



Economic Regulation Authority

Final decision on revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline (2026 to 2030)

Attachment 9: Service terms and conditions

18 December 2025

Acknowledgement of Country

At the ERA we value our cultural diversity and respect the traditional custodians of the land and waters on which we live and work.

We acknowledge their continuing connection to culture and community, their traditions and stories. We commit to listening, continuously improving our performance and building a brighter future together.

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Note

This attachment forms part of the ERA's final decision on the proposed revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline. It should be read in conjunction with all other parts of the final decision, which is comprised of the following document and attachments:

- Final decision on revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline - Overview, 18 December 2025
 - Attachment 1: Access arrangement and services
 - Attachment 2: Demand
 - Attachment 3: Revenue and tariffs
 - Attachment 4: Regulatory capital base
 - Attachment 5: Operating expenditure
 - Attachment 6: Depreciation
 - Attachment 7: Return on capital, taxation, incentives
 - Attachment 8: Other access arrangement provisions
 - Attachment 9: Service terms and conditions (this document)

Numerical amounts in tables throughout this document are generally shown to 1 decimal place. Total numerical amounts that are shown may not add exactly due to rounding. The tariff (revenue) model that was used for this decision should be used for accurate unrounded numerical amounts.

Attachment 9. Summary

The regulatory framework requires the access arrangement to specify, for each reference service, a reference tariff and the other terms and conditions on which the service will be provided.

The terms and conditions approved under an access arrangement establish standard terms and conditions that pipeline users can either accept or use as a point of reference to negotiate their own terms and conditions to meet specific operational needs. If terms and conditions cannot be agreed, the access arrangement can be used to guide an arbitrator in an access dispute.

DBP provides three reference services under the access arrangement: full haul T1 Service, part haul P1 Service and back haul B1 Services. The terms and conditions for these three haulage reference services are set out in Attachments 2, 3, and 4 of the access arrangement.

DBP's proposed terms and conditions for the T1, P1 and B1 Services for AA6 include general administrative amendments, additional wording to some clauses and changes to the Access Request Form.

The ERA's draft decision was to conditionally approve DBP's proposed amendments to the terms and conditions, subject to DBP amending:

- Clause 7.9 to create a new sub-heading to better highlight the operator's liability for out of specification gas.
- The pipeline description document with the correct date references used in the terms and conditions.
- The drafting of proposed clause 38(c) so that changes to the contract are applied automatically subject to the parties acknowledging that the changed provisions are applicable and appropriate to the circumstances.

DBP's revised terms and conditions in response to the draft decision have addressed all the ERA's required amendments. The revised terms and conditions also include other minor (administrative) amendments, which the ERA considers do not materially change the terms and conditions. For this reason, the ERA has accepted these other minor amendments.

In response to the ERA's draft decision to incorporate the revenue derived from overrun gas charges into the cost allocation process for total revenue, DBP proposed to materially increase the *overrun rate* and the *unavailable overrun charge* in clause 11.1(b)(i) and Schedule 2 of the reference service terms and conditions, respectively.¹

The ERA considers that DBP did not provide sufficient justification for the proposed increase in the overrun rate (from 115 per cent to 200 per cent of the respective T1, P1 and B1 Tariff) and unavailable overrun charge (from 250 per cent to 300 per cent of the T1 Tariff) and in particular, has not demonstrated that the proposed increases reflect the "genuine pre-estimates of the unavoidable additional costs, losses and damages that DBP will incur" as a result of shippers taking overrun gas. For this reason, the ERA has rejected DBP's proposal to increase the overrun rate/charge.

¹ "Overrun" refers to the gas on a particular gas day that a shipper receives across all outlet points that exceeds the aggregate of the quantities of contracted capacity (including the T1, P1 and B1 capacity and any capacity under spot services).

Summary of required amendments:

Required amendment 9.1

The overrun rate set out in clause 11.1(b) of the reference service terms and conditions must be amended to be “115%”, and the unavailable overrun charge set out in Schedule 2 (Row 4) of the reference service terms and conditions must be amended to be “250%”.

Regulatory requirements

1. The *National Gas Access (WA) Act 2009* implements a modified version of the National Gas Law (NGL) and National Gas Rules (NGR) in Western Australia. The rules referenced in this decision are those that apply in Western Australia.²
2. The regulatory framework requires the access arrangement to specify, for each reference service, a reference tariff and the other terms and conditions on which each reference service will be provided.³
3. There are no specific provisions in the NGR that detail what the terms and conditions for reference services must cover. In general, reference service terms and conditions should be reasonable and cover both service specific provisions and general (or generic) contract provisions.

