Revised Final Plan
Attachment 14.1A

Response to Draft Decision on Terms and Conditions

October 2020

Dampier Bunbury Pipeline

1. Response to Draft Decision on Terms and Conditions

We have accepted many of the ERA's proposed amendments to the Reference Service Terms and Conditions. However, in some instances we have either modified or rejected the ERA's proposed amendments.

Overview

The ERA made a number of further amendments to the Reference Service Terms and Conditions.

Table 1.1 below outlines the relevant amendments. Annexure A provides further detail on relevant amendments that have been modified or not accepted.

Table 1.1: Summary of ERA's Draft Decision on Terms and Conditions

ERA Required Amendment	ERA Draft Decision	Our Response	Our comment
Required amendment 25	**Modify**	**Accept**	Section 1 below
Required amendment 26	**Modify**	**Accept**	Section 1 below
Required amendment 27	**Modify**	**Accept**	Section 1 below
Required amendment 28	**Modify**	**Accept**	Section 1 below
Required amendment 29	**Modify**	**Accept**	Section 1 below
Required amendment 30	**Modify**	**Reject**	Section 3 below
Required amendment 31	**Modify**	**Reject**	Section 4 below
Required amendment 32	**Modify**	**Modify**	Section 5 below
Required amendment 33	**Modify**	**Modify**	Section 6 below
Required amendment 34	**Modify**	**Modify**	Section 7 below
Required amendment 35	**Modify**	**Accept**	Section 1 below
Required amendment 36	**Modify**	**Reject**	Section 8 below
Required amendment 37	**Modify**	**Modify**	Section 1 below
Required amendment 38	**Modify**	**Modify**	Section 1 below
Required amendment 39	**Modify**	**Accept**	Section 1 below

Required amendment 40	**Modify**	**Modify**	Section 1 below
Required amendment 41	**Modify**	**Accept**	Section 1 below
Required amendment 42	**Modify**	**Modify**	Section 9 below
Required amendment 43	**Modify**	**Accept**	Section 1 below
Required amendment 44	**Modify**	**Reject**	Section 10 below
Required amendment 45	**Modify**	**Reject**	Section 3 below
Required amendment 46	**Modify**	**Reject**	Section 3 below
Required amendment 47	**Modify**	**Reject**	Section 3 below

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

Annexure A - Proposed Terms and Conditions for Reference Services: Responses to Required Amendments 25 to 47

Introduction

These Submissions respond to the comments and required amendments made by the ERA in relation to the terms and conditions of the T1, B1 and P1 reference services. The changes shown and explained in these Submissions apply to all of the P1 Reference Contract, B1 Reference Contract and T1 Reference Contract unless otherwise stated.

These Submissions are divided into the following sections:

1. Changes required by the ERA that DBP is comfortable with (noting some minor additional consequential amendments in some cases), being Required Amendments 25, 26, 27, 28, 29, 35, 37, 38, 39, 40, 41 and 43.
2. Change requested to address a name change implemented by the AGIG Group since the terms and conditions were submitted to the ERA in January 2020;
3. Submissions regarding Required Amendments 30, 45, 46 and 47 – application of the Distance Factor to calculate the Overrun Charge and Unavailable Overrun Charge and application of the P1/B1 Reference Tariff instead of the T1 Reference Tariff to calculate the Excess Imbalance Charge, the Hourly Peaking Charge and the Unavailable Overrun Charge, in the P1 Reference Contract and the B1 Reference Contract;
4. Submissions regarding Required Amendment 31 – Description of Capacity Service for T1, P1 and B1 Services;
5. Submissions regarding Required Amendment 32 – Put and call of Options;
6. Submissions regarding Required Amendment 33 - Allocation of Maintenance Charge for Inlet Stations and Outlet Stations;
7. Submissions regarding Required Amendment 34 – allocation of rebate of excess Maintenance Charge;
8. Submissions regarding Required Amendment 36 – Curtailment Notice for Scheduling where there is insufficient available Capacity;
9. Submissions regarding Required Amendment 42 – sufficiency of forward haul Gas (B1 Reference Contract only);
10. Submissions regarding Required Amendment 44 – length of extension Term on exercise of Option;
11. Changes implemented that were suggested by ERA in the draft decision but not 'Required Amendments' and minor consequential amendments; and
12. Changes requested to address an oversight in relation to Tp Service.

The mark-up in this document shows only the changes that DBP requests further to the changes described in the Draft Decision, shown in mark-up as against the text of the changes required by the Draft Decision where appropriate (and otherwise in mark-up as against the text of the proposed terms and conditions submitted by DBP to the ERA in January 2020).

We have provided, together with these Submissions, marked up versions of the Reference Contracts, showing all changes to the versions submitted by DBP in January 2020. The marked up versions of the Reference Contracts contain, in addition to the changes described in these Submissions, a small

number of changes which are mere corrections of minor errors (being mainly errors in punctuation, spacing and cross references), which are also shown in mark-up but not separately described in these Submissions (as they are self-explanatory and uncontroversial).

Defined terms used in these Submissions:

- "**Draft Decision**" means the "Draft decision on proposed revisions to the Dampier Bunbury Pipeline access arrangement 2021 to 2025" published by the ERA dated 14 August 2020.
- "**ERA**" means the Economic Regulation Authority.
- "**Negotiated Contracts**" means existing contracts with shippers for T1 Service, P1 Service or B1 Service which are not on 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.

1. Changes required by ERA and accepted by DBP, with some minor and/or consequential amendments (Required Amendments: 25, 26, 27, 28, 29, 35, 37, 38, 39, 40, 41 and 43)

1.1. DBP is comfortable with and has incorporated the changes required by the ERA in Required Amendments 25,[1] 29, 35, 41 and 43.

1.2. DBP is comfortable with the changes required by the ERA in Required Amendment 26, Required Amendment 27 and Required Amendment 28.

> DBP thanks the ERA for correcting the cross referencing errors to clause 15 of the Access Arrangement and the required deletion of the cross reference to clause 14.7 in the T1 Reference Contract.
>
> DBP accepts the addition of the cross reference to clause 20.5(a)(ii) although notes that the reference to the definition in clause 16 of the Access Arrangement already picks up the Reference Tariff Variation Mechanism (as referred to in clause 20.5(a)(ii)).

1.3. Required Amendment 37: DBP is comfortable with Required Amendment 37 to include a requirement that the Shipper has complied with its obligations under clause 6.13 in respect of the relevant inlet or outlet point, however that change highlighted an amendment that needs to be made to clarify clause 6.13(a), as follows:

[1] In the definition of "DBNGP", in addition to Required Amendment 25, DBP has changed the reference to "2026" to a reference to "2025" in the phrase "described in section 2 of the Access Arrangement (as approved for the period 2021 – 2025)" in the marked up T1 Reference Contract and B1 Reference Contract provided with these submissions.

