



Economic Regulation Authority

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

Attachment 9: Service terms and conditions

7 July 2025

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## Note

This attachment forms part of the ERA's draft 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 draft decision, which is comprised of the following document and attachments:

- Draft decision on revisions to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline – Overview, 7 July 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)

## 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 users can either accept or use as a point of reference to negotiate their own terms and conditions to meet specific operational needs. In the event that terms and conditions cannot be agreed, the access arrangement can be used to guide an arbitrator in an access dispute.

This attachment sets out the ERA's consideration of DBP's proposed terms and conditions for its reference services and includes consideration of the matters raised in submissions in response to DBP's proposal and the ERA's issues paper.

DBP provides three reference services under the access arrangement: Full Haul (T1), Part Haul (P1) and Back Haul (B1). The terms and conditions for the three reference services are set out in Attachments 2, 3, and 4 of DBP's proposed access arrangement.

DBP's proposed terms and conditions for the three reference services remain materially unchanged from the current AA5 terms and conditions.

DBP's proposed changes comprise 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.

Subject to some additional drafting changes, the ERA has 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.

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. Off-spec gas is gas that does not meet the contractual specifications when injected into the pipeline.

Given the matters raised by stakeholders, the ERA has decided that an administrative amendment to clause 7 is required before the reference service terms and conditions can be approved. The ERA's required amendment aims to highlight DBP's liability for off-spec gas by making the relevant provision a standalone clause (rather than a subclause).

### Summary of Required Amendments

#### 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.

**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.

**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.

## 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.<sup>1</sup>
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.<sup>2</sup>
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.

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

<sup>2</sup> NGR, rule 48(1)(d).

## DBP proposal

4. The terms and conditions for the reference services are set out in DBP's proposed access arrangement as follows:
  - Section 4 (Terms and conditions for reference services).
  - Attachment 2 (Terms and conditions applying to the T1 Service).
  - Attachment 3 (Terms and conditions applying to the P1 Service).
  - Attachment 4 (Terms and conditions applying to the B1 Service).
5. DBP highlighted its proposed changes to the access arrangement in chapter 15 of its Final Plan and provided reasoning for the proposed changes in Final Plan Attachment 15.1.<sup>3</sup> The specific changes to the drafting of provisions are set out in a marked-up version of the terms and conditions.<sup>4</sup>
6. Contract terms used in DBP's proposed amendments are defined below:
  - **Negotiated Contract** – means existing contracts with shippers for T1 Service, P1 Service or B1 Service that are based on the Standard Shipper Contract rather than the reference service terms and conditions under the current or any previous access arrangements.
  - **Reference Contract** – means the proposed terms and conditions for reference services in respect of any one of the T1 Service, P1 Service or B1 Service (and "Reference Contracts" means any two or all three of them as the case requires).
  - **Standard Shipper Contract** – means the contracts for T1 Service, P1 Service and B1 Service currently published on DBP's website.
7. Most of DBP's proposed changes to the terms and conditions are consistent across all three reference services (that is, the same amendments are made in each of the terms and conditions for the T1, P1 and B1 Services, unless otherwise stated). DBP's proposed changes to the reference service terms and conditions are summarised in Table 9.1.

**Table 9.1: DBP proposed changes to the reference service terms and conditions**

### Description of proposed change/amendment

#### Formatting fixes

Various amendments throughout the terms and conditions to correct formatting errors (e.g., corrections to indentations and numbering replacements).

<sup>3</sup> DBP, *Final Plan 2026-2030*, January 2025, pp. 133-136.

DBP, *Final Plan 2026-2030, Attachment 15.1: Submissions for changes to AA6 Reference Contract*, January 2025.

<sup>4</sup> DBP, DBNGP Access Arrangement 2026-2030 - Attachment 2: T1 Reference Service Terms and Conditions (marked-up), January 2025 ([online](#)) (accessed July 2025).

DBP, DBNGP Access Arrangement 2026-2030 - Attachment 3: P1 Reference Service Terms and Conditions (marked-up), January 2025 ([online](#)) (accessed July 2025).

DBP, DBNGP Access Arrangement 2026-2030 - Attachment 4: B1 Reference Service Terms and Conditions (marked-up), January 2025 ([online](#)) (accessed July 2025).



## Description of proposed change/amendment

### Clause 1 (Interpretation)

- Amendments to the terms 'Associate', 'Control', 'Controller', 'Related Body Corporate', and 'Related Entity' defined in the Corporations Act to reflect the new Act in force date.
- Amendments to the terms 'DBNGP' and 'Kwinana Junction' to reflect current date references.
- Deletion of the term 'Tp Service'.