² The current rules that apply in Western Australia are available from the Australian Energy Market Commission: AEMC, 'National Gas Rules (Western Australia)' ([online](#)) (accessed December 2025). At the time of this decision, National Gas Rules – Western Australia version 12 (1 February 2024) was in effect.

³ NGR, rule 48(1)(d).

ERA draft decision

4. For AA6, DBP's proposed terms and conditions for the three haulage reference services (T1, P1 and B1 Services) remained materially unchanged from AA5. DBP's proposed changes comprised of:
 - General administrative amendments to improve drafting and/or to correct errors or omissions, including updates to reflect changes to legislation and dates, and the removal of redundant terms.
 - Additional wording to some clauses to better clarify the intent of the clause and/or interaction with other clauses.
 - Changes to the Access Request Form.
5. Subject to some additional drafting changes, the ERA's draft decision accepted DBP's proposed amendments to the terms and conditions on the basis that the amendments were necessary to reflect legislative requirements and/or operational needs, to correct errors, and/or to improve drafting.
6. The ERA received three submissions that raised concerns and provided feedback on clause 7 (operating specifications) provisions that relate to the liability for damage caused by out of specification (or "off-spec") gas remaining with the shipper.⁴ Given the matters raised by stakeholders, the ERA considered the provisions related to off-spec gas and decided that an administrative amendment to clause 7 was required. The ERA's required amendment aimed to better highlight DBP's existing liability for off-spec gas by making the relevant provision a standalone clause (rather than a subclause).
7. The ERA set out the following draft decision required amendments:

Draft Decision Required Amendment 9.1

DBP must amend clause 7.9 to better highlight the operator's liability for out of specification gas. The amended drafting is set out in paragraph 32 of Draft Decision Attachment 9.

Draft Decision Required Amendment 9.2

DBP must amend the pipeline description document (provided as Attachment 1 to the proposed access arrangement) to be consistent with date references used in the terms and conditions, which has the access arrangement period commencing 1 January 2026.

Draft Decision Required Amendment 9.3

DBP must amend the drafting of proposed clause 38(c) to qualify that changes to the contract will apply automatically subject to the parties acknowledging that the changed provisions are applicable and appropriate in the circumstances.

⁴ Submissions from Horizon Power, Gas Trading and NewGen Power Kwinana.

DBP response to draft decision

8. DBP's revised proposal includes revised terms and conditions for the three haulage reference services (T1, P1 and B1 Services) as set out in Attachments 2, 3, and 4 of the proposed revised access arrangement.
9. In response to the ERA's draft decision required amendments, DBP's revised proposal has made the following revisions to the terms and conditions:
 - Incorporated a new heading to clause 7, "7.9A Operator's Liability for Out-of-Specification Gas".
 - Revised date (year) references in Schedule 4 to "2026 – 2030".
 - Modified the wording to clause 38(c) so that changes apply automatically unless "the ERA provides for otherwise in its published determination" or "such changes are inapplicable".
 - Other administrative amendments (constituting corrections) to headers to cross reference (new) clause 7.9A.

New proposed amendments to overrun charges

10. In response to the ERA's draft decision to incorporate the revenue derived from overrun gas charges into the cost allocation process for total revenue, DBP has proposed to amend the terms and conditions to materially increase the "overrun rate" in clause 11.1(b)(i) from 115 per cent to 200 per cent of the respective T1, P1 and B1 Tariff, and "unavailable overrun charge" in Schedule 2 from 250 per cent to 300 per cent of the T1 Tariff.⁵
11. DBP's proposed amendments are set out as follows:

11.1 Overrun Charge

...

- (b) The Overrun Rate is the greater of:
- (i) ~~115~~200% of the [T1/P1/B1] Tariff; and
 - (ii) 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, (*Overrun Rate*).

...

Schedule 2 - Charges

[Row 4 of table]

Unavailable Overrun Charge (clause 11.6 and clause 17.8(e)):

The greater of:

- (a) ~~250~~300% of the T1 Tariff from time to time; and

⁵ Cost allocation for total revenue is considered in Final Decision Attachment 3.

- (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.
- 12. DBP considers the overrun charge to be behavioural in nature and intended to discourage shipper behaviours that may adversely impact the pipeline and affect other users.
- 13. To address the ERA's observed material increase in revenue generated from overrun gas charges, DBP considers that significant increases to the overrun rate and unavailable overrun charge would be an effective behavioural mechanism to encourage shippers to seek alternative flexible services instead of relying on and using overrun gas. Moreover, DBP anticipates that shippers will likely shift towards flexible services that are rebateable non-reference services, meaning that a portion of the revenue earned from these services would be returned to shippers via the rebate mechanism.