6.13(a) Contribution Agreement

The Shipper may only Deliver Gas to an Inlet Point, or Receive Gas from an Outlet Point~~, to which it did not Deliver Gas or from which it did not Receive Gas at the Capacity Start Date~~ if

While DBP may be required to enter into a Reference Contract prior to the Shipper having entered into the relevant Contribution Agreement, the entitlement to Deliver or Receive Gas at any point is preconditioned on the contribution requirements under clause 6.13. The existing drafting lacks clarity on this matter and therefore gives rise to uncertainty and increases the probability of disputes. DBP seeks this clarifying amendment, consistent with the national gas objective (and intends to make the same change to the Standard Shipper Contracts).

1.4. Required Amendment 38: DBP accepts the changes required by the ERA in clauses 9.5(a) and 9.6(a), however requests that the new drafting specifically refers to the contractual mechanism in clause 9.7 for the Parties to agree to a different limit on the basis that aside from that mechanism, it is not intended that separately negotiated changes apply to the Reference Contract. Of course, any provision may be amended by separately negotiated agreements, and so DBP is concerned that a widely phrased exception in relation only to imbalance introduces ambiguity into the Reference Contracts. Limiting the new exception to the specified contractual mechanisms promotes certainty. DBP proposes that clauses 9.5(a) and 9.6(a) include the underlined words set out below and has included them in the attached reference service terms and conditions:

9.5(a) Accumulated Imbalance Limit

Except where the ~~Shipper has contracted with the Operator for~~Parties have agreed a different Accumulated Imbalance Limit under clause 9.7, the Shipper's Accumulated Imbalance Limit for a Gas Day is 8% 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.

9.6(a) Excess Imbalance Charge

Except where the ~~Shipper has contracted with the Operator for~~ Parties have agreed a different Outer Accumulated Imbalance Limit under clause 9.7, 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.

1.5. Required Amendment 39: DBP will not make further submissions in relation to the ERA's removal of the proposed new clause 9.8(a) in Required Amendment 39 but notes that, given the deletion, a consequential amendment is required to clause 9.8(c) so that it only cross references clauses 9.8(a) and (b). DBP has made this change in the terms and conditions.

1.6. Required Amendment 40: DBP is comfortable with the changes to clause 14.7(b) in Required Amendment 40 except that the deleted words set out below (that formed part of the drafting set out in Required Amendment 40) are clearly a mistake by the ERA and should not be included in this clause (see also paragraph 1574 of the Draft Decision in this regard).

Clause 14.7(b) (B1 Reference Contract only)

~~Except where the Shipper has contracted with the Operator for a different Outer Accumulated Imbalance Limit, if~~ If a relocation of Capacity under this clause results in Gas being transported to the Shipper 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.

2. New minor change proposed by DBP

2.1. Since the proposed Access Arrangement was submitted, *DUET Investment Holdings Pty Ltd (ABN 22 120 456 573)* has changed its name to *Australian Gas Infrastructure Holdings Pty Ltd (ABN 22 120 456 573)*. DBP requests a minor change to paragraph (a)(iii) of the definition of AGIG in clause 1 (Definitions) to reflect this name change. There are no consequential changes in the terms and conditions arising from this change.

3. Required Amendments 30, 45, 46 and 47 – application of the Distance Factor to calculate the Overrun Charge and Unavailable Overrun Charge and application of the P1/B1 Reference Tariff instead of the T1 Reference Tariff to calculate the Excess Imbalance Charge, the Hourly Peaking Charge and the Unavailable Overrun Charge, in the P1 Reference Contract and the B1 Reference Contract

3.1. **Drafting Changes:** The changes set out below (in mark-up as against the drafting described in the Draft Decision) are the same as the position under the current Reference Contracts. Our submissions in relation to this drafting are set out below.

Definition of T1 Reference Tariff (in the P1 Reference Contract and B1 Reference Contract only)

T1 Reference Tariff means the reference tariff for T1 Service set out in clause 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.

Definition of Distance Factor (in the P1 Reference Contract and B1 Reference Contract only)

~~***Distance Factor*** means for each Outlet Point at which Shipper has Back Haul Contracted Capacity the distance in kilometres between the Inlet Point and the Outlet Point divided by 1399 kilometres.~~

Definition of P1 Reference Tariff (in the P1 Reference Contract only)

~~***P1 Reference Tariff*** means the reference tariff for P1 Service set out in clause 3.4 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the P1 Reference Tariff shall be re-set to reflect any replacement reference tariff for P1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.~~

Definition of B1 Reference Tariff (in the B1 Reference Contract only)

~~***B1 Reference Tariff*** means the reference tariff for B1 Service set out in clause 3.5 of the Access Arrangement, as adjusted by the Reference Tariff Variation Mechanism from time to time, save that the B1 Reference Tariff shall be re-set to reflect any replacement reference tariff for B1 Service approved by the Regulator for any new Access Arrangement Periods over the Term of this Contract.~~

Schedule 2 (in the P1 Reference Contract only)

Row	Description of Charge	Rate at which Charge is determined
1	Excess Imbalance Charge (clause 9.5(e) and 9.6(b))	200% of the ~~P1~~ T1 Reference Tariff from time to time
2	Hourly Peaking Charge (clause 10.3(d) and 10.4(b))	200% of the ~~P1~~ T1 Reference Tariff from time to time
3	Overrun Charge (clause 11.1(a))	At the rate specified in clause 11.1(b)
4	Unavailable Overrun Charge (clause 11.6 and clause 17.8(e))	The greater of: (a) 250% of the ~~P1~~ T1 Reference Tariff from time to time; and (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid~~, multiplied by the Distance Factor~~.

Schedule 2 (in the B1 Reference Contract only)

Row	Description of Charge	Rate at which Charge is determined
1	Excess Imbalance Charge (clause 9.5(e) and 9.6(b))	200% of the ~~B1~~ T1 Reference Tariff from time to time
2	Hourly Peaking Charge (clause 10.3(d) and 10.4(b))	200% of the ~~B1~~ T1 Reference Tariff from time to time

3	Overrun Charge (clause 11.1(a))	At the rate specified in clause 11.1(b)
4	Unavailable Overrun Charge (clause 11.6 and clause 17.8(e))	The greater of: (a) 250% of the ~~B1~~ T1 Reference Tariff from time to time; and (b) the highest price bid for Spot Capacity which was accepted for that Gas Day, other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid~~, multiplied by the Distance Factor~~.

