

Dampier Bunbury Pipeline ABN 78 081 609 289

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As advised in our submission of 17th November, this document provides further feedback on the reference contract terms and conditions clause drafting contained within the Further Consultation published 10th November. This response should be read in conjunction with our submission of 17th November.

To confirm, for the reasons set out in that submission, we consider the ERA's proposal unworkable. If, notwithstanding DBP's position, the ERA decides to proceed with its proposal then changes to the drafting (and consequent changes to the Access Contract Terms and Conditions) are required – we set these out (with explanations) below.

The ERA's proposed amendments in relation to new tariff / tariff component

This section addresses the ERA's proposed amendments to the following:

- Clause 16, definition of Reference Tariff Components
- Clause 16, new definition of Overrun Tariff
- Clause 3.3(b) (all changes)

Those amendments should not be made.

Reasoning:

While we understand (albeit we disagree with) the ERA's rationale for using certain revenue from Overrun Charges to reduce the Capacity Reservation Tariff and Commodity Tariff, we do not understand the ERA's rationale for adding a separate tariff component for Overrun Charges. Overrun Charges are simply a feature of the Access Contract Terms and Conditions (being an impost levied on conduct by a shipper that is inconsistent with running the pipeline efficiently and which may have adverse consequences for other shippers) – and, if the ERA pursues its tariff variation proposal, the Overrun Charges would also be an input used to vary the Reference Tariff.

But the Overrun Charges do not constitute a Tariff. They do not comply with the definition of "tariff" in section 2 of the National Gas Law (as applicable to Western Australia), as they are not "a rate by which a charge for a pipeline service is calculated" – as recognized by the ERA, the delivery of Overrun Gas is not a pipeline service.

Describing the Overrun Charges as a Tariff is also inconsistent with the way the remainder of the Access Arrangement is structured (for example, they are not separately subject to the Reference Tariff Variation Mechanism).

Further, and perhaps more crucially, adding the Overrun Tariff in as a component of the Reference Tariff creates substantial uncertainty in relation to the level of the charges under the SSC, as it appears to massively increase the Capacity Reservation Charge and Commodity Charge under the terms of the SSC by being included in the Reference Tariff and therefore in the "Base T1 Tariff" (see clauses 20.5(b) and (c) of the SSC, taken together with the definitions of T1 Capacity Reservation Tariff and T1 Commodity Tariff in clause 1), while also leading to uncertainty as to whether the "fixed/variable charge split" referred to in clause 20.5(e) is being changed as a result of the inclusion of the Overrun Tariff.

In addition, we note that the reference to clause 4 (in the ERA's proposed clause 3.3(b)(ii)) is unnecessary and confusing - the Overrun Gas charges may be varied in accordance with clause 4 of the Current Access Arrangement to the extent that clause 4 relates to changes to the terms and conditions of the Access Contract. But it does not make sense for the Overrun Gas charge to (by way of it being included in the definition of Reference Tariff), be directly subject to amendment by the Reference Tariff Variation Mechanism in clause 11.

The Overrun Gas charges are already derived from the Reference Tariff (which itself is subject to adjustment by the Reference Tariff Variation Mechanism in clause 11). That said, as referred to below, the behavioural charges (including the Overrun Gas charges) should not be reduced by reference to Net Overrun Revenue.

Definition of Net Overrun Revenue

The definition proposed by the ERA should (if the concept is to be used) be amended as follows:

Net Overrun Revenue means the revenue generated from the Operator's receipt of the Overrun Gas Charges from shippers under the terms and conditions of any Reference Service (being T1 Service, P1 Service or B1 Service) granted to them under any Access Arrangement, net of the costs incurred by the Operator in connection with those shippers Receiving the Overrun Gas the subject of those Overrun Gas Charges. ~~overrun gas charges, net of the costs to provide overrun gas.~~

And, consequently, the following new definition also inserted into clause 16:

Overrun Gas Charges means the Overrun Charge and Unavailable Overrun Charge as those terms are defined in the Access Contract Terms and Conditions.

Reasoning

These drafting changes promote clarity and certainty of application, as consistent with the National Gas Objective (for example, by aiding all stakeholders to use the document efficiently).

If the ERA pursues this proposal in any form, the Access Contract Terms and Conditions need to be amended so that, for the purpose of clause 11.1(b)(i) and Schedule 2, the term "T1 Tariff" refers to the T1 Tariff as determined under the Access Arrangement disregarding any reduction via the new Net Overrun Revenue adjustment mechanism. The behavioural charges should not themselves be reduced by virtue of shippers incurring behavioural charges, as that only further reduces any disincentive to take Overrun Gas.

Given the ERA's tight timeframe for responses, we have not yet fully worked through the financial consequences for the Operator if the behavioural charges themselves were to continually reduce in such manner but initial indications are that the Operator would be out of pocket. See the issue explained under *Inconsistency with revenue and pricing principles* above.