### Clause 3.2 (Capacity Service)

Amendment to clause 3.2(a)(i) to add the words "except as otherwise agreed or permitted by Law" to clarify the priority rights of the capacity service and that the respective service can be curtailed where 'otherwise agreed' or 'permitted by Law'.

### Clause 5 (Receiving and Delivering Gas)

Amendments to clauses 5.3(a) and 5.7(a) to update cross-referencing, which is consequential to the proposal to insert new clause 9.8(a).

### Clause 9.8 (Remedies for breach of imbalance limits)

Insertion of new clause 9.8(a) to better align the express imbalance remedies across negotiated contracts and the reference contracts (i.e. the reference service terms and conditions).

### Clause 17 (Curtailement)

Amendment to delete reference to 'Tp Service' in clause 17.9(c)(ii).

*With respect to the B1 Service terms and conditions only:*

*Amendments to clauses 17.3(b)(iii) and 17.3(c)(i) to update cross-referencing, which is consequential to the ERA's AA5 decision to insert new clause 17.2(f).*

### Clause 28 (Confidentiality)

Amendments to clause 28.2 (Exceptions to Confidentiality) to amend the circumstances in which a party is entitled to disclose confidential information.

Amendment to clause 28.3 (Permitted Disclosure) to clarify the exception where disclosure is not permitted that relates to the generation or sale of electricity in Western Australia.

Amendment to clause 28.6 (Information received by Operator) to add the words "including performing or enforcing this Contract" to clarify that commercially sensitive information received by the operator may be distributed to personnel who need this information to perform/enforce the contract.

### Clause 38 (Revocation, Substitution and Amendment)

Insertion of new clause 38(c) to include a direct provision to automatically update the provisions of the contract to reflect any changes to the reference service conditions approved by the ERA.

### Schedule 1 (Access Request Form)

Amendments to the Access Request Form to better clarify the terms and conditions that apply, and the agreement being entered into; and amendments to improve the methods of execution to make execution of the contract less onerous.

### Schedule 4 (Pipeline Description)

Amendment to update the pipeline description document relevant to the access arrangement.

### Schedule 6 (Curtailement Plan)

Amendment to update the Curtailement Plan to remove the Tp Service.

*Source: DBP, Final Plan 2026-2030, Attachment 15.1: Submissions for changes to AA6 Reference Contract, January 2025.*

## Submissions

8. The ERA received no submissions that commented on DBP's proposed changes to the terms and conditions for the T1, P1 and B1 Services for AA6.
9. However, the ERA received three submissions that addressed DBP's service terms and conditions as set out in clause 7 (operating specifications), which covers liability provisions for off-spec gas.<sup>5</sup> In summary, these stakeholders:
  - Reiterated that shippers have no control over the gas flow. It 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.
10. While DBP did not propose any changes to clause 7 of the terms and conditions, the ERA has considered the matters raised by stakeholders in relation to off-spec gas liability as part of its draft decision considerations.

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<sup>5</sup> Submissions from Horizon Power, Gas Trading and NewGen Power Kwinana.

## Draft decision

11. The ERA's consideration of DBP's proposed terms and conditions for its T1 Service, P1 Service and B1 Service are set out below.
12. The ERA has primarily focused on assessing the T1 Service terms and conditions. This is because they are analogous to the terms and conditions for the P1 and B1 Services, unless otherwise clarified by DBP, which the ERA has assessed accordingly. The required amendments set out in this decision must be made to each of the T1, P1 and B1 Services, unless otherwise specified.

## Liability for off-spec gas

13. DBP did not propose any amendments to clause 7 (operating specifications) despite concerns raised by shippers during the consultation process to inform its AA6 proposal. Shippers had enquired whether liability for damage caused by the delivery of off-spec gas could be transferred from the shipper to DBP, or to the producers of the gas. In response, DBP reiterated that only the shipper should bear responsibility for ensuring gas delivered is not off-spec as they are the party procuring the gas. DBP submitted that a shift in liability would be unfair to other complying shippers, economically inefficient and may impact the reliability of the pipeline for other users.
14. Submissions to the ERA stated that shippers have limited authority over the management of off-spec gas via the DBNGP but bear most of the liability. The ERA met with DBP to discuss the off-spec gas issues raised by shippers and to better understand the operating processes of the DBNGP. The following points were discussed.

