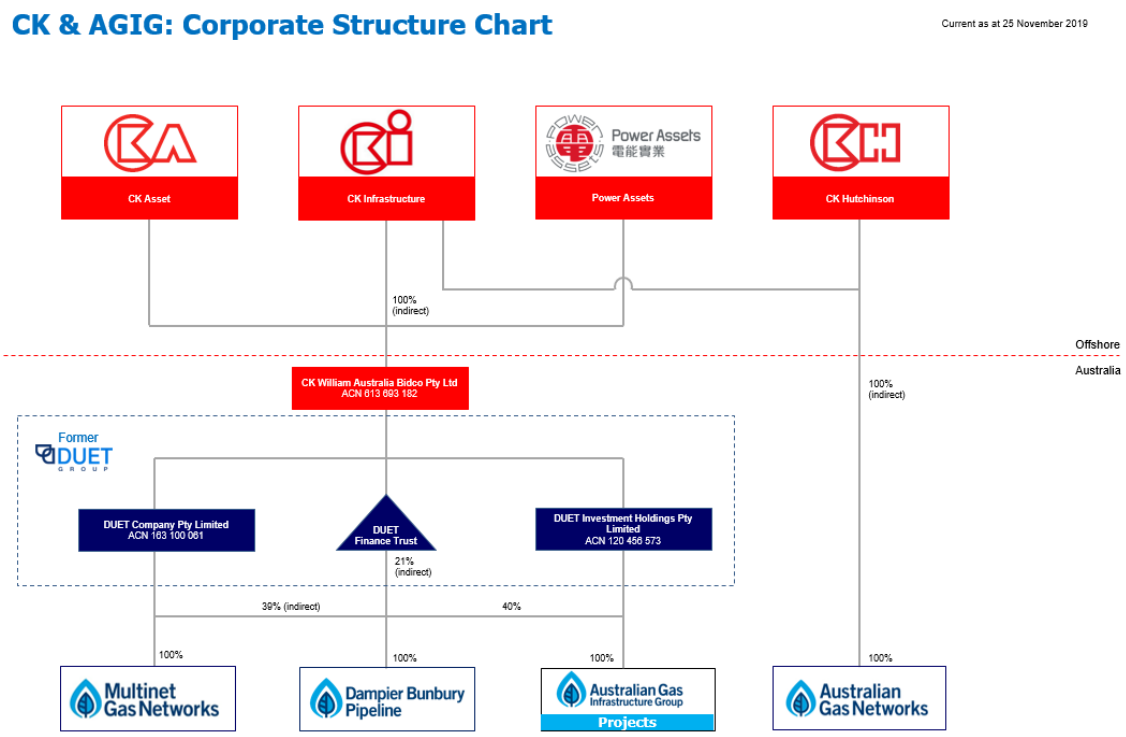
(v) Multinet Group Holdings Pty Ltd (ABN 83 104 036 937);

(vi) Australian Gas Networks Limited (ABN 19 078 551 685); and

~~(a)~~(b) any other entity part of the group known as the Australian Gas Infrastructure Group of companies from time to time.~~.~~

Explanation/Submission

2.3 Updated to reflect change of ownership following acquisition of DBP by the CKI Group in 2017. References to DUET Group (previous owners of DBP) in AA4 have been replaced by 'AGIG'. The senior executive management team of DBP (CEO, CFO and General Managers) are made up of a combination of employees of the above mentioned companies. CK William Australia Holdings Pty Ltd is the highest Australian based holding company of DBP. The current ownership structure was approved by the ACCC and FIRB and is depicted as follows:



2.4 The term is used in:

(a) the definition of 'Data' – this is a new definition inserted for the purposes of new clause 28.10 'FIRB Compliance', inserted to comply with certain conditions imposed upon AGIG as a result of the acquisition in 2017;

(b) Clause 25.3(a)(Assignment) – straight replacement of DUET Group with AGIG to reflect change of ownership;

(c) Clause 28.2(Exceptions to Confidentiality) – straight replacement of DUET Group with AGIG to reflect change of ownership; and

(d) Clause 28.3(a)(i) (Permitted Disclosure) – straight replacement of DUET Group with AGIG to reflect change of ownership.

Definition of Aggregated Service, a new definition has been added:

Aggregated Service means Aggregated P1 Service, Aggregated T1 Service and Aggregated B1 Service or any one or more of them (as the case may require).

Explanation/Submission

2.5 This is a new term which has been added as a drafting improvement and is used to fix a typographical error and to clarify the existing drafting. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

2.6 To be clear, the term is not describing a new type of service, it is merely being used to aid clarity where referring to an existing service (being Aggregated P1 Service, Aggregated T1 Service and Aggregated B1 Service or any one or more of them).

2.7 The term is used:

(a) **in the definition of "Other Reserved Service":** Aggregated Service is excluded from the definition of "*Other Reserved Service*". The reason for this is that Aggregated Service is not, and was never intended to be, an Other Reserved Service. Aggregated Service is a different Capacity Service, and has a separate priority (see the Curtailment Plan in Schedule 6), to Other Reserved Service. The change is just a correction of a typographical error;

(b) **in clause 8.17(a):** the change is to clarify that all Aggregated Service (whether derived from T1 Service, P1 Service or B1 Service) has equal priority in the Curtailment Plan (consistent with the equal (but higher) priority afforded T1 Service, P1 Service and B1 Service, and the expectation of the market);

(c) **in clause 17.9(b)(vi):** as further explained in the submissions for the changes to clause 17.9(b)(vi) later in this document, the reason for this change is that, in some circumstances for the purpose of applying the Curtailment Plan, that clause serves to recharacterize Aggregated P1 Service as P1 Service (in the P1 Service Reference Contract), Aggregated B1 Service as B1 Service (in the B1 Service Reference Contract) and Aggregated T1 Service as T1 Service (in the T1 Service Reference Contract). This recharacterization rule should also recognize (because the Curtailment Plan applies across all contracts for Capacity Services) that (in analogous circumstances) such recharacterization of Aggregated P1 Service, Aggregated B1 Service and Aggregated T1 Service also applies in other shipper contracts for P1 Service, B1 Service and T1 Service (and we have accordingly made changes to clause 17.9(b)(vi));

(d) **in clause 17.9(c)(ii):** Aggregated Service is not amenable to the calculation described in clause 17.9(c)(i) as Aggregated Service does not have a "Total Contracted Capacity" as required for that calculation. Accordingly, Aggregated Service needs to be allocated on a different basis to the allocation in clause 17.9(c)(i). Clause 17.9(c)(ii) sets out an appropriate mechanism; and

(e) **in part B of Schedule 6:** the reason for this change is to make it clearer how clause 17.9(b)(vi) is to be applied in a Curtailment in light of the more general words in Part B of Schedule 6. The opening words in clause 17.9(b) make it clear that the words in clause 17.9(b)(vi) have primacy. We have inserted words in Part B of Schedule 6 to recognise that, in some instances, as set out in clause 17.9(b)(vi) and in accordance with that primacy, Aggregated Service will be treated as T1 Service, P1 Service or B1 Service (as the case may be). This change is for clarity and the change does not change the priority order.

2.8 The ERA may query whether the change to the definition of "Other Reserved Services" has flow on effects. As noted above Aggregated Service is not, and was never intended to be, an Other Reserved Service. There are other flow on effects of expressly carving out Aggregated Service from the definition of "Other Reserved Service", but those flow on effects are required so as not to give rise to an argument that the terms of the Reference Contracts undermine the Negotiated Contracts and to facilitate a consistent set of rules for the shared use of the DBNGP by shippers. For completeness, and to explain why the flow on effects should be acceptable to the ERA, we note that the term "Other Reserved Service" is used:

(a) **in clause 2.4:** the clarification that "Other Reserved Service" does not include Aggregated Service should not raise a concern in this context as we have separately added references to the three types of Aggregated Service in that clause);

(b) **in clause 9.5(b)(ii):** the clarification that "Other Reserved Service" does not include Aggregated Service should not raise a concern in this context as the term is used alongside "Contracted Firm Capacity" (which term includes Aggregated Service, so Aggregated Service is captured in any case) (although we note that if the ERA rejects our changes to the definition of "Contracted Firm Capacity" then a reference to Aggregated Service may need to be added);

(c) **in clause 17.9(c)(ii):** we have, however, added "*Aggregated Services*" as a Type of Capacity Service captured by that clause. Therefore, despite the clarification which we have made to the definition of "*Other Reserved Service*", "*Aggregated Service*" is subjected to the Operator's obligation imposed by that clause; and

(d) **in Schedule 6:** please see the commentary in paragraph 2.7(a) above.

Definition of Aggregated B1 Service, a new definition has been added:

Aggregated B1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for B1 Service:

(a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for B1 Services; and

~~(a)~~(b) in excess of that shipper's Contracted Capacity for B1 Services at an Inlet Point or Outlet Point.

Explanation/Submission

2.9 The box set out above shows the definition of "*Aggregated B1 Service*" in the P1 Service Reference Contract and in the T1 Service Reference Contract. In the B1 Service Reference Contract, the definition of this term takes the form of the definition of "*Aggregated P1 Service*" set out below, with all necessary changes.

2.10 The definition is inserted to correct a drafting anomaly.

2.11 The three species of Aggregated Services (being Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service) are referred to throughout the Reference Contracts (see in particular the Curtailment Plan in Schedule 6, which is being updated to align with Curtailment Plan in the Negotiated Contracts). The definition added reflects the existing use of the term in the Reference Contracts and Negotiated Contracts.

Definition of Aggregated P1 Service, a new definition has been added:

Aggregated P1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for P1 Service:

(a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for P1 Services; and

(b) in excess of that shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,

and in respect to the Capacity Services available under this Contract has the meaning given in clause 8.16.

Explanation/Submission

2.12 The box set out above shows the definition of "*Aggregated P1 Service*" in the P1 Service Reference Contract. In the B1 Service Reference Contract and in the T1 Service Reference Contract, the definition of this term takes the form of the definition of "*Aggregated B1 Service*" set out above, with all necessary changes.

2.13 The definition is inserted to correct a drafting anomaly.

2.14 The three species of Aggregated Services (being Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service) are referred to throughout the Reference Contracts (see in particular the Curtailment Plan in Schedule 6, which is being updated to align with Curtailment Plan in the Negotiated Contracts). The definition used reflects the existing use of the term in the Reference Contracts and Negotiated Contracts.

Definition of Aggregated T1 Service, a new definition has been added:

Aggregated T1 Service means the entitlement of a shipper (if any) to nominate that Gas be Delivered under that shipper's contract for T1 Service:

(a) at an Inlet Point or an Outlet Point at which that shipper does not have Contracted Capacity for T1 Services; and

~~(a)~~(b) in excess of that shipper's Contracted Capacity for T1 Services at an Inlet Point or Outlet Point.

Explanation/Submission

2.15 The box set out above shows the definition of "*Aggregated T1 Service*" in the P1 Service Reference Contract and in the B1 Service Reference Contract. In the T1 Service Reference Contract, the definition of this term takes the form of the definition of "*Aggregated P1 Service*" set out above, with all necessary changes.

2.16 The definition is inserted to correct a drafting anomaly.

2.17 The three species of Aggregated Services (being Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service) are referred to throughout the Reference Contracts

(see in particular the Curtailment Plan in Schedule 6, which is being updated to align with Curtailment Plan in the Negotiated Contracts). The definition used reflects the existing use of the term in the Reference Contracts and Negotiated Contracts.

Definition of Associated

Associated, when used to describe the relationship between:

(a) a Gate Station and a Sub-network, means that Gate Station is associated with that Sub-Network;

(b) an Inlet Station and an Inlet Point, means that the Inlet Station is used to measure Gas flows and other parameters at the Inlet Point; and

(c) an Outlet Station and an Outlet Point, means that the Outlet Station is used to measure Gas flows and other parameters at the Outlet Point,

and ***relates*** and ***related***, when used to describe such relationships, have the analogous meanings.

Explanation/Submission

2.18 With respect to the new paragraph (a), its prior omission was an oversight as the term "Associated" is already used in this way in clause 6.10(c) and clause 13.5(b)(ii). In addition, the new clause 6.8(e) uses the term "Associated" as defined by this new paragraph (a).

2.19 With respect to the new sentence at the end of this definition, this is to correct a drafting error as the terms "relates" and "related" were used in this way in the existing clause 6.11(d)(i) and (ii) (amended to become 6.11(e)(i) and (ii)) and now the relevant phrasing has been copied into the new clause 6.11(d)(i) and (ii).

Definition of B1 Service

B1 Service means a Back Haul transportation service ~~Reference Service provided under the terms and conditions set out in the Access Arrangement for the B1 Service~~ which is named in the relevant contract as B1 Service and which gives the shipper a right, subject to the terms and conditions of the ~~Access Arrangement~~relevant contract, to access capacity of the DBNGP and which:

~~(a) can only be Curtailed in the circumstances specified in clause 17.2;~~

~~(b)~~(a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

~~(c)~~(b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause ~~8.9~~8.10.

Explanation/Submission

2.20 The box set out above shows the changes to the definition of "*B1 Service*" in the P1 Service Reference Contract and the T1 Service Reference Contract (and analogous changes have been made to the definition of "*P1 Service*" in the B1 Service Reference Contract and the T1 Service Reference Contract). The changes to the definition of "*B1 Service*" in the B1 Service Reference Contract are slightly different (they are analogous to the changes to the definition of "*P1 Service*" in the P1 Service Reference Contract - see the comments with respect to the definition of "P1 Service" below).

2.21 The changes are made to correct drafting anomalies, typographical errors and cross referencing.

2.22 The term "*B1 Service*" is used to identify all Back Haul transportation services which are named as a "*B1 Service*" and thus are treated in a particular (equal) way in the Curtailment Plan and the nominations priority rule in clause 8.10(a).

2.23 We have deleted the words: "*Reference Service provided under the terms and conditions set out in the Access Arrangement for the B1 Service*" (and replaced the second use of the words "*Access Arrangement*" with "*relevant contract*") because:

(a) if the words are not deleted, then according to the Reference Contract, B1 Service can only be offered under a Reference Contract (that is, if the words remained, "B1 Service" would exclude all services which are not provided by way of a Reference Contract (even though such services are named as B1 Service, contracted for as B1 Service and defined as B1 Service under the relevant non-Reference Contract)); and

(b) B1 Service cannot have a different meaning across different contracts for the relevant Capacity Service. This is because, among other things, the term "*B1 Service*" is used in the Curtailment Plan and B1 Service under a Reference Contract must be treated equally with all other B1 Service under Negotiated Contracts under the Curtailment Plan and the nominations priority rule in clause 8.10.

2.24 We have deleted the words: "*can only be Curtailed in the circumstances specified in clause 17.2*". The reason for this deletion is that, just because a different contract allows the Operator to Curtail in more circumstances, that does not, and should not, prevent that different contract from being a contract for B1 Service. We explain this point, and the reason why the retention of these deleted words would not have a net benefit to shippers and consumers of gas, in paragraphs 2.25 - 2.27 below.

2.25 The practical effect of not deleting the words "*can only be Curtailed in the circumstances specified in clause 17.2*" from the definition of B1 Service in the Reference Contract is that a Negotiated Contract for B1 Service may not, despite what was negotiated and bargained for by the shipper, be regarded as "B1 Service" as that term is used in the Reference Contracts merely because the Negotiated Contract can be curtailed in additional circumstances. Explaining further, if the words "*can only be Curtailed in the circumstances specified in clause 17.2*" were to remain in the Reference Contracts, then any terms in a Negotiated Contract which allow the Operator to Curtail the Capacity Service under the Negotiated Contract in more circumstances than under the Reference Contract would (from the perspective of the Reference Contracts) preclude the Capacity Service under the Negotiated Contract from being characterised as a B1 Service, even if the Capacity Service was/ has been negotiated as a B1 Service under the Negotiated Contract.[3]

2.26 On its face, if the deleted words are retained, the differences between the shipper contracts appear to lead to irreconcilable differences in the application of the Curtailment Plan and the nominations priority rule in clause 8.10 (which rely on a consistent application of concepts across contracts for Capacity Services without being undermined by bespoke negotiated differences permitted by clause 45 of the Negotiated Contracts). This is because, if the words remain as they are, a Negotiated Contract which on its terms offers B1 Service (and therefore offers a certain priority in the Curtailment Plan) may not be regarded as B1 Service (and therefore will not hold that certain priority in the Curtailment Plan) from the perspective

[3] **Note to ERA:** of course, it also appears that if the words "*can only be Curtailed in the circumstances specified in clause 17.2*" are not deleted from the definition then, from the perspective of the Negotiated Contracts, the B1 Service under the Reference Contract cannot be a B1 Service for the application of the Curtailment plan and nominations regime under the Negotiated Contracts (because that service then fails the 'equal treatment' tests in limbs (a) and (b) (currently (b) and (c)) of the definition).

of the Reference Contracts. In our view, there is no practical reason why the Reference Contracts (by including definitions which undermine the shared use concept across Capacity Services) should create confusion as to, and potentially undermine, the order of Curtailment set out in the Curtailment Plan and the expectations of shippers with Negotiated Contracts for B1 Service and shippers who obtain B1 Reference Services that their B1 Service ranks equally with all other B1 Services when the Curtailment Plan is applied.

2.27 Further to the foregoing, it is important to note that the words themselves (i.e. the words "*can only be Curtailed in the circumstances specified in clause 17.2*") do not provide a net benefit to shippers or to consumers of gas.[4] The restrictions on Curtailment of the B1 Service under the B1 Service Reference Contract (which are the same as the restrictions on Curtailment of the P1 Service under the P1 Service Reference Contract and the T1 Service under the T1 Service Reference Contract, save for the proposed addition of clause 17.2(f) in the B1 Service Reference Contract) apply regardless of whether or not the words are included in the definition of "B1 Service". The only potential impact of retaining the words is to affect whether B1 Service granted under a Negotiated Contract which is, according to its terms, at risk of greater Curtailment, is potentially at risk of not being treated the same as a B1 Service granted under the B1 Service Reference Contract. In other words, the deleted words place an implicit restriction upon the parties to a Negotiated Contract agreeing to be Curtailed under the Negotiated Contract in more circumstances than the Reference Contract (by undermining the characterisation of that Negotiated Contract as B1 Service and thereby creating confusion as to how the Curtailment Plan is to be applied). If a party under a Negotiated Contract agrees to greater Curtailment in some circumstances[5] (vis-a-vis the Reference Contract) then this is to the benefit, not the detriment, of the holder of a Reference Contract. For completeness, we note that the existence of the Curtailment Plan has the effect of precluding a shipper negotiating a B1 Service with a greater priority upon Curtailment than as set out in the Curtailment Plan.

2.28 The remaining changes are to fix typographical errors and a cross reference.

Definition of Contracted Capacity

Contracted Capacity has, when used in respect of the P1 Service under this Contract, the meaning given in clause ~~3.2(b)(iv)~~3.3 and, in the context of any other contract in respect of a particular Capacity Service under that contract, has the meaning given in that contract.

Explanation/Submission

2.29 The box set out above shows the changes to the definition of "*Contracted Capacity*" in the P1 Service Reference Contract. The definition of "*Contracted Capacity*" in the B1 Reference Contract and the T1 Service Reference Contract contain analogous changes.

2.30 The changes are to give clarity to the existing drafting and to fix a cross referencing error.

[4] **Note to ERA:** for completeness, we note that WESCEF has in the past expressed concern over the removal of the words: "*can only be Curtailed in the circumstances specified in clause 17.2*". According to paragraph 1415 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020: "*WESCEF expressed concern over the removal of* [the relevant words]. *WESCEF believed the change would amend the certainty of the T1 and P1 Services in the interests of DBP and was adverse to the interests of shippers, hence,* [the relevant words] *should not be deleted*." If paragraph 1415 correctly sets out WECEF's position then, with respect, we do not agree with WESCEF insofar as they appear to be suggesting that the deletion of the words are adverse to the legitimate interests of shippers. We strongly suggest, for the reasons set out in paragraphs 2.25 - 2.27 of our submissions, that the deletion of the words has a net benefit to shippers and consumers of gas.

[5] which it may do, so as to achieve some other negotiation goal.

Definition of Contracted Firm Capacity

Contracted Firm Capacity means Alcoa's Exempt Capacity and any contracted Capacity ~~under~~ Service other than a Spot Transaction~~a T1 Service, B1 Service or P1 Service or a Firm Service~~.

Explanation/Submission

2.31 The defined term has been modified to better align with the Negotiated Contracts.

2.32 The defined term is used:

(a) **in clause 5.3(g):** as part of a limit upon the Operator's power to refuse receipt of Gas at an Inlet Point. Under clause 5.3(g), put broadly, the Operator is entitled to refuse to receive the Shipper's deliveries of Gas to an Inlet Point in two circumstances:

(i) if the Shipper would otherwise deliver Gas at a rate per hour which exceeds their Contracted Capacity for that Inlet Point divided by 24; or

(ii) if the Shipper would otherwise deliver more Gas than their Contracted Capacity for that Inlet Point,

but only if "*the Operator considers as a Reasonable and Prudent Person, that to Receive such Gas would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Inlet Point*".

In the context of this clause, the change to the definition of "*Contracted Firm Capacity*" is fair and reasonable, and in the net interest of shippers and consumers, as it only restricts the Shipper under a Reference Contract from using more than its Contracted Capacity at the inlet point, and only allows the Operator to impose such restriction where the excess use interferes with other shippers taking their contracted Capacity Services. If we do not make the change to the definition of "*Contracted Firm Capacity*" (by extending the types of Contracted Capacity that are protected from excess use by the Shipper under a Reference Contract), then all Capacity Services, other than T1 Service, P1 Service and B1 Service and Firm Service,[6] would be subject to the whim of excess use by shippers under the Reference Services (making those other services unreliable and unpalatable).

(b) **in clause 5.7(f):** under clause 5.7(f), put broadly, the Operator is entitled to refuse to deliver Gas to the Shipper at an Outlet Point if the Shipper would otherwise receive more gas than their Contracted Capacity for that Outlet Point but only if "*the Operator considers as a Reasonable and Prudent Person, that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Outlet Point*".

In the context of this clause, the change to the definition of "*Contracted Firm Capacity*" is fair and reasonable, and in the net interest of Shippers and consumers, for the reasons set out in the discussion in respect of clause 5.3(g) (at paragraph 2.32(a)) immediately above.

(c) **in clauses 8.9(d) and 8.9(g):** under clauses 8.9(d) and 8.9(g), again put broadly, the Shipper's scheduled Capacity Services may exceed the Shipper's Contracted Capacity to the extent that it would bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit "*unless the Operator considers as a*

[6] The term "Firm Service" is defined by reference to the 2004 Access Arrangement and of limited (if any) ongoing relevance.

Reasonable and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity".

In the context of these clauses, the change to the definition of "*Contracted Firm Capacity*" is fair and reasonable, and in the net interest of Shippers and consumers, for the reasons set out in the discussion in respect of clause 5.3(g) (at paragraph 2.32(a)) above.

(d) **in clause 9.5(b)(ii):** under clause 9.5(b)(ii), the term "*Contracted Firm Capacity*" is used, put broadly for simplicity, as part of a list of Capacity Services one of which needs to be likely to be adversely impacted by a Shipper's Accumulated Imbalance exceeding the Accumulated Imbalance Limit for the Gas Day as a condition precedent to the Operator taking further action in respect to that excess.

In the context of this clause, the change to the definition of "*Contracted Firm Capacity*" is fair and reasonable, and in the net interest of Shippers and consumers, for the reasons set out in the discussion in respect of clause 5.3(g) (at paragraph 2.32(a)) above.

Definition of Daily Nomination

Daily Nomination means:

(a) in respect of a ~~Type of~~ Capacity Service at an Inlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is scheduled to Deliver to the Operator at the Inlet Point on a Gas Day under that ~~Type of~~ Capacity Service; and

(b) in respect of a ~~Type of~~ Capacity Service at an Outlet Point on a Gas Day - the Capacity for the quantity of Gas that the Shipper is scheduled to Receive from the Operator at the Outlet Point on a Gas Day under that ~~Type of~~ Capacity Service,

and in each case as ~~set out in the Initial Nomination~~scheduled under clause 8 for that Gas Day, and includes the Capacity for a revised quantity of Gas scheduled under a Renomination process.

Explanation/Submission

2.33 With respect to the insertion of the word "*scheduled*" in (a) and (b), we are fixing the drafting so as to clarify that the "*Daily Nomination*" describes what the Shipper is scheduled to Deliver and Receive at the relevant point on the Gas Day. The change is to clarify that the definition does not, and is not intended to, create any obligation upon the Shipper (or, for that matter, the Operator) to deliver such amounts. The obligations to Deliver and Receive Gas as per the Daily Nomination are in each case set out in the main body of the Contract.

2.34 With respect to the replacement of "*set out in the Initial Nomination*" with "*scheduled under clause 8*", this change is necessary as the Daily Nomination is not the same as the Initial Nomination (as described in clause 8.9(a)). Rather, the provisions of clause 8 are applied to the Initial Nomination to set the Daily Nomination (see for example clauses 8.9(c), 8.9(f) and 8.10) (and there can be a Daily Nomination in circumstances where there is no Initial Nomination or Advance Nomination – see clause 8.7).

2.35 The use of the term "Daily Nomination" throughout the Reference Contract is consistent with this being the figure scheduled in accordance with the rules in clause 8, rather than the amount requested by the Shipper prior to the application of those rules.

2.36 The foregoing changes to the definition of "*Daily Nomination*" are fair and reasonable, and in the net interest of Shippers and consumers because they serve to clarify the existing

intention of the Contract by removing a drafting inconsistency. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

2.37 With respect to the deletion of "*Type of*", this corrects a drafting error as the concept of "Type of Capacity Services" is relevant to the determination of priority in particular circumstances and is not properly applicable in the context of defining the figure for a "Daily Nomination".

Definition of Data, a new definition has been added:

Data means:

(a) bulk customer data;

(b) bulk personal information (being any holdings or files of personal information within the meaning of the Privacy Act 1988 (Cth) about multiple individuals which contain fields or categories); and

(c) data as to the quantum of gas delivered (both historical and current load demand) from or to any one or more sites (or their connection points),

relating to or obtained in connection with any AGIG entity's operations.

Explanation/Submission

2.38 This definition has been inserted for the purposes of clause 28.10 (FIRB Compliance).

2.39 Clause 28.10 is a new clause inserted to comply with conditions imposed upon the CKI Group by FIRB at the time of acquisition of the DBNGP under section 74(4) of the Foreign Acquisitions and Takeovers Act 1975 (Cth). The relevant condition requires any DBNGP Data to be stored within Australia and not taken outside of Australia. Clause 28.10 provides:

> *Unless otherwise agreed by the Operator, the Shipper acknowledges that the Data is subject to conditions imposed under section 74(4) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) and undertakes to ensure that all Data provided (or access to which is provided) to it by or on behalf of the Operator:*
>
> (a) *is stored only within Australia;*
>
> (b) *is accessible and maintained only from within Australia; and*
>
> (c) *will not be taken outside of Australia,*
>
> *except in circumstances where it is required to be accessed in order to comply with any law of the Commonwealth of Australia or any of its States and Territories.*

Definition of DBNGP

DBNGP means the Gas transmission pipeline system that runs between Dampier and Bunbury in Western Australia, described in section 2 of the Access Arrangement (as approved for the period ~~2016~~ 2021 – ~~2020~~2025) as expanded or amended from time to time to the extent that it is geographically located within the DBNGP Pipeline Corridor created under Part 4 of the DBP Act, as that Corridor exists at ~~the Execution Date~~1 January 2020.

Explanation/Submission

2.40 Update to refer to the next Access Arrangement period.

2.41 It is proposed to amend the definition of Execution Date to *the date on which the Access Request Form is signed by the last of the Parties to sign it* (refer paragraphs 2.45 to 2.48 below). This could be a multitude of dates depending upon when individual shippers seek a reference contract. Accordingly DBP have selected the date of 1 January 2020 to give certainty to the definition.

Definition of Dedicated Email Address, a new definition has been added:

Dedicated Email Address has the meaning given in clause 29.4(b).

Explanation/Submission

2.42 This definition was missing from clause 1 and is required because the term "Dedicated Email Address" is used in various provisions other than clause 29.4(b).

Definition of Excess Imbalance Charge

Excess Imbalance Charge means the charge payable by the Shipper identified in clause 9.5(e) ~~9.5(c)~~and clause 9.6(b).

Explanation/Submission

2.43 These cross referencing changes are required due to changes to clause 9 (Imbalances).

2.44 See paragraphs 9.17 - 9.28 which explain the changes which we have made to clause 9 (Imbalances).

Definition of Execution Date

Execution Date means the date on which ~~this Contract~~the Access Request Form is signed by the last of the Parties to sign it.

Explanation/Submission

2.45 Because most references to "*Execution Date*" have been changed to "*15 July 2019*" (for the reason which is explained in paragraph 1.3(b) above) this definition is no longer substantively used.

2.46 The remaining two usages are:

(a) in clause 5.14(d) (Shipper's gas installations);

(b) in the definition of "*Total Physical Capacity*".

2.47 We have changed the definition of "*Execution Date*" because the Contract may not be signed by the Parties. Rather, the Contract is formed by execution of the Access Request Form, in accordance with Schedule 1 item 8 which provides: "*In accordance with the Access Arrangement, this Access Request when executed by the Operator and the Pipeline Trustee*

and attached to the [T1/P1/B1] *Reference Service Terms and Conditions forms the Contract between the parties*".

2.48 The change to this definition is required to fix an error and, accordingly, provides a net benefit to shippers and consumers of gas.

Definition of Full Haul service

Full Haul ~~***service***~~ means a Gas transportation service on the DBNGP where the Inlet Point is upstream of mainline valve 31 (ML V~~A~~31) on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP.

Explanation/Submission

2.49 The change is to correct two typographical errors and, accordingly, provides a net benefit to shippers and consumers of gas.

Definition of GJ

A new definition has been added:

GJ means gigajoule.

Explanation/Submission

2.50 The change is to better align the Reference Contracts to the Negotiated Contracts. The change improves the drafting and, accordingly, provides a net benefit to shippers and consumers of gas.

Definition of Hourly Peaking Charge

Hourly Peaking Charge means the charge payable under clause 10.3(d) ~~10.3(b)~~ and clause 10.4(b).

Explanation/Submission

2.51 The first of these cross referencing changes is required to correct an error (as the previous cross reference to clause 10.3(b) was incorrect).

2.52 The second of these cross referencing changes is required due to the new clause 10.4 (Outer Hourly Peaking Limit). See paragraphs 10.19 - 10.26 which explain the addition of that clause.

Definition of Inlet Point

Inlet Point means an inlet point on the DBNGP ~~flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Delivery of Gas by it to the Operator~~ and, where the context requires, means a flange, joint or other point specified in clause 3.3(a) at which the Shipper has Contracted Capacity from time to time.

Explanation/Submission

2.53 The changes are to correct a drafting error and to better align the Reference Contracts with the Negotiated Contracts.

2.54 The term "*Inlet Point*" is used in two senses in the Reference Contracts. In some instances, the defined term "*Inlet Point*" is used to refer to any flange, joint or other point specified in clause 1.1(a) at which the Shipper has Contracted Capacity from time to time. In other instances, the defined term "*Inlet Point*" is referring more broadly to any inlet point on the DBNGP. If the second usage is confined to inlet points at which a shipper has Contracted Capacity from time to time (that is, if the definition is not changed as we have proposed) then such usage may undermine the rights otherwise granted to the Shipper under the Reference Contract. For example, a narrow (that is, unchanged) definition of "*Inlet Point*" may limit the points at which the Shipper can use the Aggregated Service and to which it may relocate capacity pursuant to clause 14, to those points at which a shipper has Contracted Capacity at the relevant time.

Definition of Kwinana Junction

Kwinana Junction has the meaning given in the pipeline description document [that forms Appendix A to the Access Arrangement (as approved for the period ~~2016~~ 2021 – ~~2020~~2025)].