Changes to clause 3.3(c)

While not directly on point, we query the ERA's proposed changes to clause 3.3(c). We do not understand why the ERA has replaced "to be inserted from ERA Final Decision" with "xx" – what is the intention with respect to how this will read in the Final Decision?

Changes to section 11 (Reference Tariff Variation Mechanism)

The ERA's proposed amendments to clause 11.3(b) should (if the concept is to be used) be amended as follows.

- 11.3 The process for the Annual Scheduled Variation of Reference Tariffs is as follows:
- (a) Before the Reference Tariff is varied in accordance with clause 11.2, the Operator must ...
 - (b) As a minimum, the Scheduled Reference Tariff Variation Notice must contain the following information:
 - (i) the proposed varied Reference Tariff and varied Reference Tariff Components;
 - (ii) the date on which the varied Reference Tariff is to come into effect; and
 - (iii) calculations showing the derivation of the varied Reference Tariff and Reference Tariff Components using the methods in Annexure A to the Access Arrangement, including:
 - A. Revenue data for Rebateable Non-Reference Services to substantiate and show the effect of the adjustments made for Rebateable Non-Reference Services in accordance with Part A5 of Annexure A.
 - B. Relevant financial and usage data Overrun Gas Received by shippers under the terms and conditions of any Reference Service (being T1 Service, P1 Service or B1 Service) granted to them under any Access Arrangement, to substantiate and show the effect of the adjustments made for Net Overrun Revenue in accordance with Part A[x] of Annexure A.for overrun gas to substantiate and show the effect of the adjustments made for overrun gas charges in accordance with Part A[x] of Annexure A.

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective.

Changes to section 13 (Fixed Principles)

The ERA's proposed amendments to clause 13.1 should (if the concept is to be used) be amended as follows.

- 13.1 The following are Fixed Principles in accordance with NGR 99:
- ...
- (c) The method used to adjust the Reference Tariff for Rebateable Non-Reference Service revenue ("**Rebate Mechanism**"), as described in Annexure A5. For the avoidance of doubt, the Rebate Mechanism applies across access arrangement periods to the extent necessary to allow the rebateable non-reference service revenue earned in one access arrangement period to be fully rebated.
 - (d) The method used to adjust the Reference Tariff for Net Overrun Revenue collected by Operator ("**Overrun Mechanism**"), as described in Annexure A[x]. For the avoidance of doubt, the Overrun Mechanism applies across access arrangement periods to the extent necessary to allow the Net Overrun Revenue collected in one access arrangement period to be fully accounted for.

Reasoning

These drafting changes are to promote clarity and certainty of application (as Net Overrun Revenue is revenue received minus costs), as consistent with the National Gas Objective.

The ERA's proposed new clause 13.5 should (if the concept is to be used) be amended as follows.

- 13.5 For the purpose of the Fixed Principle referred to in clause 13.1(d) of this Access Arrangement, the fixed period for Net Overrun Revenue ~~[for] overrun revenue collected during~~ AA6 is until the earlier of:
- (a) 31 December 2032; and
 - (b) the date when the Net Overrun Revenue ~~[for] collected during~~ the period 1 January 2026 to 31 December 2030 has been fully accounted for in accordance with the Fixed Principle in clause 13.1(d).

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective.

Changes to Annexure A

The ERA's new proposed clause 18.6 should (if the concept is to be used) be amended as follows.

- 18.6 The Net Overrun Revenue ~~from overrun gas charges~~ in any given year will also be used to alter the Reference Tariff in accordance with the approach outlined in "Adjustments for ~~overrun gas charges~~Net Overrun Revenue" (**Annexure A[x]**).

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective.

The ERA's proposed amendments to clause 18.9 should (if the concept is to be used) be amended as follows.

- 18.9 At each annual update of the tariff variation mechanism, only the latest tariff that is relevant to the variation will be calculated and applied for the variation year. The remaining years ... The resulting NPV of the Tariff Revenue will be equal to the approved Total Revenue of the access arrangement period, which was set out in the ERA's Final Decision for this Current Access Arrangement, albeit updated for the change in debt risk premium contributing to the rate of return, rebated revenue, and , and ~~net overrun gas revenue~~Net Overrun Revenue.

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective.

The ERA's proposed new part of Annexure A should (if the concept is to be used) be amended as follows.

- 18.[x] The ~~revenue generated from overrun gas charges, net of the costs to provide overrun gas~~ ("**Net Overrun Revenue**")Net Overrun Revenue, will be applied to ~~reduce adjust~~ the Reference Tariff in accordance with this clause.

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective (the relevant term is already defined in clause 16 and should only be defined once and used consistently).

The changes also reflect the need to account for the possibility that the Net Overrun Revenue could be negative, resulting in an uplift.