Clause 11.1(b)(ii) (in the P1 Reference Contract and B1 Reference Contract only)

the highest price bid for Spot Capacity which was accepted for that Gas Day other than when the highest price bid was not a bona fide bid, in which case the highest bona fide bid, ~~multiplied by the Distance Factor,~~

Explanation/Submission: application of the Distance Factor to calculate the Overrun Charge and Unavailable Overrun Charge

3.2. The application of the Distance Factor to reduce the Spot Price for the purpose of calculating the Overrun Charge and Unavailable Overrun Charge is contrary to the 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.

3.3. For the reasons set out below, it does not make sense to say that Overrun Gas taken under a contract for P1 Service or B1 Service is different from, or has a different effect from, and thus should be subject to a different and lower charge to, Overrun Gas taken under a contract for T1 Service. The Overrun regime is part of a holistic pipeline management tool which exists to benefit shippers as a whole, without preferential treatment to any particular category of shipper. The proposed change appears to benefit shippers who only have contracts for P1 Service and/or B1 Service (and no other services) to the potential detriment of all other shippers using the DBNGP (in particular, discriminating against shippers who have contracts for T1 Service).

3.4. Your early attention is drawn to clause 20.4(c) – which is specifically referred to below and which forms a crucial backdrop to the following submissions.

One shared pipeline, one Overrun calculation, one charge.

3.5. The proposed change to apply the Distance Factor in calculating the Overrun Charge and Unavailable Overrun Charge under the Reference Contracts for P1 Service and B1 Service

seems to presume that T1 Service Overrun Gas, B1 Service Overrun Gas and P1 Service Overrun Gas are separately calculated. They are not.

3.6. Overrun Gas is defined as amounts taken in excess of Contracted Capacity across all of the Shipper's Capacity Services. The definition, in each of the Reference Contracts for T1 Service, P1 Service and B1 Service is as follows:

> ***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 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.*

Clause 11.7(e) is the other crucial part of the mechanism. It provides:

> *"The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances."*

3.7. This concept of "one Overrun calculation, one charge" was specifically asked for, and negotiated by, shippers in 2004. It forms one of the important elements of the contractual matrix governing shared access to the capacity of the DBNGP.

3.8. The definition of Overrun Gas does not distinguish between an excess above Contracted Capacity for T1 Service, above Contracted Capacity for P1 Service and above Contracted Capacity for B1 Service. Overrun Gas has the same characteristic irrespective of what contract it is calculated under (it being in excess of the aggregated Contracted Capacity across all contracts held by that shipper) and because of the Aggregated Service rights given to a shipper it would, in many cases, be impossible to distinguish between Overrun Gas and Aggregated Service if Overrun Gas was to be calculated on a contract-by-contract basis (or some other variant).

3.9. If anything, the definition of Overrun Gas is overly generous vis-a-vis each shipper's Aggregated Service (as it prevents gas being Overrun Gas up to the quantity aggregated across contracts plus Spot Capacity regardless of whether, strictly speaking, the shipper can fully exercise those Aggregated Service rights).

3.10. This approach of calculating relevant amounts and charges across all of a shipper's contracts in aggregate is applied under clause 9 (Imbalance), clause 10 (Peaking) and clause 11 (Overrun) and reflects the general approach throughout the Reference Contracts that the Operator should recognise a shipper's total Contracted Capacity and total received/delivered Gas quantities taken in aggregate across all of that shipper's Capacity Services and contracts rather than break down the relevant rights and quantities on a contract-by-contract basis in a way that may result in the imposition of additional charges on shippers. If there was a shift away from that approach in one instance (that is, because a shipper successfully argued that the Reference Contract should be changed so as to allow separate calculation of P1 Service Overrun Gas, B1 Service Overrun Gas and T1 Service Overrun Gas and a separate impost of lower charges for the P1 and B1 categories) then,

among other changes, DBP would need to try to renegotiate Negotiated Contracts (and that may not be possible given that shippers originally fought hard for, and won, the current concept of "one Overrun calculation, one charge").[2]

Overrun is taking Spot Capacity which would otherwise be available to other shippers

3.11. By taking Overrun Gas, the particular Shipper is taking Gas above the Shipper's Contracted Capacity and is therefore, in practice, doing the same as taking Spot Capacity (save that, where a shipper takes Overrun Gas, the Shipper takes without asking, and in priority to anyone actually bidding for Spot Capacity). The Shipper should not be able to take up Spot Capacity without bidding for Spot Capacity or, if they chose not to do so, paying the highest bid price. Put another way, the Shipper should not receive a discount on the bid price for Spot Capacity when it takes Overrun Gas rather than requesting and bidding for Spot Capacity.[3]

Taking Overrun Gas, instead of contracting for appropriate quantities, is detrimental to the pipeline and other users

3.12. The Overrun Charge and Unavailable Overrun Charge are not intended to serve as a charge for a service offered by the Operator, as Overrun Gas is not available as of right (see clauses 5.1 and 5.2 which limit Shipper's rights to the amount of the Shipper's

[2] With respect to the historical differences, between different Access Arrangement Periods, in the application of the Distance Factor to the Overrun Charge and Unavailable Overrun Charge, we note:

- for AA2, the reference contracts for part haul and back haul contracts were prepared by the ERA – DBP's proposal was that part haul and back haul should not be reference services and so DBP made no submissions regarding the terms and conditions for those services. The ERA's decision for AA2 described the terms and conditions for the Part Haul Service and Back Haul Service (as Reference Services) as "to the extent applicable for these Services, are substantially the same as the terms and conditions" set out in the Standard Shipper Contract for T1 Service (see paragraphs 461, 464, 468, 469, 470 and 511 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline reprinted on 11 November 2005) but the ERA did not describe, in its reasons, any justification for changing, from the Standard Shipper Contract for T1 Service, the calculation of the Overrun Charge and Unavailable Overrun Charge in its published terms contracts for P1 and B1 Service;
- for AA3, the reference contracts for part haul and back haul contracts were prepared by the ERA – DBP's proposal was that the only reference service should be a R1 Service and so DBP made no submissions regarding the terms and conditions for part haul and back haul services. The ERA's decision for AA3 stepped through the drafting proposed by the ERA for Schedule 2 in paragraphs 1530 – 1537 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline dated 31 October 2011 as amended on 22 December 2011) and does not refer to the need for any differences in the reference contracts for P1 and B1 Service;
- for AA4, as noted by the ERA, because the Distance Factor was not applied to the Overrun Charge and Unavailable Overrun Charge in the then existing reference service terms and conditions, DBP did not need to make submissions on this issue.

