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26 April 2012

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY NSW 1235

Dear Sir

AER NATIONAL GAS RULES RULE CHANGE PROPOSAL – REFERENCE AND REBATEABLE SERVICES

DBNGP (WA) Transmission Pty Ltd (**DBP**) thanks the Australian Energy Market Commission (**the Commission**) for the opportunity to respond to the Draft Rule Determination released on 15 March 2012 (**Draft Determination**). The Draft Determination responds to 2 aspects of the AER's rule change proposal regarding the definition of reference and rebateable services. DBP deals with each in turn and then makes submissions in relation to the preferred draft rule contained in the Draft Determination.

Rebateable Service Definition

DBP notes that the Commission, in its Draft Determination, has not accepted the AER's proposed rule relating to the definition of "rebateable service".

DBP welcomes this aspect of the Draft Determination.

There are two aspects of the Commission's reasoning relating to the rebateable service definition in relation to which DBP makes comment.

Firstly, DBP would also like to confirm that in the Draft Determination, the Commission has correctly characterised, in terms of impacts on existing contracts, the unintended consequences the AER's proposal may have if implemented on the investment incentives protected by the 'fixed principle' in the access arrangement for the DBNGP.

Secondly, DBP notes that APA Group in discussions with the Commission acknowledges that the most favoured nation (**MFN**) clause could be triggered irrespective of whether the rebateable service was in the same market as the reference service or not.

Note: The content of this section, which is subject to a claim of confidentiality by DBNGP (WA) Transmission Pty Ltd, has been omitted in accordance with section 24 of the *Australian Energy Market Commission Establishment Act 2004* (SA) and section 319 of the National Gas Law.

Reference Service Definition - Comments on the Draft Preferred Rule

Subject to the comments below, DBP welcomes the Commission's decision (and the associated reasoning) to not accept the AER's proposed rule for the definition of reference services and to make a more preferable rule that (in the Commission's view) is likely to better contribute to the achievement of the national gas objective (NGO) than the proposed rule.

DBP does however, wish to make the following specific comments in relation to the draft preferred rule relating to the definition of reference service:

- The proposed amendment in example 2, under Rule 59(2), should use the word "specified" instead of "designated". This will ensure consistency with the provisions of rule 48(1)(c) which requires that a full access arrangement must specify the reference services; and
- The proposed rule 101(2) should use the word "deciding" rather than "considering".


DBP also submits that the following additional amendments need to be made to the current version of the NGR if the reference service definition is to be changed as proposed by the AEMC in its Draft Determination. This is to reflect the possible situation that there may be only one reference service in an access arrangement:

- Rule 48(1)(c) should be amended so that it reads: "specify each of the reference services";
- Rule 22(4)(c) should be amended so that it reads: "each of the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff";
- Rule 24(2)(c)(iii) should be amended so that it reads: "each of the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff";
- Rule 89(1)(a) should be amended so that it reads: "so that each of the reference tariffs will vary, over time, in a way that promotes efficient growth in the market for each of the reference services";
- Rule 97(3)(c) should be amended so that it reads: "the regulatory arrangements (if any) applicable to each relevant reference service before the commencement of the proposed *reference tariff variation mechanism*".

The AEMC should also give consideration as to whether changes should be made to the drafting of Rule 92 to the terms "reference tariffs" and "reference services", so that the drafting aligns with that in Rule 95 (which assumes that there may only be one reference service and one reference tariff).

DBP appreciates the opportunity it has had to date to engage in the Commissions' rule change assessment process. If the Commission wishes to make any queries regarding the issues raised in this submission please contact myself or Trent Leach, Manager Regulatory & Government Policy on (08) 9223 5347 or via trent.leach@dpp.net.au.

Yours sincerely



Anthony Cribb
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Company Secretary