## Rejecting off-spec gas at the inlet point

15. Currently, shippers are unable to reject off-spec gas at an inlet point; shippers can only reject off-spec gas at their respective outlet point. In their submissions, Horizon Power, Gas Trading and NewGen advocated granting shippers the right to reject off-spec gas at the inlet point and for DBP to assume full liability should any off-spec gas enter the pipeline.
16. DBP argued that given the operational nature of the DBNGP it cannot reasonably allow an individual shipper to stop off-spec gas from entering the pipeline at the inlet point. Most inlet points on the pipeline are multi-shipper inlet points (that is, gas producers deliver gas to multiple shippers, meaning that it is impractical for an individual shipper to reject off-spec gas at the inlet point when other shippers that use that same inlet point do not). The DBNGP is a single gas stream pipeline and due to operational constraints, DBP has no means to reject only a section of the stream. Additionally, DBP reiterated that there is only a small subset of shippers with off-spec gas liability issue. Other shippers have managed their liability contractually by passing on liability to gas producers as part of their Gas Sale Agreement(s).
17. DBP noted that, under Section 10 of the *Gas Supply (Gas Quality Specifications) Act 2009 (WA)*, gas producers are permitted to deliver off-spec gas in a short-term situation (a period of 48 hours that can be extended to five business days by notice to the Minister). Depending on the Gas Sale Agreement between the gas producer and shipper, DBP cannot prevent the delivery of off-spec gas during a short-term situation. DBP considers that risk should lie with the party best able to manage that risk, which in

this case, are the gas producers. DBP encourages all shippers to have well-written contracts that passes off-spec gas liability back onto the producers.

18. Given the operational nature of the DBNGP (a pipeline with multi-shipper inlet points), the ERA considers that it is impractical for individual shippers to reject off-spec gas at the inlet point. Additionally, the provisions of the Gas Supply Act mean that DBP is limited in its ability to stop the delivery of off-spec gas from gas producers. Given these limitations, the ERA agrees that allowing shippers to reject off-spec gas only at the outlet point – while DBP manages the receipt of gas at the inlet point – is a pragmatic approach under the reference service terms and conditions and no amendments to clause 7 will be made regarding this issue.
19. While it is reasonable for gas producers to hold liability for off-spec gas on the basis that it is the producers who are best able to manage the risk (given they produce the gas), the contract for pipeline services under the access arrangement is between the shipper and DBP. As highlighted by DBP, shippers have Gas Sale Agreements with gas producers and these agreements should ideally contain provisions that deal with off-spec gas liability. Where such provisions exist, shippers with gas sales agreements with provisions for off-spec gas liability would effectively mitigate any liability for off-spec gas under the reference service terms and conditions as they currently stand.

### ***Knowledge of off-spec gas***

20. Shippers argue that if DBP is the party that can detect, blend and mitigate off-spec gas, shippers should not be liable for damages they cannot manage.
21. When gas producers inject gas into inlet points, Gas Chromatographs (GCs) can be used to measure the quality of gas that goes in. GCs at inlet points on the DBNGP allow DBP to monitor the intake of any off-spec gas and provide the relevant data for DBP to decide on whether the gas will blend into specification as it passes through the pipeline. As soon as DBP is aware of off-spec gas, it must notify shippers of this under the reference service terms and conditions (clause 7.5).
22. Clause 12.3 of the terms and conditions explicitly requires DBP to operate the DBNGP using good gas industry practice. DBP states that it would not knowingly allow off-spec gas into the DBNGP to the extent that it would cause damage to the pipeline and its connected facilities. DBP is also legislatively required to deliver a specific quality of gas. If DBP finds that the gas does not meet the prescribed standard, it will actively stop the off-spec gas at the inlet point and liaise with the relevant gas producer and/or shipper about the issue. However, in instances where the inlet point is close in distance to the outlet point, DBP may unknowingly deliver off-spec gas to some shippers. In these instances, DBP may not have enough time to identify and report off-spec gas to those shippers (that is, by the time off-spec has been identified and reported to the shipper, some level of off-spec gas may have been delivered to the shipper at the outlet point).
23. At an outlet point, shippers may have their own GCs to help determine whether they reject or accept off-spec gas into their facility. DBP also shares metering data upstream of the outlet point to help shippers monitor the quality of gas. If the shipper rejects off-spec gas at their outlet point, then DBP would be liable for any damage from the delivery of off-spec gas (clause 7.9(b) of the reference services terms and conditions).
24. DBP is also planning to install additional GCs at key inlet points during AA6, which will help to ensure more accurate gas quality measurements at the inlet point and provide