[3] With respect to the submission by CPM that, without the discount by way of the Distance Factor, the flexibility for shippers' pipeline use is limited, DBP notes that shippers have the option of bidding for Spot Capacity or engaging in capacity trades if they require more capacity than they have contracted for. With respect to the submission by CPM that, without the discount by way of the Distance Factor, there is a disproportionate financial burden on shippers, DBP submits that, to the contrary, the discount by way of the Distance Factor would unfairly favour a limited category of shippers (being shippers who only have contracts for P1 Service and/or B1 Service (and no other services)) above all other shippers using the DBNGP (in particular, discriminating against shippers who have contracts for T1 Service or those who bid for Spot Capacity rather than taking Overrun Gas).

Contracted Capacity and clause 8.9(f) which limits scheduled Capacity Services to Shipper's Total Contracted Capacity). If the Shipper is taking Overrun Gas, it is taking Gas in excess of its express contractual rights. The charges have a practical side effect of incentivising shippers to contract appropriately for the amount of capacity they require (either as Contracted Capacity under a P1 / B1 / T1 Service or as Spot Capacity), to:

> provide greater predictability and certainty for DBP; and
>
> prevent one shipper unfairly taking Overrun Gas and causing a heightened risk of curtailment of other services,

and, consequently, provide greater service reliability for all users of the DBNGP and the customers they supply – that is, for the purpose of 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.

3.13. Further, 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.

Clause 20.4(c)

3.14. The Overrun Charge and Unavailable Overrun Charge are "Other Charges" – see clause 20.4(a)(iii) and (iv).

3.15. 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*". [4]

Explanation/Submission: use of the T1 Reference Tariff in Schedule 2 for the T1, B1 and P1 Reference Contracts

3.16. The appropriate measure for all of the charges in Schedule 2 is the T1 Reference Tariff and not the B1 / P1 Reference Tariff. [5]

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[4] Note that the reference to "Shippers" in clause 20.4(c) should rather be "shippers" – we have corrected this in the marked up Reference Contracts provided with these submissions.

[5] Note that there was (and still is) one exception to this principle, which is contained in clause 11.1(b)(i) of the Reference Contracts for B1 Service and P1 Service. If a shipper:

1. only has a contract for B1 Service (and/or P1 Service); and
2. there is no bid for spot capacity in excess of 115% of the B1 Tariff / P1 Tariff,

it was recognised, **in that circumstance**, because:

A. the shipper did not hold a contract for T1 Service (and did not have the benefit of T1 Aggregated Service);
B. there wasn't any/ or significant patent demand for spot capacity (because of the condition in point 2 above); and
C. the taking of Overrun Gas does not interfere with another shipper's entitlement (as otherwise it would be charged at the Unavailable Overrun rate in Schedule 2),

the Overrun Gas which is not Unavailable Overrun would be charged at 115% of the lower B1 Tariff (or P1 Tariff as the case may be).

3.17. A failure to implement the approach set out in paragraph 3.16 is contrary to the 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.

3.18. For the reasons set out below it does not make sense to say that Overrun, Peaking or Imbalance under a contract for P1 Service or a B1 Service is different from, or has a different effect from, and thus should be subject to a different and lower charge to, Overrun, Peaking or Imbalance under a contract for T1 Service. As set out above, the Overrun, Peaking and Imbalance regimes are part of a holistic pipeline management tool which exists to benefit shippers as a whole, without preferential treatment to any particular category of shipper. The proposed change appears to benefit shippers who only have contracts for P1 Service and/or B1 Service (and no other services) to the potential detriment of all other shippers (in particular, discriminating against shippers who have contracts for T1 Service). [6]

3.19. DBP also refers again to clause 20.4(c), which it submits is crucial to the intended operation of the pipeline and application of 'Other Charges'.

Clause 11.7(e) is a crucial part of the foregoing mechanism (as it allows DBP to charge the T1 Tariff (but not also the B1 Tariff/ P1 Tariff) where the condition in point 1. above is not satisfied) and it provides:

> "The Parties agree that, because the rights and remedies set out in this clause 11 apply across all of the Shipper's Capacity Services, when in particular circumstances the Operator exercises a right or issues a remedy under this clause 11, the Operator must not exercise the equivalent right or remedy under another contract for Capacity Services or in relation to another Capacity Service in relation to the same circumstances."

[6] With respect to the historical differences, between different Access Arrangement Periods, in the reference tariff referred to in Schedule 2 of the contracts for P1 Service and B1 Service, we note:

- for AA2, the reference contracts for part haul and back haul contracts were prepared by the ERA – DBP's proposal was that part haul and back haul should not be reference services and so DBP made no submissions regarding the terms and conditions for those services. The ERA's decision for AA2 described the terms and conditions for the Part Haul Service and Back Haul Service (as Reference Services) as "to the extent applicable for these Services, are substantially the same as the terms and conditions" set out in the Standard Shipper Contract for T1 Service (see paragraphs 461, 464, 468, 469, 470 and 511 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline reprinted on 11 November 2005) but the ERA did not describe, in its reasons, any justification for changing, from the Standard Shipper Contract for T1 Service, the drafting in Schedule 2 of its published terms contracts for P1 and B1 Service;
- for AA3, the reference contracts for part haul and back haul contracts were prepared by the ERA – DBP's proposal was that the only reference service should be a R1 Service and so DBP made no submissions regarding the terms and conditions for part haul and back haul services. The ERA's decision for AA3 stepped through the drafting proposed by the ERA for Schedule 2 in paragraphs 1530 – 1537 of the Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline dated 31 October 2011 as amended on 22 December 2011) and does not refer to the need for any differences in the reference contracts for P1 and B1 Service;
- for AA4, as noted by the ERA, because the T1 Reference Tariff was applied to the charges in Schedule 2 of the reference contracts for P1 Service and B1 Service in the then existing reference service terms and conditions, DBP did not need to make submissions on this issue.

One shared pipeline, one calculation, one charge.

3.20. The proposed change in Required Amendment 45 and Required Amendment 46 to the Unavailable Overrun Charge, Excess Imbalance Charge and Hourly Peaking Charge under the Reference Contracts for P1 Service and B1 Service seems to presume that the Accumulated Imbalance Limit, Outer Accumulated Imbalance Limit, Accumulated Imbalance, Hourly Peaking Limit Outer Hourly Peaking Limit are separately calculated for each of the T1 Service, B1 Service and P1 Service. They are not.

3.21. Each of those concepts is calculated across all of the Shipper's Capacity Services. This concept of (put loosely) "one Imbalance / Peaking / Overrun calculation, one charge" was specifically asked for, and negotiated by, shippers in 2004.[7] It forms one of the important elements of the contractual matrix governing shared access to the capacity of the DBNGP.[8]

The charges are not levied in respect to B1 Service / P1 Service taken by the Shipper

3.22. The charges in Schedule 2 are not being imposed with respect to the Overrun, Imbalance or Peaking being used as a 'service' – they are being imposed because the Shipper's behaviour interferes with the rights of others, which 'others' may include the holders of T1 Capacity.