Explanation/Submission

2.55 Update of defined term.

Definition of MHQ

MHQ means:

(a) ~~-~~for an Outlet Point on a particular Gas Day in respect of a shipper, ~~means~~ (subject to clause 17.7(c)(vi)) one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Outlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper; and

(b) for an Inlet Point on a particular Gas Day in respect of a shipper, ~~means~~ one twenty fourth of the sum of the quantities referred to as Contracted Capacity for that Inlet Point across all of the shipper's Capacity Services for that Gas Day in respect of that shipper.

Explanation/Submission

2.56 Correction of typographical errors.

Definition of National Gas Access (Western Australia) Law

National Gas Access (Western Australia) Law means the provisions applying because of section 7 of the *National Gas Access (WA) Act 2009* (WA), as changed from time to time, or any similar provisions specified in or made in accordance with any amendment or replacement of the *National Gas Access (WA) Act 2009* (WA).

Explanation/Submission

2.57 Improvement of drafting which is better aligned with the definition in the Negotiated Contracts. The improvement is not intended to effect any substantive change (as it is consistent with clause 2.1(e) (Construction generally)).

Definition of Notice

Notice includes a Tax Invoice, statement, demand, consent, request, application, notification and any other written communication, and includes such a notice communicated by means of ~~facsimile~~ email to a Dedicated Email Address or (if the Parties so agree) by the CRS.

Explanation/Submission

2.58 Aligns with update to include email as an approved form of delivery of formal Notices as per clause 29.4(b) of the Reference Contracts.

Definition of Original Capacity

Original Capacity has the meaning given in clause 4.3.

Explanation/Submission

2.59 Correction of typographical error.

Definition of Other Reserved Service

Other Reserved Service means a Capacity Service offered under a contract which, in the Operator's opinion acting reasonably, has a capacity reservation charge or an allocation reservation deposit or any material equivalent to such charge or deposit which is payable up front or from time to time in respect to the reservation of capacity under that contract for at least a reasonable time into the future (but at all times excluding a T1 Service, P1 Service, B1 Service, Aggregated Service, a Firm Service and Capacity under a Spot Transaction).

Explanation/Submission

2.60 Please see paragraphs 2.7(a) and 2.8 which explain the reason for the amendment to this definition.

Definition of Outer Accumulated Imbalance Limit, a new definition has been added:

Outer Accumulated Imbalance Limit has the meaning given in clause 9.6(a).

Explanation/Submission

2.61 The new definition is required due to the addition of new clauses 9.6(a) and (b) (Excess Imbalance Charge).

2.62 Please see paragraphs 9.19 - 9.28 which explain the addition of new clauses 9.6(a) and (b).

Definition of Outer Hourly Peaking Limit, a new definition has been added:

Outer Hourly Peaking Limit has the meaning given to it in clause 10.4(a).

Explanation/Submission

(a) The new definition is required due to the addition of a new clause 10.4 (Outer Hourly Peaking Limit).

(b) Please see paragraphs 10.19 - 10.26 which explain the addition of the new clause 10.4.

Definition of Outlet Point

Outlet Point means an outlet point on the DBNGP ~~a flange, joint or other point at which any shipper has Contracted Capacity from time to time for the Receipt by it of Gas from the Operator~~ and, where the context requires, means a flange, joint or other point referred to in clause 3.3(b) at which the Shipper has Contracted Capacity from time to time.

Explanation/Submission

2.63 The changes are to correct a drafting error and to better align the Reference Contracts with the Negotiated Contracts.

2.64 The term "*Outlet Point*" is used in two senses in the Reference Contracts. In some instances, the defined term "*Outlet Point*" is used to refer to any flange, joint or other point specified in clause 1.1(a) at which the Shipper has Contracted Capacity from time to time. In other instances, the defined term "*Outlet Point*" is referring more broadly to any outlet point on the DBNGP. If the second usage is confined to outlet points at which a shipper has Contracted Capacity from time to time (that is, if the definition is not changed as we have proposed) then such usage may undermine the rights otherwise granted to the Shipper under the Reference Contract. For example, a narrow (that is, unchanged) definition of "*Outlet Point*" may limit the points at which the Shipper can use the Aggregated Service and to which it may relocate capacity pursuant to clause 14, to those points at which a shipper has Contracted Capacity at the relevant time.

Definition of Overrun Gas

Overrun Gas means, for a particular Gas Day and for a particular shipper, Gas Received by that shipper (across all Outlet Points) less the aggregate of the quantities of Contracted Capacity across all of that shipper's Capacity Services (including T1 Service, P1 Service and B1 Service~~s~~ and any Capacity under Spot Transactions) (across all Outlet Points) on that Gas Day and, if the preceding calculation produces a negative result, Overrun Gas for that Gas Day equals zero.

Explanation/Submission

2.65 The box set out above shows the changes to the definition of "*Overrun Gas*" in the P1 Service Reference Contract. Analogous changes have been made to the definition of "*Overrun Gas*" in the T1 Service Reference Contract and the B1 Service Reference Contract.

2.66 The changes are to improve the drafting, for better alignment across the Reference Contracts (as Overrun Gas is calculated across all of the Shipper's contracts) and to better align the Reference Contracts to the Negotiated Contracts. The term "*Capacity Services*" clearly incorporates T1 Service, B1 Service and P1 Service, so the additional references do not change the meaning or operation of this definition or the relevant clauses under the Reference Contracts.

2.67 The changes are in the net interest of shippers and consumers because they improve the drafting of the Reference Contracts.

Definition of P1 Capacity Reservation Tariff

P1 Capacity Reservation Tariff, in all cases subject to clauses 0 and 0, has the meaning given in clause 15 of the Access Arrangement.~~has the meaning given in clause 3.4(c) of the Access Arrangement as adjusted by the Reference Tariff Variation Mechanism from time to time and subject to clause .~~

Explanation/Submission

2.68 The box set out above shows the changes to the definition of "*P1 Capacity Reservation Tariff*" in the P1 Service Reference Contract. Analogous changes have been made to the definition of "*B1 Capacity Reservation Tariff*" in the B1 Service Reference Contract and to the definition of "*T1 Capacity Reservation Tariff*" in the T1 Service Reference Contract (save that the changes to the definition of "*T1 Capacity Reservation Tariff*" in the T1 Service Reference Contract do not include the reference to clause 14.7, as such cross reference is not relevant to the "*T1 Capacity Reservation Tariff*").

2.69 The words "*subject to clause 14.7*" have been inserted so as to remind the reader that, where there is a relocation of Contracted Capacity as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7. This clarification is consistent with the effect and intent of the current drafting.

2.70 For completeness, we note that, as noted in paragraphs 12.19 to 12.34 below, clause 14.7 has not been substantively amended. Rather, the words used in that clause have been clarified and reformulated so as to align with the terms of the Access Arrangement for the period 2021 – 2025.

2.71 The words "*and 20.5(a)(iii)*" have been inserted so as to remind the reader that the quantum of the charges may be affected by tariff re-sets approved by the Regulator for any new Access Arrangement Periods over the term of the contract, in accordance with clause 20.5(a)(iii).

2.72 The changes to the relevant definitions are drafting improvements which do not have a net detrimental effect on shippers or consumers of gas.

Definition of P1 Commodity Tariff

P1 Commodity Tariff, in all cases subject to clauses 0 and 0, has the meaning given in clause 15 of ~~clause 3.4(c) of~~ the Access Arrangement~~ as adjusted by the Reference Tariff Variation Mechanism from time to time~~.

Explanation/Submission

2.73 The box set out above shows the changes to the definition of "*P1 Commodity Tariff*" in the P1 Service Reference Contract. Analogous changes have been made to the definition of "*B1 Commodity Tariff*" in the B1 Service Reference Contract and to the definition of "*T1 Commodity Tariff*" in the T1 Service Reference Contract (save that the changes to the definition of "*B1 Commodity Tariff*" in the B1 Service Reference Contract and to the definition of "*T1 Commodity Tariff*" in the T1 Service Reference Contract also include addition of the missing phrase "*as adjusted by the Reference Tariff Variation Mechanism from time to time*", and the changes to the definition of "*T1 Commodity Tariff*" in the T1 Service Reference

Contract do not include the reference to clause 14.7, as such cross reference is not relevant to the "*T1 Commodity Tariff*").

2.74 The words "*subject to clause 14.7*" have been inserted so as to remind the reader that, where there is a relocation of Contracted Capacity as contemplated by clause 14 (Relocation), the quantum of the charges may be affected by clause 14.7. This clarification is consistent with the effect and intent of the current drafting.

2.75 For completeness we note that, as noted in paragraphs 12.19 to 12.34 below, clause 14.7 has not been substantively amended. Rather, the words used in that clause have been clarified and reformulated so as to align with the terms of the Access Arrangement for the period 2020 – 2025.

2.76 The words "*and 20.5(a)(iii)*" have been inserted so as to remind the reader that the quantum of the charges may be affected by tariff re-sets approved by the Regulator for any new Access Arrangement Periods over the term of the contract, in accordance with clause 20.5(a)(iii).

2.77 The changes to the relevant definitions are drafting improvements which do not have a net detrimental effect on shippers or consumers of gas.

Definition of P1 Service

P1 Service in respect of the Shipper's Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts means a Forward Haul transportation service which is named in the relevant contract as P1 Service which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

(a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

(b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

~~3.4(a) of the Access Arrangement and means a service providing Part Haul capacity with priority as set out in the Curtailment Plan.~~

Explanation/Submission

2.78 The box set out above shows the changes to the definition of "*P1 Service*" in the P1 Service Reference Contract. Analogous changes have been made to the definition of "*T1 Service*" in the T1 Service Reference Contract and "*B1 Service*" in the B1 Service Reference Contract (and the analogous explanations apply thereto).

2.79 The words used are substantively the same[7] as the words used in the P1 Service Reference Contract in the definition of "*T1 Service*" and "*B1 Service*". And so the explanation set out above in relation to the amendments to the definition of *"B1 Service*" are generally applicable.

2.80 In particular, the term "*P1 Service*" is used to identify all Forward Haul transportation services which are named as a "*P1 Service*" and thus are treated in a particular (equal) way in the Curtailment Plan and the nominations priority rule in clause 8.10(a). It cannot be limited only

[7] That is, they are the same except for:
- the opening words "*in respect of the Shipper's Capacity Service under this Contract has the meaning given in clause 3.2, and in respect of other shippers and other contracts*";
- the use of "*P1 Service*" instead of "*B1 Service*" and *"T1 Service*" respectively; and
- the use of "*Forward Haul*" instead of (in the definition of *"B1 Service*") "*Back Haul*".

to the services as described in the Access Arrangement or on the terms of the Access Contract (as per the deleted reference to clause 3.4(a) of the Access Arrangement) because:

(a) if the changes are not made, then according to the Reference Contract, P1 Service can only be offered under a Reference Contract (that is, if the words remained as they are, "P1 Service" would exclude all services which are not provided by way of a Reference Contract (even though such services are named as P1 Service, contracted for as P1 Service and defined as P1 Service under the relevant non-Reference Contract)); and

(b) P1 Service cannot have a different meaning across different contracts for the relevant Capacity Service. This is because, among other things, the term "*P1 Service*" is used in the Curtailment Plan and P1 Service under a Reference Contract must be treated equally with all other P1 Services under Negotiated Contracts under the Curtailment Plan and the nominations priority rule in clause 8.10.

2.81 The reference to clause 3.4(a) of the Access Arrangement has the effect that a Negotiated Contract for P1 Service may not, despite what was negotiated and bargained for by the shipper, be regarded as "P1 Service" as that term is used in the Reference Contracts merely because the Negotiated Contract can be curtailed in additional circumstances. Explaining further, because of the words "*without interruption or curtailment except as permitted by the Access Contract*" in clause 3.4(a) of the Access Arrangement, if the words "*has the meaning given in clause 3.4(a) of the Access Arrangement*" were to remain in the definition, then any terms in a Negotiated Contract which allow the Operator to Curtail the Capacity Service under the Negotiated Contract in more circumstances than under the Reference Contract would (from the perspective of the Reference Contract) preclude the Capacity Service under the Negotiated Contract from being characterised as a P1 Service, even if the Capacity Service was/ has been negotiated as a P1 Service under the Negotiated Contract.[8]

2.82 If the reference to clause 3.4(a) of the Access Arrangement is retained, the differences between the shipper contracts appear to lead to irreconcilable differences in the application of the Curtailment Plan and the nominations priority rule in clause 8.10 (which rely on a consistent application of concepts across contracts for Capacity Services without being undermined by bespoke negotiated differences permitted by clause 45 of the Negotiated Contracts). This is because, if the words remain as they are, a Negotiated Contract which offers a P1 Service (and therefore offers a certain priority in the Curtailment Plan) may not be regarded as P1 Service (and therefore will not hold that certain priority in the Curtailment Plan) under the P1 Service Reference Contract. In our view, there is no practical reason why the Reference Contract (by including definitions which undermine the shared use concept across Capacity Services) should create confusion as to, and potentially undermine, the order of Curtailment set out in the Curtailment Plan and the expectations of shippers with Negotiated Contracts for P1 Service and shippers who obtain P1 Reference Services that their P1 Service ranks equally with all other P1 Services when the Curtailment Plan is applied.

2.83 Further, it is important to note that the words themselves (i.e. the words "*has the meaning given in clause 3.4(a) of the Access Arrangement*") do not provide a net benefit to shippers or to consumers of gas.[9] The restrictions on Curtailment of the P1 Service under the P1

[8] **Note to ERA:** of course, it also appears that if the words are not deleted from the definition then, from the perspective of the Negotiated Contracts, the P1 Service under the Reference Contract cannot be a P1 Service for the application of the Curtailment plan and nominations regime under the Negotiated Contracts (because that service then fails the 'equal treatment' tests.

[9] **Note to ERA:** for completeness, we note that WESCEF has in the past expressed concern over the removal of the words: "*can only be Curtailed in the circumstances specified in clause 17.2*". According to paragraph 1415 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020: "*WESCEF expressed concern over the removal of* [the relevant words]. *WESCEF believed the change would amend the certainty of the T1 and P1 Services in the interests of DBP and was adverse to the*

Service Reference Contract (which are the same as the restrictions on Curtailment of the B1 Service under the B1 Service Reference Contract and the T1 Service under the T1 Service Reference Contract, save for the proposed addition of clause 17.2(f) in the B1 Service Reference Contract) apply regardless of whether or not the words are included in the definition of "P1 Service". The only potential impact of retaining the words is to affect whether P1 Service granted under a Negotiated Contract is potentially at risk of not being treated the same as a P1 Service under the P1 Service Reference Contract. The words place an implicit restriction/ dissuasion upon the parties to a Negotiated Contract agreeing to be Curtailed under the Negotiated Contract in more circumstances than the Reference Contract (by undermining the characterisation of that Negotiated Contract as P1 Service and thereby creating confusion as to how the Curtailment Plan is to be applied). If a party under a Negotiated Contract agrees to greater Curtailment in some circumstances[10] (vis-a-vis the Reference Contract) then this is to the benefit, not the detriment, of the holder of a Reference Contract. For completeness, we note that the existence of the Curtailment Plan has the practical effect of precluding a shipper negotiating a P1 Service with a greater priority upon Curtailment than as set out in the Curtailment Plan.

2.84 The reason why the definition of P1 Service cannot refer to it being "*Part Haul*" (and the analogous comment applies to the definition of T1 Service and why it cannot refer to it being "*Full Haul*") is as follows:

(a) in past regulatory submissions, DBP has requested that the definitions of "*Full Haul*" and "*Part Haul*" in the Reference Contracts be aligned to the corresponding definitions in the Negotiated Contracts;

(b) in the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020, the request for alignment was rejected by the ERA;

(c) because of (b), the Reference Contracts contain a different definition for "*Full Haul*" and "*Part Haul*" to the corresponding definitions in the Negotiated Contracts;

(d) because of (c), we cannot define the P1 Service in the Reference Contract by reference to it being "*Part Haul*". This is because, if the words "*Part Haul*" were included as an element of the definition of P1 Service in the Reference Contract, then a Negotiated Contract for P1 Service may not, despite what was negotiated and bargained for by the Shipper under that Negotiated Contract, be regarded as P1 Service as that term is used in the Reference Contract (including, most concerningly, in the Curtailment Plan in the Reference Contract) merely because the Negotiated Contract is not "Part Haul" as that term is (differently) defined in the Reference Contract;

(e) because of (d), unless the reference to the P1 Service being "*Part Haul*" is removed from the definition of "P1 Service" in the Reference Contract, the difference in terminology between the shipper contracts (as to the meaning of "Part Haul") appears to lead to irreconcilable differences in the application of the Curtailment Plan and the nominations priority rule in clause 8.10 in the Reference Contracts vis-a vis the Negotiated Contracts (as the Curtailment Plan and the nominations priority rule both rely on a consistent application of concepts across contracts for Capacity Services). This is because, if the words remain as they are, a Negotiated Contract which on its terms offers P1 Service (and therefore

interests of shippers, hence, [the relevant words] *should not be deleted*." If paragraph 1415 correctly sets out WECEF's position then, with respect, we do not agree with WESCEF insofar as they appear to be suggesting that the deletion of the words are adverse to the legitimate interests of shippers. We strongly suggest, for the reasons set out in paragraphs 2.25 - 2.27 of our submissions, that the deletion of the words has a net benefit to shippers and consumers of gas.

[10] which it may do, so as to achieve some other negotiation goal.

offers a certain priority in the Curtailment Plan), but which is not "Part Haul" as that term is defined in the Reference Contracts, may not be regarded as P1 Service (and therefore will not hold that certain priority in the Curtailment Plan) from the perspective of the P1 Service Reference Contract. In our view, there is no practical reason why the Reference Contract (by including definitions which undermine the shared use concept across Capacity Services) should create confusion, and undermine, the order of Curtailment set out in the Curtailment Plan and the expectations of shippers with Negotiated Contracts for P1 Service and shippers who obtain P1 Service under a Reference Contract that their P1 Service ranks equally with all other P1 Services when the Curtailment Plan is applied.

(f) For completeness we note that we are not suggesting that the P1 Service Reference Contract will not grant a Part Haul Capacity Service. The extent of the service offered under the P1 Service Reference Contract is made clear by clause 3.2(a) of the Reference Contract.

2.85 The changes to the relevant definitions are drafting improvements which, accordingly, provide a net benefit to shippers and consumers of gas.

Definition of P1 Tariff

P1 Tariff, in all cases subject to clauses 14.7 and 20.5(a)(iii), has the meaning given in clause 15 of the Access Arrangement. ~~means the reference tariff for P1 Service as set out in clauses 3.4 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time.~~

Explanation/Submission

2.86 The box set out above shows the changes to the definition of "*P1 Tariff*" in the P1 Service Reference Contract. Analogous changes have been made to the definition of "*T1 Tariff*" in the T1 Reference Contract and "*B1 Tariff*" in the B1 Reference Contract (and the analogous explanations apply thereto).

2.87 The words "*subject to clause 14.7*" have been inserted so as to remind the reader that, where there is a relocation of Contracted Capacity as contemplated by clause 14 (Relocation), the quantum of the charges may be affected by clause 14.7. This clarification is consistent with the effect and intent of the current drafting.

2.88 For completeness we note that, as noted in paragraphs 12.19 to 12.34 below, clause 14.7 has not been substantively amended. Rather, the words used in that clause have been clarified and reformulated so as to align with the terms of the Access Arrangement for the period 2020 – 2025.

2.89 The words "*and 20.5(a)(iii)*" have been inserted so as to remind the reader that the quantum of the P1 Tariff may be affected by clause 20.5(a)(iii). Again, this clarification is consistent with the effect and intent of the current drafting.

2.90 The changes to the relevant definitions are drafting improvements which do not have a net detrimental effect on shippers or consumers of gas.

Definition of Part Haul service

Part Haul ~~***service***~~ means a pipeline service to provide Forward Haul on the DBNGP which is not a ~~full~~ Full ~~haul~~ Haul service and which includes, without limitation:

- services where the Inlet Point is upstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP;

- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is downstream of Compressor Station 9 on the DBNGP; and
- services where the Inlet Point is downstream of main line valve 31 on the DBNGP and the Outlet Point is upstream of Compressor Station 9 on the DBNGP.

Explanation/Submission

2.91 The change is to correct two typographical errors. The changes do not have a net detrimental effect on shippers or consumers of gas.

Definition of Party

Party means the Operator or the Shipper or, where the context requires, the Pipeline Trustee ~~or the DBNGP Trustee (as the case may be)~~ and, if the Shipper comprises more than one person, includes each such person.

Explanation/Submission

2.92 The role of, and provisions regarding, the DBNGP Trustee (DBNGP Holdings Pty Ltd) were removed from the Reference Contract terms and conditions in a previous Access Arrangement period – this reference was left in by oversight.

2.93 This change does not have a net detrimental effect on shippers or consumers of gas.

Definition of Period

Period means, in respect of the Shipper's Contracted Capacity, a Season or a Gas Month as the case may be for which the Shipper's Contracted Capacity is quantified.

Explanation/Submission

2.94 The change is to correct two typographical errors. The change does not have a net detrimental effect on shippers or consumers of gas.

Definition of Reference Tariff Variation Mechanism

Reference Tariff Variation Mechanism means the mechanism for varying the ~~P1~~ "Reference Tariff" (as that term is defined in the Access Arrangement) as set out in section 11 of the Access Arrangement.

Explanation/Submission

2.95 To better align with the actual terms of the Access Arrangement.

Definition of Regulator

Regulator means ~~***local R***~~"regulator" as ~~this~~ that term is defined in section ~~11~~ 9 of the *National Gas ~~Pipelines~~ Access (~~Western Australia~~WA) Act ~~1998~~ 2009* (WA) in relation to the DBNGP, being the ERA.

Explanation/Submission

2.96 The change is to update the drafting to reflect the current legislation.

Definition of Relevant Construction Costs

Relevant Construction Costs means the Relevant Inlet Point Connection Facilities Construction Costs, Relevant Outlet Station Construction Costs or Relevant Gate Station Construction Costs (as the case may require).

Explanation/Submission

2.97 The addition of a reference to "Relevant Inlet Point Connection Facilities Construction Costs" corrects an error in that it is clearly intended by clause 6.11(a) that "Relevant Construction Costs" may refer to costs in relation to Inlet Stations (see the references to "Inlet Station" in clause 6.11(a)).

2.98 The addition of a reference to "Relevant Gate Station Construction Costs" is required as a result of the changes to clause 6.8 to split out the regime in relation to Gate Stations from the regime in relation to other Outlet Stations. See paragraphs 7.11 to 7.16 in relation to those changes.

Definition of Reserved Capacity

Reserved Capacity means, subject to any changes from time to time made pursuant to the Curtailment Plan:

(a) the Distribution Networks IPQ, Alcoa's Priority Quantity, Alcoa's Exempt Delivery Entitlement;

(b) Capacity referred to in any contract for a ~~Type of~~ Capacity Service as "Contracted Capacity" where such "Contracted Capacity" may, at the relevant time, be nominated for delivery to the relevant Inlet Point or Outlet Point (if any) pursuant to that Capacity Service (regardless of the level of interruptibility of the service at an Inlet Point or an Outlet Point (as the case may be)).

Explanation/Submission

2.99 Fixes a drafting error (as "*Type of Capacity*" describes all Capacity Services in the same row of the Curtailment Plan (for example, T1 Service, P1 Service and B1 Service are all the same "Type of Capacity Service"), whereas a contract will generally be for a subset of such Capacity Services (such as T1 Service only)).

Definition of Share of the Distribution Networks' IPQ

~~Share~~ share of the Distribution Networks' IPQ means a shipper's pro-rata share of the Distribution Networks' IPQ, based on its Nominations into the Distribution Networks, unless the Distribution Networks Shippers all agree to a different allocation policy and advise the Operator thereof.

Explanation/Submission

2.100 The change is to correct a typographical error. The change does not have a net detrimental effect on shippers or consumers of gas.

Definition of Shipper

Shipper means the party ~~so described where the parties to this Contract are named on its first page~~described as the Prospective Shipper in the Access Request Form.

Explanation/Submission

2.101 We have changed the definition of "*Shipper*" because the Reference Contract does not actually contemplate the naming of Parties on the first page.

2.102 The change to this definition is required to fix an error and does not have a net detrimental effect on shippers or consumers of gas.

Definition of T1 Service

T1 Service ~~has the meaning given in clause 3.3(a)~~means a Forward Haul transportation service which is named in the relevant contract as T1 Service and which gives the shipper a right, subject to the terms and conditions of the relevant contract, to access capacity of the DBNGP and which:

(a) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

(b) is treated the same in the Nominations Plan as all other shippers with a T1 Service, P1 Service or B1 Service, and in the order of priority with respect to other Types of Capacity Service, referred to in clause 8.10.

~~of the Access Arrangement and means a service providing Full Haul capacity with priority as set out in the Curtailment Plan.~~

Explanation/Submission

2.103 The box set out above shows the changes to the definition of "*T1 Service*" in the P1 Service Reference Contract and the B1 Service Reference Contract. The changes to the definition of "*T1 Service*" in the T1 Reference Contract are slightly different (they are analogous to the changes to the definition of "*P1 Service*" in the P1 Service Reference Contract - see the comments with respect to the definition of "P1 Service" above).

2.104 The changes are made to correct a drafting anomalies, typographical errors and cross referencing.

2.105 The reasons for the changes are as set out in relation to the changes to the definition of "B1 Service" at paragraphs 2.22 - 2.28 above and the changes to the definition of "P1 Service" at paragraphs 2.80 - 2.85**Error! Reference source not found.** above. See paragraph 2.84 for the reason why the definition of "T1 Service" should not use the term "*Full Haul*".

Definition of T1 Tariff

Changes in the P1 Service Reference Contract and the B1 Service Reference Contract only

T1 Reference Tariff means the reference tariff for T1 Service set out in clause~~s~~ 3.3 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the T1 Reference Tariff shall be re-set to reflect any replacement reference tariff for T1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

Explanation/Submission

2.106 The change to add the word "*Reference*" to the defined term is to correct a typographical error in the P1 Service Reference Contract and the B1 Service Reference Contract. The term "T1 Reference Tariff" is used in Schedule 2 in those Reference Contracts.

2.107 The addition of the phrase "*save that the T1 Reference Tariff shall be re-set to reflect any replacement reference tariff for T1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract*" is to reflect the position with respect to the relevant tariff as described in clause 20.5(a)(iii) of the Reference Contracts.

Definition of TJ

A new definition has been added:

TJ means terajoule.

Explanation/Submission

2.108 The change is to align the Reference Contracts with the Negotiated Contracts. The change improves the drafting and, accordingly, provides a net benefit to shippers and consumers of gas.

3. Clause 2 – General

Clause 2.4 Other contracts

Where the context requires, a term which is defined in this Contract (including P1 Service, T1 Service, B1 Service, Aggregated P1 Service, Aggregated T1 Service, Aggregated B1 Service, Other Reserved Service, Contracted Capacity, and Total Contracted Capacity) includes the same concept in any other contract in relation to the Shipper or in relation to any other shipper (as the case may require).

Explanation/Submission

3.1 The changes are part of the correction of a drafting error in the defined term "Other Reserved Service" (that is, to make it clear that the Aggregated Services are not Other Reserved Services) and to better align the Reference Contracts with the Negotiated Contracts, providing a net benefit to shippers and consumers of gas.

Clause 2.5(e) System Operator

The Operator must procure that the System Operator complies with the requirements of Ring Fencing Arrangements of Part 2 of Chapter 4 of the *National Gas Access (Western Australia) Law* as if it were a 'covered pipeline ~~S~~service ~~P~~provider' for the purposes of that ~~section~~Part.

Explanation/Submission

3.2 The change from "section" to "Part" corrects a drafting error and the other changes are made so as to align clause 2.5(e) with the terminology used in Part 2 of Chapter 4 of the *National Gas Access (Western Australia) Law*.

4. Clause 3 – Capacity Service

Clause 3.2(a) Capacity Service

(d) The P1 Service is the Part Haul Gas transportation service ~~provided under this Contract~~ which gives the Shipper a right~~, subject to the terms and conditions of this Contract, to~~ of access ~~capacity of the DBNGP~~to Gas Transmission Capacity and which ~~(subject in all cases to clauses 8.17 and 17.9)~~:

~~(i) can only be Curtailed in the circumstances specified in clause 17.2;~~

~~(ii)~~(i) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service~~, or a P1 Service under the Standard Shipper Contract,~~ and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and

~~(iii)~~(ii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service~~, or a P1 Service under the Standard Shipper Contract,~~ and in the order of priority with respect to other Types of Capacity Service referred to in clause ~~8.8~~8.10.

Explanation/Submission

4.1 The box set out above shows the changes to clause 3.2(a) in the P1 Service Reference Contract. Analogous changes have been made to clause 3.2(a) in the T1 Service Reference Contract and the B1 Service Reference Contract (with all necessary changes).

4.2 Please see the explanation in paragraphs 2.80 - 2.85**Error! Reference source not found.** (in relation to the definition of "*P1 Service*"), which explains the reason for the majority of the changes.

4.3 In addition to the changes referred to in paragraph 4.2 above, there are two other changes to this clause that may warrant further explanation.

4.4 Firstly, we have deleted references in this clause to (in various forms) the terms and conditions of this Contract. The reason for this is as follows:

(a) in each Reference Contract, clause 3.1 states that the Parties agree that the particular Capacity Service being provided under that contract (being "*T1 Service*", "*P1 Service*" or "*B1 Service*") is offered by the Operator, and accepted by the Shipper, on the terms and conditions of that Contract;

(b) clause 3.2(a) performs a different function to clause 3.1 – clause 3.2(a) only serves to provide a definition of "*T1 Service*", "*P1 Service*" or "*B1 Service*" (as the case may be) in terms of the priority rights of that Capacity Service. It does not grant the Shipper unencumbered "*T1 Service*", "*P1 Service*" or "*B1 Service*" (rather, as mentioned in the previous paragraph, the grant and acceptance of that Capacity Service is contained in clause 3.1 (and it is therein limited to the terms and conditions of the particular contract)).

4.5 Secondly, we have deleted "*or a P1 Service under the Standard Shipper Contract,*" for the simple reason is that the deleted words are unnecessary, confusing, and raise doubts as to the interpretation, since we do not then list all other examples of P1 Service, T1 Service and B1 Service (such as under Negotiated Contracts)).

4.6 The changes have a net beneficial effect on shippers or consumers of gas as they clarify how the Reference Contract works, decreases the discrepancies between usages of

relevant terms, and lowers the probability of disputes (particularly regarding priority in Curtailment scenarios).

Clause 3.2(b) Capacity Service

(b) The Operator acknowledges and agrees:

(i) Tranche 1 Capacity in the DBNGP comprises the amount of Gas Transmission Capacity which lies between zero and the T1 Cut-off;

(ii) the T1 Cut-off is the amount of Gas Transmission Capacity at which the probability of supply for the next GJ of Gas to be transported in the DBNGP to any Outlet Point downstream of Compressor Station 9 is 98% for each Period of a Gas Year;

(iii) whenever there is a material change (other than a short term change) in the configuration of the DBNGP which will or might change the probability of supply at the T1 Cut-off for any or all Periods in a Gas Year, Operator, acting as a Reasonable and Prudent Person, shall undertake a re-determination in accordance with clause 3.2(b)(ii) of the T1 Cut-off for each Period in which the T1 Cut-off has changed; and

(iv) acting as a Reasonable and Prudent Person, Operator shall ensure that the sum of:

(A) T1 Service (including under this Contract) which it has contracted to provide to Shipper and all other shippers; and

(B) Alcoa's Exempt Capacity,

does not materially exceed the amount of T1 Capacity in the DBNGP (which shall be calculated on the assumption that all Gas Delivered into the DBNGP has a Higher Heating Value of 37.0 MJ/m3).