DBP with more data to assist in monitoring and ensuring the safe operation of the DBNGP.<sup>6</sup>

25. The ERA considers that the notification provisions for off-spec gas in clause 7.5 of the reference service terms and conditions is clear; both DBP and the shipper have obligations to notify the other party, as soon as reasonably practical, of the potential or actual occurrence of off-spec gas. DBP's operational changes to automate its notification processes for off-spec gas have resulted in more off-spec gas notifications, which some shippers have found unhelpful as they do not have the service personnel and/or processes to respond to any off-spec gas notifications received outside of standard business hours. However, DBP's automated notifications for off-spec gas are preferable to manual notifications as it helps provide shippers with adequate notice to make an informed decision about receiving gas, which could potentially be off-spec, at its outlet point. How shippers respond to notifications outside of business hours is an operational consideration for individual shippers.

### **Goldfields Gas Pipeline liability clause**

26. Currently, clause D.23.6 of the terms and conditions for the Goldfields Gas Pipeline (GGP) allows shippers to provide a standing rejection notice for off-spec gas and to pass liability to the operator (Goldfields Gas Transmission). This is similar to other APA-owned pipelines in Australia and something that had been raised in the ERA's issues paper. The ERA has discussed this matter with DBP. It is apparent that the DBNGP is substantially different to the GGP. The DBNGP has multiple gas injection points (gas sources) with multiple shippers taking gas from those points. If one shipper was to issue a standing rejection notice for off-spec gas, it would have negative flow-on effects to other shippers who are willing to take that gas and consequentially would affect the operation of the pipeline. Rather than sourcing gas directly from gas producers, gas enters the GGP downstream of the DBNGP inlet points. This operational difference significantly reduces the risk of off-spec gas entering the GGP and causing damage. It also creates a lower risk profile for GGT (as the operator) and shippers using the GGP because the gas that is sourced via the DBNGP has already been blended to meet the required gas quality specification for that pipeline. Further, shippers using the DBNGP have varying risk profiles that correspond to the location of the inlet and outlet points under contractual agreements. This makes it impractical for DBP to have a standard liability clause that allows shippers to reject off-spec gas at the inlet point and pass liability to DBP.
27. DBP stated that it cannot reasonably take on off-spec gas liability without it increasing tariff charges to recover the additional insurance costs that would be payable. The DBNGP also accommodates a larger shipper base, and given the varying risk profiles of these shippers, any increases to tariffs to cover DBP's additional insurance costs for off-spec gas liability would negatively affect shippers with lower risk profiles. DBP further noted that the terms and conditions were established around 20 years ago, and during that time no party has needed to enforce the liability provisions in clause 7. However, DBP acknowledges that some provisions of its terms and conditions (for example, clause 7.7 and 7.9(a) that allows DBP and the shipper, respectively, to receive off-spec gas on whatever terms and conditions that the shipper and DBP agree) may have been drafted too broadly and may be impractical to apply to real-life operational situations.
28. The ERA considers that the current reference service terms and conditions do allow shippers to maintain a position to reject off-spec gas at the outlet point; clause 7.6(a)

<sup>6</sup> DBP, *Final Plan 2026-2030, Attachment 9.5: Capex Business Cases (DBP15: Meter stations)*, January 2025, p. 178.

allows the shipper at any time, without penalty, to refuse to receive off-spec gas at an outlet point. As discussed above (paragraph 18) it is impractical for shippers to have the ability to reject off-spec gas at the inlet point and the operational complexity of the DBNGP means it is not viable to apply the suggested GGP's terms.

## **ERA assessment**

29. Given the above observations, the ERA has decided not to make any material changes to the provisions in clause 7 of the reference service terms and conditions.
30. Although the probability of off-spec gas causing damage is low, the potential severity of the associated risks is significantly high. However, the ERA expects shippers to take appropriate steps to mitigate their own liability at their facility outlet points and through their producers when contracting Gas Sale Agreements. As the functionality of the DBNGP is a single stream pipeline with multiple users at inlet points, it is unrealistic to stop the flow of gas every time off-spec gas is injected due to the request of only a few shippers. Commercial contracts require that parties act in good faith and fulfill their obligations. Given the provisions of clause 12.3 that require DBP to use good gas industry practice to operate the DBNGP, DBP should only accept off-spec gas at an inlet point that falls within defined parameters and that they are able to blend into specification.
31. The terms and conditions are complex commercial documents. The ERA cannot ensure that any material amendments to clause 7 would be free of unintended consequences for other shippers. As a result of the above considerations, the proposed amendment is limited to a minor administrative change to improve clarity. The terms and conditions should clearly define the respective liability responsibilities of both the shipper and the operator. Since clause 7.8 clearly outlines the shipper's liability for off-spec gas (via the use of a heading), the ERA requires DBP to introduce a new heading, 7.9A, to reflect and clarify the operator's corresponding liability. This administrative change provides greater transparency to shippers, prospective shippers, and other readers, by clarifying that certain liability obligations under clause 7 also rest with DBP.
32. The ERA requires DBP to make the following administrative change to clause 7.9 of the reference service terms and conditions.