3.23. In particular:

> the Unavailable Overrun Charge applies only where the Shipper's take of Overrun Gas impacts or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Service (or other Capacity Service) (as that is the precondition to the unavailability described in an Unavailability Notice (see clause 11.2(a)), which is a precondition to imposing the Unavailable Overrun Charge), so the T1 Reference Tariff is an appropriate rate;
>
> the Excess Imbalance Charge, where the Shipper's Accumulated Imbalance is between 8% and 20% above the Shipper's total aggregated Contracted Capacity, only applies where the Shipper's imbalance impacts or is likely to impact on any other shipper's entitlement to its Daily Nomination for T1 Capacity (or other capacity / services) (or will have a material adverse impact on the integrity or operation of the DBNGP) (as that is the precondition to the Operator providing a notice under clause 9.5(b)(iii), which is a precondition to imposing the Excess Imbalance Charge for an imbalance of between 8% and 20%), so the T1 Reference Tariff is an appropriate rate; and
>
> the Hourly Peaking Charge, where the Shipper exceeds 125% (Winter) / 120% (Summer) of the aggregate MHQ up to 140% of the aggregate MHQ, only applies where the Shipper's peaking impacts or is likely to impact on T1 Service (or any other Capacity Service) (or will have a material adverse impact on the integrity or operation of the DBNGP) (as that is the precondition to the Operator providing a notice under clause 10.3(a)(iii), which is a precondition to imposing the Hourly Peaking Charge for an imbalance of between 125/120% and 140%), so the T1 Reference Tariff is an appropriate rate.

---

[7] See:
(1) in relation to Imbalance, the definitions of "Daily Imbalance", "Total Inlet Quantity" and "Total Outlet Quantity" and clause 9.8;
(2) in relation to Peaking, the definition of "MHQ" and clause 10.6; and
(3) in relation to Overrun, the definition of "Overrun Gas" and clause 11.7(e).

[8] We note that the Standard Shipper Contracts on DBP's website contain the relevant errors in Schedule 2 in relation to the Unavailable Overrun Charge, which DBP intends to correct.

That is, given the services relevantly impacted by the Shipper's Overrun, Imbalance or Peaking may well be T1 Service, or Spot Capacity bid at the highest price, a discount based on distance is clearly inappropriate in the context of the potential effects on other capacity caused by the conduct attracting the charge.

3.24. Shippers with a P1 Service or B1 Service should not be significantly less constrained than shippers with a T1 Service to take up imbalance, overrun or peaking capacity of the DBNGP, limiting the available of capacity for shippers in real need at the relevant time.

3.25. Further, as an aside for completeness, we note the following.

The preconditions to levying the Overrun Charge, Excess Imbalance Charge and Hourly Peaking Charge involve significant time delays and do not incentivise or motivate appropriate shipper behaviour. Discounting the basis on which those charge are calculated (from the T1 Reference Tariff to the P1 / B1 Reference Tariff and using the multiplier of the Distance Factor) will further disincentivise the appropriate shipper behaviour.

The behaviours addressed by the charges listed in Schedule 2 can 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, the behaviours may cause an increase in fuel costs and may reduce the availabilities of some Other Reserved Services, such as the ability for shippers to utilise storage services. At its worst, they can drastically reduce linepack over a number of hours in a Gas Day which can result in service unavailability of some Other Reserved Services, such as storage agreements, and Operational Balancing Agreements, and potential curtailment of gas transportation services.

Because of the foregoing actual or possible effects on available capacity, the absence of an effective incentive for shippers under a Reference Contract to stay below the relevant overrun, imbalance and peaking thresholds 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.

Pursuant to clause 15.5(d) of each Reference Contract, 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 requirements and avoid the 'behavioural charges'. 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, clause 9.6(c) provides that no Excess Imbalance Charge is payable in respect of any part of the imbalance attributable to Operator failing to provide a materially accurate Accumulated Imbalance Notice in the required time and clause 10.3(g) provides that no Hourly Peaking Charge 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 20.4(c)

3.26. As noted above, the Unavailable Overrun Charge, Excess Imbalance Charge and Hourly Peaking Charge are Other Charges – see clause 20.4(a).

3.27. 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*".

4. Required Amendment 31 – Description of Capacity Service for T1, P1 and B1 Services

Clause 3.2(a)

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

Explanation/Submission

4.1. DBP again requests the deletion of paragraph (i) of clause 3.2(a) in each of the P1 Reference Contract, B1 Reference Contract and T1 Reference Contract. We set out our further submissions in relation to this issue below.

4.2. "Curtail" is defined in the Reference Contracts, to mean "*reduce, interrupt or stop, or any combination of them, completely or in part*".

4.3. The overarching statement in clause 3.2(a) that the service "*can only be Curtailed in the circumstances specified in clause 17.2"* is:

incorrect;

inconsistent with the remaining terms of the Reference Contract; and

does not reflect the terms of clause 17.2.

Therefore, at best, paragraph (i) of clause 3.2(a) in each of the Reference Contracts creates uncertainty, which is inconsistent with the national gas objective.

4.4. Clause 17.2 is not, and has never been, an exclusive list regarding when DBP can Curtail but, rather, it is a permissive and non-exclusive list.

4.5. There are other express provisions of the Reference Contract which allow the Operator to "reduce", "interrupt" or "stop" in circumstances not listed in clause 17.2, and the statement regarding clause 17.2 in clause 3.2(a) is inconsistent with, and creates uncertainty with respect to, those other express provisions. For example:

the Operator is entitled to refuse to receive gas at inlet points in certain circumstances, under clause 5.3;

the Operator is entitled to refuse to deliver gas at outlet points in certain circumstances under clause 5.7;

the Operator is entitled to refuse to receive Out-of-Specification Gas under clause 7.6;

the Operator is not required to receive / deliver gas if the Shipper has not entered into a contribution agreement in the required circumstances pursuant to clause 6.13;

the Operator is entitled to refuse to receive / deliver gas when the Shipper is in default pursuant to clause 22.4.

Those other express rights are not captured in clause 17.2 and so a statement in clause 3.2(a) that purports to limit the Operator's rights to "reduce", "interrupt" or "stop" creates uncertainty and increases the probability of disputes, as it is arguably inconsistent with those other express provisions. Such uncertainty is inconsistent with the national gas objective.

4.6. We acknowledge that clause 17.2 includes a limb for "*circumstances where the Operator, acting as a Reasonable and Prudent Person, determines for any other reason… that a Curtailment is desirable*" but such limb of clause 17.2 is not intended to add a limit to Operator's otherwise absolute rights to refuse to receive/deliver as set out in other clauses, which are not otherwise subject to such limit, such as in the examples set out above.

