

# Response to Draft Decision on Pipeline Access

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October 2020

# 1. Response to Draft Decision on Pipeline Access

**We have accepted many of the ERA's proposed amendments to the Access Arrangement document. However, in some instances we have either modified or rejected the ERA's proposed amendments.**

## 1.1. Overview

The ERA made a number of further amendments to the Access Arrangement Document. Many of these have been addressed in other Attachments (see the revised Final Plan Overview, Table 1 for a full list of required amendments and references to relevant Attachments).

This Attachment addresses the remaining amendments to the Access Arrangement Document. Table 1.1 below outlines the relevant amendments. The sections that follow deal with each of these amendments according to the subheadings in the Access Arrangement Document. Where an amendment has been accepted in full we have made the required amendment to the Access Arrangement Document and provide no further comment here. In other cases we have explained consequential amendments in this document.

## 1.2. ERA Draft Decision

Table 1.1: Summary of ERA's Draft Decision on Pipeline Access and our response

ERA Required Amendment	ERA Draft Decision	Our Response	Our Comment
<p>Required amendment 1</p> <p>DBP must amend the list of Attachments in clause 17 of the proposed revised access arrangement to reflect the pipeline description document submitted by DBP, which is a description of the DBNGP as at 15 September 2019.</p>	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 17
<p>Required amendment 2</p> <p>DBP must amend the access arrangement information to clarify the pipeline services that are available to prospective users by deleting references to the Seasonal Service, Metering and Temperature Service and Odourisation Service, which are services that exist within the contractual rights of reference services and cannot be</p>	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clauses 3 and 16

<p>provided as individual (stand-alone) pipeline services.</p> <p>The term "Seasonal Service" in clause 16 (Definitions) of the proposed revised access arrangement must also be deleted.</p>			
<p>Required amendment 3</p> <p>DBP must include a trigger event which would reopen the AA if DBP entered into any binding arrangement prior to 1 May 2023 which changes the direction of flow on the DBNGP.</p>	<b>Modify</b>	<b>Reject</b>	Attachment 14.1B, Section 1.3.2
<p>Required amendment 4</p> <p>DBP must amend the pipeline services information in clause 3 of the access arrangement to include descriptions of the reference and non-reference services that are listed in clause 3.1 (as per the statement in clause 3.2 of the proposed revised access arrangement).</p> <p>The list of non-reference services in clause 3.1(b) must include the Pilbara Service, Storage Service and Peaking</p>	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 3

Service (in addition to the non-reference services already listed in the proposed revised access arrangement).			
<p>Required amendment 5</p> <p>DBP must amend the information for the Spot Capacity Service in clause 3.6(b)(ii) of the proposed revised access arrangement to correct a referencing error by deleting the reference to "clause 5.3(g)(i)" and replacing it with a reference to "clause 3.6(b)(iv)".</p>	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 3.6(b)(ii)
<p>Required amendment 6</p> <p>Consistent with Required Amendment 4, DBP must amend clause 3 of the proposed revised access arrangement to include a reference to, and a description of, the Peaking Service, which is a non-reference service that is to be specified as a rebateable service for AA5 pursuant to rule 94(4) of the NGR.</p>	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 3
Required amendment 22	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 11 and Annexure A

DBP must amend clause 11 (Reference Tariff Variation Mechanism) and Annexure A of the proposed revised access arrangement to:

- Include a rebate mechanism for the rebateable peaking service.
- Amend the description of the debt risk premium (in Annexure A) to ensure it conforms with the ERA's Rate of Return Guideline. The required amendments are set out at paragraph 1233 of this draft decision.
- Correct the typographical error in paragraph 11.5(j) so that the reference is identified as "clause 11.5" (and not "clause 0").

Required amendment 23	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 13
Required amendment 24	<b>Modify</b>	<b>Accept</b>	Access Arrangement Document, Clause 13.1(a), 13.2
Required amendment 48  DBP must amend the requirements for access requests in clause 5.3 of the proposed revised access arrangement to insert new	<b>Modify</b>	<b>Accept</b>	Consequential further amendments  Attachment 14.1B, Section 1.3.3