### **7.5 Notice of Out-of-Specification Gas**

If either Party becomes aware that any Out-of-Specification Gas is to enter or has entered the DBNGP at an Inlet Point or is to leave or has left the DBNGP at an Outlet Point, it must as soon as reasonably practicable notify the other Party in accordance with clause 29.1(a).

### **7.6 Operator and Shipper may refuse to Receive Out-of-Specification Gas**

- (a) Subject to any agreement under clauses 7.7 and 7.9, the Operator may at any time without penalty refuse to Receive from the Shipper at an Inlet Point, and the Shipper may at any time without penalty refuse to Receive from the Operator at an Outlet Point, any Out-of-Specification Gas.
- (b) The Shipper is entitled to a refund of Capacity Reservation Charges for any Capacity it is unable to use on a Gas Day as a result of the Shipper refusing any Out-of-Specification Gas under clause 7.6(a) to the extent that the Operator caused the Gas in the DBNGP to be Out-of-Specification Gas.

**7.7 Operator may Receive Out-of-Specification Gas**

The Operator may, at its own risk, agree to Receive Out-of-Specification Gas from the Shipper at an Inlet Point on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.

**7.8 Shipper's Liability for Out-of-Specification Gas**

If any Out-of-Specification Gas Delivered by or on behalf of the Shipper enters the DBNGP without the Operator's agreement under clause 7.7:

- (a) the Shipper is liable to the Operator for any loss or damage arising in respect of the Out-of-Specification Gas; and
- (b) Without limitation on any of its other rights under any Law, the Operator is, to the extent necessary to allow it to deal with that entry of Out-of-Specification Gas:
  - (i) entitled to vent, flare or burn the Out-of-Specification Gas, and the Shipper is deemed not to have Delivered a quantity of Gas at the Inlet Point equivalent to the quantity of all Gas necessarily vented by the Operator; and
  - (ii) relieved of any obligation to Deliver Gas to the Shipper by an amount no greater than the quantity of Gas vented, flared or burnt by the Operator under clause 7.8(b)(i) on the basis that the Shipper is deemed not to have Delivered that quantity of Gas at the Inlet Point.
- (c) The exclusion of Indirect Damage in clause 23.3 does not apply in relation to the Shipper's liability under clause 7.8(a).

**7.9 Shipper may Receive Out-of-Specification Gas**

~~(a)~~ — The Shipper may, at its own risk, agree to Receive Out-of-Specification Gas from the Operator at an Outlet Point, on whatever terms and conditions (including as to pricing) that the Shipper and the Operator may agree.

**7.9A Operator's Liability for Out-of-Specification Gas**

~~(b)~~ — If any Out-of-Specification Gas is delivered to the Shipper at an Outlet Point without the Shipper's agreement under clause 7.9~~(a)~~, 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 respect of the Out-of-Specification Gas.

**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.

**Clause 1 (Interpretation)**

33. DBP proposed numerous amendments to Clause 1 definitions.

## Associate, Control, Controller, Related Body Corporate, Related Entity

34. The terms “Associate”, “Control”, “Controller”, “Related Body Corporate”, and “Related Entity” are defined by reference to the *Corporations Act 2001* (Cth). For each of these definitions, “as at 15 July 2019 (being Compilation No 95, Federal Register of Legislation ID C2019C00216)” has been deleted and “as at 14 October 2024 (being Compilation No.38, Federal Register of Legislation ID C2024C00605 (C137))” has been inserted to reflect the new act in force date. The selected date, 14 October 2024, was the latest version of the Act at the time of preparing the submitted changes to the Reference Contracts, containing amendments up to Act No.38 2024.