- (a) For the purpose of clause 18.[x], the costs incurred by the Operator as described in the definition of Net Overrun Gas shall be limited to provide overrun gas include only the additional System Use Gas operating expenditure to provide overrun gas incurred in connection with the Receipt of the relevant Overrun Gas

Reasoning

The reference to the "System Use Gas operating expenditure to provide overrun gas" has been replaced, as Overrun Gas is not a Service and is not nominated or intended to be provided (in the sense of being 'facilitated'), so SUG is not incurred in order "to provide overrun gas". The taking of Overrun Gas is a problem for the management of the pipeline, the effects of which are, in part, addressed through an increased use of SUG. The relevant SUG costs are incurred because shippers fail to limit their receipts to their Contracted Capacities, and the Operator incurs SUG because of this uncontracted use.

Further drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective (the relevant language and defined terms should be used consistently throughout the document).

- (b) The Net Overrun Revenue generated in each of the periods specified in Column A below will be applied to reduce-adjust the Reference Tariff for the adjacent period in Column B.

Period	Column A	Column B
AA6, 1	1 January 2026 until 31 December 2026	1 January 2028 until 31 December 2028
AA6, 2	1 January 2027 until 31 December 2027	1 January 2029 until 31 December 2029
AA6, 3	1 January 2028 until 31 December 2028	1 January 2030 until 31 December 2030
AA6, 4	1 January 2029 until 31 December 2029	1 January 2031 until 31 December 2031
AA6, 5	1 January 2030 until 31 December 2030	1 January 2032 until 31 December 2032

Reasoning

The change reflects the need to account for the possibility that the Net Overrun Revenue could be negative, resulting in an uplift.

Further clarifying changes to ensure consistency with earlier proposed drafting changes

- (c) The Net Overrun Revenue is calculated as:

$$\text{Net Overrun Revenue}_{(t)} = \text{ORev}_{(t)} - \text{OExp}_{(t)}$$
 where:

$$\text{ORev}$$
 is overrun gas revenue collected amount received by Operator via the Overrun Tariff in year (t) via the Overrun Gas Charges paid by shippers

under the terms and conditions of any Reference Service (being T1 Service, P1 Service or B1 Service) granted to them under any Access Arrangement;;

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective (for example by use of defined terms).

Further clarifying changes to ensure consistency with earlier proposed drafting changes

OExp is the actual additional System Use Gas operating expenditure incurred by the Operator in connection with the Delivery of the Overrun Gas the subject of the Overrun Gas Charges comprising ORev for year (t) for the relevant year in Column A, that is calculated by adding the additional overrun gas full haul daily throughput to the calculation in the approved Tariff Model for the relevant year (t) to calculate the System Use Gas operating expenditure inclusive of overrun gas, and then subtracting the System Use Gas operating expenditure that was approved for the Current Access Arrangement Period in year (t); and

Reasoning

These drafting changes are to promote clarity and certainty of application, as consistent with the National Gas Objective.

In addition, the ERA's proposal for calculating the relevant SUG costs is flawed and needs to be changed as proposed above. The fuel curve applied in the model underestimates those instances where the pipeline is running inefficiently (which happens when Overrun Gas is taken, which by definition is unplanned). On the ERA's proposed drafting, AGIG would be denied recovery of efficient costs. The ERA proposes to calculate the net overrun revenue, using fuel curves in the tariff model, will under-estimate our costs in providing these services and over-estimate net revenues, which would be inconsistent with efficient pricing. We have suggested an alternative approach to more closely capture how much SUG cost the overrun is actually imposing. This approach was set out on page 2 of our submission of 17th November under "Estimation of net overrun revenues".

Further clarifying changes to ensure consistency with earlier proposed drafting changes

- (t) is the relevant year.
- (d) The Net Overrun Revenue to be used to reduce (if positive) or increase (if negative) the Reference Tariff in clause 18.[x](e) must be adjusted:
- (i) for inflation, consistent with the method set out in Annexure A2, so that the nominal value of the revenue matches the nominal year (set out in Column B) in which the revenue is to be returned via a reduction to the Reference Tariff; and
 - (ii) for interest earned on the revenue, using the rate of return in the Tariff Model.
- (e) The Net Overrun Revenue will be applied to reduce (if positive) or increase (if negative) the Reference Tariff by:
- (i) calculating the Net Overrun Revenue for the relevant period on a per gigajoule (full haul equivalent) per day basis by dividing the Net Overrun Revenue for the relevant period in Column A by the number of days and gigajoules specified as the "Full Haul Equivalent Capacity and throughput forecast" in the Tariff Model for the adjacent period in Column B; and then
 - (ii) subtracting (if positive) or increase (if negative), from (if positive) or increase (if negative) the Reference Tariff that would have otherwise been calculated for the relevant period in Column B after applying all the other methods for the Annual Scheduled Variation of Reference Tariffs as set out in Annexure A, the

amount calculated for that period under clause 18.[x](e)(i) and split between the Capacity Reservation Tariff and Commodity Tariff on the same ratio used in the Tariff Model to determine those Reference Tariffs.

Reasoning

The changes reflect the need to account for the possibility that the Net Overrun Revenue could be negative, resulting in an uplift.

If you would like to discuss any aspects of this submission, please do not hesitate in contacting either myself or Peter Bucki – Group Head of Regulation.

Yours sincerely

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