4.7. Removing the reference to clause 17.2 from clause 3.2(a) does not change the contractual effect of clause 17.2 and does not detrimentally affect shippers' rights – rather, it preserves the effect of the full set of contract terms. The statement, in clause 3.1, that the relevant Reference Service is provided "*on the terms and conditions of this Contract*" makes it clear that all of the terms and conditions, including the Curtailment regime (and the liability regime thereunder (which is a result of the protracted negotiations with shippers which occurred in 2004)), apply to the provision of the service and that should not be undermined by a reference to clause 17.2 out of context.

4.8. The deletion of clause 3.2(a)(i) is also consistent with the Standard Shipper Contracts, which the ERA has recognised throughout the Draft Decision is consistent with the national gas objective and promotes business efficacy.

5. Required Amendment 32 – Put and call of Options

Clause 4.8(a) Put and call of Options

If the Operator receives a duly completed Access Request (as defined in the Access Arrangement) in accordance with clause 5.2 of the Access Arrangement ~~Access Request Form~~ from a shipper or prospective shipper (**Third Party Access Request**) which specifies a start date for the requested services 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 from the other shipper:

Explanation/Submission

5.1. We appreciate the desire to clarify the use of the term "access request form" in the former drafting. However, we disagree with the use of the defined term "Access Request Form" in this instance as that term is defined as "*Access Request Form means the access request form in Schedule 1 entered into between the Operator and the Shipper to which these Terms and Conditions are appended.*" and so only applies to the form entered into between the Operator and this particular Shipper to create this particular contract between them, whereas in this clause we need to capture an equivalent form submitted by another shipper.

5.2. We have made an alternative suggestion as shown in mark-up above to address the issue raised in paragraph 1424 of the Draft Decision.

6. Required Amendment 33 – Allocation of Maintenance Charge for Inlet Stations and Outlet Stations

Clause 6.11(a) Maintenance Charge for Inlet Stations and Outlet Stations

For the purposes of this clause 6.11, ***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 or have Contracted Capacity at the Inlet Point Associated with that Inlet Station or at the Outlet Point Associated with that Outlet Station (as the case may be) and pay a charge for substantially the same purpose in respect of the Inlet Station or Outlet 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 which are not already paid by any shipper under clauses 6.6, or 6.8(a)(i) (or the material equivalent in any other contract) or ~~paid for by~~ ultimately borne by another third party excluding the Operator~~, (or the material equivalent in any other contract)~~, and the costs of:

Explanation/Submission

6.1. The changes shown in paragraph 1458 of the Draft Decision (as required by Required Amendment 33) give rise to a need for further consequential changes as shown above in mark-up to clarify the operation of the clause.

6.2. The first change is to clarify what the ERA's new phrase "*use or have Contracted Capacity*" is referring to (as there is no Contracted Capacity at an Inlet Station or Outlet Station).

6.3. The second change is to move the pre-existing phrase "*or the material equivalent in any other contract*", which was intended to refer to the references to clauses 6.6 and 6.8(a)(i) of this contract.

6.4. The third change is to cover off any circumstances in which a cost may be initially paid for by a third party but reimbursed by the Operator.

7. Required Amendment 34 – allocation of rebate of excess Maintenance Charge

Clause 6.11(d)

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 as the amount paid by the Shipper under ~~greater of the amount determined by~~clause 6.11(d)(i) ~~and~~ or clause 6.11(d)(ii) in respect to that Inlet Station and that month bears to the amount the Operator recovers across all shippers in respect to that Inlet Station and that month under such clauses (or the material equivalent in any other contract).

Clause 6.11(e)

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 as the amount paid by the Shipper under ~~greater of the amount determined by~~clause 6.11(d)(i) ~~and~~ or clause 6.11(d)(ii) in respect to that Outlet Station and that month bears to the amount the Operator recovers across all shippers in respect to that Outlet Station and that month under such clauses (or the material equivalent in any other contract).

Clause 6.11(f)

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 as the amount paid by the Shipper under ~~greater of the amount determined by~~clause 6.11(f)(i) ~~and~~ or clause 6.11(f)(ii) in respect to that Gate Station and that month bears to the amount the Operator recovers across all shippers in respect to that Gate Station and that month under such clauses (or the material equivalent in any other contract)..

Explanation/Submission

7.1. The amendments set out in paragraph 1467 of the Draft Decision (required by Required Amendment 34) need to be further changed as shown above to clarify the operation of the affected clauses. We are comfortable with the suggestion to have the rebate proportionate to the amounts charged to the Shipper in the first instance but believe that position is better achieved by the above drafting which provides that the rebate is in the proportion that the amount actually paid by the Shipper bears to the total of the amounts paid by all shippers - rather than using the "greater of" test. We are concerned that the "greater of" test would operate under the different contracts to result in different denominators for the fraction of the rebate applying to different shippers, which may, mathematically, not work out to a

100% rebate overall. We are also keen to ensure that the mechanics do not become overly burdensome for billing purposes.

7.2. For completeness, we note that our original suggestion for this Access Arrangement Period was to have the rebate equal to the Contracted Capacity proportions because the reason for the rebate – that is, the circumstance giving rise to the potential over-recovery - is that some shippers pay more than the proportion that would have applied by reference to their Contracted Capacity because they are using the relevant point for amounts in excess of their Contracted Capacity and, given that circumstance, it seemed fair to have the rebate paid to the shippers that had reserved capacity at the point as 'compensation' for the fact that other shippers were using that point for amounts they had not reserved. That simple (and relatively stable) proportionate sharing was also easier to manage, from a practical perspective, for monthly billing purposes.

7.3. Finally, we agree with the ERA's decision (in paragraph 1462 of the Draft Decision) not to make the change requested by CPM in relation to clause 6.11(e)(i) and note also that maintenance has to be undertaken in relation to a point where a shipper has Contracted Capacity even though it has not used that capacity at that point in a certain month - because the Operator has to remain able to deliver at the point if the shipper does decide to use its Contracted Capacity – and so the presence of Contracted Capacity (even if not actually used) should be the relevant trigger for contribution. At its extreme, on CPM's submitted test, if shippers had Contracted Capacity at a point but all took aggregated service at a different point in a particular month, then Operator would receive no maintenance contributions for that month.

8. Required Amendment 36 – Curtailment Notice for Scheduling where there is insufficient available Capacity

> ***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 B1 Service to the Shipper which is less than the Shipper's Initial Nomination for B1 Service at an Inlet Point or an Outlet Point, the Operator ~~must issue~~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 Capacity for B1 Service at that Inlet Point or Outlet Point and the Capacity Service scheduled by the Operator for B1 Service for that Gas Day at that Inlet Point or Outlet Point.