## DBNGP, Kwinana Junction

35. The dates in “DBNGP” and “Kwinana Junction” have been amended from “2021-2026” to “2026-2030” to reflect the new access arrangement period.
36. The ERA notes that the pipeline description map provided as Attachment 1 to the proposed access arrangement is dated “as at 1 January 2025”. Consistent with the proposed date amendments to the terms ‘DBNGP’ and ‘Kwinana Junction’, DBP needs to update the date reference on the pipeline description document to match.

### 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.

## Tp Service

37. The term “Tp Service” has been removed. DBP submitted that there is currently no shipper with a Tp Service at the time of submission and it will no longer be offered as a service in the future, so the term is redundant.

## Clause 3 (Capacity service)

38. DBP proposed additional wording to clause 3.2(a) as follows:

### Clause 3.2 Capacity Service

- (a) The T1 Service is the Full Haul Gas transportation service which gives the Shipper a right of access to Gas Transmission Capacity and which:
- (i) [except as otherwise agreed or permitted by Law](#), can only be Curtailed in the circumstances set out in this Contract;
  - (ii) is treated the same in the Curtailment Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service and in the order of priority with respect to other Types of Capacity Service set out in clause 17.9; and
  - (iii) is treated the same in the Nominations Plan as all other shippers with a T1 Service, a P1 Service or a B1 Service and in the order of priority with respect to /other Types of Capacity Service referred to in clause 8.10.



39. DBP submitted that the amendment will clarify the priority rights between clause 3.1 and clause 3.2(a). That is:
- Clause 3.1 determines that the operator will provide the capacity service to the shipper under the agreed Reference Contract.
  - Clause 3.2(a) serves a different purpose and defines the priority rights of the capacity service but does not grant unencumbered access to the service. The actual grant and acceptance are covered in clause 3.1, subject to the contract's terms and conditions.
40. DBP submits that the insertion of the phrase “as otherwise agreed” ensures that if the shipper and operator agree to curtailment outside of the Reference Contract, it doesn't affect the shipper's entitlement to the capacity service and will only apply if the shipper has agreed to it previously or if it's “permitted by Law”. Furthermore, this amendment will benefit shippers/consumers of gas as it lowers the probability of disputes.
41. Based on DBP's reasoning and there being no submissions raising any issues with the amendments, the ERA approves DBP's proposed amendments to clause 3.

## Clause 5 (Receiving and delivering gas)

42. DBP's proposed amendments to clauses 5.3(a) and 5.7(a) are cross-referencing related and are consequential to the proposed addition of new clause 9.8(a).
43. The ERA has approved the addition of clause 9.8(a) (see below) and hence approves DBP's proposed amendments to clause 5.

## Clause 9 (Imbalances)

44. DBP proposed the inclusion of a new provision to clause 9.8 as follows:

### Clause 9.8 Remedies for breach of imbalance limits

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

(a) an action for breach of clause 9.5(b)(iii), limited to the recovery of Direct Damages in accordance with clause 23 and the Shipper's liability to the Operator for Direct Damages suffered by the Operator which is caused by or arises out of the Shipper's failure to comply with clause 9.5(b)(iii) is reduced by any Excess Imbalance Charge or Excess Imbalance Charges paid by the Shipper in respect of that failure;

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

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

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

45. DBP submits that the addition of clause 9.8(a) will clearly indicate that any damages referred to should be reduced by any excess imbalance charge(s) paid by the shipper

in respect of the relevant breach, thereby preventing DBP from receiving double recovery.

46. Based on DBP's reasoning and there being no submissions raising any issues with the amendments, the ERA approves DBP's proposed amendments to clause 9.

## Clause 17 (Curtailment)

47. With respect to B1 Service terms and conditions only, DBP's proposed amendments to clause 17.3(b)(iii) and 17.3(c)(i) are cross-referencing related and are consequential to a change the ERA made and approved in the last (AA5) access arrangement review.
48. DPB's removal of Tp Service in clause 17.9(c)(ii) is a consequential amendment resulting from the deletion of the defined term in clause 1 (see paragraph 37).
49. DBP's proposed amendments are consequential to other amendments that have been approved by the ERA; hence the ERA approves DBP's proposed amendments to clause 17.

## Clause 28 (Confidentiality)

### Exceptions to confidentiality

50. DBP proposed amendments to clause 28.2 as follows:

28.2 Either Party may disclose Confidential Information which:

...