Explanation/Submission

4.7 The changes align the Reference Contracts to the terms of the Negotiated Contracts and add clarity. The changes have a net beneficial effect on shippers or consumers of gas as they clarify how the Contract works and reflect how the pipeline's operations are required to be measured in practice.

Clause 3.2(c) Capacity Service

(c) Shipper acknowledges and agrees that, subject to clause 14, the ~~T1~~ P1 Service under this Contract is a ~~Full~~ Forward Haul ~~Service~~ service and cannot be:

(i) Back Haul; or

(ii) ~~Part~~ Full Haul.

Explanation/Submission

4.8 The box set out above shows the changes to clause 3.2(c) in the P1 Service Reference Contract and corrects anomalies in the current P1 and B1 Service Reference Contracts. We have aligned clause 3.2(c) under the B1 Service Reference Contract to the foregoing approach.

4.9 We have changed clause 3.2(c) in each of the P1 Service Reference Contract and the B1 Service Reference Contract so that they refer to the "*P1 Service*" and the "*B1 Service*", and the characteristics of those services, respectively, rather than describing "*T1 Service*". This tidy up does not have any negative flow on effects (other than to provide greater clarity, consistent with the patent intent of the Reference Contracts, as to the nature of the Capacity Service being offered and accepted under the relevant contract itself).

4.10 We have also inserted the words "*under this Contract*" into clause 3.2(c) in each of the P1 Service Reference Contract, T1 Service Reference Contract and the B1 Service Reference Contract. The reason for this change is as follows:

(a) in past regulatory submissions, DBP has requested that the definitions of "*Full Haul*" and "*Part Haul*" in the Reference Contracts be aligned to the corresponding definitions in the Negotiated Contracts;

(b) in the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016-2020, the request for alignment was rejected by the ERA;

(c) because of (b), the Reference Contracts contain a different definition for "*Full Haul*" and "*Part Haul*" to the corresponding definitions in the Negotiated Contracts;

(d) because of (c), for the reasons outlined earlier (in relation to the changes to the definitions of "*T1 Service*", "*P1 Service*" and "*B1 Service*"), it is important that the Reference Contracts avoid statements that may indicate that:

(i) "*T1 Service*" (as a general concept used across contracts) is defined as being "*Full Haul*" as the term "*Full Haul*" is defined in the Reference Contract (and therefore may not capture services described as T1 Service under Negotiated Contracts). So we have changed clause 3.2(c) in the T1 Service Reference Contract so that it only makes such statement in respect to the T1 Service "*under this Contract*"; and

(ii) "*P1 Service*" (as a general concept used across contracts) is defined as being "*Part Haul*" as the term "*Part Haul*" is defined in the Reference Contract (and therefore may not capture services described as P1 Service under Negotiated Contracts). So we have changed clause 3.2(c) in the P1 Service Reference Contract so that it only makes such statement in respect to the P1 Service "*under this Contract*".

4.11 The changes have a net beneficial effect on shippers or consumers of gas as they clarify how the Contract works, decreases the discrepancies between usages of relevant terms and lowers the probability of disputes (particularly regarding priority in Curtailment scenarios).

Clause 3.3 Contracted Capacity

~~The~~ Subject to this Contract, the Shipper's ***Contracted Capacity*** for each Gas Day within a Period under this Contract:

(a) at an Inlet Point specified in the Access Request Form - is the amount for P1 Service set out (adjacent to that Inlet Point) in the Access Request Form for that Period; and

(b) at an Outlet Point specified in the Access Request Form - is the amount for P1 Service set out (adjacent to that Outlet Point) in the Access Request Form for that Period.

Explanation/Submission

4.12 The changes:

(a) better align the Reference Contracts to the terms of the Negotiated Contracts and provide clarity;

(b) are clarifications / drafting improvements - with respect to the words "*Subject to this Contract*", see for example clause 17.7(e) and with respect to the phrase "*adjacent to that…*", an Access Request Form may include multiple Inlet Points / Outlet Points with different amounts for each point; and

(c) have a net beneficial effect on shippers or consumers of gas as they clarify how the Contract works and lowers the probability of disputes.

5. Clause 4 – Duration of the Contract

Clause 4.8 Put and call of Options

(a) If the Operator receives a duly completed access request form from a shipper or prospective shipper (**Third Party Access Request**) which specifies a start date for the requested service occurring more than 12 months prior to the Shipper's Capacity End Date, and at the time when the service requested in the Third Party Access Request will be required there is or is reasonably likely to be insufficient Capacity to meet the requirements of the Third Party Access Request and the Shipper has one or more Options that it has not exercised, then the Operator must give a written notice to the Shipper as soon as practicable after receipt of the access request form from the other shipper:

(i) confirming receipt of the Third Party Access Req~~i~~uest, the start date for the requested service and the amount of Contracted Capacity which is requested in the Third Party Access Request; and

(ii) requiring the Shipper to confirm whether the Shipper intends to exercise its available Options or wishes for those Options to lapse;

(b) No later than 45 days after receipt of the Operator's notice issued under clause 4.8(a) and notwithstanding clause 4.5, ~~a~~ Shipper may give written notice to the Operator that it wishes to exercise its available Options. If such notice is not given before such time or the Shipper confirms that it wishes for those Options to lapse, the Options lapse~~d~~, are of no force and effect whatsoever, and cannot be exercised.

Explanation/Submission

5.1 Insertion of 'prospective shipper' clarifies that notice to existing Shippers under clause 4.8(a) must be provided where both existing and new shippers submit a Third Party Access Request. Purpose is to clarify and avoid any dispute about the operation of this clause.

5.2 Amendments to clause 4.8(b) clarify the Shipper who is to provide notice and corrects grammatical error.

6. Clause 5 – Receiving and Delivering Gas

Clause 5.3(a)(iii) Operator may refuse to Receive Gas

clause 9.8(c)~~9.7(b)~~ (Remedies for breach of imbalance limits); and

Explanation/Submission

6.1 Correction of incorrect cross reference. Clause 9.7(b) refers to allowing the Shipper to exceed the Accumulated Imbalance Limit in circumstances where that Shipper's Gas supply has failed and the Operator considers it technically practicable to do so, not refusal to receive gas. Clause 9.8(c) refers to refusal to receive gas as a remedy for a Shipper exceeding the Accumulated Imbalance Limit.

6.2 This change is to correct an obvious error. Improves efficiency by ensuring the Reference Contracts are correctly drafted and reduces potential for dispute.

Clause 5.3(g)(ii) Operator may refuse to Receive Gas

the Receipt of that Gas for a Gas Day at an Inlet Point is in excess of the aggregate of all the Shipper's Contracted Capacity, in respect of that Inlet Point for that Gas Day,

Explanation/Submission

6.3 Correct reference to defined term.

Clause 5.7(a)(iii) Operator may refuse to Deliver Gas

clause 9.8(c)~~9.7(b)~~ (Remedies for breach of imbalance limit)

Explanation/Submission

6.4 Correction of incorrect cross reference. Clause 9.7(b) refers to allowing the Shipper to exceed the Accumulated Imbalance Limit in circumstances where that Shipper's Gas supply has failed and the Operator considers it technically practicable to do so, not refusal to receive gas. Clause 9.8(c) refers to refusal to receive gas as a remedy for a Shipper exceeding the Accumulated Imbalance Limit.

6.5 This change is to correct an obvious error. Improves efficiency by ensuring the Reference Contracts are correctly drafted and reduces potential for dispute.

Clause 5.7(a)(iv) Operator may refuse to Deliver Gas

clause 10.3(a)(iv)~~10.3(a)(ii)~~ (Consequences of exceeding Hourly Peaking Limit);

Explanation/Submission

6.6 Correction of incorrect cross reference. Clause 10.3(a)(ii) refers to the requirement that a Shipper exceeding the Hourly Peaking Limit adversely impact on another Capacity Service before the Operator may refuse to Delivery Gas. Clause 10.3(a)(iv) refers to refusal to deliver gas as a remedy for a Shipper exceeding the Hourly Peaking Limit.

6.7 This change is to correct an obvious error. Improves efficiency by ensuring the Reference Contracts are correctly drafted and reduces potential for dispute.

Clause 5.7(a)(v) Operator may refuse to Deliver Gas

clause 10.6(c)~~10.5(c)~~ (Remedies for breach of Peaking Limits);

Explanation/Submission

6.8 Correction of incorrect cross reference. Clause 10.5(c) refers to the requirement that a Shipper exceeding the Hourly Peaking Limit adversely impact on another Capacity Service before the Operator may refuse to Delivery Gas. Clause 10.6(c) refers to refusal to deliver gas at an Outlet Point as a remedy for a Shipper exceeding the Hourly Peaking Limit, in accordance with clause 10.3(a)(iv) (see above).

6.9 This change is to correct an obvious error. Improves efficiency by ensuring the Reference Contracts are correctly drafted and reduces potential for dispute.

Clause 5.7(d), (e) and (f) Operator may refuse to Deliver Gas

(d) to the extent that the Operator considers as a Reasonable and Prudent Person that it would be unsafe to Deliver that Gas or that such Delivery may exceed the Total Current Physical Capacity of the relevant Outlet Point; ~~and~~

(e) to the extent that the Shipper has not entered into any agreement in relation to that Outlet Point required by clause 6.13; and

~~(c)~~(f) to the extent that the Delivery of that Gas for a Gas Day at an Outlet Point is in excess of the aggregate of all the Shipper's Contracted Capacity in respect of that Outlet Point for that Gas Day, if the Operator considers as a Reasonable and Prudent Person, that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Outlet Point.

Explanation/Submission

6.10 New paragraph 5.7(f) gives the Operator an express right under the Reference Contract to refuse to Deliver to the Shipper more than the Shipper's Contracted Capacity at a particular Outlet Point if doing so would interfere with any other shipper's Contracted Firm Capacity at that Outlet Point.

6.11 The purpose of this change is to fix an anomaly whereby the equivalent of clause 5.3(g)(ii) (which applies to Inlet Points) had not been replicated in 5.7 (which applies to Outlet Points).

6.12 We note that the change only allows a refusal to Deliver amounts which are in excess of Contracted Capacity at the relevant Outlet Point, which is consistent with the general rule that Contracted Capacity at a point has priority at that point. By protecting shippers' rights to the capacity they have specifically contracted for at a particular point (by allowing the Operator, in limited circumstances, to refuse to Deliver to other shippers to the extent those others wish to take amounts above their Contracted Capacity at that particular point), this change is in the interests of consumers of natural gas with respect to reliability and security of supply of natural gas, thereby achieving the NGO.

6.13 In addition to the limitation that only amounts above Contracted Capacity at the point can be refused, the new paragraph (f) is limited to circumstances where the Operator considers, as a Reasonable and Prudent Person, that to Deliver such excess amounts would interfere with other shippers' rights to their Contracted Firm Capacity at the relevant Outlet Point.

Clause 5.14(b) Shipper's gas installations

(b) The Shipper must, at its cost:

(i) in accordance with the *Gas Standards Act 1972* (WA) appoint an inspector to inspect:

(A) any gas installation ~~installed~~ used or to be used by it, or any of its Related Bodies Corporate, to which gas from the ~~Shipper after the Execution Date~~DBNGP flows or may flow, prior to the commencement of any Delivery ~~of Gas~~ by the Operator of Gas which flows or may flow to such gas installation; or

(B) any gas installation that has been altered by, or on behalf of it, or any of its Related Bodies Corporate,~~the Shipper after the Execution Date~~ by the installation of a Type B gas appliance, prior to any further Delivery, by the Operator, of Gas which flows or may flow to such gas installation ~~by the Operator~~;

(ii) provide evidence of the completion of an inspection under clause 5.14(b)(i) to the Operator~~, including confirmation that the gas installation is compliant with the *Gas Standards Act 1972* (WA)~~; and

(iii) ensure that ~~once installed its~~ gas installations used by it, or any of its Related Bodies Corporate, comply ~~at all times~~ with the requirements specified under all relevant Environmental and Safety Laws including the *Gas Standards Act 1972* (WA) and *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999* (WA).

Explanation/Submission

6.14 The changes to clause 5.14(b) align the drafting in the Reference Contracts with the equivalent clause in the Negotiated Contracts. These changes were made to the SSC in about 2007 to reflect changes in legislation.

6.15 The words "*including confirmation that the gas installation is compliant with the Gas Standards Act 1972 (WA)"* in sub-clause 5.14(b)(ii) are not required, as compliance is captured by the first line in clause 5.14(b)(i).

Clause 5.14(d) Shipper's gas installations

If any gas installation is installed by the Shipper after the Execution Date, the Operator is not obliged to commence Delivery of Gas until the gas installation is inspected in accordance with clause 5.14(b)(i) and evidence confirming compliance with the *Gas Standards Act 1972* (WA) is provided to the Operator in accordance with clause 5.14(b)(ii)~~5.14(b)(iii)~~.

Explanation/Submission

6.16 Correction of cross referencing error. Clause 5.14(b)(iii) refers to compliance with all relevant Environmental and Safety Laws and gas standards and fitting laws. Clause

5.14(b)(ii) is the provision that requires provision of evidence of completion of an inspection to ensure compliance with the *Gas Standards Act* 1972 WA.

7. Clause 6 - Inlet Points and Outlet Points

7.1 Generic Changes to reflect change from REMCo to AEMO made to clauses 6.2, 6.3(d), 6.3(f)(i) – refer paragraphs 1.2(d) and 2.4 above.

Clause 6.4(c) Allocation of Gas at Inlet Points

If, by no later than ~~11~~10:0~~3~~0 hours on the next Gas Day, the Shipper procures the delivery of written confirmation to the Operator from, or on behalf of, every shipper that Delivers Gas to that Inlet Point on a Gas Day of the quantity of Gas supplied by those shippers at that Inlet Point on that Gas Day, then whether or not there is a relevant Multi-shipper Agreement, and in the absence of evidence to the contrary, that confirmation is deemed to show the quantity of Gas Delivered by the Shipper and each such other shipper to the Operator at that Inlet Point on that Gas Day and may be relied upon by the Operator accordingly.

Explanation/Submission

7.2 The time has been changed from 11.30am to 10.00am to reflect the current practice of the DBNGP. Whilst there is some variation from 10.00am in the Negotiated Contracts, the majority of contracts do reference 10.00am and over time we will be endeavouring to align all contracts to the 10.00am time. In practice, the producers provide the allocations at Inlet Points, then the Operator provides the Delivered Quantities Report by midday. Moving the time to 10.00am benefits the Shippers as it enables provision of the Delivered Quantities Report by the Operator to the Shippers in time for the Shippers to make any re-nominations (due by 3pm).

7.3 To be effective, the relevant notification must come from all shippers using that Inlet Point on the relevant Gas Day. Because of this, the earliest time binding on any one of those shippers tends to be the relevant time for notice applicable to that Inlet Point.

Clause 6.4(d) Allocation of Gas at Inlet Points

Gas Delivered by the Shipper to an Inlet Point is deemed to be Received by the Operator in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day, in the following order:

(i) first, Gas for any ~~available~~ scheduled P1 Service ~~which~~ and ~~includes Gas for any available~~ Aggregated P1 Service;

(ii) second, Gas for any scheduled T1 Service and Aggregated T1 Service;

~~(iv)~~(iii) third, Gas for any scheduled B1 Service and Aggregated B1 Service;

~~(v)~~(iv) ~~second~~fourth, Gas for any available Capacity Services (other than ~~P1 Service~~Capacity Services referred to above) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a);

~~(vi)~~(v) ~~third~~fifth, other gas.

Explanation/Submission

7.4 The box set out above shows the changes to clause 6.4(d) in the P1 Service Reference Contract. Changes have also been made to clause 6.4(d) in the T1 Service Reference Contract and the B1 Service Reference Contract so that the words in 6.4(d) are the same in all three contracts.

7.5 The purpose of this clause is to provide a fall-back rule that can be applied if the Shipper does not tell the Operator in which order it is to apply Gas Received.

7.6 The reason for the change is that, where a particular shipper has multiple Capacity Services which are each granted under a separate contract, the fall-back rule should be the same across all contracts with that shipper (and thus the same order should be set out in clause 6.4(d) of each of the Reference Contracts for T1 Service, P1 Service and B1 Service). Whilst this consistency across shipper contracts for different Capacity Services has not been achieved to date, we are endeavouring to standardise the clause (and the order of the fall-back rule set out in the clause) going forward.

7.7 Because, as stated above, the clause only applies a fall-back rule if the Shipper does not tell the Operator the Shipper's preferred order, each shipper can, in effect, unilaterally change the order set out in the clause.

7.8 The change to this definition is required to provide consistency across the operation of the DBNGP for the fall back Gas allocation in the event that a Shipper does not instruct the Operator otherwise, and thus provides a net benefit to shippers and consumers of gas.

Clause 6.5(d) Allocation of Gas at Outlet Points

Gas Delivered by the Operator to an Outlet Point is deemed to be Received by the Shipper in the order specified generally or for a particular Gas Day by the Shipper, and if the Shipper fails to specify for any Gas Day in the following order:

(i) first, Gas for any ~~available~~ scheduled P1 Service ~~(which shall include any available~~and Aggregated P1 Service~~)~~;

(ii) second, Gas for any scheduled T1 Service and Aggregated T1 Service;

(iii) third, Gas for any scheduled B1 Service and Aggregated B1 Service;

~~(ii)~~(iv) ~~second~~fourth, Gas available for any available Capacity Services (other than Capacity Services referred to above~~P1 Service~~) (and for the avoidance of doubt, including any Capacity under any Spot Transactions) in the order set out in clause 8.8(a); and

~~(iii)~~(v) ~~third~~fifth, other gas.

Explanation/Submission

7.9 The box set out above shows the changes to clause 6.5(d) in the P1 Service Reference Contract. Changes have also been made to clause 6.5(d) in the T1 Service Reference Contract and the B1 Service Reference Contract so that the words in 6.5(d) are the same in all three contracts.

7.10 The purpose of this clause is to provide a fall-back rule that can be applied if the Shipper does not tell the Operator in which order it is to apply Gas Delivered. The reasoning in paragraphs 7.6 to 7.8 above regarding allocations of Gas Received apply equally to the changes to the fall back allocations of Gas Delivered proposed in clause 6.5(d).

Clause 6.8 Design and installation of Outlet Stations

6.8 Design and installation of Outlet Stations and Gate Stations

(a) The Operator must, at the Shipper's request, design and install or procure the design and installation of any required Outlet Station that is not a Gate Station. Subject to clause 6.12, the Operator and the Shipper must negotiate and enter into an agreement

in respect of the relevant works (an ***Outlet Station Works Agreement***) by which the Shipper must agree either:

(i) to pay the costs incurred by the Operator in connection with such design and installation (which includes the capital cost of acquiring and installing all relevant components of the Outlet Station), plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation (***Relevant Outlet Station Construction Costs***); or

(ii) to include the Relevant Outlet Station Construction Costs as part of the cost base used to calculate the Maintenance Charge relating to the Outlet Station (and in such case, for the purpose of clause 6.11(e), such costs are deemed to be associated with an Operator Owned Point).

(b) The Operator must not unreasonably refuse to enter into or delay entering into, or insist upon unreasonable conditions in, an Outlet Station Works Agreement, but otherwise an Outlet Station Works Agreement may be on such terms as the Operator and the Shipper agree.

(c) The Operator must ensure that an Outlet Station meets the requirements set out in clauses 6.9(a) to 6.9(f).

(d) The Shipper must use its reasonable endeavours to assist the Operator in gaining access to any relevant Outlet Station to which the Operator has no rights of access for the purpose of maintaining and operating that Outlet Station.

(e) The Operator must, at the collective request of all shippers who have Contracted Capacity at the Notional Gate Point for a Sub-network, procure the design and installation by a third party contractor or third party contractors engaged by the Operator of any required Gate Station Associated with that Sub-network, other than an Existing Station.

~~(d)~~(f) The costs incurred by the Operator in connection with the design and installation of any Gate Station (which includes the capital cost of acquiring and installing all relevant components of the Gate Station, plus a reasonable premium calculated to recognise the Operator's management time and to allow the Operator a reasonable margin on its overhead expenses during design and installation) (***Relevant Gate Station Construction Costs***), must be amortised as part of the Maintenance Charge relating to the Gate Station which is payable in accordance with clause 6.11(f).

Explanation/Submission

7.11 Gate Stations have been removed from clause 6.8(a) and are now dealt with in clauses 6.8(e) and (f). Clauses 6.8(e) and (f) are as set out in clause 6.10 of the majority of Negotiated Contracts save that, at the end of clause 6.8(f), the words: "*which is payable in accordance with clause (f)*" have been used in place of "*payable by all shippers who receive Gas from the Operator at the Notional Gate Point for that Sub-network*".

7.12 The reason why Gate Stations have been removed from clause 6.8(a), and dealt with in new clauses 6.8(e) and (f), is because such points are notional points used by many shippers and it is regarded as unfair if one shipper can demand relevant works and push through the costs to the Maintenance Charge payable by all shippers using/having contracted capacity at that point (rather than all shippers using/having contracted capacity at that point having to agree to a request that the costs be incurred before those costs become shared across all such shippers).

7.13 This change better aligns the Reference Contracts with the Negotiated Contracts.

7.14 The reason why, at the end of clause 6.8(f), the words "*which is payable in accordance with clause (f)*" have been used in place of "*payable by all shippers who receive Gas from the Operator at the Notional Gate Point for that Sub-network*", is that the previous words do not inform the reader as to how the charge will be levied – rather, they simply identify who may pay the charge without detailing the basis on which the amounts will be apportioned between such persons – leaving the allocation up to the discretion of the Operator. Clause 6.11(f) contains a relevant and appropriate rule for allocation of the amounts and so its use here promotes certainty and clarity.

7.15 We have also changed clause 6.8(a)(ii) by adding the following: "*(and in such case, for the purpose of clause (e), such costs are deemed to be associated with an Operator Owned Point)*". The reason for this change is to make it clearer that, consistent with the obvious intention of the clause, the Relevant Outlet Station Construction Costs are to be included in the Maintenance Charge which must be paid by Shippers pursuant to clause 6.11(e).

7.16 The changes improve the drafting (by clarifying the drafting in accordance with its obvious practical intent) and, accordingly, provides a net benefit to shippers and consumers of gas. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

Clause 6.11 Maintenance Charge for Inlet Stations and Outlet Stations

(a) For the purposes of this clause 6.11 and subject to clause 6.11(b), ***Maintenance Charge*** means, with respect to a particular Inlet Station or Outlet Station a charge determined by the Operator (acting as a Reasonable and Prudent Person) as being sufficient to allow the Operator (across all shippers who ~~use~~ pay a charge for substantially the same purpose in respect of the Inlet ~~s~~Station or Outlet ~~s~~Station) to amortise, over the life of the Inlet Station or Outlet Station (as the case may be), so much of the Relevant Construction Costs as are not already paid by any shipper under clauses 6.6, or 6.8(a)(i), or (or the material equivalent in any other contract), and the costs of:

(i) maintaining;

(ii) operating;

(iii) refurbishing;

(iv) upgrading;

(v) replacing; and

(vi) decommissioning,

the Inlet Station or Outlet Station, plus a reasonable premium calculated to recognise the value of the Operator's management time, allowing for the charge to amortise those costs over the life of the Inlet Station or Outlet Station.

(b) The Operator may only include costs associated with refurbishing or upgrading an Inlet Station or Outlet Station in accordance with clause 6.11(a) if:

(i) the Shipper requests the relevant refurbishment or upgrade; or

(ii) the Operator determines, acting reasonably, that the refurbishment or upgrade is required in order to meet a statutory or contractual obligation.

(c) At the request of the Shipper, the Operator must provide a statement of the calculations used to determine a Maintenance Charge in the form in which the Operator normally

calculates Maintenance Charges as at the Capacity Start Date. Any disagreement as to the level of any Maintenance Charge may be referred by any party for determination as a Dispute under clause 24.

(d) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Inlet Station that is the greater of the amount that:

(i) in the case of an Inlet Station related to an Inlet Point, is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at that Inlet Point during the previous calendar month bears to the aggregate Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) for all shippers at that Inlet Point during the previous calendar month; and

(ii) in the case of an Inlet Station related to an Inlet Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Delivers a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Inlet Point, during the previous calendar month to which that Inlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Inlet Point, during the previous calendar month,

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Inlet Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion described in clause 6.11(d)(i) in respect to that month.

~~(d)~~(e) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point (but no other Outlet Stations) that is the greater of the amount that:

(i) in the case of an Outlet Station related to an Outlet Point, is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) at that Outlet Point during the previous calendar month bears to the aggregate Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) for all shippers at that Outlet Point during the previous calendar month~~, less any amount recovered under clause 6.11(d)(ii)~~; and

(ii) in the case of an Outlet Station related to an Outlet Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Receives a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Outlet Point, during the previous calendar month to which that Outlet Station relates, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month,

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to an Outlet Station associated with an Operator Owned Point for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion described in clause 6.11(e)(i) in respect to that month.

(f) Subject to clause 6.12(b) in relation to Existing Stations, the Shipper must pay a proportion of the Maintenance Charge relating to a~~n~~ Gate ~~Outlet~~ Station that is the greater of the amount that:

(i) is equal to the proportion that the sum of the Shipper's Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment

Plan) at the relevant Notional Gate Point during the previous calendar month ~~for the time being~~ bears to the aggregate ~~sum of all the Shipper's and other shippers'~~ Contracted Capacity (across all Capacity Services but prior to any reduction under the Curtailment Plan) for all shippers at such Notional Gate Point ~~for the time being~~during the previous calendar month; and

(ii) in the case of a Notional Gate Point at which the Shipper, during the previous calendar month, does not have Contracted Capacity or Receives a quantity of Gas greater than its Contracted Capacity, is equal to the proportion that the sum of the Shipper's deliveries of Gas (across all Capacity Services) at the Notional Gate Point, during the previous calendar month, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Notional Gate Point, during the previous calendar month,

save that where the Operator recovers across all shippers an amount greater than the Maintenance Charge relating to a Gate Station for the relevant month, the Operator must rebate to the Shipper a proportion of the excess being the same proportion described in clause 6.11(f)(i) in respect to that month.

~~(e)~~(g) For the avoidance of doubt and without limiting clauses 6.11(d), (e) or (f), ~~W~~whenever a new Inlet Station or Outlet Station is installed, or Inlet Station or Outlet Station is enhanced, for the purposes of the consequent re-determination of the Maintenance Charge for the Inlet Station or Outlet Station, the Relevant Construction Costs must be included in the apportionments between all shippers who deliver Gas to the Operator at the Inlet Station or receive Gas from the Operator at the Notional Gate Point or Outlet Station (as the case may be), ~~including~~ and shippers with grants of Capacity at the Inlet Station, Notional Gate Point or Outlet Station made before the date of installation or enhancement.

~~(f)~~(h) For the purposes of assessing, reporting or otherwise dealing with the commercial viability of any capacity, service or thing related to a Physical Gate Point, a Notional Gate Point, ~~or~~ an Outlet Station or an Inlet Station, the Operator may have regard to the likely impact of clause 6.11(g)~~6.11(f)~~.

Explanation/Submission

7.17 The changes to 6.11 have been made so that clause 6.11 better reflects the intent that the Relevant Construction Costs and costs of maintaining, operating, refurbishing, upgrading and replacing Inlet Stations and Outlet Stations are recovered fairly across shippers (and so that that the relevant costs are neither over-recovered nor under-recovered by the Operator).

7.18 It is arguable that the existing words may not achieve the foregoing and, whilst we are avoiding wholesale changes, we are proposing certain clarifications, which we explain as follows.

Clause 6.11(a): The change in clause 6.11(a) replaces the word "*use*" with the words "*pay a charge for substantially the same purpose in respect of*". The reason for the change is that, under clauses 6.11(d) to (f), Maintenance Charges are recovered from shippers if they have Contracted Capacity at the relevant inlet point / outlet point or if they use the relevant inlet point / outlet point. On the unaltered drafting in clause 6.11(a), the size of the Maintenance Charge is determined only by reference to recoveries from shippers who use the relevant point at the relevant time, leading to confusion as to the calculation of the Maintenance Charge, or allowing the Operator to over-recover the relevant costs (as recoveries from shippers who have Contracted Capacity at a point, but do not use the point during the relevant period, are arguably ignored when determining if the Maintenance Charge is sufficient).

Clauses 6.11(d) to (f): the definition of "Maintenance Charge" in clause 6.11(a), and also clauses 6.11(b) and 6.7(a)(ii), clearly contemplate that a Maintenance Charge can apply in

relation to Inlet Stations but, on the existing drafting, the terms of recovery are unclear. So we have inserted a new clause 6.11(d) which applies the same cost recovery rule as set out in clauses 6.11(e) and (f) (in relation Outlet Stations and Gate Stations, respectively) to Inlet Stations.

We have amended, for clarity, the wording in clause 6.11(e) (formerly 6.11(d)), so that the clause more clearly provides:

(a) that the Shipper pays a proportion of the relevant Maintenance Charge for the month that is equal to the proportion that its Contracted Capacity at the relevant point bears to the sum of all shippers' Contracted Capacity at that point (unless that Shipper takes greater than its Contracted Capacity at that point, in which case the Shipper pays a proportion of the relevant Maintenance Charge for the month that is equal to the proportion that its take at that point bears to the take of all shippers at that point); and

(b) because the rule in (a) may result in over-recovery of the Maintenance Charge by the Operator, we have clarified, in the rider at the end of the clause, that the relevant over-recovery (if any) must be rebated to shippers with Contracted Capacity at that point in proportion to their respective Contracted Capacities at that point.

This clarification is important to both the Operator and shippers because of the increased availability of the Aggregated Services (that is, we need to ensure that shippers with Contracted Capacity at a point are fairly treated vis-a-vis shippers who use Aggregated Service at the point, and that the rules for cost sharing are clearer and more transparent).

We have then replicated the amended wording in the new clause 6.11(d) and in clause 6.11(f) (formerly 6.11(e)), so that the three clauses (6.11(d), 6.11(e) and 6.11(f)) apply the same rule to recovery of the Maintenance Charge in relation to each of Inlet Stations, Outlet Stations (other than Gate Stations) and Gate Stations respectively.

Clauses 6.11(g) and (h): Changes are also made to clauses 6.11(g) and (h) to clarify that the same rules apply to both Outlet Stations and Inlet Stations. As noted above, the definition of "Maintenance Charge" in clause 6.11(a), and also clauses 6.11(b) and 6.7(a)(ii), clearly contemplate that a Maintenance Charge can apply in relation to Inlet Stations but, on the existing drafting, the rules in relation thereto are unclear.

7.19 The changes improve the drafting (by clarifying the drafting in accordance with its obvious intent) and, accordingly, provides a net benefit to shippers and consumers of gas. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

Clause 6.12(b) Provisions relating both to Relevant Construction Costs and Maintenance Charge

The Operator is not entitled to impose any charges under clauses 6.6, 6.8 or 6.11 or otherwise under this Contract in respect of Existing Stations, except in relation to the incremental costs of the design, installation, maintenance and operation of a modification of an Existing Station which occurred, or occurs, after 1 January 1995. Where such incremental costs are incurred, the Operator is entitled to impose charges on the Shipper and other shippers who have Contracted Capacity at, or use, that Existing Station in relation to their respective proportions of those incremental costs, as determined under clause ~~6.11(d)~~6.11(e) or 6.11(f).

Explanation/Submission

7.20 The changes in clause 6.12(b) are to reflect the fact that:

(a) as noted above, clauses 6.11(e) and 6.11(f) calculate charges by reference to both the Contracted Capacity and use (so we have added in the words "*have Contracted Capacity at, or*"); and

(b) there are no Existing Stations which are Inlet Stations (and therefore clause 6.11(d) which now applies to Inlet Stations has been replaced with clause 6.11(e) and (f), which apply to Outlet Stations and Gate Stations respectively).

7.21 The changes improve the drafting (by clarifying the drafting in accordance with its obvious intent) and update the drafting (to take into account other drafting changes to clause 6 as described above) and, accordingly, provides a net benefit to shippers and consumers of gas.