Explanation/Submission

8.1. The change requested by CPM is inconsistent with historical and current practice, the existing Reference Contracts, Negotiated Contracts and Standard Shipper Contracts and would impose an additional unnecessary administrative step. The ERA has recognised throughout the Draft Decision that alignment across the contracts in place with shippers is consistent with the national gas objective. In particular, the alignment of the notice requirements where scheduled capacity is below nominated capacity across the various shipper contracts is part of the efficient operation of the DBNGP, as DBP uses the same system and process with respect to daily scheduling across all shippers.

8.2. Clause 8.10(b) addresses the daily scheduling process. DBP schedules capacity by way of the CRS and the shippers receive notice of their scheduled quantities, in advance of the day, in this manner. There is no information gap to be addressed by an additional notice and it would place an inappropriate administrative burden on DBP to have to issue an additional written notice in these circumstances, which would be inconsistent with efficient investment in and the efficient operation of the DBP.

8.3. CPM's submission provided that the reason for requiring the amendment to the deemed notice under clause 8.10(b) was because of the penalty regime for exceeding imbalance limits. However, the imbalance provisions already contain a requirement for notice to be issued in relation to an imbalance - see clauses 9.5(b)(iii) and the cross reference to that clause in clause 9.5(e). Furthermore, the Operator provides a daily notice to shippers notifying their Accumulated Imbalance, and shippers are in control of their daily nominations used for scheduling purposes, so shippers already have sufficient information and control to be able to manage their risk of incurring imbalance charges (which do not arise until after an 8% tolerance).

9. Required Amendment 42 – sufficiency of forward haul Gas (B1 Reference Contract only)

Clause 3.5 (B1 Reference Contract only)

3.5 Need for sufficient Forward Haul Gas

9.1. Except to the extent otherwise required by law, ~~T~~the Operator must not agree to provide a B1 Service unless ~~it considers, as a Reasonable and Prudent Person, that there will be sufficient Forward Haul Gas under normal operating conditions to provide all B1 Services on a firm basis (excluding interruptible services)~~ at the time of so agreeing (***Contract Entry Time***), the aggregate of:

(a) the amount of Contracted Capacity for B1 Service under that new agreement; plus

(b) quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for B1 Service entered into prior to the Contract Entry Time which, on their terms at the Contract Entry Time (for the avoidance of doubt, without regard to rights of relinquishment or forecast use), will be in effect during the period of that new agreement,

is no greater than the aggregate of the quantities referred to as Contracted Capacity aggregated for all shippers across all contracts for T1 Service and all contracts for P1 Service entered into prior to the Contract Entry Time which, on their terms at the Contract Entry Time (for the avoidance of doubt, without regard to rights of relinquishment or forecast use), will be in effect during the period of that new agreement.

Explanation/Submission

9.2. DBP has strict procedures in place to ensure that a technical assessment is undertaken prior to agreeing to provide a pipeline service in response to a request, and that capacity is not contracted unless and until approved pursuant to such procedure. Further, DBP is required to make available information in relation to capacity and to address requests for capacity in accordance with the Access Arrangement and the NGR and NGA. Accordingly, DBP does not consider there is any need for a provision in the nature of that suggested by CPM and by the ERA in paragraph 1600 of the Draft Decision. However, DBP is comfortable accepting such a provision if the relevant test is made clearer, to provide greater certainty.

9.3. We have specified that the test requires, in effect, that the aggregate of B1 Service be no greater than the aggregate of T1 Service and P1 Service. This is, in some senses, perhaps more restrictive on DBP than the test suggested by the Draft Decision[9] but, given these are the relevant equivalent services for the purpose of the Curtailment Plan, it is consistent with DBP's technical requirements and promotes certainty, thereby promoting efficient investment in, and efficient operation and use of, the DBNGP.

[9] in that it limits "Forward Haul Gas" to T1 and P1 Services.

9.4. DBP is not proposing any amendment to the change to clause 17.3(b)(ii) required by the ERA in Required Amendment 42.

9.5. The matters raised above have also highlighted a further change required to clause 17.2(f) as follows.

> ***Clause 17.2(f) Curtailment Generally***
>
> in circumstances where actual Forward Haul gas flow over the relevant area is less than the B1 Service demand over the relevant area across all shippers with a B1 Service.

10. Required Amendment 44 – length of extension Term on exercise of Option

> ***Clause 4.3 Option to renew Contract***
>
> Subject to clauses 4.4, 4.5, 4.6, 4.7 and 4.8, Shipper has two options ~~(each an Option)~~ to extend the Capacity End Date in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (***Original Capacity***) each for a period of 1 year (***Option***).~~:~~
>
> ~~(a) in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (***Original Capacity***); and~~
>
> ~~(b) for a period of not less than 1 month and not greater than 1 year (***Option Period***), specified in the written notice given to the Operator in accordance with clause 4.5.~~
>
> ***Clause 4.5 Notice exercising an Option***
>
> Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option ~~for the Option Period~~. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.
>
> ***Clause 4.6 First Option Period***
>
> If Shipper gives a notice in accordance with clauses 4.5 or 4.8 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for a period of 1 year ~~the Option Period~~ and:
>
> ***Clause 4.7 Second Option Period***
>
> If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clauses 4.5 or 4.8 exercising the second option given to it under clause 4.3 then the Period of Supply for the Original Capacity under this Contract will be extended for a period of another year ~~the Option Period~~ and:

Explanation/Submission

10.1. DBP requests that clause 4.3 be reinstated as per the drafting in the existing terms and conditions of Reference Contracts (which DBP did not propose to amend in its submissions

of January 2020) and that the consequential changes to clauses 4.5, 4.6 and 4.7 be reversed. As noted in paragraphs 1707 and 1708 of the Draft Decision, the existing provisions for Shipper's option – whereby Operator is compelled to provide the services for one year beyond the agreed term if the Shipper so elects - are reasonable, particularly when viewed in the context that contracts for other Australian covered pipelines do not contain any such extension options and the Standard Shipper Contract requires that options be exercised for 5 years at a time.

10.2. For DBP to compromise further by accommodating extensions that are shorter than 1 year becomes administratively burdensome.

10.3. Accordingly, the change proposed to allow extensions of term for less than 12 months is inconsistent with the national gas objective as it results in inefficiencies for the Operator.

10.4. If the ERA disagrees with DBP that the current "as of right" extension period of 1 year strikes the right balance for the purpose of the national gas objective, then DBP submits that providing for anything shorter than 6 months is too administratively burdensome and not justified by the short term of the extension and, accordingly, is inconsistent with the national gas objective as it would not promote efficient investment in, nor efficient operation and use of, the DBNGP. Accordingly, if the ERA insists on changes to shorten the period of the forced extension, DBP asks that the drafting proposed by the ERA be amended as follows:

Clause 4.3 Option to renew Contract

Subject to clauses 4.4, 4.5, 4.6, 4.7 and 4.8, Shipper has two options (each an Option) to extend the Capacity End Date:

(a) in respect of Contracted Capacity the subject of this Contract as at the Capacity Start Date (***Original Capacity***); and

(b) for a period of not less than ~~1~~6 month<u>s</u> and not greater than 1 year (***Option Period***), specified in the written notice given to the Operator in accordance with clause 4.5.