<p>clause 5.3(d), which will apply to an access request for a reference service where the shipper states, in accordance with clause 5.2(c)(viii)(A), that it accepts the Access Contract Terms and Conditions. The required drafting for new clause 5.3(d) is set out at paragraph 1746 of this draft decision. Consequential amendments to renumber the remaining subclauses in clause 5.3 must also be made.</p>			
<p>Required amendment 49</p> <p>DBP must amend the queuing requirements in clause 5.4 of the proposed revised access arrangement to require the disclosure of information to enable a user to determine its actual position in the queue for access to capacity (as required by rule 103(5)(b) of the NGR).</p>	<b>Modify</b>	<b>Accept</b>	<p>Consequential further amendments</p> <p>Attachment 14.1B, Section 1.3.3</p>
<p>Required amendment 50</p> <p>DBP must amend the queuing requirements in clause 5.4(f) of the proposed revised access arrangement to clarify the requirements in instances</p>	<b>Modify</b>	<b>Accept</b>	<p>Consequential further amendments</p> <p>Attachment 14.1B, Section 1.3.3</p>

where an access request requires the terms and conditions of the access contract to be negotiated between the operator and prospective shipper or is subject to conditions. The required drafting for these amendments is set out at paragraph 1755 of this draft decision.			
<p>Required amendment 51</p> <p>DBP must amend the extension and expansion requirements in clause 7.3 of the proposed revised access arrangement to change the date from "1 July 2021" to "1 January 2021" to reflect the expected commencement date of the revised access arrangement for the fifth access arrangement period (AA5).</p>	<b>Modify</b>	<b>NA</b>	<p>Other amendments have made this change unnecessary.</p> <p>Attachment 14.1B, Section 1.3.1</p>
<p>Required amendment 52</p> <p>DBP must amend the extension and expansion requirements in clause 7 of the proposed revised access arrangement so that the requirements satisfy rule 104</p>	<b>Modify</b>	<b>Accept</b>	<p>Consequential further amendments</p> <p>Attachment 14.1B, Section 1.3.1</p>



of the NGR. The matters that DBP must address are set out at paragraphs 1770 to 1780 of this draft decision

Required amendment 53

DBP must amend the terms and conditions for changing inlet and outlet points in clause 8.1 in the proposed revised access arrangement to read: "In accordance with NGR 106, the Shipper under an Access Contract may: ..."

**Modify**

**Accept**

Access Arrangement Document, Clause 8.1

**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.

## 1.3. Our Response to the Draft Decision

### 1.3.1. Extensions and Expansions (Clause 7)

#### Required Amendment 51 stated:

DBP must amend the extension and expansion requirements in clause 7.3 of the proposed revised access arrangement to change the date from "1 July 2021" to "1 January 2021" to reflect the expected commencement date of the revised access arrangement for the fifth access arrangement period (AA5).

#### DBP Response:

We have not made this change as, pursuant to Required Amendment 52, the relevant part of clause 7.3 (now clause 7.2) of the proposed revised access arrangement has been deleted.

#### Required Amendment 52 stated:

DBP must amend the extension and expansion requirements in clause 7 of the proposed revised access arrangement so that the requirements satisfy rule 104 of the NGR. The matters that DBP must address are set out at paragraphs 1770 to 1780 of this draft decision.

#### DBP Response:

NGR 104 provides:

##### *"Extension and expansion requirements*

- (1) *Extension and expansion requirements may state whether the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to the pipeline made during the access arrangement period or may allow for later resolution of that question on a basis stated in the requirements.*
- (2) *Extension and expansion requirements may, if the service provider agrees, state that the applicable access arrangement will apply to incremental services to be provided as a result of a particular extension to the pipeline made before the revision commencement date for the applicable access arrangement.*
- (3) *Extension and expansion requirements must state that the applicable access arrangement will apply to incremental services to be provided as a result of any expansion to the capacity of the pipeline during the access arrangement period and deal with the effect of the expansion on tariffs.*
- (4) *Extension and expansion requirements included in a full access arrangement must, if they provide that an applicable access arrangement is to apply to incremental services provided as a result of an extension to the pipeline:*
  - (a) *in the case of extensions made before the revision commencement date for the applicable access arrangement deal with:*
    - (i) *the effect of the extension on the opening capital base under rule 77(2)(c1); and*

- (ii) *the effect of the extension on the description of reference services specified in the access arrangement proposal; and*
- (b) *in all cases, deal with the effect of the extension on tariffs.*
- (5) *The extension and expansion requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees."*

We have worked through each of the paragraphs of NGR 104 and made changes to better align clause 7 of the Proposed DBNGP Access Arrangement with NGR 104 as follows:

- (a) **NGR 104(1):** this rule is addressed in clause 7.2(a) of the Proposed DBNGP Access Arrangement, which provides that extensions made during the Current Access Arrangement Period become part of the Covered Pipeline unless the Operator elects otherwise and gives notice to the Regulator accordingly, and clause 7.4(a) of the Proposed DBNGP Access Arrangement, which provides that the Current Access Arrangement will apply to Incremental Services provided as a result of extensions which become part of the Covered Pipeline during the Current Access Arrangement Period.
- (b) **NGR 104(2):** this rule is addressed in clauses 7.2(a) and 7.4 of the Proposed DBNGP Access Arrangement in the negative. In other words, those clauses do not state that the Proposed DBNGP Access Arrangement applies to extensions made before the revision commencement date for Proposed DBNGP Access Arrangement (being 1 January 2021) (therefore neither of these clauses enlivens the requirements in NGR 104(4)) (see below).
- (c) **NGR 104(3):** the previous clause 7.2 of the Proposed DBNGP Access Arrangement has been deleted as it was, in part, inconsistent with NGR 104(3) and section 18 of the NGL (as it provided for an exception to the rule that expansions during the access arrangement period become part of the Covered Pipeline). Clause 7.2(b) (previously clause 7.3(b)) of the Proposed DBNGP Access Arrangement has been amended so that it applies the mandatory rule in NGR 104(3) and section 18 of the NGL (and no longer has an exception that applies at the Regulator's discretion: see paragraph 1775 of the Draft Decision). Clause 7.4(a), read together with clause 7.2(b), of the Proposed DBNGP Access Arrangement now provides that the Current Access Arrangement will apply to Incremental Services provided as a result of expansions during the Current Access Arrangement Period (and clause 7.4(b) deals with the effect of expansions during the Current Access Arrangement Period on tariffs).
- (d) **NGR 104(4)(a):** As noted above, this rule is not enlivened as clauses 7.2(a) and 7.4 of the Proposed DBNGP Access Arrangement do not apply to extensions made before the revision commencement date for this Access Arrangement. For completeness, we note that this is consistent with paragraph 716 of the "Draft Decision on Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement for 2020 to 2024 – Submitted by Goldfields Gas Transmission Pty Ltd" published by the ERA dated 31 July 2019, where the ERA states:

*"GGT has not stated that the access arrangement will apply to incremental services provided by means of an extension made before the revision commencement date for the applicable access arrangement (being 1 January 2020 for the current (AA3) access arrangement). Hence, rule*

*104(4)(a) does not apply and the access arrangement does not need to deal with the effect of the extension: – on the opening capital base (under rule 77(2)(c1)) – on the description of reference services”.*

- (e) **NGR 104(4)(b):** see clause 7.4(b) of the Proposed DBNGP Access Arrangement, which deals with the effect of the extension on tariffs.
- (f) **NGR 104(5):** clause 7.1 of the Proposed DBNGP Access Arrangement has been clarified, consistent this rule.

**Other changes:**

We have also:

- (a) deleted references to “enhancement” in clauses 7.4 and 7.9 of the Proposed DBNGP Access Arrangement in accordance with paragraph 1779 of the ERA’s Draft Decision.
- (b) inserted a new definition in clause 16 of the Proposed DBNGP Access Arrangement as follows: “**Incremental Services** means Pipeline Services provided by means of an extension to, or expansion of the capacity of, the DBNGP.” Because we have used this new term in place of “*Incremental Shippers*”, we have deleted the definitions of “*Incremental Shippers*” and “*Incremental Capacity*” from clause 16 of the Proposed DBNGP Access Arrangement.
- (c) clarified the effect of an extension or expansion of the DBNGP being a Trigger Event (by, inter alia, taking into account the 1 May 2023 deadline for a Trigger Event and the minimum 6 month acceleration of the review submission date suggested by the ERA in relation to the new Trigger Event in Required Amendment 3: see paragraph 100 of the ERA’s Draft Decision and paragraph 97 of the ERA’s Draft Decision). See clauses 7.4, 14.2 and 14.3 of the Proposed DBNGP Access Arrangement.
- (d) in clauses 3.3(d), 3.4(e) and 3.5(e), we have deleted the phrase “as it is configured at the time of approval of this Access Arrangement” so that the minimum term requirement applies to any Spare Capacity resulting from an extension or expansion.

**Required Amendment 3 stated:**

#### 14A. TRIGGER EVENT

14A.3 Trigger Event means the execution by Operator of a binding agreement (whether conditional or unconditional) for the transport of gas through the DBNGP, the performance of which requires a re-direction of the flow of gas through the DBNGP.

### DBP Response:

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[illegible]

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### 1.3.3. Other amendments

#### Required Amendment 48 stated:

DBP must amend the requirements for access requests in clause 5.3 of the proposed revised access arrangement to insert new clause 5.3(d), which will apply to an access request for a reference service where the shipper states, in accordance with clause 5.2(c)(viii)(A), that it accepts the Access Contract Terms and Conditions. The required drafting for new clause 5.3(d) is set out at paragraph 1746 of this draft decision. Consequential amendments to renumber the remaining subclauses in clause 5.3 must also be made.

#### DBP Response:

We have incorporated a new clause 5.3(d) as required in Required Amendment 48.

Consequential changes have been made to reflect the new numbering for clauses 5.3(d) to 5.3(g) as follows:

- (a) Clause 5.3(d) has changed to 5.3(e), clause 5.3(e) has changed to clause 5.3(f), clause 5.3(f) has changed to clause 5.3(g), clause 5.3(g) has changed to clause 5.3(h);
- (b) Cross-references to clause 5.3(d) have been changed to "5.3(e)" in clauses 5.3(e)(ii) and 5.3(f)(iv); and
- (c) Cross-references to clause 5.3(e) have been changed to "5.3(f)" in clauses 5.3(f) and 5.3(h)(iii).

Additional minor changes to correct typographical mistakes or correct grammar for enhanced clarity in the Access Arrangement:

- (a) Clause 5.2(c)(vi) change "Relevant" to "relevant" and full stop at end of paragraph to semi-colon, consistent with remainder of punctuation in clause 5.2;

**Attachment 14.1B**

- (b) In clause 5.3(e)(ii)(B), insert the words “that it” at the start of the sub-clause, so that clause 5.3(e)(ii)(B), so that the subclause reads:

*"Within 15 business days of receiving the terms and conditions under clause 5.3(e)(i), the Prospective Shipper must notify the Operator:*

*(A) if it wants to seek access on those terms and conditions; or*

*(B) that it requests amendments to the terms and conditions, and provide the requested amendments to the Operator."*

- (c) In clause 5.3(e)(iii), insert the words “In respect of notice under clause 5.3(e)(ii)(B)” at the start of the subclause, This change is required to make it clear which step the 15 Business Day time period refers to. The subclause now reads:

*"In respect of notice under clause 5.3(e)(ii)(B), the Operator must respond within 15 Business Days of receiving the proposed amendments from the Prospective Shipper."*

- (d) Further changes have been made to clause 5.3(e)(iii) to delete the remainder of the words in this paragraph as a consequence of Required Amendment 50 (discussed below).

**Required Amendment 49 stated:**

DBP must amend the queuing requirements in clause 5.4 of the proposed revised access arrangement to require the disclosure of information to enable a user to determine its actual position in the queue for access to capacity (as required by rule 103(5)(b) of the NGR).

**DBP Response:**

We have amended clause 5.4 of the proposed revised access arrangement as required in Required Amendment 49. Clause 5.4(a) requires the Operator to notify a prospective shipper in accordance with NGR 112 if Spare Capacity does not exist to satisfy an Access Request. Clause 5.4(b) has been amended to require that the notice include the required information as follows:

*"Operator will maintain a single queue for access to Reference Services and Non-Reference Services that are Haulage Services (Queue). In the notification provided under clause 5.4(a) the Operator will inform the Prospective Customer of the date its access request was received (or, as appropriate, deemed to be received) by the Operator, the number of other prospective users in the Queue and the date each other prospective user entered the Queue."*

**Required Amendment 50 stated:**

DBP must amend the queuing requirements in clause 5.4(f) of the proposed revised access arrangement to clarify the requirements in instances where an access request requires the terms and conditions of the access contract to be negotiated between the operator and prospective shipper or is subject to conditions. The required drafting for these amendments is set out at paragraph 1755 of this draft decision.

**DBP Response:**

## Attachment 14.1B

We are comfortable with the ERA's intended changes as set out in paragraph 1754 of the Draft Decision, however it considers that the overall clause is still difficult to understand and could be drafted with greater clarity. We have suggested some minor changes to the wording of clause 5.4(f) in the proposed access arrangement document as follows (the changes shown in tracking in the extract below are shown against the ERA's proposed changes):

- (f) *If an Access Request requires the terms and conditions of the Access Contract to be negotiated between Operator and the Prospective Shipper or is subject to conditions, the Access Request will be entered in the Queue with a priority date being the date of receipt of the Access Request by Operator, except that:*

*~~However, in a case:~~*

- (i) *where Operator notifies Shipper in accordance with clause 5.3(c)(i) that there is Spare Capacity sufficient to satisfy the Access Request, but the Prospective Shipper requests amended terms and conditions in accordance with the process under clause 5.3(~~ed~~)(ii)(B) in respect of the Access Request; or*
- (ii) *where Operator notifies Shipper in accordance with clause 5.3(c)(ii) that there is not Spare Capacity sufficient to satisfy the Access Request and the parties agree to investigations being carried out under a FEED Proposal in accordance with the process under clause 5.3(f)(iv).*

*unless within 15 Business Days after the date the Shipper receives an access proposal in response to the proposed amended terms and conditions under clause 5.3(e)(ii)(B), or an access proposal based on the investigations carried out in respect of a FEED Proposal under clause 5.3(f)(iv), either: ~~-(A)—an access proposal in response to the proposed amended terms and conditions under clause 5.3(d)(ii)(B); or~~*

*~~-(B)—an access proposal based on the investigations carried out in respect of a FEED Proposal under clause 5.3(e)(iv); either:~~*

- (iii) *the parties agree the terms of access and/or the conditions are, in Operator's reasonable opinion, satisfied; or*
- (iv) *the Prospective Shipper agrees to amend the Access Request such that it becomes an Access Request for a Reference Service made on the basis of the Access Contract Terms and Conditions,*

*the Access Request will be removed from the Queue and will subsequently be re-entered in the Queue with a priority date being the date that agreement is reached and/or the conditions are, in Operator's reasonable opinion, satisfied. However, where a dispute between Operator and the Prospective Shipper arises in respect of the terms and conditions of access and that dispute is referred to arbitration under section 181 of the NGA, the period of time remaining pursuant to clauses 5.4(f)(i) and 5.4(f)(ii) (as applicable) will be suspended from the date the dispute is referred to arbitration (Referral Date) until 4 months after the Referral Date.*

The changes to the proposed drafting provide greater clarity by:

- (a) tidying up the cross references to clause 5.3, changed due to Required Amendment 48;
- (b) in subclause 5.4(f)(ii), directing the parties to subclause 5.3(f)(iv) which is the clause that governs provision of a FEED Proposal;

## Attachment 14.1B

- (c) collapsing 5.4(f)(ii)(A) and (B) into a single paragraph that properly sits separate to clause 5.4(f)(ii) of the clause, clarifying the numbering and clarifying the conditions that result in the Access Request being removed from the Queue.

As noted in paragraph 4.4 above, a consequential change is required in clause 5.3(e)(iii). Clause 5.3(e) sets out the mechanics for entry into the terms and conditions where the Operator is able to provide the Service requested where the terms and conditions differ to one of the Reference Service terms and conditions. The clause requires that the Operator is to provide the prospective customer with the terms and conditions upon which it is prepared to provide the requested service within 25 business days of the access request, the prospective customer is notify DBP within 15 business days of receipt of the terms and conditions as to whether it accepts access on those terms and conditions or whether it requests amendments. If the prospective customer requests amendments, the Operator must respond within 15 business days of receipt of the proposed amendments, and if the parties have not agreed to terms and conditions within a further 20 business days of the Operator's response, the access request is taken to be rejected. Clause 5.3(e)(iii) currently provides:

*"In respect of notice under clause 5.3(e)(ii)(B), the Operator must respond within 15 business days of receiving the proposed amendments from the Prospective Shipper. If the parties have not agreed on the Operator's proposed terms and conditions, or negotiated amendments to the terms and conditions, within a further 20 business days of the Operator's response under this clause, then the Operator is taken to have rejected the Prospective Shipper's request."*

The second sentence of clause 5.3(e)(iii) is in conflict with the clause 5.4(f) because under clause 5.4(f), once the prospective shipper receives the Operator's response, the parties have 15 business days to agree amendments to the terms and conditions offered by the Operator, rather than 20 business days as set out in clause 5.3(e)(iii). It appears that both clause 5.3(e)(iii) and clause 5.4(f) provide slightly different mechanisms to deal with the same situation. We submit that the second sentence of clause 5.3(e)(iii) should be deleted and the parties should follow clause 5.4(f)'s mechanism for agreeing terms and conditions and resolving where the access request sits in the Queue.

The change suggested is consistent with the national gas objective in providing clarity as to the correct mechanism to apply where a prospective customer wishes to negotiate changes to the terms and conditions proposed by the Operator and the timing of applicable notices. Given the terms of clause 5.4(f), there is no detriment to prospective customers from deleting the second sentence of clause 5.3(e)(iii)