Clause 6.13(b)(ii) and (iii) Contribution Agreement

(ii) the Shipper's proportion of the Maintenance Charge is determined under clause 6.11(e)~~6.11(d)~~ or 6.11(f) (as the case may be), or is otherwise agreed in the Contribution Agreement; and

(iii) the Shipper agrees that another shipper (***New Shipper***) may Receive Gas from the relevant Outlet Point, if:

(A) the New Shipper agrees to pay to the Operator an amount by way of contribution to the Maintenance Charge for the Outlet Point determined in a manner consistent with the principles in clause 6.11(e) ~~6.11(d)~~ or 6.11(f) (as the case may be); and

(B) the Operator agrees to rebate to the Shipper all, or such proportion of, the contributions it receives from the New Shipper under clause 6.13(b)(iii)(A) so as to implement the intention of clause 6.11 to apportion the relevant costs among the shippers using that point.

Explanation/Submission

7.22 The changes to clause 6.13 reflect the changes to clause 6.11. Clauses 6.11(e) and 6.11(f) are referred to in place of clause 6.11(d) because clauses 6.13(b)(ii) and (iii) apply in respect of Outlet Points (and clause 6.11(d), as a result of the changes outlined above, only applies to Inlet Points).

7.23 The changes improve the drafting (by fixing a drafting error) and update the drafting (to take into account other drafting changes to clause 6 as described above) and, accordingly, provides a net benefit to shippers and consumers of gas.

Clause 6.14 Shipper Specific Facility Agreement – P1 Service Reference Contract only

The Operator must not grant to any shipper (***New Shipper***) access to or use of (or enter into any agreement or arrangement to do so) any Inlet Point, Outlet Point, Associated Inlet Station or Associated Outlet Station, or related equipment (***Facility***) which is or has been the subject of an agreement or arrangement under which the Shipper has contributed, or is contributing, to the capital costs or operating and maintenance costs (or both) of the Facility (***Facility Agreement***) without ensuring that:

(i) subject to clause 6.14(a)(ii)~~6.14(b)~~, the New Shipper is obliged to contribute to the capital costs or operating and maintenance costs (or both) of the Facility in a manner consistent with clause 6.13(b)(iii); and

	(ii)	the Operator agrees to rebate to the Shipper the contributions it receives from the New Shipper under clause 6.14(a)(i)~~6.14(a)~~ in a manner consistent with clause 6.13(b)(iii).

Explanation/Submission

7.24 These changes (to correct cross referencing errors) are only required in the P1 Service Reference Contract (the clause numbering is different, and does not require correction, in the T1 Service Reference Contract and the B1 Service Reference Contract).

8. Clause 8 - Nominations

Clause 8.5(b) Operator to make available bulletins of available Capacity

No obligation to schedule a Capacity Service under clauses 8.9 and 8.14 or otherwise arises merely because the Operator specifies under clause 8.5(a) that Capacity is available for Nomination or Renomination, and nothing in such a bulletin limits the Operator's rights, under this Contract or under any Law, to Curtail wholly or partly the Shipper's P1 Service and Aggregated P1 Service or to refuse wholly or partly to Receive Gas from, or Deliver Gas, to the Shipper.

Explanation/Submission

8.1 The change:

(a) fixes a typographical error (in that all of the Shipper's Capacity Services under the contract should be referred to in this clause); and

(b) has a net beneficial effect on shippers and consumers of gas as it clarifies how the Reference Contracts work. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

Clause 8.8(a) Nominations priority

(a) The priority of scheduling Capacity Services in respect of Nominations for Capacity Services (from superior to inferior as between rows and equal priority within a row) is, so far as is relevant to the Inlet Point or Outlet Point, set out in the column of Schedule 6 headed "Point Specific Curtailment" as supplemented by this clause 8 and clause 17.9.

(b) Each category of Capacity Service described in a row of the Curtailment Plan (as relevant to the particular circumstance), together with each other category of Capacity Service in that row, refers separately to a ***Type of Capacity Service*** such that, for example, Alcoa's Priority Quantity is a ***Type of Capacity Service***.

Explanation/Submission

8.2 The changes:

(a) are clarifications / drafting improvements; and

(b) have a net beneficial effect on shippers or consumers of gas as they clarify how the Reference Contracts work.

8.3 The changes reflect the commercial understanding of the shippers, and the terms of clause 17, that all Capacity Services within a row in the Curtailment Plan rank equally upon a relevant Curtailment (in other words, T1 Service, P1 Service and B1 Service each rank equally upon a relevant Curtailment).

Clause 8.9 Scheduling of Daily Nominations

(a) The Operator must, by no later than 16:00 hours on each Gas Day (that is, within two hours of the last time for Nomination under clause 8.6), by notice to

the Shipper, schedule Capacity Services in respect of the Shipper's Initial Nomination for the Nominated Day ~~and, if applicable under the rules governing the market for Spot Capacity, schedule Capacity Services in respect of Spot Capacity determined in accordance with this clause 8.9,~~ for each Nominated Inlet Point and for each Nominated Outlet Point.

(b) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 ~~Capacity~~ Service for each Nominated Inlet Point:

(i) must not exceed the Shipper's Initial Nomination for P1 Service at that Inlet Point; and

(ii) subject to clauses 8.9(c) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Inlet Point.

(c) Subject to clause 8.9(d), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service and Aggregated P1 Service:

(i) across all i~~I~~nlet p~~P~~oints exceed the Shipper's Total Contracted ~~P1~~ Capacity for P1 Service across all Inlet Points; or

~~(iii)~~(ii) at and upstream of any particular inlet point, exceed the Shipper's Contracted Capacity for P1 Service at Inlet Points at or upstream of that inlet point.

~~(c)~~(d) The sum of the scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service and Aggregated P1 Service may exceed the Shipper's Total Contracted ~~P1~~ Capacity for P1 Service across all Inlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit unless the Operator considers as a Reasonable and Prudent Person that to Deliver such gas would interfere with other shippers' rights to their Contracted Firm Capacity.

~~(d)~~(e) Subject to the terms of any Multi-shipper Agreement, the scheduled Capacity Services for P1 ~~Capacity~~ Service at each Nominated Outlet Point:

(i) must not exceed the Shipper's Initial Nomination for P1 Service at that Outlet Point; and

(ii) subject to clauses 8.9(f) and 8.10, may not be less than the Shipper's Initial Nomination for P1 Service at that Outlet Point.

(f) Subject to clause 8.9(g), in no case may the sum of the scheduled Capacity Services in respect of the Shipper's Daily Nominations for P1 Service and Aggregated P1 Service:

(i) across all ~~Outlet~~ outlet ~~Points~~points, exceed the Shipper's Total Contracted ~~P1~~ Capacity for P1 Service across all Outlet Points; or

~~(iii)~~(ii) at and downstream of any particular outlet point, exceed the Contracted Capacity for P1 Service at Outlet Points at or downstream of that outlet point.

~~(e)~~(g) The sum of the scheduled Capacity Services in respect of the Shipper's Daily Nomination for P1 Service and Aggregated P1 Service may exceed the Shipper's Total Contracted ~~P1~~ Capacity for P1 Service across all Outlet Points by a quantity of Gas which is to be Delivered for the purpose, or which would have the effect, of bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit, unless the Operator considers as a Reasonable

	and Prudent Person that to Deliver such Gas would interfere with other shippers' rights to their Contracted Firm Capacity.

Explanation/Submission

8.4 The box set out above shows the changes to clause 8.9 in the P1 Service Reference Contract. The reasons for the marked up changes are as follows. Analogous changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract (and analogous reasons for those changes apply).

8.5 **Clause 8.9(a):** the Reference Contracts do not offer Spot Capacity. So the references to the terms on which Spot Capacity is offered have been deleted from the Reference Contracts. Such deletions have been accepted by the ERA in relation to past Access Arrangements for the DBNGP – this remaining deleted phrase was left in by oversight.

8.6 **Clause 8.9(b):** correction of typographical error.

8.7 **Clause 8.9(c):** we have made the changes to improve how the clause deals with Aggregated P1 Service, so as to properly deal with that service. Pursuant to the changes:

(a) The clause now deals with P1 Service and Aggregated P1 Service in aggregate so that the clause applies the rule that the Shipper cannot be scheduled Daily Nominations for more P1 Service and Aggregated P1 Service (in aggregate) than the amount of its Contracted Capacity for P1 Service (in aggregate) (subject to clause 8.9(d)). This clarification should be uncontroversial as it is commonly understood that the purpose of Aggregated P1 Service is to allow the Shipper a limited right to shift where it takes its Contracted Capacity for P1 Service and that Aggregated P1 Service is not a stand-alone right to take a greater amount of Capacity Service (across all points) than the amount of Contracted Capacity for P1 Service for which the Shipper has contracted.

(b) In clause 8.9(c)(i) we have:

(i) uncapitalized the term "*inlet point*". The reason for this change is to make it clearer that the Aggregated Service being offered to the Shipper under the Reference Contract is not limited to Inlet Points referred to in the second limb of the defined term "Inlet Point" (that is "*a flange, joint or other point specified in clause 1.1(a) at which the Shipper has Contracted Capacity from time to time*") (as otherwise there may be uncertainty as to whether this is a circumstance "*where the context requires*" as that phrase is used in the definition of "Inlet Point");[11]

(ii) fixed a typographical error by the change: "*Total Contracted Capacity for P1 Service*".

(c) We have inserted a new 8.9(c)(ii). The new clause is the mechanism which implements the rule in clause 8.16(d)(i) (that is, that the Aggregated P1 Service cannot be used so as to facilitate the Shipper delivering Gas upstream of the Inlet Point from which the Aggregated P1 Service is derived (i.e. the point at which the Shipper holds the relevant Contracted Capacity)).

8.8 **Clause 8.9(d):** the addition of "*the sum of the*" and "*and Aggregated P1 Service*" aligns with the clarification changes in clause 8.9(c) as described in paragraph 8.7(a). The other change to this clause is a correction of a typographical error.

[11] **Note to ERA:** the change aligns the drafting to the drafting of clause 8.16.

8.9 **Clause 8.9(e):** correction of typographical error.

8.10 **Clause 8.9(f):** see comments above regarding clause 8.9(c) with respect to Inlet Points. Analogous comments apply to this clause with respect to Outlet Points, with all necessary changes.

8.11 **Clause 8.9(g):** see comments above regarding clause 8.9(d) with respect to Inlet Points. Analogous comments apply to this clause with respect to Outlet Points, with all necessary changes.

Clause 8.10(b) Scheduling where there is insufficient available Capacity

Subject to clause 17.9 and except where, and to the extent, permitted or required pursuant to clause 8.9, if the Operator schedules a Capacity Service for P1 Service to the Shipper which is less than the Shipper's Initial Nomination for P1 Service at an Inlet Point or an Outlet Point, the Operator is taken to have issued a Curtailment Notice at the time it schedules that Capacity Service, such Curtailment being in respect of the difference between the Shipper's Contracted ~~T1~~ Capacity for P1 Service at that Inlet Point or Outlet Point and the Capacity Service scheduled by the Operator for P1 Service for that Gas Day at that Inlet Point or Outlet Point.

Explanation/Submission

8.12 The box set out above shows the changes to clause 8.10(b) in the P1 Service Reference Contract. Analogous changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract (and analogous reasons for those changes apply).

8.13 We have made the changes to clause 8.10(b) so as to clarify the drafting to better account for Aggregated Service.

8.14 The key reason for the changes is that, as per clause 8.9, the Operator is allowed to schedule less P1 Service at a point than the amount of the Shipper's Contracted Capacity for P1 Service at that point if the Shipper has already used that Contracted Capacity to request Aggregated P1 Service at a different point. So for this reason we have inserted the words "*and except where, and to the extent, permitted or required pursuant to clause* ***Error! Reference source not found.***". Further, clause 8.9 expressly on its terms allows the Operator to schedule Capacity Service which is less than the Shipper's Initial Nomination for P1 Service at a point, in the circumstances described in clauses 8.9(c) and 8.9(f) (see also the "*subject to*" wording in clauses 8.9(b)(ii) and 8.9(e)(ii)), so the added phrase provides improved clarity for consistency with that position.

8.15 The change from "*Contracted T1 Capacity*" to "*Contracted Capacity for P1 Service*" is to fix a typographical error.

8.16 The additional references to "*At that Inlet Point or Outlet Point*" are to clarify that, in all instances, the clause is dealing with scheduling at a specific Inlet Point or Outlet Point, not across the entire DBNGP (as already indicated by the existing reference to "*at an Inlet Point or an Outlet Point*" earlier in the clause).

8.17 As previously noted, clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

Clause 8.15 Default provision for Renomination process

If any element of the Renomination procedure prescribed in this clause 8 is not completed within the time limit specified, unless the delay is caused or contributed to by the Operator not providing

information in a timely manner under clause 8.5 or clause 15.5(d) or if for any other reason the Renomination procedure is not complied with, then the Shipper's Daily Nominations are to remain unchanged ~~from the previous Gas Day's nomination~~ (but if the Operator can reasonably continue and complete processing a Renomination after the expiry of the time limit in clause 8.12(b) it must do so).

Explanation/Submission

8.18 This deletion has been made because it is preferable for the Shipper's most recent nomination to remain unchanged when a subsequent Renomination is not effective, rather than having to go further back to the previous Gas Day's nomination.

8.19 The change better aligns the Reference Contracts with the Negotiated Contracts.

Clause 8.16 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

8.16 Nominations at inlet points and outlet points where Shipper does not have sufficient Contracted Capacity

Subject to this clause 8, Shipper is entitled to nominate that Gas be Delivered under Shipper's P1 Service:

(a) at an inlet point or an outlet point at which Shipper does not have Contracted Capacity for P1 Services, provided that such outlet point is above CS9; and

(b) in excess of Shipper's Contracted Capacity for P1 Services at an Inlet Point or Outlet Point,

~~(~~being ***Aggregated P1 Service***), provided that all of the following are satisfied:

(c) Aggregated P1 Service is a Forward Haul service and may not be used for Back Haul; and

(d) the sum of the Shipper's nominations for P1 Service and Aggregated P1 Service (in aggregate without double counting) for:

(i) Delivery of Gas at and upstream of any particular inlet point cannot exceed the Contracted Capacity for P1 Service at Inlet Points at or upstream of that inlet point; and

(ii) Receipt of Gas at and downstream of any particular outlet point cannot exceed the Contracted Capacity for P1 Service at Outlet Points at or downstream of that outlet point; and

~~(c)~~(e) the Shipper has entered into any agreement in relation to the relevant outlet point required by clause 6.13.

Explanation/Submission

8.20 The box set out above shows the changes to clause 8.16 in the P1 Service Reference Contract. Analogous changes have been made to the T1 Service Reference Contract (save that there is no equivalent to paragraph (d) in the T1 Service Reference Contract) and the B1 Service Reference Contract (and analogous reasons for those changes apply).

8.21 The changes have been made to clarify the terms on which Aggregated Service is offered.

8.22 **Clause 8.16(c):** Aggregated P1 Service is derived from the Shipper's P1 Service, so it is fair and reasonable, and intended, that the Aggregated P1 Service is a Forward Haul Service. For completeness, we note the drafting is consistent with the Negotiated Contracts, which makes the same point in clause 8.17 which states: "*Nothing in this Contract allows the Shipper to use the P1 Service, or an Aggregated P1 Service, as Back Haul.*"

8.23 **Clause 8.16(d):** Aggregated P1 Service cannot be used to so as to facilitate the Shipper delivering Gas upstream of the Inlet Point, or receiving Gas downstream of the Outlet Point, from which the Aggregated P1 Service is derived (i.e. the point at which the Shipper holds the relevant Contracted Capacity)).

8.24 **Clause 8.16(e):** the new clause reminds the reader of clause 6.13 (and therefore the change is a drafting improvement which helps to ensure that users of the Contract do not get caught out by this requirement if they do not read the whole Contract at the relevant time they consider this clause).

Clause 8.17 Aggregated P1 Service

(a) Subject to the terms of any Multi-shipper Agreement, the Parties agree that, for the purpose of the Nominations Plan, any Nomination for P1 Service which is, according to clause 8.16, deemed to be Aggregated P1 Service, shall be deemed to be a Nomination for a separate Type of Capacity Service which service ranks equally in priority with all other Aggregated ~~P1~~ Service.

(b) For the purposes of applying the Curtailment Plan in a Point Specific Curtailment, the Aggregated P1 Service shall be excluded from the P1 Service.

(c) The Shipper is not permitted to use Aggregated P1 Service unless such service has been scheduled pursuant to clause 8.

(d) For the avoidance of doubt, the Commodity Charge applies to Aggregated P1 Service pursuant to clause 20.3.

Explanation/Submission

8.25 In the box set out above, we have shown the changes to clause 8.17 in the P1 Service Reference Contract. Analogous changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract (and analogous reasons for those changes apply).

8.26 The drafting changes have been made to clarify, not change, the terms on which Aggregated Service is offered. As already noted, clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

8.27 **Clause 8.17(a):** the change is to clarify that all Aggregated Service have equal priority in the Curtailment Plan (regardless of whether it derives from T1 Service, P1 Service or B1 Service).

8.28 **Clause 8.17(c):** the new drafting is consistent with clause 8.16, which provides that Aggregated Service is derived from the right to make certain nominations for P1 Service.

8.29 **Clause 8.17(d):** the new drafting reminds the reader that the Commodity Charge applies to Aggregated P1 Service (to the extent that such Capacity Service is actually taken).

9. Clause 9 – Imbalances

Clause 9.3 Shipper's Accumulated Imbalance

At the end of any Gas Day, the Accumulated Imbalance is the Accumulated Imbalance at the end of the previous Gas Day plus the Shipper's Daily Imbalance on the Gas Day. ~~The Accumulated Imbalance at the Capacity Start Date is zero.~~

Explanation/Submission

9.1 The deletion fixes a drafting error and further aligns the Reference Contracts with the Negotiated Contracts.

9.2 The Shipper's Accumulated Imbalance is calculated as a single figure across all of the Shipper's Capacity Services/contracts. If a Shipper already has another contract/Capacity Service in place at the time that the Shipper enters into a Reference Contract, then the Accumulated Imbalance on the Capacity Start Date under that Reference Contract should be the same figure as the Accumulated Imbalance under all of the Shipper's existing contracts/Capacity Services at that date, not zero (unless, of course, zero is the Shipper's Accumulated Imbalance under all of the Shipper's existing contracts/Capacity Services at that date).

9.3 For completeness, we note that because the Shipper's Accumulated Imbalance is calculated as a single figure across all of the Shipper's Capacity Services/contracts, clause 9.8 was inserted to protect the Shipper from having a remedy exercised against it under more than one contract/Capacity Service in respect of the same imbalance circumstance, by providing: "*The Parties agree that, because the rights and remedies set out in this clause 9.8 apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.8, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance*." If the Accumulated Imbalance under a Shipper's Reference Contract is set at zero on the Capacity Start Date notwithstanding that the Shipper has a different figure for its Accumulated Imbalance under another of its pre-existing contracts then that discrepancy gives rise to uncertainty about whether a remedy under the separate contracts is being exercised "in relation to the same circumstance" and opens an avenue for dispute between the Shipper and Operator which is inconsistent with the intended approach of having a single imbalance figure, and singular application of remedies, across all of the Shipper's contracts.

Clause 9.4 Notice of the Shipper's imbalances

Before 13:~~3~~00 hours on each Gas Day, except the ~~Contract Commencement~~Capacity Start Date, the Operator must provide to the Shipper notice (***Accumulated Imbalance Notice***) of its Accumulated Imbalance and Daily Imbalance at the end of the preceding Gas Day, and the amounts so notified must, subject to the Operator receiving the information necessary to make an allocation of Gas Deliveries or Receipts or both to shippers as contemplated in clause 6.4(c) be materially accurate.

Explanation/Submission

9.4 The amendment to the relevant time further aligns the Reference Contracts with the Negotiated Contracts. The amendment benefits the Shipper as it requires earlier provision of information by Operator. The amendment promotes administrative efficiency for the Operator.

9.5 The change from "*Contract Commencement Date*" to "*Capacity Start Date*" fixes a drafting error. "*Contract Commencement Date*" is not a defined term in the Reference Contract (the relevant defined term is "Capacity Start Date").

Clause 9.5(a) Accumulated Imbalance Limit

The Shipper's ***Accumulated Imbalance Limit*** for a Gas Day is 8% of the ~~sum of the Shipper's Contracted Capacity under Spot Transactions and~~ quantities~~,~~ referred to as the Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service, P1 Service and B1 Service and Capacity under Spot Transactions) for that Gas Day.

Explanation/Submission

9.6 The deletion is required because capacity under Spot Transactions is already captured by the reference to "*Contracted Capacity across all of the Shipper's Capacity Services*" and must not be double-counted.

9.7 Capacity under Spot Transactions is already captured by the reference to "*Contracted Capacity across all of the Shipper's Capacity Services*" because:

(a) the definition of "*Capacity Services*" in the Reference Contract captures "*any service*" and so includes Spot Transactions. By way of contrast, Spot Transactions are expressly excluded from the definition of "*Capacity Service*" in the Negotiated Contracts (by way of the statement "other than under a Spot Transaction" in the definition of "Capacity Service in the Negotiated Contracts), which is the reason why the deleted words were required in the Negotiated Contracts and from there, when this provision of the Reference Contracts was relevantly drafted, were erroneously copied into the Reference Contracts; and

(b) the definition of "*Contracted Capacity*" in the Reference Contract includes capacity under other contracts for other Capacity Services. That definition provides as follows (including DBP's proposed amendments): "*Contracted Capacity has, when used in respect of the P1 Service under this Contract, the meaning given in clause 3.3 and, in the context of any other contract in respect of a particular Capacity Service under that contract, has the meaning given in that contract*". It is the second part of that definition (beginning with "*in the context of any other contract in respect of a particular Capacity Service under that contract*") which captures the Shipper's capacity under Spot Transactions. The reference in clause 9.5(a) to "*referred to as the Shipper's Contracted Capacity across all of the Shipper's Capacity Services*" incorporates both the first and the second parts of the definition of "Contracted Capacity".[12]

9.8 The inclusion of capacity under Spot Transactions in calculating the Accumulated Imbalance Limit is further confirmed by the later words in brackets in clause 9.5(a), which provide: "*including T1 Service… and Capacity under Spot Transactions*".

9.9 To be absolutely clear, this change is not intended to remove, and does not have the effect of removing, Capacity under Spot Transactions from the calculation of the Shipper's Accumulated Imbalance Limit. Rather the change is to remove a drafting anomaly whereby it may be arguable that Spot capacity is double counted.

9.10 The addition of "*P1 Service and B1 Service*" is merely for completeness given the bracketed text refers to T1 Service.

[12] **Note to ERA:** see also clause 2.4 which is also to the same effect.

9.11 The foregoing changes are fair and reasonable, and in the net interest of shippers and consumers of gas, because they clarify the drafting without changing the obvious intent that Spot Transactions are relevantly captured. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

Clause 9.5(b) Accumulated Imbalance Limit

If at any time the absolute value of the Shipper's Accumulated Imbalance exceeds the Accumulated Imbalance Limit for the Gas Day just finished and, the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition

(i) will have a material adverse impact on the integrity or operation of the DBNGP; or

(ii) will adversely impact, or is likely to adversely impact, on any other shipper's entitlement to its Daily Nomination for T1 Capacity, B1 Capacity, P1 Capacity, Contracted Firm Capacity, or any Other Reserved Service,

then the Operator (acting as a Reasonable a~~A~~nd Prudent Person) may, subject to clause 9.5(f), either or both:

(iii) issue a notice requiring the Shipper to reduce its imbalance to the Accumulated Imbalance Limit (to the extent reasonably required to ameliorate the condition in clause 9.5(b)(i) or 9.5(b)(ii)) and the Shipper must use best endeavours in accordance with clause 9.5(d) to immediately comply, or procure immediate compliance, with the notice, so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; and~~/or~~

(iv) refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the absolute value of the Shipper's Accumulated Imbalance within, or closer to, the Accumulated Imbalance Limit.

Explanation/Submission

9.12 The change to a lower case “a” in the reference to “*Reasonable and Prudent Person*” is for consistency with the defined term in clause 1, which does not capitalise the “a”.

9.13 The addition of “*either or both*” in the lead-in words to sub-clauses (iii) and (iv) is to allow the word “*and*” to replace the use of “*and/or*” at the end of sub-clause (iii). The formulation “and/or” is considered to be unclear in drafting practice and the use of “either or both” is more certain.

9.14 The addition of the word “*immediate*” in sub-clause (iii) is to clarify that the timeframe for the Shipper to “*procure compliance*”, as an alternate to the Shipper directly complying, is intended to be the same as the timeframe for “*comply*”. That is, the requirement for immediacy is not removed if the Shipper is procuring compliance rather than itself complying - the Shipper’s obligation is to immediately either (i) comply; or (ii) procure compliance.

9.15 The foregoing changes are fair and reasonable, and in the net interest of shippers and consumers of gas, because they clarify the drafting without changing the obvious intent that a shipper cannot absolve itself of an obligation to immediately fix a problem by requesting someone else to fix the same problem, unless the fix by way of such request is also immediate (vis-a-vis the obligation to fix arising).

Clause 9.5(d)(ii) Accumulated Imbalance Limit

where the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Outer Accumulated Imbalance Limit and the absolute value of the Shipper's Accumulated Imbalance is not less than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper is taken not to have used best endeavours to comply, or to procure compliance, with the notice for the purposes of clause 9.5(b)(iii).

Explanation/Submission

9.16 This is a minor drafting clarification.

Clause 9.5(e) Accumulated Imbalance Limit

If the Shipper does not comply and is not deemed pursuant to clause 9.5(d) to have used best endeavours to have complied with the notice issued for the purposes of clause 9.5(b)(iii) and as a result of such failure the absolute value of the Shipper's Accumulated Imbalance remains greater than the Accumulated Imbalance Limit by the end of the following Gas Day, the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Accumulated Imbalance Limit up to the Outer Accumulated Imbalance Limit in accordance with clause 20 in respect of the Gas Day on which the notice is issued and each subsequent Gas Day the absolute value of the Shipper's Accumulated Imbalance exceeds the Shipper's Accumulated Imbalance Limit until the absolute value of the Shipper's Accumulated Imbalance is less than, or closer to the Accumulated Imbalance Limit (as the Operator sees fit).

Explanation/Submission

9.17 This change is required to accommodate the addition of clauses 9.6(a) and 9.6(b). Accordingly, please see the explanation set out below in respect of those clauses. Put briefly, the addition of a separate regime for levying the Excess Imbalance Charge where the Shipper exceeds an imbalance limit of 20% (in clauses 9.6(a) and (b)) has the consequence that the existing regime for levying the Excess Imbalance Charge where the Shipper exceeds an imbalance limit of 8% (in clause 9.5) only applies up to the 20% threshold.

9.18 If the changes in clause 9.6(a) and 9.6(b) are not accepted then this change must also be rejected so that the regime in clause 9.5 applies for the total imbalance above 8%.

Clause 9.6 Excess Imbalance Charge

9.6 Excess Imbalance Charge

(a) The Shipper's ***Outer Accumulated Imbalance Limit*** for a Gas Day is 20% of the quantities referred to as the Shipper's Contracted Capacity across all of the Shipper's Capacity Services (including T1 Service, P1 Service and B1 Service and Capacity under Spot Transactions) for that Gas Day.

(b) If the absolute value of the Shipper's Accumulated Imbalance at the end of a Gas Day exceeds the Outer Accumulated Imbalance Limit for the Gas Day just finished then, subject to clause 9.6(c), the Shipper must pay an Excess Imbalance Charge at the Excess Imbalance Rate for each GJ of Gas in excess of the Shipper's Outer Accumulated Imbalance Limit in accordance with clause 20.

~~(e)~~(c) No Excess Imbalance Charge under clause 9.5(e) or 9.6(b) is payable in respect of that part (if any) of the imbalance that is attributable to:

(i) the Shipper's Capacity Service being Curtailed under clause 17;

~~(i)~~(ii) the Operator, for any reason not caused by the Shipper or any person supplying Gas to the Shipper, not Receiving from the Shipper at any Inlet Point a quantity of Gas equal to the Shipper's Daily Nomination for that Inlet Point;

~~(ii)~~(iii) the Operator failing to provide the Shipper with a materially accurate Accumulated Imbalance Notice within the period set out in clause 9.4; or

(iv) the Shipper being unable, for reasons beyond the Shipper's control, to remedy an imbalance arising on a prior Gas Day but then only to the extent that such imbalance was caused by an event referred to in one of clauses 9.6(c)(i), 9.6(c)(ii) or 9.6(c)(iii) ~~9.5(g)(i) or 9.5(g)(ii)~~**Error! Reference source not found.Error! Reference source not found.,Error! Reference source not found.**

but in each case the Shipper's Daily Imbalance and Accumulated Imbalance must still be calculated for the Gas Day.

Explanation/Submission

clauses 9.6(a) and (b)

9.19 The insertion of clauses 9.6(a) and (b) better align the Reference Contracts to the Negotiated Contracts by adding a separate remedial approach where the Shipper exceeds its Outer Accumulated Imbalance Limit of 20% of the sum of Contracted Capacity across all of the Shipper's Capacity Services. The charge only applies to gigajoules above the 20% figure. Between the 8% Accumulated Imbalance Limit and up to the 20% Outer Accumulated Imbalance Limit, the provisions of clause 9.5 continue to apply in their existing form (with only minor drafting changes as described above).

9.20 Note that there is no duplication of charges in respect of exceeding the 8% Accumulated Imbalance Limit and the 20% Outer Accumulated Imbalance Limit, as a result of the new words "*up to the Outer Accumulated Imbalance Limit*" which have been added in the charging provision in clause 9.5(e). That is, above 8% and up to 20%, the Shipper is charged under clause 9.5(e) (if the relevant preconditions in clause 9.5 are met) and then, above 20%, the Shipper is charged under clause 9.6(b). The rate of the charge is the same in each case, it is merely the preconditions to charging that differ.

9.21 The inclusion of the outer threshold remedy established by clauses 9.6(a) and 9.6(b) was the agreed outcome of the 2004 arms' length negotiations with shippers and reflects the position accepted by the market since that time. It is not appropriate for the Reference Contract to contain a different position on this issue given its potential effect on the availability of capacity services for all shippers.

9.22 The addition of clauses 9.6(a) and 9.6(b) promote efficient investment in, and efficient operation and use of, the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas. The effect of these clauses is to remove the situation where one shipper under a Reference Contract (on the current terms) is significantly less constrained than other shippers (including shippers on Negotiated Contracts) to take up significant (i.e. above 20% of its Contracted Capacity) imbalance capacity of the pipeline, limiting the availability of that capacity (and capacity for other services) for those shippers in real operational need at the relevant time. DBP holds the view that this is an issue even at the 8% imbalance limit but has decided not to seek to amend the existing regime with respect to that threshold until the 20% threshold has been reached. The preconditions to levying a charge under clause 9.5 involve significant

time delays and do not incentivise or motivate appropriate shipper behaviour - the 20% threshold is an extreme imbalance scenario and different rules are more clearly justified (and have been accepted by the market) at that point.

By the time the shipper breaches the 20% point, the prudent and sensible balance between the individual shipper's interests and the interest of all other users of the shared use asset (the DBNGP) clearly shifts in favour of ensuring that the behaviour of a single shipper does not impact on pipeline operations and integrity and the capacity utilisation of all other shippers, for the net benefit of consumers of gas.