Clause 4.5 Notice exercising an Option

Not later than 12 months before the Capacity End Date, a Shipper may give written notice to the Operator that it wishes to exercise an Option for the Option Period <u>specified in that notice</u>. If such notice is not given before such time, the Option lapses, is of no force and effect whatsoever, and cannot be exercised.

Clause 4.6 First Option Period

If Shipper gives a notice in accordance with clauses 4.5 or 4.8 exercising the first option given to it under clause 4.3, then the Period of Supply for the Original Capacity under this Contract will be extended for the Option Period <u>specified in that notice</u> and:

Clause 4.7 Second Option Period

If Shipper has exercised the first option under clause 4.3 and gives a notice in accordance with clauses 4.5 or 4.8 exercising the second option given to it under clause 4.3 then the

Period of Supply for the Original Capacity under this Contract will be extended for the Option Period specified in that notice and:

Clause 4.8(b) Put and call of Options

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

11. Changes implemented that were suggested by ERA but not 'Required Amendments'

11.1. Definitions of Associate, Control, Controller, Related Body Corporate and Related Entity

… of the Corporations Act as at 15 July 2019 (being Compilation No 95, Federal Register of Legislation ID C2019C00216)

Explanation/Submission

The underlined wording was suggested (albeit not required) by the ERA in paragraph 1282 of the Draft Decision.

11.2. 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~~,~~.

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

Explanation/Submission

We have made this change to address the ERA's comments in paragraph 1310 of the Draft Decision. Consequential changes (underlined below) have been made in clauses 6.11(d), 6.11(e) and 6.11(h) as follows:

Clause 6.11(d)

(i) in the case of an Inlet Station ~~related to~~ Associated with 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~~ Associated with 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~~ with which that Inlet Station ~~relates~~ is Associated, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Inlet Point, during the previous calendar month,

Clause 6.11(e)

(i) in the case of an Outlet Station ~~related to~~ Associated with 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; and

(ii) in the case of an Outlet Station ~~related to~~ Associated with 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~~ with which that Outlet Station ~~relates~~ is Associated, bears to the sum of all shippers' delivery of Gas (across all Capacity Services) at such Outlet Point, during the previous calendar month,

Clause 6.11(h)

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

11.3. Formatting of clause 6.14 (and consequent cross referencing changes) (in the P1 Reference Contract only)

Clause 6.14

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

Explanation/Submission

We have made this change to address the ERA's comments in paragraph 1477 of the Draft Decision.

11.4. Definition of SI Units - deleted

~~***SI Units*** means units of *Le Système International d'Unités* established by the *Conférence Générale des Poids et Mesures*.~~

Explanation/Submission

We have made this change to address the ERA's comments in paragraph 1286 of the Draft Decision.

11.5. Clause 10.6 Remedies for breaching peaking limits

(a) for breach of clause 10.2 or ~~10.3~~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~~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~~10.3(a)(iv)); or

Explanation/Submission

We have fixed the above cross referencing errors in accordance with the ERA's comments in footnote 666 of the Draft Decision.

11.6. Clause 28.10 – 'FIRB' changed to Foreign Investment Review Board

28.10 Foreign Investment Review Board Compliance

Explanation/Submission

We have made this change in accordance with the ERA's comments in paragraph 1674 of the Draft Decision.

12. Changes requested to address an oversight in relation to Tp Service

12.1. The existing Reference Contracts did not include a separate row in the Curtailment Plan in Schedule 6 with respect to Tp Service but contained drafting in clause 17.9(c)(ii) and Schedule 6 which, in effect, provided that the Tp Service was not treated as an Other Reserved Service for the purpose of Curtailments. That drafting was incorrect. However, due to an oversight, DBP submitted that this problem should be addressed by deleting the various references to Tp Service (reasoning that that service was, in effect, no longer relevant).

12.2. The ERA caveated its position on those changes in paragraph 1279 of the Draft Decision, stating "*Provided that the "Tp Service" is a service that is no longer offered…*". On further investigation, one of the existing shippers has surviving rights in relation to the Tp Service under its Negotiated Contracts and will continue to do so during part of the Access Arrangement Period. Notwithstanding that the availability of Tp Service is limited in practice, it still exists and therefore the Curtailment regime in every Reference Contract and Negotiated Contract must treat it consistently.

12.3. Accordingly, the following changes are required in the Reference Contracts. These changes align the relevant elements of the Curtailment regime across the Reference Contracts, the Standard Shipper Contracts and the Negotiated Contracts and will help to ensure that the outcome of a Curtailment is consistent with the market's expectations based on existing contract terms. These changes are reversing the relevant changes submitted in January 2020 back to the existing drafting of the Reference Contracts for the current Access Arrangement Period, aside from the addition of a new row 6 in Schedule 6 and save that we have clarified that Tp Service is limited to a particular kind of Other Reserved Service.

12.4. These changes correct the terms and conditions for reference services with respect to the Curtailment regime to promote efficient investment in, and efficient operation and use of, the DBNGP. The certainty and predictability of the application of the Curtailment regime promotes the National Gas Objective of efficient operations and promotes the interests of consumers with respect to reliability and security of supply. Accordingly, these proposed changes are consistent with the National Gas Objective.

Clause 1, add a definition of Tp Service

Tp Service is an Other Reserved Service which is described in the contract under which it is granted as "Tp Service" and which was granted prior to 1 January 2020.

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.

Schedule 6, Part A System Curtailment, row 6

Add a new row 6 and amend the existing row 6 (and renumber the existing rows 6 and 7) as follows:

6	Tp Service
~~6~~7	Other Reserved Service (other than Tp Service)
~~7~~8	Spot Capacity

Schedule 6, Part A Point Specific Curtailment, row 6

Add a new row 6 and amend the existing row 6 (and renumber the existing rows 6, 7, 8 and 9) as follows:

6	Tp Service
~~6~~7	Other Reserved Service (other than Tp Service) that is Contracted Capacity at the relevant point
~~7~~8	Aggregated T1 Service, Aggregated P1 Service and Aggregated B1 Service, at the relevant point
~~8~~9	Other Reserved Service (if any) nominated by and scheduled to the shipper at the relevant point at which the shipper does not have Contracted Capacity in that Other Reserved Service in accordance with the provision of the shipper's contract for the Other Reserved Service
~~9~~10	Spot Capacity