- (j) is requested by an operator of a pipeline which is inter-connected with the DBNGP, subject to the Confidential Information being relevant to, and [the disclosure being for the purpose of, necessary for](#) the operation of the inter-connected pipeline [or for the allocation of Gas at the inter-connection point;](#)
- (k) is required by Law or any governmental agency to be disclosed in connection with any emissions generated by or associated with the operation of the DBNGP and in such cases, the disclosing Party must promptly notify the other Party of that requirement or request (as the case may be); ~~or~~
- (l) comprises the terms of the Operator's Standard Shipper Contract; [or](#)
- [\(m\) is requested by a Producer, subject to the Confidential Information being relevant to, and the disclosure being for the purpose of, the allocation of Gas Deliveries at an Inlet Point to which Gas supplied by that Producer flows.](#)

51. DBP submits that the additional wording in clause 28.2(j) helps tighten confidentiality and limit the information that can be shared.
52. DBP submits that proposed new clause 28.2(m) narrowly extends the scope for allowed disclosure by limiting it to where it is for the purpose of the allocation of gas by a producer at the relevant inlet point. Subsequently, this will help users utilise their contracted service more efficiently and reduce the scope for disputes.

### Permitted disclosure

53. DBP proposed amendments to clause 28.3(b)(i) as follows:

- (b) Nothing in his clause 28.3 permits disclosure by the Operator or the System Operator, or by a person or persons to whom Confidential Information from the Operator or the System Operator has been disclosed under this clause 28, to:
- (i) any person who is directly involved in:
    - (A) The distribution of Gas to customers through a covered pipeline that is a distribution pipeline situated in Western Australia under the National Gas Access (Western Australia) Law;
    - (B) The retailing of Gas within Western Australia;
    - (C) The generation or sale of electricity in Western Australia [if such electricity is, or may be, generated using \(whether in whole or in part\) Gas Delivered from the DBNGP](#);
    - (D) Contracting for Capacity on the DBNGP; or
    - (E) The management of the activities referred to in clauses 28.3(b)(i)(A) to 28.3(b)(i)(D); or
  - (ii) such person's employees, officers, agents, contractors, consultants and technical advisors who are themselves directly involved in any of the activities described in clause 28.3(b)(i);
- except to the extent that such person is ...

54. Clause 28.3(b) prevents disclosure of information if the related person is involved in any activities listed in subclauses (A) to (D). The intention of this clause is to prevent the operator's corporate group to gain competitive advantage in a related industry by virtue of knowledge. DBP submits that the additional wording to clause 28.3(b)(i)(C) better clarifies the intent and promotes the amended national gas objective of achieving targets to reduce Australia's greenhouse gas emissions.

### Information received by DBP

55. DBP proposed additional wording to clause 28.6(b) as follows:

- (b) The Operator recognises that some information received by its personnel or by the System Operator's personnel (which expression includes the Operator's and the System Operator's employees, officers, agents, contractors, consultants, lawyers, bankers, financiers, financial and technical advisers), including general operational and gas flow information, is commercially sensitive and the Operator undertakes that where the information is commercially sensitive (as determined by the Operator acting reasonably), in addition to the obligations under clauses 28.1 and 28.5, such Confidential Information will only be distributed by the control room personnel of the Operator or the System Operator, as the case may be, to other individuals within the Operator, or the System Operator, to the extent that those other individuals have a bona fide need to receive that Confidential Information for the purposes of Operating or Expansion of the DBNGP [\(including performing or enforcing this Contract\)](#). The Operator must procure that any Confidential Information distributed under this clause 28.6 is only used for the purpose for which it was distributed.

56. DBP submits that the term "operate" is not exhaustively defined in the Reference Contract; so the additional wording helps clarify that the clause is applicable to personnel other than the control room personnel that may need to receive confidential information for the performance of the Reference Contract.

57. Based on DBP’s reasoning and there being no submissions raising any issues with the amendments, the ERA approves DBP’s proposed amendments to Clause 28.

## Clause 38 (Revocation, substitution and amendment)

58. DBP proposed the inclusion of new clause 38(c) as follows:

### **38 Revocation, Substitution and Amendment**

- (a) The Operator and the Shipper may at any time agree in writing to revoke, substitute or amend any provision of this Contract (including the (Access Request Form).
- (b) If the Parties agree to an increase in Contracted Capacity, this Contract (including the Access Request Form) is to be amended to reflect this.
- (c) 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.
59. DBP submits that the new clause will help keep terms consistent across Reference Contracts and help DBP manage contracts efficiently whilst aligning with the national gas objective. Further, it also reflects the intention of clause 4.1 of the current approved access arrangement for AA5 where it states:

The terms and conditions of any Reference Service (being T1 Service, P1 Service or B1 Service) granted under this Access Arrangement are those terms and conditions for the T1 Service, P1 Service and B1 Service contained in the Access Contract Terms and Conditions **as amended or varied from time to time in accordance with clause 4.3 of the Access Arrangement. [emphasis added]**

60. The ERA notes that DBP has proposed some drafting amendments to section 4 (terms and conditions) of the proposed access arrangement that aims to capture any amendments made to the reference service terms and conditions by the regulator in accordance with certain divisions of the NGR. Where such amendments are made, DBP’s proposed amended drafting would allow the amendments to apply to other contracts.<sup>7</sup>
61. The ERA understands the importance of maintaining consistency across Reference Contracts. However, the use of the term “automatically” fails to consider instances where changes to the terms and conditions are inapplicable or inappropriate to specific shippers. On this basis, the ERA considers that the drafting should qualify that changes will apply automatically subject to the parties acknowledging that the changed provisions are applicable and appropriate in the circumstances.

### 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.

<sup>7</sup> DBP’s proposed amendments to the access arrangement document are considered in Draft Decision Attachment 8.

## Schedule 1 (Access request form)

62. DBP proposed numerous amendments to the Access Request Form as follows:

### 6. Terms and Conditions

Prospective Shipper accepts the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement) for the T1 Reference Service. ~~The T1 Reference Service Terms and Conditions apply.~~

### 7. Acknowledgement

By executing and submitting this Access Request Form, Prospective Shipper acknowledges having read and understood the latest version of the Access Arrangement, including the Queuing Policy under the Access Arrangement, and the current Access Contract Terms and Conditions ~~proposed terms and conditions for the Reference Service.~~

### 8. Agreement

In accordance with the Access Arrangement:

(a) a contract may be deemed to arise between the parties on the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement); or

~~(a)(b) otherwise,~~ this Access Request when executed by the Operator and the Pipeline Trustee and returned to the Prospective Shipper, creates a contract attached to the T1 Reference Service Terms and Conditions forms the Contract between the parties on the Access Contract Terms and Conditions (as defined in, and varied or amended from time to time in accordance with, the Access Arrangement).

63. DBP has also amended the requirements for execution in section 10 of the form by adding words to the prospective shipper's execution and removing words from the operator's execution as follows. References to "Director" and "Director/Secretary" have also been deleted from the signature block for both parties.

Executed by Prospective Shipper:

Executed by [insert Prospective Shippers Details and ABN] in accordance with section 127 of the Corporations Act 2001 or such other manner as approved in writing by Operator:

...

Executed by Operator:

Executed by DBNGP (WA) Transmission Pty Limited (ABN 69 081 609 190) ~~in accordance with section 127 of the Corporations Act 2001:~~

64. DBP submits that the wording changes to the Access Request Form better clarifies what terms and conditions are being referred to and ensures consistency with the access arrangement provisions for access requests.

65. DBP's proposed amendments to execution requirements and execution block is consistent with DBP's requested amendment to insert a new clause 5.2(e) in the access arrangement. DBP submits that its amendments result in a less onerous method of execution and promotes business efficacy.

66. The ERA considers that DBP's proposed amendments to the Access Request Form are drafting improvements that clarify provisions of form. The ERA has considered DBP's

proposed changes to the requirements for access requests in Draft Decision Attachment 8. Consistent with these considerations, the ERA approves DBP's proposed execution amendments for the reasons provided by DBP.

## Schedule 4 (Pipeline description)

67. DBP's proposed amendments to Schedule 4 will revise the dates to apply to AA6. The ERA considers these amendments to be administrative.

## Schedule 6 (Curtailment plan)

68. DBP's proposed amendments to delete the Tp Service from the Curtailment Plan are consequential to the deletion of the term Tp Service from the terms and conditions (see paragraph 37).

## Other amendments

69. Table 9.2 details other amendments that have been made or need to be made to the reference service terms and conditions. The ERA considers that the amendments listed are administrative in nature and can be approved or addressed by DBP in its revised proposal.

**Table 9.2: ERA assessment of other amendments to the reference service terms and conditions**

Amendment	ERA assessment
Bottom left footer date has been revised to "2026-2030".	Required administrative amendment.
<b>Schedule 6 (page 173)</b> "Schedule 6 – Curtailment Plan" is missing from the top right header.	Administrative error that DBP can correct in its revised proposal.
<b>Schedule 7 (page 175)</b> "Schedule 7 – Form of Tripartite Deed" is missing from the top right header.	Administrative error that DBP can correct in its revised proposal.

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