9.23 In the Operator's experience to date, this second limb of the imbalance regime being a feature of all, or almost all, existing shipper contracts has prevented the circumstance of one shipper going into extreme imbalance to the detriment of other shippers, services or pipeline safety, reliability and security of supply. But it is certainly foreseeable that, were a shipper under a Reference Contract to be, in a practical sense, less constrained in taking up imbalance capacity on any one Gas Day, this would impact the ability of other shippers (including both shippers on other Reference Contracts and on Negotiated Contracts) to access capacity of the DBNGP thereby reducing reliability and security of supply to the detriment of those other shippers and the ultimate consumers of the gas. At its best, a small overall imbalance position may cause an increase in fuel costs and may limit the abilities of some Other Reserved Services, such as the ability for shippers to utilise storage services. At its worst, such as during a producer outage where shippers will typically take more gas from the DBNGP than they deliver at the producer inlet point, this can drastically reduce linepack over a number of hours in a Gas Day which can result in unavailability of Overruns, service unavailability of some Other Reserved Services, such as storage agreements, and Operational Balancing Agreements, and potential curtailment of gas transportation services.

9.24 To date, every single producer outage, and resulting shipper behaviour through imbalances and other behavioural activities, has resulted in substantial depletions of DBNGP line pack which has resulted in the above impacts to service delivery. This has included the Public Utilities Office (PUO) activating the Gas Supply Disruption Response Plan, through the initiation of the Operations Management Group, on 6 June 2014 and 20 January 2015 in response to DBP's depleted line pack. These events arose not due to the production outage itself, given sufficient gas production capacity remained unutilised by Shippers from other production facilities, but rather arose due to shippers continuing to take gas from DBNGP line pack during the production outage in excess of the quantity of gas being received into the DBNGP, causing substantial negative imbalance positions on the DBNGP.

9.25 Further, because of the foregoing actual or possible effects on available capacity, the absence of a significantly effective incentive for shippers under a Reference Contract to stay below the 20% threshold will significantly sterilise pipeline utilisation that the pipeline operator can otherwise offer to all shippers through other services. This sterilisation further reduces the efficient utilisation of the asset and is inconsistent with promoting efficient investment in, and efficient operation and use of, the DBNGP.

9.26 In short, we are seeking changes which have the effect that those shippers on a Negotiated Contract, and consumers of gas as a whole, are not disadvantaged by the unmanageable conduct (when viewed in a practicable sense in light of the controls available to the pipeline operator under the unamended Reference Contract) of a shipper under a Reference Contract. The imbalance regime should be relevantly balanced and aligned across the whole suite of shipper contracts.

9.27 To allay any potential concern that the charge under clause 9.6(b) could be described as "penal" or a revenue raising exercise, we note that clause 20.4(c) provides: "*To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers*".

Clause 20.4(a) has been amended so that the "Other Charges" include the charge under clause 9.6(b).

9.28 For completeness, we note that shippers under the Reference Contract have many ways to manage, control and fix their imbalance positions, including:

(a) **Notification of imbalances:** Pursuant to clause 9.4 of the Reference Contracts, every shipper is notified of its Accumulated Imbalance and Daily Imbalance by way of an Accumulated Imbalance Notice issued to shippers before 13:00 (on the proposed amendments) hours on each Gas Day. Accordingly, each shipper is expressly informed of its daily and cumulative imbalance position to enable it to modify its behaviour and remain within the relevant imbalance limits.

(b) **Trading of imbalances:** Clause 9.9 of the terms and conditions provides each shipper with an ability to exchange all or part of its Accumulated Imbalance with another shipper on the DBNGP (by notice to the Operator on the next Working Day, by the later of 14:00 hours and the time (on that next Working Day) which is 1 hour after the time of receipt from the Operator of the Shipper's Accumulated Imbalance Notice for that Gas Day), on any terms that those parties may agree. Accordingly, this provides an ability for each shipper to unilaterally agree, outside of any involvement with the pipeline operator, to exchange and thereby reduce its imbalance position with other shipper to mitigate its potential exposure to imbalance charges.

(c) **Control over Transportation Usage:** DBP is of the view that each shipper has a myriad of options to adjust its usage of gas transportation services and gas demand requirements to ensure that it does not exceed its Accumulated Imbalance Limits. These include, but are not limited to:

(i) direct control over its gas demand requirements through the management of its end user or asset;

(ii) Advance Nomination rights under clause 8.18 of the reference service terms and conditions which provide an ability for each shipper to provide advance notice of its forecast gas transportation requirements; and

(iii) Initial Nomination and Renomination rights under clauses 8.9 and 8.11 which provide an ability for each shipper to adjust its nomination requirements, up to 20:00 hours on each Gas Day, to mirror its gas transportation requirements with its gas demand usage on any given Gas Day.

(d) **Imbalance Limits:** DBP's imbalance limits are set at a very high level, in contrast to Australian and global averages, which already provide substantial margins of flexibility for shippers before any imbalance charges are incurred.

clause 9.6(c)

9.29 In clause 9.6(c), the addition of "*or 9.6(b)*" is a consequence of the proposed change to divide the application of the Excess Imbalance Charge between the regime in clause 9.5 (for imbalances above 8% and up to 20%) and the regime in clause 9.6(b) (for imbalances above 20%), as clause 9.6(c) is meant to apply to the entire Excess Imbalance Charge. Obviously, if the new clauses 9.6(a) and (b) are rejected then this additional cross reference must also be rejected.

9.30 The new sub-clause 9.6(c)(i) and the new words at the end of clause 9.6(c) are changes in favour of the Shipper and are consistent with the approach of better aligning the provisions of clause 9 with the Negotiated Contracts.

9.31 The amended cross references in sub-clause 9.6(c)(iv) are an outcome of the insertion of clauses 9.6(a) and (b) and 9.6(c)(i).

Clause 9.7 Balancing in particular circumstances

(a) If the Parties anticipate a failure of the Shipper's Gas supply (including a failure due to an impending cyclone), the Parties may, if they consider it Technically Practicable and appropriate to do so, agree to increase for a short period the Accumulated Imbalance Limit or the Outer Accumulated Imbalance Limit (or both), in order to enable the Shipper to deposit additional Gas in the DBNGP in advance of that failure.

(b) The Parties may, during a period in which the Shipper's Gas supply has wholly or partially failed, if they consider it Technically Practicable and appropriate to do so, agree to allow the Shipper to exceed the Accumulated Imbalance Limit, whether or not the Shipper has deposited additional Gas under clause 9.7~~9.6~~(a) in anticipation of the failure of the Shipper's Gas supply.

(c) Subject to clause 9.7~~9.6~~(d), an agreement under clauses 9.7(a)~~9.6~~ or ~~9.6(a)~~9.7(b) may be on any terms and conditions the Parties consider Technically Practicable and appropriate. The agreement must be in writing (which may be contained in an email) and must be in place before the Shipper seeks to exercise or purport to exercise any rights under it or intended to be granted by it.

(d) The Operator may require an agreement under clause 9.7(a)~~9.6(a)~~ to contain any reasonable provisions it sees fit, including any or all of the following provisions:

(i) that the Operator may from time to time during the duration of that agreement, by notice to the Shipper, specify a limit for the Shipper's Accumulated Imbalance, beyond which limit the Operator may refuse to Receive Gas from the Shipper at an Inlet Point or Deliver Gas to the Shipper at an Outlet Point, or both; and

(ii) that upon resumption of the Shipper's Gas supply, the Operator may require the Shipper to restore the absolute value of its Accumulated Imbalance to below the Accumulated Imbalance Limit as soon as reasonably practicable.

(e) Nothing in this clause compels a Party to enter into an agreement under clauses ~~9.6~~ 9.7(a) or ~~9.6(a)~~ 9.7(b).

Explanation/Submission

9.32 These changes are required as a result of the addition of clauses 9.6(a) and 9.6(b) (which additions are explained above).

Clause 9.8 Remedies for breach of imbalance limits

Except as provided in clause 9.10~~9.9~~, the Operator may not exercise any rights or remedies against the Shipper for exceeding the Accumulated Imbalance Limit, other than:

(a) an action for breach of clause 9.2 or 9.5(b)(iii), limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 9.5(b)(iii) is

reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the Shipper in respect of that failure;

~~(f)~~(b) to recover the Excess Imbalance Charge or Excess Imbalance Charges where permitted by and in accordance with this clause;

~~(g)~~(c) to refuse to Receive Gas from the Shipper at an Inlet Point or refuse to Deliver Gas to the Shipper at an Outlet Point so as to bring the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit; or

~~(h)~~(d) any combination of the rights and remedies in clauses~~,~~ 9.8(a)~~9.7(a)~~, 9.8(b) and 9.8(c)~~9.7(b)~~.

The Parties agree that, because the rights and remedies set out in this clause 9.8~~9.7~~ apply across all of the Shipper's Capacity Services, when, in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 9.8~~9.7~~, the Operator may not exercise the equivalent right or pursue the equivalent remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

Explanation/Submission

9.33 The insertion of a new clause 9.8(a) is another step to better align the express imbalance remedies across Negotiated Contracts and the Reference Contracts. As in the case of the addition of clauses 9.6(a) and (b), this change is important to promote efficient investment in, and efficient operation and use of, the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas by removing the situation where one shipper under a Reference Contract (on the current terms) is less constrained than other shippers to take up imbalance capacity of the pipeline, thereby limiting the probability that imbalance capacity (and capacity for other services) will be available for those shippers in real operational need at the relevant time. The inclusion of this express remedy was the agreed outcome of the 2004 arms' length negotiations with shippers and reflects the position accepted by the market since that time. It is not appropriate for the Reference Contract to contain a different position on this issue given its potential effect on the availability of capacity services for all shippers.

9.34 Both clauses 9.2 and 9.5(b)(iii) contain obligations (albeit not strict obligations but obligations to "endeavour" and "use best endeavours" respectively) and therefore a breach by the Shipper should sound in damages if any are suffered by the Operator as a result.

9.35 Note that clause 9.8(a) expressly provides that any such damages referred to in that clause are to be reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the Shipper in respect of the relevant breach, thereby preventing any potential double recovery by the Operator.

9.36 The changes to cross references result from the addition of clauses 9.6(a) and (b) (and, in clause 9.8(d), from the addition of clause 9.8(a)).

Clause 9.9 Trading in imbalances

(a) The Shipper may exchange all or part of its Accumulated Imbalances with another shipper on any terms they may agree, or may exchange all or part of its Accumulated Imbalances for accumulated imbalances under any other contract or contracts the Shipper has with the Operator for Capacity Services, in accordance with this clause 9.9~~9.8~~.

(b) The Shipper must give notice in writing of any such exchange in respect of a Gas Day to the Operator ~~by 12:00 hours~~ on the next Working Day following

receipt from the Operator of the Shipper's Accumulated Imbalance Notice in accordance with clause 9.4 for that Gas Day, by the later of 14:00 hours and the time (on that next Working Day) which is 1 hour after the time of receipt from the Operator of the Shipper's Accumulated Imbalance Notice for that Gas Day. If the Shipper does not give notice of an exchange by the applicable time, then the exchange is of no effect.

(c) On receipt of a notice under clause 9.9(b)~~9.8(b)~~, the Operator must calculate adjustments in the Shipper's Accumulated Imbalance to reflect the exchange and notify both shippers of the adjustments by the beginning of the next Gas Day.

Explanation/Submission

9.37 The cross referencing changes in clause 9.9(a) and (c) are required by virtue of the addition of clauses 9.6(a) and (b).

9.38 The changes in clause 9.9(b) are to reflect current operational practice. They also align with the Negotiated Contracts. We note that they benefit the Shipper as they allow more time for the Shipper to give notice of an exchange.

Clause 9.10 Cashing out imbalances at end of each Gas Month

9.10 Cashing out imbalances at end of ~~each Gas Month~~Contract

(a) The balancing process prescribed in this clause 9.10~~9.9~~ is only to be undertaken at the Capacity End Date.

(b) If at the Capacity End Date, the Shipper's Accumulated Imbalance is a positive number ~~then~~, the Operator is to pay a fair market price to the Shipper for that Gas.

(c) If at the~~–~~ Capacity End Date, the Shipper's Accumulated Imbalance is a negative number, the Shipper is to pay a fair market price to the Operator for that Gas.

Explanation/Submission

9.39 The change to the heading of clause 9.10 is to reflect the substance of the clause – it is potentially confusing in its current form. It is also consistent with the general approach of better alignment with clause 9 in the Negotiated Contracts.

9.40 The cross referencing change in clause 9.10(a) is the result of the addition of clauses 9.6(a) and (b) (with respect to which see the explanation set out earlier).

9.41 The addition of "*only*" in clause 9.10(a) and the deletion of "*then*" in clause 9.10(b) are also consistent with the general approach of better alignment with clause 9 in the Negotiated Contracts (and, in the case of the deletion of "*then*", is also for consistency with clause 9.10(c)).

10. Clause 10 - Peaking

Clause 10.3(a) Consequences of exceeding Hourly Peaking Limit

(a) If at any time the Shipper exceeds an Hourly Peaking Limit and the Operator (acting as a Reasonable and Prudent Person) considers that a continuation of that condition

(i) will have a material adverse impact on the integrity or operation of the DBNGP; or

(ii) will adversely impact or is likely to adversely impact, on any other Capacity~~, or any Other Reserved~~ Service,

the Operator (acting as a Reasonable and Prudent Person) may, subject to clauses 10.6 and 10.3(h)(i), do either or both of the following:

(iii) issue a notice requiring the Shipper to reduce its take of Gas, in that or future periods (to the extent reasonably required to ameliorate the condition in clauses 10.3(a)(i) or 10.3(a)(ii)), and the Shipper must use best endeavours in accordance with clause 10.3(c) to comply immediately, or to procure immediate compliance, with the notice so as to cease exceeding the Hourly Peaking Limit; and

(iv) refuse to Deliver Gas to the Shipper at any Outlet Point within the relevant pipeline zone until the Shipper's Hourly Quantity is within the Hourly Peaking Limit.

Explanation/Submission

clause 10.3(a)(ii)

10.1 In clause 10.3(a)(ii), the drafting is confusing and, rather than being read as referring to "Capacity Service" or "Other Reserved Service" could be interpreted as:

(a) "*Capacity*" as a standalone concept; and

(b) an extremely narrow kind of Capacity Services being: "*Other Reserved Services*".

10.2 Our changes have the effect of better aligning the clause with the intended purpose of clause 10.3(a)(ii), to set, as one of the alternative preconditions to the Operator exercising certain rights in respect to a breach of the Peaking Limits, that there be an actual or likely adverse impact on other services on the pipeline.

10.3 If the error were to remain, and not be corrected, it may be arguable that term "*Capacity*" is defined in such a way that the relevant test in clause 10.3(a)(ii) can only be satisfied if either:

(a) physical capacity at a point (rather than the availability of services at a point); or

(b) an exceedingly narrow type of Capacity Service (being Other Reserved Services),

is relevantly impacted.

10.4 This result, if applied, is plainly inconsistent with the way the clause is intended to operate[13] and the way it operates, in the Negotiated Contracts (where clause 10.3(a)(ii) refers to the

[13] **Note to ERA:** see the analogous clause 9.5(b)(ii) which refers to the effect on "Contracted Firm Capacity". Further we note that the effect of the excess peaking on the physical pipeline is already dealt with in 10.3(a)(i) so it is not necessary, and was not intended, that clause 10.3(a)(ii) does this same work.

impact on "*any other shipper's entitlement to its Daily Nomination for Contracted Firm Capacity*" which is defined very broadly as "*any contracted Capacity Service*").

10.5 We acknowledge that DBP's change in the wording from "*Capacity, or any Other Reserved Service*" to "*Capacity Service*" arguably broadens the services the impact (or likely impact) on which the Operator can take into account when determining whether to give a notice to the Shipper to cease exceeding the Hourly Peaking Limit and refuse to Deliver Gas to the Shipper until the Shipper's Hourly Quantity is within the Hourly Peaking Limit. But "*Other Reserved Service*" expressly excludes (among other things) T1 Service, P1 Service, B1 Service and Aggregated Service and it was never intended, and is not the expectation of the market, that a shipper exceeding the Hourly Peaking Limit should be free to impact another shipper's ability to take Gas under its T1 Service, P1 Service or B1 Service.

10.6 This change promotes efficient investment in, and efficient operation and use of, the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas by removing the situation where one shipper under a Reference Contract (on the current terms) is less constrained than other shippers to take up significant (i.e. above 125% of the relevant MHQ) peaking capacity of the pipeline, thereby limiting the probability that peaking capacity (and capacity for other services) will be available for those shippers in real operational need at the relevant time. The preconditions to levying a charge under clause 10.3 are already cumbersome and operationally inefficient, involve significant time delays and do not incentivise or motivate appropriate shipper behaviour – the impact on other relevant services is a minimum consideration that should be expressly relevant to the power to issue the relevant notice and relevantly refuse to deliver gas.

10.7 This change also more closely aligns to the position under the Negotiated Contracts. It is not appropriate for the Reference Contract to contain a different position on this issue given its potential effect on the availability of capacity services for all shippers.

10.8 DBP notes, for context, that if a Shipper under a Reference Contract is, (in a practical sense) relatively unconstrained in taking up peaking capacity on any one Gas Day, then this impacts the ability of other shippers to access capacity of the DBNGP (thereby reducing reliability and security of supply to the detriment of all other shippers and consumers of gas). In other words, peaking can require DBP to temporarily utilise other shippers' capacity rights on the DBNGP to provide the extra capacity required to satisfy the peaking requirement, which reduces the reliability and security of supply to the detriment of those other shippers and the ultimate consumer of the relevant gas. This is particularly relevant during heatwaves or cold spells. During these periods, we have experienced:

(a) numerous instances where we have had to withdraw overrun capability;

(b) Instances where we receive huge renominations, for example on Friday 6th December 2019 we had a renomination of 70TJ during a single day and during August 2018 we experienced one day where there were renominations of more than 100TJ in the period of one day;

(c) instantaneous flow rates in excess of 900TJ, despite the pipeline being rated for 845TJ and only having 726.5 TJ of contracted T1 capacity.

The impact of the peakiness of nominations creates huge difficulties for operation of the pipeline in that it makes it very difficult for the control room to control flows of gas in a manner that complies with physical pressure requirements, which in turn adds enormous risk to pipeline operations.

10.9 In addition, the costs of pipeline operations to restore and maintain pipeline integrity increases as peaking rights are utilised on the pipeline. Further, because of the foregoing effects on available capacity, the absence of an effective incentive for shippers under a Reference Contract to stay below the 125% threshold will significantly sterilise pipeline

utilisation that the pipeline operator can otherwise offer to all shippers through other services. This sterilisation further reduces the efficient utilisation of the asset and is inconsistent with promoting efficient investment in, and efficient operation and use of, the DBNGP.

10.10 For completeness DBP notes that the Shipper has timely access to the relevant information to manage incurring an obligation to pay an Hourly Peaking Charge as the Operator is required, by clause 15.5(d)(i), to make available to the Shipper, within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by the Shipper at each Outlet Point during that Gas Hour. Clause 10.3(g) provides that no Hourly Peaking Charge, whether under clause 10.3(d) or 10.4(b), is payable in respect of any Gas Hour in which the Operator fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i) or provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.

10.11 Finally to allay any potential concern that DBP's changes to the preconditions to enforcing the relevant peaking remedies is simply a conduit to "revenue raising", we note that clause 20.4(c) provides: "*To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers*".

clause 10.3(a)(iii)

10.12 In clause 10.3(a)(iii), the addition of the words "*to*" and "*immediate*" are to clarify that the timeframe for the Shipper to "*procure compliance*", as an alternate to the Shipper directly complying, is intended to be the same as the timeframe for "*comply*". That is, the requirement for immediacy is not removed if the Shipper is procuring compliance rather than itself complying - the Shipper's obligation is to immediately either (i) comply; or (ii) procure compliance.

10.13 The foregoing changes are fair and reasonable, and in the net interest of shippers and consumers of gas, because they clarify the drafting without changing the obvious intent that a shipper cannot absolve itself of an obligation to immediately fix a problem by requesting someone else to fix the same problem, unless the fix effected by way of such request is also immediate (vis-a-vis the obligation to fix arising).

Clause 10.3(c) Consequences of exceeding Hourly Peaking Limit

If, after the Operator issues a notice under clause 10.3(a)(iii):

(i) subject to clause 10.3(c)(ii) ~~10.3(b)~~, the Shipper's Hourly Quantity calculated across the relevant outlet points is reducing, then the Shipper is taken to be using best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii); and

(ii) t~~T~~he Shipper's Hourly Quantity calculated across the relevant outlet points is not within the Hourly Peaking Limit by the end of the following Gas Hour, the Shipper is taken not to have used best endeavours to comply, or procure compliance, with the notice for the purposes of clause 10.3(a)(iii).

Explanation/Submission

10.14 The change to the cross reference corrects a drafting error. That is, even if the Shipper's Hourly Quantity is reducing as described in clause 10.3(c)(i), if the Shipper's Hourly Quantity nevertheless remains above the Hourly Peaking Limit by the end of the following Gas Hour then the Shipper is taken not to have used the relevant best endeavours. This was always the intended interaction of clauses 10.3(c)(i) and 10.3(c)(ii) and the existing cross reference to clause 10.3(b) is clearly an error (as a failure by the Operator to issue a notice to other

shippers should not preclude the Shipper from being taken to be using the relevant best endeavours).

Clause 10.3(d) Consequences of exceeding Hourly Peaking Limit

(d) If the Shipper does not comply and is not deemed pursuant to clause ~~10.3(c)~~10.3(c)(i) to have used best endeavours to have complied with the notices issued for the purposes of clause 10.3(a)(iii) so that the Shipper is still exceeding at least one of the Hourly Peaking Limits by the end of the following Gas Hour, the Shipper must pay an Hourly Peaking Charge at the Hourly Peaking Rate for each GJ of Gas Received:

(i) in excess of the Hourly Peaking Limit (if a notice has not been issued pursuant to clause ~~10.5(e)~~10.4(e)); or

(ii) in excess of the Hourly Peaking Limit up to the Outer Hourly Peaking Limit (if a notice has been issued pursuant to clause ~~10.5(e)~~10.4(e)),

in accordance with clause 20.

Explanation/Submission

10.15 The change in cross reference from "10.3(c)" to "10.3(c)(i)" is for better precision.

10.16 The change to the cross references in clauses 10.3(d)(i) and (ii) corrects a drafting error and is required as a result of the addition of clause 10.4, which addition is explained below.

Clause 10.3(e) Consequences of exceeding Hourly Peaking Limit

If the Hourly Peaking Charge is payable under clause 10.3(d), that charge is payable in respect of the Gas Hour in which the relevant Hourly Peaking Limit was first exceeded, and each subsequent Gas Hour until the first occasion on which the Shipper is no longer exceeding any of the Hourly Peaking Limits (after which the Shipper is not liable to pay any Hourly Peaking Charge until a new notice is issued under clause 10.3(a)(iii) or clause 10.4(e) (as the case may be)).

Explanation/Submission

10.17 This change is required as a result of the addition of clause 10.4, which addition is explained below.

Clause 10.3(g) Consequences of exceeding Hourly Peaking Limit

No Hourly Peaking Charge, whether under clause 10.3(d) or 10.4(b), is payable in respect of any Gas Hour in which the Operator:

(i) fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i); or

(ii) provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.

Explanation/Submission

10.18 This change is required as a result of the addition of clause 10.4, which addition is explained below.

Clause 10.4 Outer Hourly Peaking Limit

A new clause has been added:

10.4 Outer Hourly Peaking Limit

(a) The Shipper's Outer Hourly Peaking Limits are:

(i) 140% of the aggregate MHQ calculated across all Outlet Points on the DBNGP;

(ii) 140% of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10; and

(iii) 140% of the aggregate MHQ calculated across all Outlet Points in Pipeline Zone 10B,

(each of the limits in clauses 10.4(a)(i), 10.4(a)(ii) and 10.4(a)(iii) being an ***Outer Hourly Peaking Limit***).

(b) For each Gas Hour following the issue of a notice pursuant to clause 10.4(e) that the Shipper exceeds an Outer Hourly Peaking Limit, the Shipper must pay at the Hourly Peaking Rate an Hourly Peaking Charge for each GJ of Gas Received in excess of the relevant Outer Hourly Peaking Limit during that Gas Hour in accordance with clause 20.

(c) If the Shipper exceeds more than one Outer Hourly Peaking Limit in respect of the same Gas Hour, then the Hourly Peaking Charge under clause 10.4(b) is calculated using only the amount of the largest excess.

(d) If an Hourly Peaking Charge is payable under clause 10.3(d) and also 10.4(b) in respect of a Gas Hour, then the Shipper is required to pay both the charge under clause 10.3(d) and the charge under clause 10.4(b).

(e) If at any time the Shipper's take of Gas is such that the Operator, acting as a Reasonable and Prudent Person, believes that the Shipper has exceeded or is likely to exceed an Outer Hourly Peaking Limit, the Operator may issue a notice to the Shipper of that fact. A notice given under this clause 10.4(e) is only valid for the purposes of clause 10.4(b) and clause 10.3(d)(ii) until the Shipper has ceased to exceed the Hourly Peaking Limit.

And the previous clause 10.4 (Charges do not affect Daily Delivery) has been renumbered clause 10.5, and the heading "10.5 [deleted]" has been deleted.

Explanation/Submission

10.19 The inclusion of the new clause 10.4 more closely align the Reference Contracts to the Negotiated Contracts by adding a separate remedial approach where the Shipper exceeds its Outer Hourly Peaking Limit of 140% of the aggregate MHQ calculated across relevant Outlet Points across all of the Shipper's Capacity Services. The charge under clause 10.4 for exceeding the 140% limit is levied at the same rate as the charge under clause 10.3 for exceeding the 125% limit. The charge under clause 10.4 only applies to gigajoules above the 140% figure and only if a separate notice, under new clause 10.4(e), is first issued. If the notice under clause 10.4(e) is issued then, between the 125% Hourly Peaking Limit and up to the 140% Outer Hourly Peaking Limit, the provisions of clause 10.3 continue to apply in their existing form (with only minor drafting changes as described above). If no notice is issued under clause 10.4(e), then the entire amount above the 125% Hourly Peaking Limit

is subject to the application of the provisions of clause 10.3 in their existing form (with only minor drafting changes as described above).

10.20 Note that there is no duplication of charges in respect of exceeding the 125% Hourly Peaking Limit and the 140% Outer Hourly Peaking Limit, as a result of the words "*up to the Outer Hourly Peaking Limit*" in the charging provision in clause 10.3(d)(ii), which applies where a notice is given under clause 10.4(e) (being a precondition to levying the charge for exceeding the Outer Hourly Peaking Limit). That is, if a notice is given under clause 10.4(e) enlivening the charging regime in clause 10.4, then above 125% and up to 140%, the Shipper is charged under clause 10.3(d)(ii) (if the relevant preconditions in clause 10.3 are met) and then, above 140%, the Shipper is charged under clause 10.4(b). The rate of the charge is the same in each case, it is merely the preconditions to charging that differ.

10.21 The addition of clause 10.4 has been made to better align the imbalance remedies across Negotiated Contracts and the Reference Contracts. The inclusion of this outer threshold remedy was the agreed outcome of the 2004 arms' length negotiations with shippers and reflect the position accepted by the market since that time. It is not appropriate for the Reference Contract to contain a different position on this issue given its potential effect on the availability of capacity services for all shippers.

The addition of clause 10.4 promotes efficient investment in, and efficient operation and use of, the DBNGP for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas by removing the situation where one shipper under a Reference Contract (on the current terms) is significantly less constrained than other shippers (including shippers on Negotiated Contracts) to take up significant (i.e. above 140% of the relevant MHQ) peaking capacity of the pipeline, thereby limiting the probability that peaking capacity (and capacity for other services) will be available for those shippers in real operational need at the relevant time. DBP holds the view that this is an issue even at the 125% peaking limit but has decided not to seek to amend the existing regime with respect to that threshold until the 140% threshold has been reached.

In the Operator's opinion, by the time the shipper breaches the 140% point, the prudent and sensible balance between the individual shipper's interests and the interest of all other users of the shared use asset (the DBNGP) has clearly shifted away from offering the particular shipper even more peaking flexibility in favour of ensuring that the further behaviour of a single shipper does not impact on pipeline operations and integrity and the capacity utilisation of all other shippers for the net benefit of consumers of gas.

10.22 In the Operator's experience to date, this second limb of the peaking regime being a feature of all, or almost all, existing shipper contracts has prevented the circumstance of one shipper undertaking extreme peaking to the detriment of other shippers, services or pipeline safety, reliability and security of supply. But it is certainly foreseeable (and in DBP's view likely) that, were a shipper under a Reference Contract to be, in a practical sense, less constrained in taking up peaking capacity on any one Gas Day, this would impact the ability of other shippers (including both shippers on other Reference Contracts and on Negotiated Contracts) to access capacity of the DBNGP thereby reducing reliability and security of supply to the detriment of those other shippers and consumers of the gas. For example, peaking can require DBP to temporarily utilise another shipper's capacity rights on the DBNGP to provide the extra capacity required to satisfy the peaking requirement, which reduces the reliability and security of supply to the detriment of that other shipper and the ultimate consumer of the relevant gas. In addition, the costs of pipeline operations to restore and maintain pipeline integrity increases significantly as peaking rights are utilised on the pipeline.

10.23 Further, because of the foregoing actual or possible effects on available capacity, the absence of a significantly effective incentive for shippers under a Reference Contract to stay below the 140% threshold will significantly sterilise pipeline utilisation that the pipeline operator can otherwise offer to all shippers through other services. This sterilisation further

reduces the efficient utilisation of the asset and is inconsistent with promoting efficient investment in, and efficient operation and use of, the DBNGP.

10.24 In short, we are seeking changes which have the effect that those shippers on a Negotiated Contract, and consumers of gas as a whole, are not disadvantaged by the unmanageable conduct (when viewed in a practicable sense in light of the controls available to the pipeline operator under the unamended Reference Contract) of a shipper under a Reference Contract. The peaking regime should be balanced and aligned across the whole suite of shipper contracts.

10.25 To allay any potential concern that the charge under clause 10.4(b) could be described as "penal", or a revenue raising exercise, we note that clause 20.4(c) provides: "*To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers*". Clause 20.4(a) has been amended so that the "Other Charges" include the charge under clause 10.4(b).

10.26 Note that the Shipper has timely access to the relevant information to manage incurring an obligation to pay an Hourly Peaking Charge as the Operator is required, by clause 15.5(d)(i), to make available to the Shipper, within one hour after each Gas Hour, the unverified hourly quantities of Gas Received by the Shipper at each Outlet Point during that Gas Hour. Clause 10.3(g) provides that no Hourly Peaking Charge, whether under clause 10.3(d) or 10.4(b), is payable in respect of any Gas Hour in which the Operator fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i) or provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.

Clause 10.6 Remedies for breach of peaking limits

The Operator must not exercise any rights or remedies against the Shipper for exceeding an Hourly Peaking Limit, other than:

(a) for breach of clause 10.2 or 10.3(a)(iii) limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 10.3(a)(iii) is reduced by any Hourly Peaking Charge or Hourly Peaking Charges paid by the Shipper in respect of that failure;

(b) to recover the Hourly Peaking Charge or Hourly Peaking Charges where permissible by and in accordance with this clause 10;

(c) to refuse to Deliver Gas to the Shipper at an Outlet Point (in accordance with clause 10.3(a)(iv)); or

(d) any combination of clauses 10.6(a), 10.6(b) and 10.6(c).

The Parties agree that, because the rights and remedies set out in this clause 10.6 apply across all of the Shipper's Capacity Services, when in a particular circumstance, the Operator exercises a right or pursues a remedy under this clause 10.6, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Service or in relation to another Capacity Service in relation to the same circumstance.

Explanation/Submission

10.27 A reference to clause 10.2 has been added in clause 10.6(a) because both clauses 10.2 and 10.3(a)(iii) contain obligations a breach of which by the Shipper should sound in damages if any are suffered by the Operator as a result. The obligation in clause 10.2 is an obligation

to do all things expected of a Reasonable and Prudent Person to ensure that the Shipper's Hourly Quantity for each Gas Hour does not exceed the relevant Hourly Peaking Limits.