Submissions to the ERA

14. We received no submissions in response to DBP's initial proposal or the ERA's issues paper commenting on DBP's proposed changes to the terms and conditions for the T1, P1 and B1 Services for AA6. However, the ERA did receive submissions from Horizon Power, Gas Trading and NewGen Power that addressed DBP's service terms and conditions as set out in clause 7 (operating specifications), which covers liability provisions for off-spec gas.⁶ In summary, these stakeholders:
- Submitted that shippers have no control over the flow of gas through the pipeline; the gas flow is measured and managed by DBP and therefore shippers should not be held liable for damages caused by off-spec gas.
 - Raised the ineffectiveness of DBP's new automated notification system to some shippers, as many notifications are received outside of business hours (for example, at night) with no attending personnel to accept/reject them, leading to delayed responses.
 - Noted that shippers would rather pay the potential imbalance charge associated with not receiving off-spec gas rather than being liable for damages caused by it.
 - Encouraged DBP to incorporate clauses similar to D.23.5 and D.23.6 of the terms and conditions that apply for the Goldfields Gas Pipeline, so shippers are better protected.
15. While DBP did not propose any changes to clause 7 of the terms and conditions, the ERA addressed the above matters as part of its draft decision considerations.
16. There were no public submissions in response to the ERA's draft decision that addressed the ERA's considerations on the terms and conditions for reference services. However, two submissions did comment on DBP's revised proposal to increase the overrun charge in the terms and conditions to address the ERA's considerations on overrun and the inclusion of overrun in the allocation process for total revenue.
- NewGen indicated that they disagreed with DBP's proposal to increase the overrun rate.⁷
 - Wesfarmers Chemicals, Energy and Fertilisers (WesCEF) also disagreed with DBP's proposal to increase overrun charges and noted that the use of overrun gas reflects the increasingly difficult nature of forecasting variable demand from power generation, retail natural gas demand and liquefied petroleum gas production.⁸

⁶ Horizon Power, *Submission in response to DBP proposal and/or ERA issues paper*, 26 March 2025.
Gas Trading Australia, *Submission in response to DBP proposal and/or ERA issues paper*, 19 March 2025.
NewGen Power, *Submission in response to DBP proposal and/or ERA issues paper*, 31 March 2025.

⁷ NewGen Power, *Submission in response to ERA draft decision and/or DBP revised proposal*, 22 September 2025.

⁸ Wesfarmers Chemicals, Energy & Fertilisers, *Submission in response to ERA draft decision and/or DBP revised proposal*, 18 September 2025.

Final decision

17. DBP accepted draft decision required amendment 9.1 and the wording proposed in paragraph 32 of the draft decision. That is, clause 7.9 has been amended to incorporate new clause heading 7.9A to read as follows, which better highlights DBP’s liability for off-spec gas:

7.9A Operator’s Liability for Out-of-Specification Gas

If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper’s agreement under clause 7.9, then except to the extent that the Shipper caused the Gas in the DBNGP to be Out-of-Specification Gas by delivering Out-of-Specification Gas to the Inlet Point, the Operator is liable to the Shipper for Direct Damage arising in response of the Out-of-Specification Gas.

18. DBP also accepted draft decision required amendment 9.2 and the new date provided in paragraph 36 of the draft decision. In Schedule 4 of the terms and conditions, DBP has amended the first paragraph to read: “*Description of the Dampier to Bunbury Natural Gas Pipeline System (as approved for the period 2026 – 2030)*”. This amendment makes the date references used in the terms and conditions consistent with the access arrangement period commencing 1 January 2026 and meets the intent of the required amendment 9.2.
19. In response to draft decision required amendment 9.3, DBP noted the concern over the use of the word “automatically” in clause 38 but rejected the ERA’s proposed wording: “subject to the parties acknowledging that the changed provisions are applicable and appropriate in the circumstances.”
20. DBP expressed a concern that requiring mutual agreement for each future change could lead to inconsistencies across reference contracts, should an individual shipper withhold agreement. DBP also noted that they do not view the automation of contract changes as a risk for the following reasons:
- If a shipper has specific circumstantial needs inapplicable to other shippers, the shipper and the operator are free to negotiate a contract different to the reference contract, in which case, clause 38(c) would not need to form part of their negotiated contract.
 - The intention of the automatic changes is to benefit all shippers and to “ensure that no single shipper under a reference contract is less constrained than other shippers.”
 - Further, future changes to the terms and conditions are subject to the ERA’s future approval, meaning that it is also up to the ERA to determine whether changes to reference contracts entered into after the determination date are applicable or not to existing shippers.
21. However, to address the intent of the ERA’s required amendment, DBP proposed its own alternative wording to clause 38(c) to read as follows:

The Parties agree that the provisions of this Contract will change automatically from time to time to reflect any changes to the terms and conditions for the T1 Service as approved by the ERA from time to time unless, with respect to a particular change:

- (i) the ERA provides otherwise in its published determination with respect to such change; or
- (ii) such change is inapplicable to the terms and conditions of this Contract.