10.28 Note that clause 10.6(a) expressly provides that any such damages referred to in that clause are to be reduced by any Hourly Peaking Charge or Hourly Peaking Charges paid by the Shipper in respect of the relevant breach, thereby preventing any potential double/over recovery by the Operator.

11. Clause 11 - Overrun

Clause 11.2(a) Unavailability Notice

The Operator may at any time, acting as a Reasonable and Prudent Person, give notice (an ***Unavailability Notice***) to the Shipper that Overrun Gas is unavailable to the Shipper, or is only available to the Shipper to a limited extent, for one or more Gas Days, but only to the extent that the Shipper overrun will impact or is likely to impact on any other shipper's entitlement to its Daily Nomination for ~~P1 Capacity, any Other Reserved~~any Capacity Service ~~or~~ including allocated Spot Capacity. The Operator must, at the same time, give an Unavailability Notice to all other shippers that are taking Overrun Gas, the taking of which, due to the location on the DBNGP at which the Overrun Gas is being taken, has an impact on the ability of the Operator to Deliver Gas to meet its obligations to shippers.

Explanation/Submission

11.1 The box set out above shows the changes to clause 11.2(a) in the P1 Service Reference Contract. Analogous changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract.

11.2 The changes correct a drafting error and more closely aligns the Reference Contracts to the Negotiated Contracts.

11.3 Clause 11 relates to the taking of Overrun Gas by the Shipper. "*Overrun Gas*" is defined as Gas in excess of the quantities of Contracted Capacity across all of that shipper's Capacity Services.

11.4 The change in clause 11.2(a) arguably broadens the scheduled services the impact (or likely impact) on which the Operator can take into account when determining whether to give an Unavailability Notice with respect to Overrun Gas. The change replaces the narrower references to "*P1 Capacity*" and "*any Other Reserved Service*" with the broader term "*any Capacity Service*".

11.5 The change is sensible and reasonable, and for net benefit of shippers and consumers of gas, for the following reasons:

(a) It was never intended, and is not the expectation of the market, that a shipper taking Overrun Gas under a P1 Service should be free to impact another shipper's ability to take its Capacity Service (including, for example, T1 Capacity within that other shipper's scheduled Contracted Capacity for that T1 Service). A shipper's right to Overrun Gas was always intended to be tempered by it not interfering with other shippers taking their Capacity Services.

(b) Overrun Gas is calculated as a single figure across all of the Shipper's Capacity Services. At the very least, it creates unnecessary confusion if the test under the Shipper's contract for one service, for determining the relevant impact of taking an amount across all of the Shipper's contracts, differs from the test relating to that exact same amount of Gas under the Shipper's contract for a different service (by virtue of the reference to "P1 Capacity" in the P1 Service Reference Contract, as compared to the reference to "T1 Capacity" in the T1 Service Reference Contract and the reference to "B1 Capacity" in the B1 Service Reference

Contract). It also unnecessarily complicates the application of clause 11.7(e), which protects the Shipper from the Operator exercising a right or remedy against the Shipper under different contracts with the Shipper "*in relation to the same circumstances*" because, if the test in respect of what other services are impacted by the Overrun Gas differs between the Shipper's contracts then the exercise of the right or remedy may be said to be in respect of different, rather than the same, circumstances under the different contracts.

(c) Overrun Gas is not available as of right:

(i) under clauses 5.1 and 5.2, the Shipper's rights to Deliver to, and Receive Gas from, the Operator and the Operator's obligations to Receive Gas from, and Deliver Gas to, the Shipper, are limited to the amount of the Shipper's Contracted Capacity;

(ii) under clause 8.9(f), scheduled Capacity Services must not exceed the Shipper's Total Contracted Capacity (except in limited circumstances (as described in clause 8.9(g)), for bringing the Shipper's Accumulated Imbalance within the Accumulated Imbalance Limit and, even then, not if the Operator considers as a Reasonable and Prudent Person that it would interfere with other shippers' rights to their Contracted Firm Capacity).

Accordingly, if the Shipper is taking Overrun Gas, that means it is taking Gas in excess of its express contractual rights and it is appropriate that, where such excess take will, or is likely to, impact on any other shipper's entitlement to its scheduled nomination, the Operator should be able to issue an Unavailability Notice. That is, once scheduled, scheduled services should take priority over any unscheduled take of Gas above Contracted Capacity. This priority (to scheduled services over unscheduled take) promotes certainty of scheduling which is in the interests of consumers of natural gas with respect to reliability and security of supply of natural gas, thereby achieving the NGO.

11.6 Further, DBP notes that the utilisation of Overrun Gas by shippers results in a direct loss of linepack used to support other pipeline services on the DBNGP and increases the probability of curtailment of these services which is inconsistent with the promotion of safety, reliability and security of supply of natural gas. The ability to issue an Unavailability Notice under clause 11.2(a) and thereby enliven the clause 11.4 right to refuse to deliver Overrun Gas is therefore supported by the NGO. Clause 11.4assists DBP to prevent one shipper unfairly taking Overrun Gas and causing a heightened risk of curtailment of other services.

11.7 For completeness, DBP notes that, pursuant to clause 15.5(d), each shipper has constant access to CRS information to manage its gas flows and has various options to adjust its usage of gas transportation services, gas demand requirements and contracted capacity levels (including by increasing its access to Capacity Services (including by way of Spot Transactions)) to manage its need for, and take of, Overrun Gas. Clause 11.7(d) provides that no Unavailable Overrun Charge is payable in respect of any Gas Day in which the Operator fails to provide the Shipper with the information required in accordance with clause 15.5(d)(i) or provides the Shipper with information under clause 15.5(d)(i) which is incorrect in any material respect.

11.8 Finally, to allay any potential concern that the charge under clause 11.6 could be described as "penal" or a revenue raising exercise, we note that clause 20.4(c) provides: "*To the extent that the Other Charges are in excess of the costs, losses and damages actually incurred by the Operator as a result of the conduct giving rise to the Other Charges, the Operator will distribute such additional revenue annually in equal proportions amongst the Shippers*".

Clause 11.2(c) Unavailability Notice

Any Curtailment Notice issued under clause 17 for any period is taken to constitute an Unavailability Notice indicating that Overrun Gas is wholly unavailable for the same period unless the Curtailment:

(i) is a Point Specific Curtailment;

(ii) does not affect Gas Transmission Capacity generally; and

(iii) does not affect the ~~Inlet Point or~~ Outlet Point at which the Overrun Gas is being Received by the Shipper.

Explanation/Submission

11.9 The change corrects a drafting error - Overrun Gas can only be Received at an Outlet Point and not an Inlet Point.

12. Clause 14 - Relocation

Clause 14.2(b) Assessment of Requested Relocation

For the purposes of clause 14.2(a), a Requested Relocation of Contracted Capacity is not an Authorised Relocation if:

(i) the Requested Relocation would cause the sum (after the relocation) of all shippers':

(A) quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Inlet Point is located; or

(B) quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located;

(ii) in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible; or

(iii) the Requested Relocation is such that ~~the~~ an Inlet Point at which there is Contracted Capacity under this Contract would be downstream of ~~the~~ an Outlet Point at which there is Contracted Capacity under this Contract ~~and it would change the normal direction of Gas flow in the DBNGP~~.

Explanation/Submission

12.1 The box set out above shows the changes to clause 14.2(b)(iii) in the P1 Service Reference Contract and the T1 Service Reference Contract.

12.2 The substantive effect of the change is to remove the requirement that the "*normal direction of Gas flow in the DBNGP*" must be changed in order for a relocation causing a notional change from Forward Haul to Back Haul (or vice versa, in the case of the Reference Contract for B1 Service) to be classified as '*not an Authorised Relocation*'. The purpose of the change is to make clear that a relocation is not automatically available, as of right under the Reference Contracts, in circumstances where the relocation, if made, would cause a notional change in direction of the Capacity Service under that contract (i.e. Forward Haul becomes Back Haul or vice versa) even if there is no resulting physical change in the direction of gas flows on the DBNGP. The Reference Contracts still provide for the Parties to negotiate the terms on which such relocation will be accommodated – that is, a relocation causing a change in notional direction in direction of the Capacity Service under that contract is not precluded.

12.3 The original formulation of this clause was a drafting mistake. None of the Reference Contracts or Negotiated Contracts contain (or have ever contained) a mechanism for the relevant terms of service to change (i.e. Forward Haul becoming Back Haul or vice versa) where the notional direction changes pursuant to a relocation.[14] Further, and without

[14] **Note to ERA:** in fact there are numerous provisions in the Reference Contracts and the Negotiated Contracts which assume that the Capacity Services (i.e. Full Haul, Back Haul or Part Haul (as the case may be)) cannot become, and prevent the Capacity Services from becoming, different services (i.e. not Full Haul, Back Haul or Part Haul (as the case may be)) than the services contracted for. The only exception to this statement is that, where

limitation on the foregoing legal and commercial issue, in some circumstances the reversal of the notional direction of flows has cost and engineering implications – in particular where the outlet point capacity is not sufficient to automatically be able to accept such a relocation of capacity. Any relocation, as a matter of practice, must be referred to the engineering division of the Operator to ensure that deliveries are physically possible before it can be approved.

12.4 We also note that the minimum term of the Reference Contracts is only 2 years and it would be unusual for an unforeseen requirement to change from a Forward Haul to a Back Haul (or vice versa) to arise, and need to be implemented, in such a short period (particularly given the rights of a Shipper under a Reference Contract to trade or sub-contract capacity, or assign its contract, and obtain a new Reference Contract for the appropriate service).

12.5 The other changes to clause 14.2(b)(iii) promote drafting clarity as:

(a) they accommodate the possibility of there being more than one Inlet Point or more than one Outlet Point at which there is Contracted Capacity under the particular contract; and

(b) given the defined terms "Inlet Point" and "Outlet Point" can mean any such point on the DBNGP, they clarify that the usage of those terms in this clause is with respect to the particular points at which the Shipper has Contracted Capacity.

12.6 Clause 14.2(b)(iii) in the B1 Service Reference Contract is the same as clause 14.2(b)(iii) in the P1 Service Reference Contract and the T1 Service Reference Contract (and thus, except as referred to in paragraph 12.7 directly below, analogous changes have been made to the B1 Service Reference Contract).

12.7 We have made a further change to clause 14.2(b)(iii) in the B1 Service Reference Contract by changing the reference to "*downstream*" in the existing drafting to a reference to "*upstream*". Prior to our suggested change, the clause appears to have been simply copied over from the P1 Service Reference Contract or the T1 Service Reference Contract (which are both Forward Haul Capacity Services) and thus the clause needs to be amended, by changing the reference to "*downstream*" to "*upstream*", to reflect the fact that the clause appears in a contract for Back Haul service (rather than a contract for Forward Haul service).

Clause 14.2(c) Assessment of Requested Relocation

For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Inlet Point is an Authorised Relocation under the Contract if:

(i) the Requested Relocation would result in the New Inlet Point being downstream of ~~the~~ all Existing Inlet Points;

(ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Inlet Point across all of shippers' Capacity Services) at the New Inlet Point to exceed the New Inlet Point's Total Current Physical Capacity; and

~~(i) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements; and~~

the Operator agrees to a Requested Relocation such that a Capacity Service under a P1 Service Reference Contract or a B1 Reference Service Contract becomes a Full Haul Forward Haul service, such service will be on the terms of the T1 Service Reference Contract: see clause 14.7(c) in the P1 Service Reference Contract and in the B1 Reference Service Contract.

(iii)	the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that New Inlet Point.

Explanation/Submission

12.8 The box set out above shows the changes to clause 14.2(c) in the P1 Service Reference Contract and the T1 Service Reference Contract.

12.9 **the opening paragraph of clause 14.2(c):** the insertion of the words: "*unless clause 00 provides that it is not an Authorised Relocation,*" fixes a drafting error so as to now make clear that if a relocation is "*not an Authorised Relocation*" pursuant to clause 14.2(b), the relocation cannot be an "*Authorised Relocation*" under clause 14.2(c). This is an important change because it makes it clearer that the criteria in 14.2(b) have work to do such that the Operator is not forced to accept a relocation where:

(a) to do so would mean that quantities referred to as Contracted Capacity "*exceed the safe operating capability of the part of the DBNGP at which the New Inlet Point is located*" (see clause 14.2(b)(i)(A)); or

(b) "*in the opinion of the Operator, as a Reasonable and Prudent Person, the Requested Relocation would not be Operationally Feasible, and for the avoidance of doubt an increase in compressor fuel costs does not mean the Requested Relocation is not Operationally Feasible*" (see clause 14.2(b)(ii)); or

(c) the Requested Relocation would change the service from a Forward Haul to a Back Haul (or vice versa in the case of the B1 Service Reference Contract) (see clause 14.2(b)(iii)).

12.10 The change is consistent with the remainder of the clause which provides, in clause 14.3, that assessment of a Requested Relocation as "*not an Authorised Relocation*" and an assessment of a Requested Relocation as "*an Authorised Relocation*" are mutually exclusive and alternative outcomes having different consequences which are dealt with in clauses 14.5 and 14.4 respectively.

12.11 **deletion of clause 14.2(c)(iii):** we have deleted this clause as the relevant requirements are already set out in clauses 14.2(b)[15] and 14.2(c).

12.12 The changes to clause 14.2(c) are drafting and substantive improvements which provide a net benefit to shippers and consumers of gas. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

12.13 Clause 14.2(c) in the B1 Service Reference Contract is the same as clause 14.2(c) in the P1 Service Reference Contract and the T1 Service Reference Contract (and thus, except as referred to in paragraph 12.14 directly below, analogous changes have been made to the B1 Service Reference Contract).

12.14 We have made a further change to clause 14.2(c)(i) in the B1 Service Reference Contract by changing the reference to "*downstream*" in the existing drafting to a reference to "*upstream*". The clause appears to have been simply copied over from the P1 Service Reference Contract or the T1 Service Reference Contract (which are both Forward Haul Capacity Services) without due consideration of the differences between the relevant Capacity Services and thus the clause needs to be amended, by changing the reference to

[15] **Note to ERA:** this change assumes that the change to the opening paragraph of clause 14.2(c), as referred to directly above, is accepted.

"*downstream*" to "*upstream*", to reflect the fact that the clause appears in a contract for Back Haul service (rather than a contract for Forward Haul service).

Clause 14.2(d) Assessment of Requested Relocation

For the purposes of clause 14.2(a), unless clause 14.2(b) provides that it is not an Authorised Relocation, a Requested Relocation of Contracted Capacity to a New Outlet Point is an Authorised Relocation under this Contract if:

(i) the Requested Relocation would result in the New Outlet Point being upstream of ~~the~~ all Existing Outlet Points;

~~(ii) if the New Inlet Point is a proposed inlet point that new inlet point satisfies the Operator's technical and operational requirements;~~

~~(iii)~~(ii) the Requested Relocation would not cause the sum (after the relocation) of all shippers' quantities referred to as Contracted Capacity for that Outlet Point across all shippers' Capacity Services at the New Outlet Point to exceed the New Outlet Point's Total Current Physical Capacity or to exceed the safe operating capability of the part of the DBNGP at which the New Outlet Point is located; and

~~(iv)~~(iii) the Shipper has entered into a Contribution Agreement, or any other agreement, arrangement or understanding required by clause 6.13(a)(iii), in relation to that Outlet Point.

Explanation/Submission

12.15 The box set out above shows the changes to clause 14.2(d) in the P1 Service Reference Contract and the T1 Service Reference Contract.

12.16 Clause 14.2(d) is the same as clause 14.2(c), save that the former applies to Outlet Points and the latter applies to Inlet Points. The explanation of the changes to clause 14.2(c) in the P1 Service Reference Contract and the T1 Service Reference Contract apply, with all necessary changes, to the changes in clause 14.2(d) of those contracts.

12.17 Clause 14.2(d) in the B1 Service Reference Contract is the same as clause 14.2(d) in the P1 Service Reference Contract and the T1 Service Reference Contract (and thus, except as referred to in paragraph 12.18 directly below, analogous changes have been made to the B1 Service Reference Contract).

12.18 We have made a further change to clause 14.2(d)(i) in the B1 Service Reference Contract by changing the reference to "*downstream*" in the existing drafting to a reference to "*upstream*". The clause appears to have been simply copied over from the P1 Service Reference Contract or the T1 Service Reference Contract (which are both Forward Haul Capacity Services) without due consideration of the differences between the relevant Capacity Services and thus the clause needs to be amended, by changing the reference to "*downstream*" to "*upstream*", to reflect the fact that the clause appears in a Back Haul service (rather than a Forward Haul service).

Clause 14.7(a) Charges for relocation

Unless the Parties agree in writing to the contrary, no Charges payable under this Contract ~~must~~ will be reduced as a result of a relocation of Contracted Capacity under this clause 14, even if the relocation causes some or all Gas to be transported over a shorter distance or has the result that there is a shorter distance between the inlet point(s) and outlet point(s) at which the Shipper has Contracted Capacity, or reduces the "km" (as that term is otherwise used in the calculation of the P1 Tariff, P1 Commodity Tariff or P1 Capacity Reservation Tariff (as the case may be)), or the relocation

causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.

Explanation/Submission

12.19 The box set out above shows the changes to clause 14.7(a) in the P1 Service Reference Contract.

12.20 The changes have been made so that clause 14.7(a) reflects the way in which the P1 Commodity Tariff and the P1 Capacity Reservation Tariff are calculated under the P1 Service Reference Contract.

12.21 The P1 Service Reference Contract contains the following definitions:

(a) **P1 Capacity Reservation Tariff,** in all cases subject to clauses 14.7 and 20.5(a)(iii), has the meaning given in clause 15 of the Access Arrangement.

(b) **P1 Commodity Tariff**, in all cases subject to clauses 14.7 and 20.5(a)(iii), has the meaning given in clause 15 of the Access Arrangement.

12.22 Clause 15 of the draft Access Arrangement (2021 – 2025 Access Arrangement Period) defines the **P1 Capacity Reservation Tariff** as at 1 January 2021 is amount described as the "*P1 Capacity Reservation Tariff*" in clause 3.4(c)(i) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time. Clause 3.4(c)(i) sets out the dollar amount for the capacity reservation charge per GJ *MDQ*km as at December 2020.

12.23 Clause 15 of the draft Access Arrangement (2021 – 2025 Access Arrangement Period) defines the **P1 Commodity Tariff** as at 1 January 2021 is amount described as the "*P1 Commodity Tariff*" in clause 3.4(c)(ii) of this Current Access Arrangement, and thereafter, such amount as varied pursuant to the Reference Tariff Variation Mechanism from time to time. Clause 3.4(c)(ii) sets out the dollar amount for the commodity charge per GJ * km payable for the P1 Service.

12.24 The same changes have been made to clause 14.7(a) of the B1 Service Reference Contract (save that the references to "P1" are instead references to "B1") and the same reasoning applies thereto. In addition, we note that we have added "*or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Back Haul to Forward Haul*" even though, as noted above, Forward Haul cannot be utilised under a B1 Service Reference Contract (and Back Haul cannot be utilised under a P1 Service Reference Contract or a T1 Service Reference Contract), purely to align the drafting in the B1 Service Reference Contract with the equivalent drafting which was already contained in the P1 Service Reference Contract and the B1 Service Reference Contract.

12.25 We set out below the changes to clause 14.7(a) in the T1 Service Reference Contract.

Clause 14.7(a) Charges for relocation

Unless the Parties agree in writing to the contrary, no Charges payable under this Contract ~~must~~ will be reduced as a result of a relocation of Contracted Capacity under this clause **Error! Reference source not found.**, even if the relocation causes some or all Gas to be transported over a shorter distance or has the result that there is a shorter distance between the inlet point(s) and outlet point(s) at which the Shipper has Contracted Capacity, or the relocation causes a notional reversal of flow of Gas transported under this Contract for the Shipper from Forward Haul to Back Haul.

12.26 These changes have been made to the T1 Service Reference Contract so that clause 14.7(a) of the T1 Service Reference Contract makes it clearer to the reader that the T1 Capacity Reservation Tariff does not reduce merely because of any reduction in the distance between the inlet point(s) and outlet point(s) at which the Shipper has Contracted Capacity. This conclusion is clearly consistent with the general statement in the clause that "*no Charges payable under this Contract will be reduced as a result of a relocation of Contracted Capacity under this clause 14*" and is also consistent with the definition of "*T1 Capacity Reservation Tariff*" and "*T1 Commodity Tariff*" which do not incorporate (whether directly or by cross reference to the Access Arrangement) any distance factor.

Clause 14.7(b) Charges for relocation

If a relocation of Capacity under this clause 14 results in Gas being transported to the Shipper to, or from, or Received from the Shipper at, a point downstream of the southern most point of the DBNGP as at 30 December 2003 (being Clifton Road), in addition to the matters described in clause 14.7(c), the Shipper must pay the additional tariff required by the Operator in respect to the increased distance beyond Clifton Road over which the Gas is transported, in accordance with clause 20. Nothing in this clause obliges the Operator to accept a Requested Relocation of Capacity to an Inlet Point or Outlet Point which is not located on the DBNGP.

12.27 The box set out above shows the changes to clause 14.7(b) in the B1 Service Reference Contract.

12.28 The existing clause appears to have been simply copied over from the P1 Service Reference Contract or the T1 Service Reference Contract (which are both Forward Haul Capacity Services) without due consideration of the differences between the relevant Capacity Services and thus the clause needs to be amended to reflect the fact that, under a B1 Service Reference Service, if the relevant extension occurs, the transportation over the relevant extension will most likely commence from a southerly point on the DBNGP and be transported northwards.

Clause 14.7(c) Charges for relocation

Without limiting clause 14.7(b), if a relocation of Capacity under this clause results in Gas being transported from an Inlet Point upstream of mainline valve 31 (MLV31) on the DBNGP to an Outlet Point down stream of Compressor Station 9 on the DBNGP so that a Part Haul service becomes a Full Haul service, any Capacity so relocated is to be treated as if it were:

(i) ~~be treated as if it were on the same terms and conditions as~~ Full Haul Capacity for T1 Service; and

~~(v)~~(ii) on the terms and conditions for T1 Service forming part of the Access Arrangement at the time the relocation first takes effect (as though the Parties had executed an access request form for a Reference Service that is a T1 Service in respect of such Capacity, with a Requested Reference Service Start Date of the date the relocation first takes effect and a Requested Reference Service End Date which is the same as that in the Access Request Form), for the avoidance of doubt including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and

~~(vi)~~(iii) ~~be treated under this Contract as though it was Full Haul~~no longer Contracted Capacity under this Contract.

Explanation/Submission

12.29 The box set out above shows the changes to clause 14.7(c) in the P1 Service Reference Contract. Changes have been made to the B1 Service Reference Contract so that it has the same effect (with all necessary changes) as clause 14.7(c) in the P1 Service Reference.

12.30 The changes have been made so as to more effectively reflect the obvious intent of the clause. The key issue is that the mere reference to "*terms and conditions*" for "*Full Haul Capacity for T1 Service*" in the previous draft of the clause did not inform the reader as to precisely what terms and conditions apply to that capacity. Further, the previous drafting did not clearly remove that capacity from the P1 Service Reference Contract.

12.31 The changes are drafting improvements and are to the net benefit of Shippers and consumers of Gas. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

12.32 For completeness, we note that the previous drafting in clause 14.7(c) of the B1 Service Reference Contract which has been deleted (so as to align that clause with clause 14.7(c) of the P1 Service Reference Contract, as described above) was unnecessary as it merely replicated the position already established by clauses 14.7(a) and 14.9 of the B1 Service Reference Contract (whereby, if the relocation causes the distance between contracted points to decrease, the Charges do not change but if the relocation causes the distance between contracts points to increase, the Charges are relevantly increased).

12.33 We set out below the changes to clause 14.7(c) in the T1 Service Reference Contract.

Clause 14.7(c) Charges for relocation

If a relocation of Capacity under this clause results in Gas being transported to an Outlet Point up-stream of Compressor Station 9 on the DBNGP so that a Full Haul service becomes a Part Haul service, any Capacity so relocated:

(i) remains on the same terms and conditions as Full Haul Capacity for T1 Service under this Contract, including as to the calculation of the Capacity Reservation Charges and the Commodity Charges; and

(ii) is treated under this Contract as though it was Full Haul Capacity for T1 Service under this Contract.

12.34 The changes are drafting improvements (which clarify that the terms for the Capacity Service do not change) and are to the net benefit of Shippers and consumers of Gas.

Clause 14.9 Contract amended to reflect relocation

If the Parties reach agreement under clause 14.4 or 14.5, the Requested Relocation and the terms and conditions so agreed must be given effect to by an amendment of the Access Request Form in accordance with clause 38 but without prejudice to clause 14.7(a) or 14.7(c).

Explanation/Submission

12.35 The box set out above shows the changes to clause 14.9 in the P1 Service Reference Contract. The same changes are made to the T1 Service Reference Contract and the B1 Service Reference Contract.

12.36 The changes remind the reader of clause 0 or 0 and clarify the effect of such changes to the Access Request Form. Clarity in contracting promotes efficient investment in, and efficient operation and use of, the DBNGP in the interests of users and ultimate consumers, as (among other things) it enables users to better understand and utilise their contracted services and reduces the scope for disputes.

13. Clause 15 – Metering

Clause 15.3(a)(i) Metering uncertainty

measurement to within a maximum uncertainty of:

(A) subject to clause 15.3(b), plus or minus ~~0.75~~1% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of 5 TJ/d or greater; and

(B) plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level for Metering Equipment with a design maximum flow rate of less than 5 TJ/d; and

Explanation/Submission

13.1 Changes made for consistency with the Negotiated Contract and to distinguish between levels of accuracy required for Primary Metering Equipment and alternative Metering Equipment. The Negotiated Contracts reflect the agreed position between the Shippers and the Operator, therefore throughout clause 15 we are proposing to adjust the uncertainty level for measuring requirements in line with the Negotiated Contracts. It is inefficient for the Reference Contract to differ from the Negotiated Contracts in relation to measurement of Gas flows through Metering Equipment. Further, having to ensure that the Metering Equipment meets unnecessarily tight degrees of certainty creates additional operations and maintenance cost, which costs are passed on to Shippers, even though the shippers under the Negotiated Contracts have agreed to a slightly more relaxed level of certainty in Metering Equipment.

13.2 The reference to clause 15.3(b) reflects the insertion of a new clause regarding Metering certainty measures in connection with Alternative Metering Equipment. Alternative Metering Equipment is incorporated into Metering Stations as a failsafe in the event the uncertainty regime differs from Primary Metering Equipment. Metering Equipment is only *alternative* Metering Equipment if it meets both criteria in clause 15.3(b). For the purposes of the changes proposed to the Reference Contracts, the essential provision is that the relevant Metering Equipment is used for less than 72 hours in any Gas Year. Given that it is a back up system, the Operator submits that the more relaxed uncertainty limits of plus or minus 2% are reasonable in order to minimise the maintenance costs that would otherwise be required for checking and calibrating this *alternative* Metering Equipment.

13.3 As Shippers are responsible for installation of Inlet Metering Equipment and the Operator is responsible for installation of Outlet Metering Equipment, the requirements apply equally to both Parties to the contract and result in cost savings to Shippers without compromising quality to an unacceptable level. Shippers on Negotiated Contracts accept the proposed level of accuracy, demonstrating that the proposed levels are acceptable. Accordingly there is no net detriment to the Shippers from the changes proposed.

Clause 15.3(b) Metering uncertainty

Alternative Metering Equipment referred to in clause 15.4(b) need not comply with clause 15.3(a)(i)(A) if:

(i) it is designed, adjusted and Operated so as to achieve measurement to within a maximum uncertainty of plus or minus 2% of Actual Mass Flow Rate at a minimum of the 95% confidence level; and

~~(iii)~~(ii) it is not used or likely to be used for more than 72 hours in any Gas Year.

Explanation/Submission

13.4 The operator repeats the submissions in paragraphs 13.1 to 13.3

Clause 15.3(c) Metering uncertainty

Subject to clauses 15.3(a) and 15.3(b), each component of Primary Metering Equipment may be designed, adjusted and Operated within limits of uncertainty agreed between the Parties.

Explanation/Submission

13.5 The operator repeats the submissions in paragraphs 13.1 to 13.3.

Clause 15.4(c)(xii) Primary Metering Equipment

hydrocarbon content in mole percent for each of the fractions and LPG content in tonnes per TJ of Gas;

Explanation/Submission

13.6 Clause 15.4(c) lists the gas quality and quantity information that Inlet Metering Equipment must measure and record. The items measured are generally for the Shipper's benefit, so that they can ensure that the gas quality that they receive from producers meets their requirements under their Gas Supply Agreements. It appears that the requirement to measure LPG content in tonnes per TJ of Gas is an inadvertent omission from the Regulated Contracts, accordingly the Operator is proposing to include this in the contract to better promote efficiency and consistency with what occurs in practice on the DBNGP.

Clause 15.5(e) Provision of information to Shipper

Clause has been deleted

~~(f) The Operator must make available to the Shipper via the CRS or a similar communications system as soon as practicable after receiving from Networks the information referred to in clause 33(1) of the Operating Arrangement, but in any event no later than 72 hours after the end of the Gas Day to which the information relates, the verified quantity of Gas:~~

~~(i) Received by the Shipper in a Gas Day at each Physical Gate Point; and~~

~~(ii)~~(iii) ~~Received by the Shipper in a Gas Day aggregated across all outlet points including all Physical Gate Points.~~

Explanation/Submission

13.7 Deletion of clause 15.5(e) is a consequential change arising from the end of the Operating Agreement between ATCO and DBP. The Operating Arrangement ended prior to the current Access Arrangement and references to it were deleted in AA4, however this reference was inadvertently overlooked. As the Operating Arrangement is no longer in effect, no information is provided to DBP by Networks pursuant to it.

13.8 If the Regulator is minded to do so, a further tidy up change could be made to the Reference Contracts (not included in the tracked versions of the T1, P1 and B1 Reference Contracts attached to the Access Arrangement for 2021-2025 submitted with these submissions) in that the definition of "Networks" could be deleted. *"Networks"* is defined as *"ATCO Australia Pty Ltd ABN 90 089 531 975 (formerly WA Gas Networks Pty Ltd and before that AlintaGas Networks Pty Ltd)"*. Given the cessation of the Operating Arrangement, ATCO Australia Pty Ltd now falls within the definition of Distribution Networks Shipper and there is no need to distinguish it from other Distribution Networks Shippers. The term "*Networks*" is only used in clause 15.5(e) (which is obsolete as discussed above), and in the definition of "*Distribution Network*". The definition of "Distribution Network" could be amended as follows with no detriment to the operation of the Reference Contract – ATCO Australia Pty Ltd would be captured by the remaining terms of the definition:

> ***Distribution Network*** means any Gas distribution system which receives Gas from the DBNGP ~~and includes any Gas distribution system owned or operated by Networks which receives Gas from the DBNGP~~.

Clause 15.5(f) Provision of information to Shipper

Clause~~s 15.5(e) and (f)~~ 15.5(e) only ~~apply~~ applies for as long as the Shipper is a Distribution Networks Shipper.

Explanation/Submission

13.9 The amendment to clause 15.5(f) is a consequence of the deletion of clause 15.5(e)

14. Clause 17 – Curtailment

Clause 17.2 Curtailment Generally

The Operator may Curtail the provision of the Capacity Services to the Shipper from time to time to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail:

(a) if there is an event of Force Majeure where the Operator is the Affected Party;

(b) whenever it needs to undertake any Major Works;

(c) by reason of, or in response to a reduction in Gas Transmission Capacity caused by the default, negligence, breach of contractual term or other misconduct of Shipper;

(d) for any Planned Maintenance; ~~and~~

(e) in circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason (including to avoid or lessen a threat of danger to the life, health or property of any person or to preserve the operational integrity of the DBNGP) that a Curtailment is desirable; and

(f) in circumstances where actual Forward Haul gas flow is less than the B1 Service demand across all shippers with a B1 Service.

Explanation/Submission

14.1 This change is only for the B1 Service Reference Contract and seeks to further align the relevant Curtailment provisions across the terms for B1 Service under the Negotiated Contracts and the Reference Contract.

14.2 In clause 2.1 of the B1 Service Reference Contract, "Back Haul" is defined as follows:

***"Back Haul** means a Gas transportation service on the DBNGP where the Inlet Point is downstream of the Outlet Point."*

14.3 Clause 17.2 is an application of that definition. This is because, unless Forward Haul gas flow exceeds the B1 Service demand, Back Haul cannot exist (and therefore cannot be provided). In other words, the change reflects operational reality that Back Haul service is, on the current (and historical) configuration of the DBNGP, only provided on the basis that there is sufficient actual Forward Haul gas flow to accommodate the provision of a notional Back Haul service.

Clause 17.3(b) Curtailment without liability

The Operator has no liability to the Shipper whatsoever under clause 17.3(a) or otherwise, except as may be provided in clause 17.4, for a Curtailment in any of the following circumstances:

(i) where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the B1 Service during the Gas Year does not cause the B1 Permissible Curtailment Limit to be exceeded;

(ii) where the Curtailment is in accordance with any of clauses 17.2(a), ~~or~~ 17.2(b) or 17.2(f); or

(iii) where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment.

This clause 17.3(b) does not derogate from or limit in any way the Operator's obligation under clause 17.1(a).

Explanation/Submission

14.4 This change is only for the B1 Service Reference Contract.

14.5 This change reflects the addition of a new clause 17.2(f) into the B1 Service Reference Contract – see the explanation for such change set out above. The change is consistent with, and implements, the definition of "Back Haul" in that, under the B1 Service Reference Contract, the Operator only undertakes to provide, and the Shipper can only use, a "Back Haul" (as defined above) Capacity Service.

14.6 This change aligns to the Negotiated Contracts for B1 Service.

Clause 17.3(c) Curtailment without liability

The P1 Permissible Curtailment Limit means 2% of the time in the relevant Gas Year during the Period of Supply (regardless of the amount of Capacity Curtailed during the period of the Curtailment) except that:

(i) a Curtailment in circumstances set out in clause 17.2(a) or 17.2(b);

(ii) a circumstance where clause 17.5 provides that the circumstance is not to be regarded as a Curtailment; and

(iii) a Curtailment pursuant to a Multi-shipper Agreement to the extent that such capacity would not have been Curtailed if the Curtailment Plan had been applied,

is not to be aggregated with other Curtailments in determining whether the accumulated duration of Curtailments in a Gas Year cause the P1 Permissible Curtailment Limit to be exceeded.

Explanation/Submission

14.7 In the box above we set out the change in the P1 Service Reference Contract. This change has also been made in the T1 Service Reference Contract (in relation to the T1 Permissible Curtailment Limit) and the B1 Service Reference Contract (in relation to the B1 Permissible Curtailment Limit), to which the explanation below also applies. In addition, in the B1 Service Reference Contract, a cross reference to clause 17.2(f) has also been added and analogous reasons to those set out below in relation to clause 17.2(b) apply to that addition as well.

14.8 The addition of a cross reference to clause 17.2(b) in clause 17.3(c)(i) corrects a typographical error. This is because:

(a) Clause 17.3(b)(ii) provides that the Operator has no liability to the Shipper whatsoever for a Curtailment which is in accordance with clause 17.2(b) (being a Curtailment to the extent the Operator as a Reasonable and Prudent Person believes it is necessary to Curtail whenever it needs to undertake any Major Works).

(b) Clause 17.3(b)(i) provides that the Operator has no liability to the Shipper whatsoever for a Curtailment where the duration of the Curtailment together with the aggregate duration of all other Curtailments of the P1 Service (or, in the T1 Service Reference Contract, the T1 Service and in the B1 Service Reference Contract, B1 Service) during the Gas Year does not cause the P1 Permissible Curtailment Limit (or, in the T1 Service Reference Contract, the T1 Permissible Curtailment Limit and in the B1 Service Reference Contract, the B1 Permissible Curtailment Limit) – being 2% of the time in the relevant Gas Year - to be exceeded. Accordingly, where the aggregate duration of all Curtailments of the relevant Capacity Service in a Gas Year does exceed the 2% threshold, the Operator may be liable to the Shipper.

(c) If Curtailments in circumstances set out in clause 17.2(b) ("**no liability Curtailments**") are not listed in clause 17.3(c)(i), then such Curtailments will count towards the 2% threshold described above and could result in the Operator being liable for Curtailments as a result of that 2% threshold being exceeded, in circumstances which were intended to result in no liability as described in clause 17.3(b)(ii).

For example, if there are Curtailments in a Gas Year for reasons other than as described in clause 17.2(b) which count towards the 2% threshold but do not, by themselves, cause it to be exceeded ("**Other Curtailments**"), and there are also Curtailments for reasons described in clause 17.2(b) in that same Gas Year which, when added to such Other Curtailments, cause the 2% threshold to be exceeded, then the Operator could be liable to the Shipper even if the relevant excess would not have occurred but for the "no liability Curtailments". Clearly this is not the intention given the "no liability whatsoever" position described in clause 17.3(b)(ii) with respect to Curtailments described in clause 17.2(b).

14.9 The addition of the cross reference to clause 17.2(b) in clause 17.3(c)(i) better aligns the drafting with the Negotiated Contracts.

14.10 The cross reference to clause 17.2(b) in clause 17.3(c)(i) was removed by DBP solely to support, and as a necessary by product of, a change to clause 17.4 requested by DBP in its submissions in respect of the prior Access Arrangement Period. As the Regulator did not accept, and DBP is not again requesting, the relevant change to clause 17.4, the omission of the cross reference to clause 17.2(b) in clause 17.3(c)(i) should have been reversed.[16] That is, DBP is simply seeking to ensure that the "no liability" position described in clause 17.3(b)(ii) is not undermined by the removal of the reference to clause 17.2(b) in clause 17.3(c)(i).

14.11 In the B1 Service Reference Contract, a cross reference to clause 17.2(f) has been added as well (see the explanation for the addition of this clause above), which is consistent with such cross reference being added to clause 17.3(b)(ii) of that contract (that is, the analogous reasoning for the inclusion of the cross reference to clause 17.2(b) applies to the cross reference to clause 17.2(f) by virtue of the cross reference to clause 17.2(f) also being added into clause 17.3(b)(ii)).

Clause 17.7(c)(vi) Content of a Curtailment Notice and Initial Notice

does not retrospectively affect the Shipper's compliance with Hourly Peaking Limits or Outer Hourly Peaking Limits prior to the time the Curtailment Notice is issued on the Gas Day (for which purposes the Shipper's compliance with those limits for an hour must be determined having regard to the Shipper's Contracted Capacity at the commencement of the hour).

Explanation/Submission

14.12 The phrase "*or Outer Hourly Peaking Limits*" is required because of the addition of clause 10.4. See our submissions in relation to that clause.

[16] See paragraph 1658 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline 2016 – 2020 which states "*The Authority does not disagree that the pipeline operator is entitled to a reasonable period of 'downtime'*". That is, we suggest that the regulator made a simple error when it "accepted" DBP's deletion of "*or 17.2(b)*" in paragraph 1659. This is because that deletion only made sense (and was only proposed) as part of DBP's submission that a change be made to 17.4. Since the regulator rejected the change to clause 17.4, the deletion of "*or 17.2(b)*" no longer made sense, no longer should be made, and no longer was being proposed by DBP.

Clause 17.8(c) Compliance with Curtailment Notice

If the Shipper does not comply with the requirements of the Curtailment Notice in accordance with clause 17.8(a) or 17.8(b), the Operator may take action to the extent necessary to give effect to the requirements set out in the Curtailment Notice, including refusing to Receive Gas from the Shipper at an Inlet Point or refusing to Deliver Gas to the Shipper at an Outlet Point.

Explanation/Submission

14.13 The addition of a cross reference to clause 17.8(b) in clause 17.8(c) corrects a typographical error / oversight. Clause 17.8(c) is intended to address the Shipper's failure to comply with any Curtailment Notice, whether such notice was given in relation to a Point Specific Curtailment (under clause 17.8(a)) or a Curtailment that is not a Point Specific Curtailment (clause 17.8(b)).

Clause 17.9(b)(i) Priority of Curtailment

Any Laws regulating the priority of Capacity Services (which ~~for the purposes of this clause~~ include capacity under a Spot Transaction) on the DBNGP.

Explanation/Submission

14.14 The definition of "*Capacity Service*" in the Reference Contracts includes capacity under a Spot Transaction, so it is incorrect to state that such inclusion is only "*for the purposes of this clause*" (as it is the position that applies to the whole contract).

Clause 17.9(b)(iii)(A) Priority of Curtailment

(subject to clause 17.9(b)(iii)(B)) one or more I~~i~~nlet P~~p~~oints or O~~o~~utlet P~~p~~oints (as the case may be) where the Shipper has unutilised Contracted Capacity for the P1 Service at that point, in which case the Curtailment will not be taken into account in respect of an amount of capacity up to the Shipper's unutilised Contracted Capacity for the P1 Service at that or those I~~i~~nlet P~~p~~oints or O~~o~~utlet P~~p~~oints (as the case may be);

Explanation/Submission

14.15 In the box above we set out the change in the P1 Service Reference Contract.

14.16 The capitalisation of the terms "*Inlet Points*" and "*Outlet Points*" is a drafting fix. Clause 17.9(b)(iii)(A) refers to points "*where the Shipper has unutilised Contracted Capacity*" for the service the subject of the contract, thereby clearly intending to capture the points described in clause 3.3 "*at which the Shipper has Contracted Capacity from time to time*", as described in the definitions of "*Inlet Point*" and "*Outlet Point*".

14.17 The same changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract.

Clause 17.9(b)(vi) Priority of Curtailment

In a System Curtailment, where the Curtailment Plan is being applied to a Curtailment Area greater than a Point Specific Curtailment, the ~~Shipper's~~relevant shipper's:

(A) Aggregated ~~P1~~ Service which derives from Contracted Capacity for P1 Services, T1 Services or B1 Services at the Outlet Points (or, where the Curtailment relates to

Receipt of Gas into the DBNGP, any Inlet Point) located within the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

(1) not be included in the Aggregated ~~P1~~ Service; and

(2) be included in the P1 Service, T1 Service or B1 Service (as the case may be),

available to the relevant ~~S~~shipper in the Curtailment Area; and

(B) Aggregated ~~P1~~ Service which derives from Contracted Capacity for P1 Services, T1 Services or B1 Services at any Outlet Point (or, where the Curtailment relates to Receipt of Gas into the DBNGP, any Inlet Point) located outside the Curtailment Area shall, when the Curtailment Plan is applied to that Curtailment Area:

(1) be included in the Aggregated ~~P1~~ Service;

(2) not be included in the P1 Service, T1 Service or B1 Service (as the case may be),

available to the relevant ~~S~~shipper in the Curtailment Area.

Explanation/Submission

14.18 In the box above we set out the change in the P1 Service Reference Contract.

14.19 The reason for the changes from "*Shipper*" to "*relevant shipper*", "*Aggregated P1 Service*" to "*Aggregated Service*" and the addition of references to T1 Service(s) and B1 Service(s) is as follows. Note that the analogous changes have been made to the T1 Service Reference Contract and the B1 Service Reference Contract and the analogous reasoning applies thereto.

(a) Clause 17.9(b)(vi) describes circumstances where, for the purpose of applying the Curtailment Plan, Aggregated P1 Service is recharacterized as P1 Service.

(b) The Curtailment Plan applies across all contracts for Capacity Services and therefore this recharacterization rule should also recognize that (in analogous circumstances) such recharacterization of Aggregated P1 Service, Aggregated T1 Service and Aggregated B1 Service also applies in other shipper contracts for P1 Service, B1 Service and T1 Service. That is, in a Curtailment circumstance, the Operator must be able to apply the Curtailment Plan consistently across all contracts (including Reference Contracts and the Negotiated Contracts) and across all Capacity Services without breaching any one particular contract by virtue of unintended inconsistencies and therefore it needs to be clear that the relevant rules apply across all contracts and Capacity Services.

14.20 The addition of "*(or, where the Curtailment relates to Receipt of Gas into the DBNGP, any Inlet Point)*" is required because this clause is intended to apply to all Curtailments, whether relating to delivery at outlet points or receipts at inlet points. This change merely corrects an oversight.

14.21 The changes are drafting improvements and clarifications which facilitate the application of Curtailment Plan in a clearer, and more consistent and integrated, manner across Capacity Services. The changes provide a net benefit to both shippers and consumers of gas.

Clause 17.9(c)(i) Priority of Curtailment

Subject to clause 17.9(c)(ii), if when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their full Contracted Capacity in respect of a Type of Capacity Service for that Gas Day, then the capacity available for the Type of Capacity Service to each such shipper during a particular Gas Day during a Curtailment will (unless relevant shippers agree to the

contrary) be calculated, from time to time by the Operator acting in good faith, on the basis of the following:

$$\text{Available Capacity} \times \frac{A}{B}$$

where:

Available Capacity = the total amount of relevant capacity which the Operator (acting in good faith) deems to be available during the particular Gas Day during the Curtailment for the particular Type of Capacity Service;

A = the particular shipper's relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service on that Gas Day (in the case of ~~P1~~ T1 Service only, less any of the shipper's relevant share of the Distribution Networks' IPQ which is to be transported using that ~~P1~~ T1 Service on that Gas Day); and

B = the aggregate of relevant Total Contracted Capacity (prior to any Curtailment) in respect of the particular Type of Capacity Service across all shippers on that Gas Day (in the case of ~~P1~~ T1 Service only, less the aggregate of the shippers' relevant shares of the Distribution Networks' IPQ which is to be transported using that ~~P1~~ T1 Service on that Gas Day)

Explanation/Submission

14.22 The changes in clause 17.9(c)(i) are required, in both the P1 Service Reference Contract and the B1 Service Reference Contract, so that the allocation mechanism is the same as across the Reference Contracts for T1 Service, P1 Service and B1 Service, given that those services are all intended to have equal priority under the Curtailment Plan. That is, T1 Service, P1 Service and B1 Service are all treated as a single "Type of Capacity Service" for the purpose of applying the Curtailment Plan, with equal priority to each other, and therefore the formula in clause 17.9(c)(i) needs to be the same across the contracts for each of such services, otherwise the result of the proportionate allocation will be inconsistent across them.

14.23 The change is consistent with the drafting in the Negotiated Contracts and corrects a typographical error that has inadvertently been incorporated into the P1 Service and B1 Service Reference Contracts.

14.24 The changes are drafting improvements and clarifications which facilitate the application of Curtailment Plan in a clearer, and more consistent and integrated, manner across Capacity Services. The changes provide a benefit to both shippers and consumers of gas.

Clause 17.9(c)(ii) Priority of Curtailment

If when applying the Curtailment Plan there is insufficient relevant available capacity to allow all shippers their relevant entitlement to a Type of Capacity Service being an Other Reserved Service ~~(other than a Tp Service)~~ or Aggregated Service, then the capacity available for the shipper for that Type of Capacity Service during the Curtailment will be determined by the Operator acting as a Reasonable and Prudent Person.

Explanation/Submission

14.25 The deletion of "*(other than a Tp Service)*" is because the term "*Tp Service*" is not used in the Reference Contracts.

14.26 The addition of "*or Aggregated Services*" is required as a result of the clarification made to the definition of "*Other Reserved Service*", which excludes "*Aggregated Service*" from constituting an "*Other Reserved Service*" (see our explanation in relation to the change to

the definition of "*Other Reserved Service*"). This change to clause 17.9(c)(ii) makes it clear that "*Aggregated Service*" is subjected to the Operator's obligation imposed by clause 17.9(c)(ii).

14.27 The changes are drafting improvements and clarifications which more clearly set out the Operator's obligations where there is a relevant Curtailment of Aggregated Service. The changes provide a net benefit (albeit minor) to both shippers and consumers of gas.

Clause 17.10(a) Apportionment of Shipper's Curtailments

Subject to clause 17.10(b), if the Shipper has:

(iv) Daily Nominations for a Capacity Service or otherwise has a right to Deliver Gas at more than one Inlet Point, the Operator must apportion any refusals to ~~Deliver~~ Receive Gas across those Inlet Points in the manner required by the Shipper;

(v) Daily Nominations for a Capacity Service or otherwise has a right to Receive Gas at more than one Outlet Point, the Operator must apportion any refusals to ~~Receive~~ Deliver Gas across those Outlet Points in the manner required by the Shipper; or

(vi) Contracted Capacity or Daily Nominations (or both) at more than one Inlet Point or Outlet Point - the Operator must apportion any Curtailment of the Shipper's Capacity Service at the Inlet Points or Outlet Points across those Inlet Points or Outlet Points in the manner required by the Shipper.

Explanation/Submission

14.28 The changes from "*Deliver*" to "*Receive*" in sub-clause (i), and vice versa in sub-clause (ii), correct a typographical error. This error is currently incorporated in the Standard Shipper Contract published on the Operator's website but will be corrected at the first available opportunity.

14.29 The addition of the words "*in the manner required by the Shipper*" in paragraphs (ii) and (iii) are in the Shipper's favour and are considered a mistaken omission by the Operator in the existing version of the Reference Contracts.

The changes are drafting improvements and clarifications. The changes provide a net benefit (albeit minor) to both shippers and consumers of gas.

15. Clause 18 - Maintenance and Major Works

Clause 18(a) and (b) Maintenance and Major Works

(a) By 31 ~~March~~ August of each Contract Year, the Shipper may provide the Operator with a schedule of events which the Shipper, acting as a Reasonable and Prudent Person, believes may increase or reduce the Capacity it requires for certain periods during the 12 months starting the following 1 ~~July~~ October (***Maintenance Year***) which sets out the Shipper's best estimates of the amount and the expected duration of such increase or reduction.

(b) ~~Within 30 days of receiving the schedule referred to in clause 18(a)~~ On or before 30 September of each Contract Year, the Operator (acting as a Reasonable and Prudent Person) must, in consultation with the Shipper and other shippers, schedule Major Works for the DBNGP for the Maintenance Year (***Annual DBNGP Maintenance Schedule***), using its reasonable endeavours to take into account the periods during which the Shipper's requirements for Capacity are reduced and the Shipper's and other shippers' requirements generally.

Explanation/Submission

15.1 The Operator now operates on a Calendar Year basis rather than a Financial Year basis, and, as such, sets budgets and associated maintenance plans for the following year in November of the year prior. To assist the Operator with its budget setting process and to streamline the maintenance programming process DBP is requesting the changes shown above to clauses 18(a) and 18(b) of the Reference Contracts. These amendments will align the timing with the timing required under the Negotiated Contracts which already reflect the process now adopted by the Operator. The change will improve the efficiency of the Operator's planning process and is just a shift in the timing of information to be provided by the Shippers.

16. Clause 20 - Charges

Clause 20.2(a) Capacity Reservation Charge

Subject to clause 14.7, t~~T~~he Capacity Reservation Charge will be calculated for each Gas Day during the Period of Supply by calculating the sum of Contracted Capacity for P1 Services at each Outlet Point multiplied by the ~~T1~~ P1 Capacity Reservation Tariff.

Explanation/Submission

16.1 The words "*subject to clause 14.7*" have been inserted in each of the Reference Contracts so as to remind the reader that, where there is a relocation of Contracted Capacity as contemplated by clause 14, the quantum of the charges may be affected by clause 14.7. This clarification is consistent with the effect and intent of the current drafting.

16.2 Clause 14.7 is discussed in paragraphs 12.19 to 12.34 above, and we note that clause 14.7 has not been substantively amended. Rather, the words used in that clause have been clarified and reformulated so as to align with the terms of the Access Arrangement for the period 2021 – 2025.

16.3 This change to refer to the "P1 Capacity Reservation Tariff" in place of the "T1 Capacity Reservation Tariff" applies only to the P1 Service and B1 Service Reference Contracts (with the change to the B1 Service Reference Contract being to "B1 Capacity Reservation Tariff"). This amendment is to correct an obvious typographical error and addresses concerns raised by various Shippers to DBP. As currently drafted, clause 20.2(a) results in the P1 Capacity Reservation Charge being calculated by reference to the T1 Capacity Reservation Tariff. It is in the interests of all Parties to correct this error and ensure that:

(a) for the P1 Service, the P1 Capacity Reservation Charge is calculated by reference to the P1 Capacity Reservation Tariff, and likewise for the B1 Capacity Reservation Charge; and

(b) for the B1 Service, the B1 Capacity Reservation Charge is calculated by reference to the B1 Capacity Reservation Tariff.

Clause 20.3 Commodity Charge

Subject to clause 14.7, t~~T~~he Commodity Charge will be calculated for each Gas Day during the Period of Supply by calculating the multiple of the P1 Commodity Tariff and each GJ of Gas Delivered to the Shipper up to Contracted Capacity for P1 Services at all Outlet Points by the Operator on that Gas Day.

Explanation/Submission

16.4 DBP repeats the submissions in paragraphs 16.1 and 16.2 above.

Clause 20.4(a) Other Charges

The following charges apply to this Contract:

(i) Excess Imbalance Charge (clauses 9.5(e)~~9.5(c)~~ and 9.6(b));

(ii) Hourly Peaking Charge (clauses 10.3(d)~~10.3(b)~~ and 10.4(b));

(iii) Overrun Charge (clause 11.1(a));

(iv) Unavailable Overrun Charge (clauses 11.6 and 17.8(e)); and

(v) any charges or other sums payable under clauses, 6.6, 14.7 and 15.11 or elsewhere in this Contract,

(together ***Other Charges***).

Explanation/Submission

16.5 The amendments to clause 20.4(a) are to correct typographical errors and consequential changes arising from inclusion of the new drafting in clause 9.6 ("Excess Imbalance Charge") and the new clause 10.4 ("Outer Hourly Peaking Limit") of the Reference Contracts.

16.6 In connection with the new cross references to clause 9.6(b) and clause 10.4(b), we refer to and repeat the submissions above in paragraphs 9.19 to 9.31 and paragraphs 10.19 to 10.26 respectively.

16.7 In connection with corrections of typographical errors, clause 20.4 refers to the types of charges that apply to the Reference Contracts, other than and in addition to the tariff. In the current drafting:

(a) the reference to clause 9.5(c) in clause 20.4(a)(i) is incorrect. Clause 9.5(c) requires the Operator to issue notices to all other shippers with a positive or negative Accumulated Imbalance. The correct cross reference is to clause 9.5(e), which deals with the Excess Imbalance Charge that is applicable where a Shipper has not complied with a notice issued to it and has failed to reduce its' Accumulated Imbalance.

(b) The reference to clause 10.3(b) in clause 20.4(a)(ii) is incorrect. Clause 10.3(b) requires the Operator to issue notices to all other shippers that have exceeded the Hourly Peaking Limit in various circumstances. The correct cross reference is to clause 10.3(d), which deals with the Hourly Peaking Charge that is applicable where a Shipper has not complied with a notice issued to it to reduce its Hourly Quantities.

Clause 20.5(a)(iii) Adjustment to P1 Tariff

the P1 Tariff, P1 Capacity Reservation Tariff and P1 Commodity Tariff shall be re-set to reflect any new P1 Tariff, P1 Capacity Reservation Tariff and P1 Commodity Tariff approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.

Explanation/Submission

16.8 These changes are proposed for clarity and to align with the way in which the Access Arrangement document describes the make-up of, and variations to, the P1 Tariff.

17. Clause 22 – Default and Termination

Clause 22.2 Notice of Shipper's default

If an event referred to in any one or more of clauses 22.1(a) to 22.1(f) (inclusive) occurs, then the Operator may give notice in writing to the Shipper specifying the nature of the ~~default~~ event and requiring the Shipper to rectify the event~~default~~ (***Shipper Default Notice***).

Explanation/Submission

17.1 The changes to clause 22.2 are drafting tidy-ups to reflect the fact that the occurrence of an event that may give rise to a Shipper default is not necessarily a default until expiry of the time stipulated for remedy of the relevant event in clause 22.3(b).

Clause 22.3(c) When Operator may exercise remedy

An ~~default~~ event of the kind referred to in clause 22.1(d) is deemed to be remedied when the relevant Insolvency Event is no longer continuing.

Explanation/Submission

17.2 DBP refers to and repeats the submission in paragraph 17.1 above.

Clause 22.6 Notice of Operator's default

If an event referred to in clause 22.5 occurs, then the Shipper may give notice in writing to the Operator specifying the nature of the ~~default~~ event and requiring the Operator to rectify the ~~default~~ event (***Operator Default Notice***).

Explanation/Submission

17.3 The changes to clause 22.6 are drafting tidy-ups to reflect the fact that the occurrence of an event that may give rise to an Operator default is not necessarily a default until expiry of the time stipulated for remedy of the relevant event in clause 22.7(b).

Clause 22.7(c) When Shipper may exercise remedy

An ~~default~~event of the kind referred to in clause 22.5(b) is deemed to be remedied when the relevant Insolvency Event is no longer continuing. An ~~default~~ event of the kind referred to in clause 22.5(a) that relates to the repudiation or disclaimer of a contract, agreement or deed is deemed to be remedied when the relevant repudiation or disclaimer is no longer continuing.

Explanation/Submission

17.4 DBP refers to and repeats the submission in paragraph 17.3 above.

18. Clause 25 - Assignment

Clause 25.2(a) Charges

A Party may, without the consent of the other Party (but subject to all other necessary consents and approvals), charge in favour of any recognised bank or financial institution or a Related Body Corporate of the Party the whole or any part of its rights or interests under this Contract (including any right to receive money), provided that the chargor and chargee enters into a tripartite deed with the other Party substantially in the form of Schedule 7 ~~Schedule 7~~. If the Shipper is the Party charging its rights and interests under this Contract under this clause 25.2, the tripartite deed in the form of Schedule 7 ~~Schedule 7~~ must be modified in the manner necessary to change the charging Party from the Operator to the Shipper.

Explanation/Submission

18.1 The purpose of entry into the tripartite agreement is to protect the non-charging Party by ensuring that, regardless of a default by the charging Party under its financial agreements, the financial institution (the chargee) is bound to continue to comply with the terms of the Reference Contract for so long as the non-charging Party complies with its obligations under the Reference Contract. Accordingly, to ensure that the tripartite agreement is effective, it is necessary that the chargee enters into the tripartite agreement with the non-charging Party. The proposed change reflects this intention and is for the benefit of both Parties to the Reference Contract. There is no detriment to Shippers arising from correction of this clause as outlined above.

Clause 25.5(f) Pipeline Trustee's Acknowledgments and Undertakings

~~Other than to the extent relating to the transaction documentation entered into on or about the Capacity Start Date,~~ The Pipeline Trustee shall not dispose of the whole or any part of its rights, title or interest in the DBNGP without requiring the dispo~~s~~nee to enter into a deed of assumption with Shipper to the reasonable satisfaction of Shipper pursuant to which it:

Explanation/Submission

18.2 The words "*Other than to the extent…. Capacity Start Date,*" refers to documentation entered into in 2004 which is no longer relevant to the operation of the DBNGP and the corporate structure of AGIG. It is now irrelevant to include this carve out which was previously included for the benefit of the Pipeline Trustee. The deletion benefits the Shippers by removing a circumstance in which the Pipeline Trustee could transfer the DBNGP assets without requiring the acquirer of the assets (the disponee) to assume the relevant Reference Contract.

18.3 The change from "disposee" to "disponee" corrects a typographical error.

Clause 25.7 Non complying assignment

A new clause has been added:

25.7 Non complying assignment

Any purported sale, transfer or assignment in breach of the requirements of any of the provisions of this clause 25 is void *ab initio*.

The Parties acknowledge that this clause 25 does not apply to a Transfer under clause 27.

Explanation/Submission

18.4 This clause has been included for drafting clarity and for consistency with the Negotiated Contracts. The stipulation that a purported sale, transfer or assignment is compliant with the protections offered to the non-selling/non-transferring/non-assigning party is fundamental to the security of each Party in understanding who they are contracting with and what the creditworthiness of their counter party is. This new clause benefits both Parties to the Reference Contracts and ought not be controversial.

19. Clause 26 General Right of Relinquishment

Clause 26.3(a) Operator may accept Relinquishment Offer

(a)

~~(vi)~~(i) ~~(i)~~ The Operator may at any time give notice in writing to the Shipper accepting a Relinquishment Offer (***Relinquishment Acceptance***).

~~(vii)~~(ii) ~~(ii)~~ A Relinquishment Acceptance may be given in respect of all or part of the Relinquishable Capacity.

~~(viii)~~(iii) ~~(iii)~~ A Relinquishment Acceptance must not apportion Relinquished Capacity between the Shipper's Contracted Capacity for each Period in a manner inconsistent with any specification under clause 26.1(c)~~26.1(d)~~.

Explanation/Submission

19.1 The changes to clause 26.3(a) fixes formatting errors in the draft and corrects a cross-reference. Clause 26.1(d) does not provide for any specification, whereas clause 26.1(c) provides for apportionment of Relinquished Capacity between the Shipper's Contracted Capacities for each Period. The change corrects an obvious typographical error and clarifies the drafting in the Reference Contract, for the benefit of both Parties.

Clause 26.3(c) and 26.3(d) Operator may accept Relinquishment Offer (changes to T1 and B1 Contract only)

(c) Subject to clause 26.3(b), the Operator's discretion in determining:

(i) whether or not to give a Relinquishment Acceptance;

(ii) in respect of how much of the Relinquishable Capacity to give a Relinquishment Acceptance; and

(iii) the order in which it accepts offers of relinquishment from:

(A) Shipper under this clause 26; and

(B) if another shipper or shippers have rights of relinquishment of T~~P~~1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26,

is to be absolute and unfettered.

(d) Operator's discretion is not to be limited by:

(i) any circumstances of Shipper;

(ii) the current or projected level of utilization of capacity of the DBNGP;

(iii) the number or magnitude of current or anticipated offers of relinquishment from:

(A) the Shipper under this clause 26; and

(B) if another shipper or shippers have rights of relinquishment of T~~P~~1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26; or

(iv) the order in which offers of relinquishment are received by Operator from:

(A) Shipper under this clause 26; and

(B) if another shipper or shippers have rights of relinquishment of T~~P~~1 Service under clauses materially equivalent to this clause 26, another shipper or shippers under clauses materially equivalent to this clause 26.

Explanation/Submission

19.2 The changes to clause 26.3(c) and 26.3(d) correct a drafting error in the T1 Service Reference Contract and in the B1 Service Reference Contract. It appears that these clauses were cut and pasted from the P1 Service Reference Contract without changing the references to "P1 Service" to "T1 Service" and, in the B1 Service Reference Contract, to "B1 Service".

19.3 The changes correct an obvious typographical error and improve the drafting, adding certainty for both the Operator and Shippers under the Reference Contracts.

Clause 26.5 Notification of relinquishment of capacity by other shippers (changes to T1 and B1 Contract only)

If another shipper or shippers have rights of relinquishment of T~~P~~1 Service under clauses materially equivalent to this clause 26, the Operator must, whenever requested by the Shipper to do so, provide the Shipper, at the Shipper's expense, with a statement of the current amount of capacity another shipper or shippers have offered to relinquish under clauses materially equivalent to this clause 26

Explanation/Submission

19.4 The change to clause 26.5 corrects a drafting error in the T1 Service Reference Contract and in the B1 Service Reference Contract. As per clause 26.3(c) and clause 26.3(d) above, it appears that this clause was cut and pasted from the P1 Service Reference Contract without changing the references to "P1 Service" to "T1 Service" and, in the B1 Service Reference Contract, to "B1 Service".

19.5 The change corrects an obvious typographical error and improve the drafting, adding certainty for both the Operator and Shippers under the Reference Contracts.