22. The ERA notes DBP's explanation and recognises the importance of maintaining consistency across the terms and conditions for the three haulage reference services (T1, P1 and B1 Services). As the regulator, the ERA uses its best endeavours to ensure that risks arising from automating processes are appropriately mitigated and considers DBP's revised proposed drafting reasonable as it balances operational efficiency with regulatory oversight, whilst ensuring shipper interests are still protected. The ERA further considers DBP's alternative wording appropriate as it helps manage risks associated with automatic modifications and addresses the intent of draft decision required amendment 9.3.
23. The ERA notes that in addressing draft decision required amendments 9.1, 9.2 and 9.3, DBP made other minor amendments to the terms and condition, such as corrections to cross-referencing. The ERA considers that these amendments do not materially change the terms and conditions and accepts these other minor amendments to the reference services terms and conditions for the T1, P1 and B1 Services.

Decision on overrun charges

24. The ERA considers that DBP has not provided sufficient justification for the proposed material increase to the overrun rate (from 115 per cent to 200 per cent) and unavailable overrun charge (from 250 per cent to 300 per cent) and in particular, has not demonstrated that the proposed increases satisfy the provisions set out in clause 20.4(b) of the terms and conditions, which remains unchanged.⁹ That is, DBP has not demonstrated that its proposed increases reflect the "genuine pre-estimates of the unavoidable additional costs, losses and damages that DBP will incur" as a result of shippers taking overrun gas.
25. The ERA notes DBP's explanation for the proposed increases to the overrun rate and unavailable overrun charge, including the intended behavioural objective of discouraging shippers from utilising overrun gas. However, the ERA does not consider that this change would have much of a behavioural impact, as users of overrun gas operating under other negotiated contracts (including the Standard Shipper Contract) with DBP will not be affected. That is, these other negotiated contracts are not tied to, nor affected by, changes in the reference service contract. As a result, the proposed increase to the overrun rate/charge in the AA6 reference service terms and conditions is not expected to influence the behaviour of these shippers.¹⁰

⁹ Clause 20.4 of the terms and conditions sets out provisions related to other charges, which includes the Overrun and Unavailable Overrun charges.

Clause 20.4(b) states: "*The Parties agree that the Other Charges are genuine pre-estimates of the unavoidable additional costs, losses and damages that the Operator will incur as a result of the conduct entitling such charges to be levied. The Shipper will not be entitled to claim or argue (in any proceeding or otherwise), that any Other Charge is not a genuine pre-estimate of loss or damage that may be incurred by the Operator or is otherwise a penalty or constitutes penal damages.*"

¹⁰ The ERA has confirmed that the biggest users of overrun gas are shippers that will not be affected by its proposed changes to the overrun charges (DBP response to information request ERA20).

26. As reflected in public submissions, DBP's proposed increase to the overrun rate/charge fails to align with the best interests of its users.¹¹ The ERA is aware that some shippers view overrun gas as a means to support the day-to-day management of their operations and gas requirements. That is, shippers may use overrun gas to meet some of their gas needs rather than contracting for additional firm capacity or as suggested by DBP, seek access to other flexible services. As expressed in submissions, the increased use of overrun gas may reflect the increasingly challenging environment for shippers with variable demand to accurately forecast their daily gas needs. Some shippers, where they have access to spot capacity, will attempt to secure that first or explore whether they can trade capacity with other shippers before taking overrun gas. In such cases, the use of overrun gas typically results from a forecasting error, for example, when actual demand is higher than expected due to colder/hotter than expected weather conditions.
27. Given the above considerations, the ERA rejects DBP's proposed increases to the overrun rate and unavailable overrun charge in clause 11.1(b)(i) and Schedule 2 of the reference service terms and conditions, respectively.

Required amendment 9.1

The overrun rate set out in clause 11.1(b) of the reference service terms and conditions must be amended to be "115%", and the unavailable overrun charge set out in Schedule 2 (Row 4) of the reference service terms and conditions must be amended to be "250%".

¹¹ There was no support for DBP's proposal to increase overrun charges in submissions received in response to the ERA's draft decision and/or DBP's revised proposal, or in submissions received in response to the ERA's further consultation notice on the treatment of overrun revenue.