20. Clause 28 - Confidentiality

Clause 28.2(i) Exceptions to Confidentiality

is required by Law or any governmental agency or stock exchange to be disclosed in connection with the issue of securities or financial products by a Party, a Related Body Corporate of a Party, a member of AGIG, the Diversified Utility and Energy Trust No 1 ABN 83 495 791 796~~and No 2~~ or the DUET Finance Trust~~POWERS Trust~~ ABN 85 482 841 876, or any funding vehicle of any of those parties;

Explanation/Submission

20.1 The amendments to clause 28.2(i) are required to update the Reference Contracts to reflect the changes to the corporate structure of DBP and its holding companies since the Access Arrangement for 2016 to 2020.

Clause 28.3(a)(i) Permitted Disclosure

subject to clauses 28.3(d) and 28.5, its, and its Related Bodies Corporate's, employees, officers, agents, contractors, consultants, lawyers, bankers, financiers (including any entity that directly or indirectly provides financial accommodation to a Party or its Related Body Corporate or a financier of any of them), financial and technical advisers (and for the purpose of this clause 28.3(a) Alcoa, ~~and~~ the System Operator and each member of AGIG are deemed to be ~~must be considered~~ Related Bodies Corporate of the Operator); and

Explanation/Submission

20.2 The changes proposed to clause 28.3(a)(i) are required to:

(a) correct a grammatical error by correcting an apostrophe and improve the drafting of the Reference Contract;

(b) enable provision of information about the operations of the DBNGP to financiers of AGIG in order to encompass circumstances where the borrowing entity is not DBNGP Finance Co Pty Ltd, but another member of AGIG that is able to borrow at better interest rates and then provides inter-company loans to the Operator; and

(c) deem, for the purpose of this clause 28.3, all members of AGIG to be Related Bodies Corporate of the Operator.

20.3 In connection with the amendment to insert the words "*and each member of AGIG are deemed to be… Related Bodies Corporate of the Operator*", given the trust structure of DBNGP Holdings Pty Ltd, the holding companies may not necessarily be "Related Bodies Corporate" as defined under the Corporations Act, 2001.

20.4 In relation to all proposed changes to this clause 28.3(a)(i), the fundamental protection provided to Shippers that any disclosure is subject to clause 28.4 (encompassing the restrictions set out in clause 28.3(b) as set out below) and clause 28.5 remains in place. Accordingly, DBP submits that the changes will enable more efficient operation of the DBNGP and the Shippers will not suffer any detriment as a result of the proposed changes to clause 28.3(a)(i).

Clause 28.3(b) Permitted Disclosure

Nothing in this clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:

(i) any person who is directly involved in:

(A) the distribution of Gas to customers through a covered pipeline that is a distribution pipeline situated in ~~the~~ Western Australia ~~— Natural Gas Distribution System as that term is used in the National Third Party Access Rules for Natural Gas Pipeline Systems (as amended from time to time)~~ under the National Gas Access (Western Australia) Law;

(B) the retailing of Gas within Western Australia;

(C) the generation or sale of electricity in the South West Interconnected System of Western Australia;

(D) contracting for Capacity on the DBNGP; or

(E) the management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or

(ii) such person's employees, officers, agents, contractors, consultants and technical advisers who are themselves directly involved in any of the activities described in clause 28.3(b)(i).~~,~~

except to the extent that such person is:

(iii) the System Operator and requires the disclosure of information to it by the Operator or by it to enable it to perform its obligations to the Operator under the relevant operating and maintenance services contract (provided that at no time may the System Operator or its employees, officers, agents, contractors, consultants and technical advisers be directly or indirectly involved in anything listed in clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D) or clause 28.3(b)(i)(E) to the extent it relates to clauses 28.3(b)(i)(B), 28.3(b)(i)(C) or 28.3(b)(i)(D));

(iv) a director or senior manager of Alcoa, or any of Alcoa's Related Bodies Corporate ~~through which they have a direct or indirect equity interest in the DBNGP, and requires~~ who is provided with the disclosure of aggregated information in connection with ~~the management of their respective equity~~their interests in the DBNGP;~~; or~~

~~(v) a senior manager of Alcoa, or any of Alcoa's Related Bodies Corporate, who:~~

~~(A) is a director of the Operator or its Related Bodies Corporate, or of the System Operator; or~~

~~(B) by virtue of his or her duties as a senior manager is required to assist a director under clause 28.3(b)(iv),~~

which disclosure under clauses 28.3(b)(iii) and~~,~~ 28.3(b)(iv) ~~and 28.3(b)(v)~~ is,

	subject to clauses 28.3(d) and 28.5, permitted in accordance with the provisions of this clause 28.3.

Explanation/Submission

20.5 The intent of clause 28.3(b)(i) is to restrict the provision of confidential shipper information by the Operator or the System Operator to any person that may be in competition with the Shippers of Gas on the DBNGP, to prevent the use of such information by the recipient to obtain an unfair advantage and thereby risk lessening of competition in those markets.

20.6 The proposed changes to clause 28.3(b)(i)(A) update the description of entities involved in Gas distribution networks. There is no substantive change to the meaning, other than the terms are updated in line with the current terms in the National Gas Access (Western Australia) Law. The Operator submits that the proposed change merely implements better drafting, which is to the equal benefit of the Operator and the Shippers under the Reference Contracts.

20.7 The proposed changes to clause 28.3(b)(i)(C) seek to ensure that members of AGIG are not prevented from tendering for, owning, constructing, operating or maintaining electricity generation operations where those operations are not connected to the South West Interconnected System of Western Australia ("**SWIS**"). The Operator accepts that by reason of the information that it obtains via operation of the DBNGP, it may have an unfair advantage should it wish to engage in electricity generation operations that are connected to the SWIS, which would be contrary to the provisions of the National Gas Law. However, the information that members of AGIG may be privy to by reason of their knowledge of DBNGP's operations provides no advantage to it in terms of electricity generation operations that are isolated from the SWIS. The Operator seeks inclusion of these words so as to avoid doubt in the event that a member of the AGIG tenders for an opportunity to build, own or operate an electricity generation facility that is not connected to the SWIS. With the increasing market for solar powered or hydrogen fuelled power generation, AGIG is seeking to ensure that the words in clause 28.3(b)(i)(C) do not curtail its ability to compete in this market. Provided there is no connection to the SWIS, the Operator submits that there is no disadvantage to Shippers on the DBNGP of members of AGIG pursuing such opportunities and, in fact, it would be anti-competitive in the markets for isolated power generation units within Western Australia to prevent members of AGIG from tendering.

[redacted]

20.10 Note that there is a minor consequential amendment to clause 28.4(b) that has been incorporated as a result of the amendments discussed in paragraphs 20.5 to 20.9 above. The amendment is to delete a cross-reference to clause 28.3(b)(v).

Clause 28.6(a) Information received by Operator

(a) The Operator must develop, implement and enforce, policies and procedures to:

(i) give effect to its obligations under:

(A) clause 28.3(a)(i), 28.3(b), 28.6(a), 28.6(b) or 28.6(c); and

(B) clauses 28.4 and 28.5 to the extent related to disclosure under clauses 28.3(a)(i), 28.3(b) or 28.6(b); and

(ii) ensure that all shippers are treated equally and fairly in relation to disclosure of Confidential Information,

and must procure that its direct and indirect shareholders, service providers (including the System Operator) and all Related Bodies Corporate of these entities comply with those policies and procedures and with the Law.

Explanation/Submission

20.11 Clause 28.6 solely governs how the Operator must ensure that it actively enforces its confidentiality obligations under clause 28.3, 28.4 and 28.5. The inclusion of the words "*in relation to disclosure of Confidential Information*" clarifies the operation of clause 28.6(a)(ii) in the context of all of clause 28.6, and seeks to ensure that it cannot be argued that this clause should be construed so as to imply an obligation upon the Operator to develop, implement and enforce, policies and procedures ensure that all shippers are treated equally and fairly in all respects. Such an obligation would be impossible to comply with and is not the intent of the clause when looked at in the context of clause 28.6 as a whole.

20.12 Inclusion of the amendment to this clause is better drafting and reduces the potential for a dispute arising, both of which increase the efficiency of the operation of the DBNGP.

Clause 28.7(j) Breach by Operator

The procedures outlined in clauses 28.7(a) to 28.7(i) represent the sole and exclusive means by which the Shipper may obtain damages in relation to such breaches or alleged breaches by the Operator. No right of termination arises for a Relevant Breach. This clause 28.7(j) does not limit clause 28.11 ~~28.10~~.

Explanation/Submission

20.13 Consequential change due to the inclusion of new clause 28.10 (refer to paragraph 20.15 below).

Clause 28.7(k)(ii) Breach by Operator

the appointing authority in clause 24.8(b) ~~24.8(c)~~ will in the first instance be the Chairman for the time being of the ERA or, if he or she fails or declines to make the appointment within 10 days of being asked to do so, then it will revert to the appointing body as set out in 24.8(b); and

Explanation/Submission

20.14 Correction of an incorrect cross reference. Clause 24.8(b) refers to what happens if the parties are unable to agree upon an Independent Expert, and nominates the Australian Commercial Disputes Centre to assign a suitably qualified person in that event. Clause

28.4(c) refers to a replacement body in the event that the Australian Commercial Disputes Centre ceases to exist. Therefore reference to the "appointing body" should cross reference back to clause 24.8(b).

Clause 28.10 FIRB Compliance

A new clause has been added:

28.10 FIRB Compliance

Unless otherwise agreed by the Operator, the Shipper acknowledges that the Data is subject to conditions imposed under section 74(4) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) and undertakes to ensure that all Data provided (or access to which is provided) to it by or on behalf of the Operator:

(b) is stored only within Australia;

(c) is accessible and maintained only from within Australia; and

(d) will not be taken outside of Australia,

except in circumstances where it is required to be accessed in order to comply with any law of the Commonwealth of Australia or any of its States and Territories.

Explanation/Submission

20.15 This clause has been inserted to comply with certain conditions imposed upon the CKI Group by the Foreign Investments Review Board when it acquired the DUET Group. The FIRB conditions restrict handling of access to and storage of bulk personal information. As drafted the restrictions are not limited to the Operator's handling of such information and extend to third parties' access to that information.

20.16 Under the relevant FIRB conditions, unless otherwise agreed with the Commonwealth, AGIG must ensure that all Data is stored only within Australia, is accessible and maintained only from within Australia and may not be taken outside of Australia except in circumstances where:

(a) it is required to be accessed for the express purpose of continuation of gas services;

(b) it is required to be accessed to comply with any law of the Commonwealth of Australia or any of its States and Territories;

(c) it is being accessed by financial, accounting, insurance, legal, regulatory and other advisers, auditors, insurers, security trustees and financiers (and each of their advisers) of the FIRB Applicant or AGIG, and any bona fide prospective purchaser of the FIRB Applicant or AGIG, but in each case, only to the extent necessary in order to provide the advisory or other services bona fide required of them; or

(d) it is aggregated (with removal of any information that would enable identification of personal information) before being accessed for any corporate and financial reporting purposes.

AGIG has been required to implement and audit policies to reflect these requirements. 'Data' is defined as per the definition proposed in the Reference Contract and AGIG considers that this extends to information provided to shippers.

21. Clause 29 – Notices

Clause 29.1 Notices for nominations, Curtailment, unavailability, balancing, Out-of-Specification Gas and capacity trading

(a) Subject to clause 29.1(b), all Curtailment Notices and Unavailability Notices and notices under clauses 7.5, 9.9(b)~~9.9(c)~~, and 17.6(a) must be communicated by ~~facsimile to the facsimile number~~email to the email address set out in the Access Request Form, until further notice is given under clause 29.3(c).

(b) The Operator and the Shipper may agree on an alternative means for communication of the notices specified in clause 29.1(a), in which case the notices must be communicated using that alternative method.

(c) Until the Operator and the Shipper agree an alternative method of communication under clause 29.1(b), the Operator and the Shipper must each ~~install~~ establish and maintain a dedicated email address~~facsimile machine on a separate facsimile number~~ for the purposes of clause 29.1(a), and from time to time either Party may advise the other Party in writing of a new email address ~~facsimile number~~ which takes effect in substitution for the email address~~number~~ set out in in the Access Request Form.

Clause 29.3 Notices generally

(a) Where under this Contract a notice is required or permitted to be communicated to a Party (other than the notices specified in clauses 29.1(a) and 29.2(a)), the notice is taken to have been communicated if it is in writing and it is delivered personally to, or sent by certified mail addressed to, the Party at the address, or is sent by email to the Dedicated Email Address~~, or is sent by facsimile transmission to the facsimile number~~, last notified under this clause.

(b) For the purposes of this clause, and until further notice is given under clause 29.3(c), the addresses and~~,~~ Dedicated Email Addresses ~~and facsimile numbers~~ of the Parties are as set out in the Access Request Form.

(c) From time to time, for the purposes of this clause, either Party may advise the other Party in writing of an address located within the State~~, of~~ and a Dedicated Email Address ~~and a facsimile number~~ which are to take effect in substitution for the details set out in this clause.

(d) Nothing in this clause prevents the Parties from agreeing in writing to utilise an alternative means of communication of notices, including via electronic mail or through the CRS.

Clause 29.4 Receipt of notices

(a) A reference in this Contract to notice before a certain time means that the notice must be received at the intended address or ~~facsimile machine~~email address, or posted to the CRS, by no later than that time.

~~(b) For the purposes of this Contract, any notice sent by facsimile machine is, subject to clause 29.4(c), to be taken to have been sent and received on the~~

~~date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one hour (in the case of a notice to which clause 29.1(a) applies) or 12 hours (in any other case) of the time printed on the transmission report that the facsimile was not received in its entirety in legible form.~~

~~(c) When the time printed on the transmission report referred to in clause 29.4(b) is between:~~

~~(i) 00:00 hours and 09:00 hours; or~~

~~(ii) 17:00 hours and 24:00 hours,~~

~~on a Working Day, clause 29.4(b) applies as if, in respect to 29.4(c)(i), the time on the transmission report was 09:00 hours on the Working Day and, in respect to clause 29.4(c)(ii), the time on the transmission report was 09:00 hours on the next Working Day.~~

~~(d)~~(b) For the purposes of this Contract, any notice sent by email must be sent by and to the email addresses set out in the Access Request Form or, if an email address is substituted pursuant to clause 29.1(c) or 29.3(c), such substituted email address (***Dedicated Email Address***). Each Party agrees to configure the information systems on which emails are sent from and to the Dedicated Email Addresses so as to generate an automatic response message for each email received by the Dedicated Email Address. Any notice sent from a Dedicated Email Address is, subject to this clause 29.4, taken to be given and received at the time the sender receives an automatic response message to the email.

~~(e)~~(c) For the purposes of this Contract, a notice sent by certified mail is taken to be received on the earlier of the date of receipt or on the second Working Day after the notice was committed to post.

~~(f)~~(d) For the purposes of this Contract:

(i) a notice sent by the CRS between 00:00 hours and 17:00 hours on a Working Day will be taken to have been received on that Working Day; and

(ii) the other notices sent by the CRS will be taken to have been received at the commencement of the next Working Day.

Explanation/Submission

21.1 The changes to clause 29 remove the requirement for notices to be served by facsimile and replace this with permission for notices to be served by email. This change is self-explanatory, and in line with current practices of the Operator and its commercial counterparts given that fax machines are all but obsolete. It is of benefit to both the Operator and all Shippers and leads to improved efficiency in communications between the Parties.

22. Clause 44 – General

Clause 44.1 Operator's discretion

In circumstances in which the Operator has a discretion to take action under this Contract, including any of clauses 9.8~~9.7~~, or 10.3(a)(i) that may limit the amount of Capacity available to the Shipper, or that may affect the way in which the Shipper may use Capacity, during a certain period, which action is not governed by the provisions of clauses 8.8, or 8.9, relating to Nominations or clauses 17.9 or 17.10 relating to Curtailment, the Operator must treat the Shipper fairly and reasonably in the circumstances with all other shippers who should or may be subject to similar action.

Explanation/Submission

22.1 The change in cross reference from clause 9.7 to clause 9.8 is a consequence of inclusion of the proposed new clause 9.6 (Excess Imbalance Charge).

23. Schedule 1 – Access Request Form

Section 1 Prospective Shipper Details and Section 2 Operator Details

The row for "Facsimile Number" has been deleted

Explanation/Submission

23.1 Amendment made as a consequence of proposed changes to clause 29 (Notices) to replace provision of notice by facsimile with provision of notice by email.

Section 6 Terms and Conditions

The ~~Terms and Conditions of the~~ PT~~T~~1 Reference Service Terms and Conditions ~~Shipper Contract~~ apply.

Explanation/Submission

23.2 Amendment to Schedule 1 of each of the Reference Contracts correct and clarify the contracts that the Access Request Form refers to and ensure that:

(a) the P1 Service Access Request Form refers to the P1 Reference Service Terms and Conditions;

(b) the B1 Service Access Request Form refers to the B1 Reference Service Terms and Conditions; and

(c) the T1 Service Access Request Form refers to the T1 Reference Service Terms and Conditions.

23.3 Amendment required to correct errors, particularly in the P1 Service and B1 Service Reference Contracts. The amendment improves efficiency by ensuring that Shippers seeking access to the DBNGP under the Access Arrangement are guided to the correct set of terms and conditions for the service sought.

Section 8 Agreement

In accordance with the Access Arrangement, this Access Request when executed by the Operator and the Pipeline Trustee and attached to the PT~~T~~1 Reference Service Terms and Conditions ~~Shipper Contract~~ forms the ~~Agreement~~ Contract between the parties.

Explanation/Submission

23.4 The Operator refers to and repeats submission 23.2 above.

24. Schedule 2 – Charges

Table, Row 1

Excess Imbalance Charge (clause 9.5(e)~~9.5(c)~~ and 9.6(b))	200% of the T1 Reference Tariff from time to time

Explanation/Submission

24.1 Changes have been made to correct the reference to clause 9.5 and to insert a new reference to new clause 9.6. The Operator refers to and repeats paragraphs 9.19 to 9.31 above.

Table, Row 2

Hourly Peaking Charge (clause 10.3(d) and 10.4(b))	200% of the T1 Reference Tariff from time to time

Explanation/Submission

24.2 Changes have been made to insert a new reference to new clause 10.4. The Operator refers to and repeats paragraphs 10.19 to 10.26 above.

25. Schedule 5 - Existing Stations

Table

South Metro	OP~~4~~8-01 OP6-01 OP7-01

Explanation/Submission

25.1 The proposed change is to correct an incorrect reference to the designation for South Metro. The designation OP4-01 actually refers to a North Metro Outlet Point. The correct designation is to OP8-01.

26. Schedule 6 – Curtailment Plan

Part A System Curtailment, Row 3

Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), P1 Service (including Aggregated P1 Service) and B1 Service (including Aggregated B1 Service), to the extent of, and apportioned in accordance with, the provisions of item (a) of Part B of this Schedule 6

Explanation/Submission

26.1 The addition of *", P1 Service (including Aggregated P1 Service) and B1 Service (including Aggregated B1 Service)*" is to correct an oversight and is key to the certainty of T1 Service, P1 Service and B1 Service.

26.2 As noted in relation to the definitions of "*T1 Service*", "*P1 Service*" and "*B1 Service*" and clause 3.2 (earlier in these submissions), these three services are intended to be treated the same in a Curtailment scenario – that requirement is a critical element constituting the service itself (that is, the services are defined, in part (albeit a crucial part), by reference to their equality of treatment under the Curtailment Plan) and, accordingly, needs to be reflected in the Curtailment Plan. This is also consistent with the market's expectations (as reflected in the Negotiated Contracts) that capacity under contracts for T1 Service, P1 Service and B1 Service will be treated the same in a Curtailment regardless of which of those three Capacity Services the capacity is for and regardless of whether such capacity was granted under a Negotiated Contract or under a Reference Contract.

26.3 The current omission of P1 Service and B1 Service in row 3 of Part A of Schedule 6 of the Reference Contracts is simply a drafting error and is inconsistent with the definitions of "*T1 Service*", "*P1 Service*" and "*B1 Service*" and the description of each of T1 Service, P1 Service and B1 Service in clause 3.2(a) of each Reference Contract, and is also inconsistent with paragraph (a) of Part B of Schedule 6, which inconsistencies create unnecessary confusion in application of the Curtailment Plan and provision of the services.

26.4 Further, and consistent with the equal priority of T1 Service, P1 Service and B1 Service, all Aggregated Service (whether derived from T1 Service, P1 Service or B1 Service) is intended to rank equally (put generally, in a System Curtailment equally with, and otherwise lower in priority to, T1 Service, P1 Service or B1 Service). See clause 8.17(a) and the Curtailment Plan in this regard.

26.5 These changes are required to better align with Curtailment Plan in the Negotiated Contracts and to ensure that the outcome of a Curtailment is consistent with the market's expectations based on existing contract terms.

26.6 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

26.7 The other changes to row 3 of the "System Curtailment" table are for better drafting precision / clarity.

Part A System Curtailment, Row 4

The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity) and T1 Service (including Aggregated T1 Service), P1 Service (including Aggregated P1 Service) and B1 Service (including Aggregated B1 Service), which is not dealt with under item 3 above, apportioned in accordance with the provisions of items (b) and (c) of Part B of this Schedule 6

Explanation/Submission

26.8 The addition of the word "*Service*" after "*Aggregated T1*" corrects a typographical error.

26.9 The addition of the references to "*(including Aggregated P1 Service)*" and "*(including Aggregated B1 Service)*" correct an oversight and are consistent with the equal priority afforded to Aggregated P1 Service and Aggregated B1 Service vis-à-vis Aggregated T1 Service. See clause 8.17(a) in this regard.

26.10 The addition of "*items (b) and (c) of*" is for better drafting precision / clarity.

26.11 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A System Curtailment, Row 6

Other Reserved Service ~~(other than Tp Service)~~

Explanation/Submission

26.12 This change corrects a typographical error. Without this change, "*Other Reserved Service*" is not addressed in the Curtailment Plan for a System Curtailment. Given Tp Service was not separately described in any row of the Curtailment Plan, and is not addressed in the Reference Contracts, it is not appropriate to carve it out from Other Reserved Service in row 6 of the System Curtailment table.

26.13 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A Point Specific Curtailment, Rows 1 and 2

Any Capacity Service insofar as it is for the shipper's relevant share of the Distribution Networks' IPQ *
Alcoa's Priority Quantity*

Explanation/Submission

26.14 The asterisk is given the following meaning below the table:

> ***** *denotes amounts that are net of such quantities delivered at other inlet points or outlet points (as the case requires) on the relevant Gas Day*

26.15 The addition of the asterisk is to clarify that, when determining the allocation in these categories at a particular point, amounts delivered within these categories at other points must be taken into account (that is, amounts delivered at other points are not included in the amount that attracts the relevant priority at the curtailed point in question).

26.16 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A Point Specific Curtailment, Row 3

Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)* and T1 Service (exincluding Aggregated T1 Service), P1 Service (excluding Aggregated P1 Service) and B1 Service (excluding Aggregated B1 Service), that is Contracted Capacity at the relevant point to the extent of, and apportioned in accordance with, the provisions of item (a) of Part B of this Schedule 6

Explanation/Submission

26.17 The asterisk is given the following meaning below the table:

> ***** *denotes amounts that are net of such quantities delivered at other inlet points or outlet points (as the case requires) on the relevant Gas Day*

26.18 The addition of the asterisk is to clarify that, when determining the allocation in the "*Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)*" category at a particular point, amounts delivered within this category at other points must be taken into account (that is, amounts delivered at other points are not included in the amount that attracts the relevant priority at the curtailed point in question).

26.19 The addition of "*P1 Service*" and "*B1 Service*" is to correct an oversight and is key to the certainty of T1 Service, P1 Service and B1 Service.

26.20 As noted in relation to the definitions of "*T1 Service*", "*P1 Service*" and "*B1 Service*" and clause 3.2 (earlier in these submissions), these three services are intended to be treated the same in a Curtailment scenario – that requirement is a critical element constituting the service itself (that is, the services are defined, in part (albeit a crucial part), by reference to their equality of treatment under the Curtailment Plan) and, accordingly, needs to be reflected in the Curtailment Plan. This is also consistent with the market's expectations (as reflected in the Negotiated Contracts) that capacity under contracts for T1 Service, P1 Service and B1 Service will be treated the same in a Curtailment regardless of which of those three Capacity Services the capacity is for and regardless of whether such capacity was granted under a Negotiated Contract or under a Reference Contract.

26.21 The current omission of P1 Service and B1 Service in row 3 of Part A of Schedule 6 of the Reference Contracts is simply a drafting error and is inconsistent with the definitions of "*T1 Service*", "*P1 Service*" and "*B1 Service*" and the description of each of T1 Service, P1 Service and B1 Service in clause 3.2(a) of each Reference Contract, and is also inconsistent with paragraph (a) of Part B of Schedule 6, which inconsistencies create unnecessary confusion in application of the Curtailment Plan and provision of the services.

26.22 The change from "*including*" Aggregated T1 Service to "*excluding*" Aggregated T1 Service corrects a critical typographical error, as it has always been intended (and understood by the market) that, and the Reference Contracts otherwise make it clear that, in a Point Specific Curtailment, Aggregated Service at a point has a lower priority than T1 Service / P1 Service / B1 Service with Contracted Capacity at that point. See clause 8.17(b) in this regard. Clauses 17.9(b)(iii) and 17.9(b)(vi)(B) also describe the different treatment of Aggregated Service vis-à-vis the service from which it derived.

26.23 These changes are required to better align with Curtailment Plan in the Negotiated Contracts and to ensure that the outcome of a Curtailment is consistent with the market's expectations

based on existing contract terms. The Curtailment Plan relies on a consistent application across contracts for Capacity Services.

26.24 The other changes to row 3 of the "Point Specific Curtailment" table are for better drafting precision / clarity.

26.25 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A Point Specific Curtailment, Row 4

The balance of Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)* and T1 Service (exincluding Aggregated T1 Service), P1 Service (excluding Aggregated P1 Service) and B1 Service (excluding Aggregated B1 Service), that is Contracted Capacity at the relevant point which is not dealt with under item 3 above, apportioned in accordance with the provisions of items (b) and (c) of Part B of this Schedule 6

Explanation/Submission

26.26 The asterisk is given the following meaning below the table:

> ***** *denotes amounts that are net of such quantities delivered at other inlet points or outlet points (as the case requires) on the relevant Gas Day*

26.27 The addition of the asterisk is to clarify that, when determining the allocation in the "*Alcoa's Exempt Delivery Entitlement (excluding Alcoa's Priority Quantity)*" category at a particular point, amounts delivered within this category at other points must be taken into account (that is, amounts delivered at other points are not included in the amount that attracts the relevant priority at the curtailed point in question).

26.28 The change from "*including*" Aggregated T1 Service to "*excluding*" Aggregated T1 Service corrects a typographical error, as it has always been intended (and understood by the market) that, and the Reference Contracts otherwise make it clear that, in a Point Specific Curtailment, Aggregated Service at a point has a lower priority than T1 Service / P1 Service / B1 Service with Contracted Capacity at that point. See clause 8.17(b) in this regard. Clauses 17.9(b)(iii) and 17.9(b)(vi)(B) also describe the different treatment of Aggregated Service vis-à-vis the service from which it derived. The addition of the words "*that is Contracted Capacity*" further support this change.

26.29 These changes are required to better align with Curtailment Plan in the Negotiated Contracts and to ensure that the outcome of a Curtailment is consistent with the market's expectations based on existing contract terms. The Curtailment Plan relies on a consistent application across contracts for Capacity Services.

26.30 The addition of the word "*Service*" after "*Aggregated T1*" corrects a typographical error.

26.31 The addition of the references to "*(excluding Aggregated P1 Service)*" and "*(excluding Aggregated B1 Service)*" correct a drafting error and are consistent with the equal treatment afforded to Aggregated P1 Service and Aggregated B1 Service vis-à-vis Aggregated T1 Service. See clause 8.17(a) in this regard.

26.32 The addition of "*items (b) and (c) of*" is for better drafting precision / clarity.

26.33 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A Point Specific Curtailment, Row 6

Other Reserved Service ~~(other than Tp Service)~~ that is Contracted Capacity at the relevant point

Explanation/Submission

26.34 Given Tp Service was not separately described in any row of the Curtailment Plan, and is not addressed in the Reference Contracts, it is not appropriate to carve it out from Other Reserved Service in row 6 of the System Curtailment table.

Part A Point Specific Curtailment, Row 7

A new row has been added:

7	Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point

And the rows thereafter have been renumbered

Explanation/Submission

26.35 As noted above, it has always been intended (and understood by the market) that, and the Reference Contracts otherwise make it clear that, in a Point Specific Curtailment, Aggregated Service at a point has a lower priority than T1 Service / P1 Service / B1 Service with Contracted Capacity at that point. The omission of a separate row addressing the separate priority status of Aggregated Service in a Point Specific Curtailment was a drafting error. This row needs to be added for certainty.

26.36 This change is required to better align with Curtailment Plan in the Negotiated Contracts and to ensure that the outcome of a Curtailment is consistent with the market's expectations based on existing contract terms. The Curtailment Plan relies on a consistent application across contracts for Capacity Services.

26.37 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part A Point Specific Curtailment

***** denotes amounts that are net of such quantities delivered at other inlet points or outlet points (as the case requires) on the relevant Gas Day

Explanation/Submission

26.38 As noted above, the addition of the asterisk is to clarify that, when determining the allocation in the relevant categories (that is, the categories with respect to which we have added the

asterisk), amounts delivered within these categories at other points must be taken into account (that is, amounts delivered at other points are not included in the amount that attracts the relevant priority at the curtailed point in question).

26.39 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part B, item (a)

(a) The amount of Capacity available after allowing for items 1 and 2 in Part A of this Schedule 6, up to the next 253.5 TJ/d of Capacity, must be apportioned as follows:

(i) ½ of the available Capacity must be apportioned to Alcoa; and

(ii) ½ of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service (including, in a relevant System Curtailment, Aggregated Service) which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i).

Explanation/Submission

26.40 This change is to articulate how clause 17.9(b)(vi) is to be applied upon a Curtailment in light of the more general words in Part B of Schedule 6. The opening words in clause 17.9(b) make it clear that the words in clause 17.9(b)(vi) have primacy. We have inserted these words in Part B to recognise that, in some instances (as set out in clause 17.9(b)(vi) and in accordance with that primacy), Aggregated Service will be treated as T1 Service, P1 Service or B1 Service (as the case may be). This change is for clarity, consistent with the existing drafting, and the change does not change the priority order.

26.41 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.

Part B, item (b)

(b) The amount of Capacity available after allowing for items 1, 2 and 3 in Part A of this Schedule 6 must be apportioned as follows:

(i) the Alcoa Proportion of the available Capacity must be apportioned to Alcoa; and

(ii) the balance of the available Capacity must be apportioned to T1 Service, P1 Service and B1 Service (including, in a relevant System Curtailment, Aggregated Service) which, among shippers with Contracted Capacity for T1 Service, P1 Service and B1 Service must be apportioned in accordance with clause 17.9(c)(i), or if there is available Capacity after all T1 Service, P1 Service and B1 Service (including, in a relevant System Curtailment, Aggregated Service) has been provided for then to items below T1 Service, P1 Service and B1 Service in the applicable column of the table in Part A of this Schedule 6, which among shippers with the relevant Type of Capacity Service must be apportioned in accordance with clause 17.9(c)(i).

Explanation/Submission

26.42 This change is to make it clearer how clause 17.9(b)(vi) is to be applied upon a Curtailment in light of the more general words in Part B of Schedule 6. The opening words in clause

17.9(b) make it clear that the words in clause 17.9(b)(vi) have primacy. We have inserted these words in Part B to recognise that, in some instances (as set out in clause 17.9(b)(vi) and in accordance with that primacy), Aggregated Service will be treated as T1 Service, P1 Service or B1 Service (as the case may be). This change is for clarity, consistent with the existing drafting, and the change does not change the priority order.

26.43 The certainty and predictability of the application of the Curtailment Plan promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply.