

G WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

1311



PERTH, TUESDAY, 10 MARCH 1998 No. 47 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 4.00 PM

DAMPIER TO BUNBURY PIPELINE ACT 1997

**DAMPIER TO BUNBURY
PIPELINE REGULATIONS 1998**

WESTERN AUSTRALIA

**DAMPIER TO BUNBURY PIPELINE
REGULATIONS 1998**

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DAMPIER TO BUNBURY PIPELINE ACT 1997

**DAMPIER TO BUNBURY PIPELINE
REGULATIONS 1998**

Made by the Governor in Executive Council.

PART 1 — PRELIMINARY**Citation**

1. These regulations may be cited as the *Dampier to Bunbury Pipeline Regulations 1998*.

Commencement

2. These regulations come into operation at the pipeline transfer time.

Definitions

3. (1) In these regulations, unless the contrary intention appears —
 - “**access contract**” means a contract between the DBNGP owner and a shipper for access to gas transmission capacity, except that it does not include an exempt contract;
 - “**assigned access contract**” means an access contract resulting from the assignment to the DBNGP owner of rights and liabilities of the corporation under a contract that was entered into before the commencement of these regulations, and includes an access contract of that kind as varied or substituted if —
 - (a) the amount of capacity to which access is given is not increased; and
 - (b) the period for which access is given is not increased other than by exercising a right given before the commencement of these regulations;
 - “**assigned shipper**” refers to a person as a shipper under an assigned access contract;

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“associated”, when used to describe the relationship between a notional gate point and a physical gate point, means that they are each associated with the same sub-network;

“committed capacity” means any one or more of T1 capacity, T2 capacity, or T3 capacity (each of which is to be regarded as committed capacity of a particular kind);

“current description of the privatized DBNGP system” means —

- (a) all or part of the description of the corporation’s DBNGP system prepared by the corporation under clause 3 (3) of Schedule 5 to the *Gas Corporation Act 1994* that was current before that system or part of it became the privatized DBNGP system; or
- (b) the description prepared by the DBNGP owner in accordance with clause 4 of Schedule 1 to the Act;

“designating user” has the same meaning as it has in regulation 22(3);

“exempt contract” means a contract defined by section 20 (5) of the Act to be an exempt contract;

“exempt shipper” refers to a person as a shipper under an exempt contract;

“gas” means any gas or mixture of gases, whether naturally occurring or manufactured, intended for use —

- (a) as a fuel; or
- (b) in any chemical process;

“gas day” means the 24 hour period starting at 08:00 hours on a day and ending at 08:00 hours on the following day;

“gas distribution system” means the gas distribution system as defined in section 90 of the *Gas Corporation Act 1994*;

“inlet point” means a flange, joint, or other point, specified in an access contract as a point at which the shipper delivers gas to the DBNGP owner under the contract;

“notional gate point” has the meaning given to it in regulation 19;

“outlet point” means a flange, joint, notional gate point, or other point, specified in an access contract as a point at which the DBNGP owner delivers gas to the shipper under the contract;

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“physical gate point” means a flange, joint or other point specified in the current description of the privatized DBNGP system as a point that marks a boundary between the privatized DBNGP system and the gas distribution system;

“post-transfer access contract” means an access contract that is not an assigned access contract;

“post-transfer shipper” refers to a person as a shipper under a post-transfer access contract;

“reasonable and prudent person” means a person acting in good faith with the intention of performing his or her contractual obligations and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognised standards and applicable laws engaged in the same type of undertaking under the same or similar circumstances and conditions;

“T1 capacity” means capacity of the privatized DBNGP system to transport gas to an outlet point to which capacity a shipper has a right of access under a contract that describes that capacity as T1 capacity and is not an exempt contract;

“T2 capacity” means capacity of the privatized DBNGP system to transport gas to an outlet point to which capacity a shipper has a right of access under a contract that describes that capacity as T2 capacity and is not an exempt contract;

“T3 capacity” means capacity of the privatized DBNGP system to transport gas to an outlet point to which capacity a shipper has a right of access under a contract that describes that capacity as T3 capacity and is not an exempt contract;

“T1 cutoff” and **“T2 cutoff”** have the meanings given by regulation 11;

“tranche” means Tranche 1, Tranche 2, or Tranche 3;

“Tranche 1”, **“Tranche 2”**, and **“Tranche 3”** have the meanings given by regulation 11.

(2) For the purposes of these regulations, an assigned access contract that —

(a) describes capacity as “shipper’s T1 capacity”, “ST1 capacity”, “capacity in Tranche 1”, or in any other way intended to convey that the capacity is to be treated in a way substantially similar to the way T1 capacity is treated by these regulations, is to be taken to describe that capacity as T1 capacity;

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- (b) describes capacity as “shipper’s T2 capacity”, “ST2 capacity”, “capacity in Tranche 2”, or in any other way intended to convey that the capacity is to be treated in a way substantially similar to the way T2 capacity is treated by these regulations, is to be taken to describe that capacity as T2 capacity;
- (c) describes capacity as “shipper’s T3 capacity”, “ST3 capacity”, “capacity in Tranche 3”, or in any other way intended to convey that the capacity is to be treated in a way substantially similar to the way T3 capacity is treated by these regulations, is to be taken to describe that capacity as T3 capacity.

Assigned access contracts and exempt contracts

4. (1) That a provision of these regulations is expressed so as not to apply to or in relation to an assigned access contract, an exempt contract, an assigned shipper, or an exempt shipper does not prevent an assigned access contract or an exempt contract from dealing with the subject matter of that provision, either in the same way or differently.

(2) So far as it is consistent with the Act to do so, an assigned access contract is, after its assignment under Part 3 of the Act, to be read and construed as described in regulation 90 (2) of the *Gas Transmission Regulations 1994* as it was in force before those regulations were repealed.

(3) These regulations do not apply to the extent that their application would be inconsistent with anything in an assigned access contract as read and construed in accordance with subregulation (2) or in an exempt contract.

Capacity refers to average daily capacity

5. (1) A reference in these regulations to capacity to transport gas is to that capacity averaged across a gas day unless the contrary intention appears in these regulations.

(2) A reference in an access contract to capacity to transport gas is to that capacity averaged across a gas day unless the contrary intention appears in these regulations or the contract.

*Dampier to Bunbury Pipeline Regulations 1998***PART 2 — SEPARATION OF BUSINESS ACTIVITIES****Definitions****6.** In this Part —

“affiliate”, in relation to the DBNGP owner, means —

- (a) if the DBNGP owner comprises 2 or more persons, any of those persons;
- (b) an entity controlled by the DBNGP owner or by a person who is an affiliate under paragraph (a);
- (c) an entity that controls the DBNGP owner or controls a person who is an affiliate under paragraph (a);
- (d) an entity, other than the DBNGP owner or a person who is an affiliate under paragraph (a), that is controlled by an entity referred to in paragraph (c);

“control”, in relation to an entity, means, either directly or indirectly, to —

- (a) control the composition of the entity’s managing body;
- (b) be in a position to cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the entity; or
- (c) hold more than one half of the issued share capital of the entity (excluding any part of that issued share capital that does not carry a right to participate beyond a specified amount in a distribution of either profits or capital);

“related business” means the business of producing, purchasing, trading, or selling gas in Western Australia but does not include purchasing or selling gas to the extent necessary —

- (a) for the safe and reliable operation of the privatized DBNGP system; or
- (b) to enable the DBNGP owner to provide services to a shipper in respect of maintaining a balance between total quantities of gas that the shipper puts into and takes from the privatized DBNGP system;

“staff”, in relation to the DBNGP owner or an affiliate, means its officers, servants, consultants, independent contractors, or agents.

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Related business not to be carried on

7. (1) The DBNGP owner is not to participate in or be connected with a related business.

(2) A person who is a member of the staff of the DBNGP owner is not to participate in or be connected with a related business for and on behalf of the DBNGP owner.

(3) A person who contravenes subregulation (1) or (2) commits an offence and is liable to a penalty of \$1 000.

Affiliates of the DBNGP owner

8. (1) If an affiliate of the DBNGP owner participates in or is connected with a related business —

- (a) the DBNGP owner is not to employ or retain as a member of the DBNGP owner's marketing staff any staff of the affiliate;
- (b) the DBNGP owner is to ensure that none of its staff is a member of the affiliate's marketing staff; and
- (c) the DBNGP owner is not to favour an affiliate as described in subregulation (6).

(2) In subregulation (1) and this subregulation —

“affiliate's marketing staff” means any member of the affiliate's staff directly involved in advertizing or selling in connection with a related business, but does not include anyone by reason only that —

- (a) the person is —
 - (i) the executive officer or another officer of the affiliate to whom anyone else reports directly or indirectly on any of those matters; or
 - (ii) an officer of the affiliate involved in the affiliate's strategic decision-making;

or

- (b) the person performs the function of providing technical, administrative, accounting or other services;

“DBNGP owner's marketing staff” means any member of the DBNGP owner's staff directly involved in negotiating access contracts or advertizing, selling, or providing rights to access to

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gas transmission capacity, but does not include anyone by reason only that —

- (a) the person is —
 - (i) the executive officer or another officer of the DBNGP owner to whom anyone else reports directly or indirectly on any of those matters; or
 - (ii) an officer of the DBNGP owner involved in the DBNGP owner's strategic decision-making;

or

- (b) the person performs the function of providing technical, administrative, accounting or other services.

(3) If an affiliate of the DBNGP owner participates in or is connected with a related business, the DBNGP owner is required, within the period fixed by subregulation (4), to —

- (a) devise, document in detail, and implement, procedures that are designed to avoid the DBNGP owner favouring an affiliate as described in subregulation (6); and
- (b) give the Coordinator a copy of the detailed documentation of the procedures.

(4) The period for compliance with subregulation (3) is —

- (a) if the affiliate is participating in or is connected with a related business when these regulations come into operation, the period ending 90 days after the day on which these regulations come into operation;
- (b) otherwise, the period ending 90 days after the day on which the affiliate begins to participate in or be connected with a related business.

(5) Procedures documented under subregulation (3) (a) are not sufficient for the purposes of subregulation (3) unless they have been first approved by the Coordinator and the DBNGP owner may amend the procedures with the Coordinator's approval, and a reference to the procedures includes a reference to them as amended from time to time.

(6) For the purposes of this regulation the DBNGP owner favours an affiliate if —

- (a) in making a decision concerning the provision of access to gas transmission capacity; or

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- (b) otherwise in operating the privatized DBNGP system and conducting the business in the course of which it is operated,

the DBNGP owner has regard to the interests of the affiliate in priority to the interests of other shippers and prospective shippers other than in accordance with the Act or to the extent necessary to comply with a contract entered into before the commencement of these regulations or an access contract approved under regulation 9.

(7) The DBNGP owner is to ensure that procedures documented under subregulation (3) (a) are complied with, and is to monitor compliance with them.

(8) If a person requests the DBNGP owner to make available —

- (a) a copy of the detailed documentation prepared under subregulation (3) (a); or
- (b) a detailed description of how it has monitored compliance with procedures documented under subregulation (3) (a),

the DBNGP owner is to comply with the request as soon as is reasonably practicable.

(9) The DBNGP owner may charge a person a reasonable fee for making anything available under subregulation (8) but the fee is not to take into account any costs associated with preparing the documentation or description.

Contracts with affiliates require approval

9. (1) A post transfer access contract under which the DBNGP owner is to provide access to gas transmission capacity to an affiliate is subject to the prior approval of the Coordinator.

(2) If the approval of the Coordinator under this regulation is requested and the Coordinator refuses to give the approval requested, the Coordinator is required to give to the person requesting the approval written reasons for the refusal.

(3) If the approval of the Coordinator under this regulation is requested and the Coordinator does not, within the period fixed by subregulation (4), notify the person making the request that the request is refused, the Coordinator is to be taken to have given the approval requested.

(4) The period for notifying a person that a request is refused is the period of 21 days after the day on which the Coordinator received the request except that if, during that period, the Coordinator notifies the person that additional information is required before a decision can be made, the day on which the Coordinator notifies the person that additional information is required and each day after that until and including the day on which the Coordinator receives all the additional information is to be disregarded when counting the period of 21 days.

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PART 3 — CAPACITY TRANCHES AND CAPACITY GENERALLY

Definitions

10. In this Part —

“**cutoff**” means a T1 cutoff or T2 cutoff;

“**full-haul capacity**” means the capacity of the privatized DBNGP system to transport gas to an outlet point downstream of the compressor station site known as Compressor Station 9.

Capacity tranches and cutoffs

11. (1) The full-haul capacity of the privatized DBNGP system is divided into Tranche 1, Tranche 2, and Tranche 3.

(2) Tranche 1 comprises the portion of full-haul capacity that lies between zero and the T1 cutoff.

(3) Tranche 2 comprises the portion of full-haul capacity that lies between the T1 cutoff and the T2 cutoff.

(4) Tranche 3 means the portion of full-haul capacity that is not Tranche 1 or Tranche 2.

(5) The T1 cutoff and the T2 cutoff are the levels of full-haul capacity described in the DBNGP access manual as the T1 cutoff and the T2 cutoff.

(6) There may be different cutoffs for different periods of the year.

Cutoff levels

12. (1) A cutoff cannot be changed unless —

(a) there is a material change, other than a short term change, in the configuration or operation of the privatized DBNGP system that the DBNGP owner believes will or might affect the probability of supply at the cutoff; or

(b) the Coordinator has requested the DBNGP owner in writing signed by the Coordinator, to recalculate the level for the cutoff.

(2) The recalculation of the level for a cutoff is to be on the basis that —

(a) the probability of supply at a T1 cutoff is as close as practicable to 98%; and

(b) the probability of supply at a T2 cutoff is as close as practicable to 92%.

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(3) If the Coordinator requests the DBNGP owner to recalculate the level for a cutoff the DBNGP owner is to —

- (a) perform the recalculation in accordance with subregulation (2); and
- (b) in writing, inform the Coordinator, each shipper other than an exempt shipper, and each prospective shipper of whom the DBNGP owner is aware, of the result of the recalculation.

(4) When informing a shipper or prospective shipper of the result of the recalculation, the DBNGP owner is to include an explanation to the effect that the relevant cutoff only changes if it is changed in the DBNGP access manual.

(5) In this regulation —

“probability of supply” means the probability that full-haul capacity will not fall below the cutoff level other than because of major works;

“major works” means any enhancement, expansion, connection, pigging or other work that the DBNGP owner needs to undertake on the privatized DBNGP system and that —

- (a) cannot reasonably be scheduled at a time when it will not affect gas transmission capacity; and
- (b) by its nature or magnitude would require a reasonable and prudent person to wholly or partially reduce gas transmission capacity.

Firm and non-firm capacities

13. For the purposes of the Act, Tranche 1 is firm capacity and Tranche 2 and Tranche 3 are each non-firm capacity.

Saving of certain rights

14. Nothing in this Part limits the DBNGP owner's rights however arising to wholly or partially curtail or interrupt any shipper's use of gas transmission capacity, or to refuse to accept gas from or deliver gas to a shipper.

Curtailement and interruption between different kinds of committed capacity

15. (1) The DBNGP owner, in its operation and maintenance of the privatized DBNGP system, is to use its best endeavours to minimize any curtailement of the use of the T1 capacity of a post-transfer shipper.

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(2) Subject to regulations 14, 17, and 18, the DBNGP owner, in response to a reduction in gas transmission capacity, is not, without the prior approval of the shipper, to —

- (a) wholly or partially curtail the use of the T1 capacity of a post-transfer shipper until the DBNGP owner has reduced to zero the use of all shippers' T2 capacities and T3 capacities; or
- (b) wholly or partially interrupt the use of the T2 capacity of a post-transfer shipper until the DBNGP owner has reduced to zero the use of all shippers' T3 capacities.

Security of supply for the corporation

16. Despite anything else in these regulations, the DBNGP owner is not, without the prior approval of the corporation, to wholly or partially curtail the use of the corporation's T1 capacity below 40 TJ/d in total until the use of the T1 capacities of all other post-transfer shippers has been reduced to zero.

Curtailment or interruption for shipper's default

17. Subject to regulation 16, if and to the extent that, because of the default, negligence, breach of contractual term, or other misconduct of a post-transfer shipper (in this regulation called "**the defaulting shipper**") —

- (a) a reduction in gas transmission capacity is caused that makes necessary any curtailment or interruption of the use of gas transmission capacity by any other post-transfer shipper; or
- (b) the DBNGP owner is entitled under these regulations or an access contract to refuse to accept gas from or deliver gas to any other post-transfer shipper (or, if applicable, to curtail or interrupt the use of gas transmission capacity by any other post-transfer shipper),

the DBNGP owner must wholly refuse to accept gas from or deliver gas to the defaulting shipper and must reduce to zero the defaulting shipper's use of gas transmission capacity of any kind before it reduces the other post-transfer shipper's use of gas transmission capacity of any kind, and the DBNGP owner is not liable to the defaulting shipper for any damage arising from that curtailment, interruption or refusal.

Exclusion of shipper's capacity from apportionment of curtailments or interruptions in certain circumstances

18. Subject to regulation 16, if and to the extent that —

- (a) the use of gas transmission capacity by a particular post-transfer shipper would, but for this regulation, be included in an apportionment of curtailments or interruptions; and

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- (b) in the view of a reasonable and prudent person, the inclusion of that use of gas transmission capacity would for any reason (including without limitation the location of the particular post-transfer shipper's inlet point or inlet points or outlet point or outlet points) be unlikely to wholly or partially reduce the need to curtail or interrupt any other shipper's use of gas transmission capacity,

the DBNGP owner may exclude the use of gas transmission capacity referred to in paragraph (a) from the apportionment of curtailments or interruptions despite what would otherwise be the DBNGP owner's obligation to include that use in the apportionment.

*Dampier to Bunbury Pipeline Regulations 1998***PART 4 — TECHNICAL AND OPERATIONAL MATTERS****Definitions**

19. In this Part —

“**gate station**” means the metering equipment site associated with a physical gate point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services;

“**notional gate point**”, in relation to a sub-network, means the notional gate point for that sub-network referred to in regulation 20(1).

Delivery of gas to sub-networks

20. (1) The DBNGP owner is to ensure that there is a notional gate point for each sub-network.

(2) An access contract for the transport of gas that is to be delivered into a sub-network is to be for the transport of the gas to the notional gate point for the sub-network and —

- (a) a curtailment of or interruption to the shipper's use of gas transmission capacity; or
- (b) a refusal to deliver gas to the shipper,

is to be taken to occur at the notional gate point for the sub-network.

(3) An access contract for the transport of gas that is to be delivered into a sub-network can not be for the transport of gas to a physical gate point but this does not prevent a notional gate point from being at the same physical location as a physical gate point.

(4) The DBNGP owner is responsible for managing at what times, to what extent, and in what manner, gas that is to be delivered into a sub-network from the privatized DBNGP system is physically transported into the sub-network and is to discharge that responsibility in accordance with its obligations under the operating agreement referred to in regulation 23(2) and having regard to —

- (a) the corporation's reasonable requirements as the operator of the gas distribution system; and
- (b) the interests of all shippers and designating users.

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Metering gas delivered at notional gate points

21. The quantity of gas passing through a notional gate point in any period of time is to be taken to be the sum of the quantities metered as passing through all associated physical gate points in that period of time.

Gas taken by user determines shipper's outlet quantity

22. (1) Whenever a designating user receives, or in accordance with regulation 87 of the *Gas Distribution Regulations 1996* is to be taken to have received, a quantity of gas at a distribution outlet point in a sub-network, the designated shipper is to be taken to have received, and the DBNGP owner is to be taken to have delivered, gas of an equivalent quantity (in terajoules) at the notional gate point associated with the sub-network.

(2) Subregulation (1) applies in respect of a shipper regardless of —

- (a) the shipper's daily nomination at the notional gate point;
- (b) any metered quantity at any physical gate point or deemed metered quantity at the notional gate point; and
- (c) any operation of subregulation (1) in respect of any other shipper at the notional gate point.

(3) In subregulation (1) —

“designated shipper” means the shipper nominated under regulation 56 of the *Gas Distribution Regulations 1996* by the user in respect of the quantity of gas;

“designating user” means the user (which may be the designated shipper) who gave notice under regulation 56 of the *Gas Distribution Regulations 1996* nominating a designated shipper in respect of the quantity of gas;

“distribution outlet point” means the flange, joint or other point specified in a grant of access (as defined in the *Gas Distribution Regulations 1996*) as the point at which the user is entitled to take delivery of gas.

Operating agreement between DBNGP owner and corporation

23. (1) In this regulation —

“operating agreement” means the operating agreement between the DBNGP owner and the corporation —

- (a) which the DBNGP owner is a party to by reason of the agreement being specified in a transfer order (as defined in section 14 of the Act) pursuant to section 19 of the Act; and

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- (b) which deals with operational and technical matters necessary for the safe, reliable, efficient and convenient integration of the operation and maintenance of the privatized DBNGP system from time to time with the operation and maintenance of the gas distribution system from time to time.

(2) The DBNGP owner is to make a copy of the current operating agreement available for inspection by anyone asking to see it and is to provide copies of it to anyone asking for copies.

(3) The DBNGP owner may charge a person a reasonable fee for making the agreement available for inspection or for providing copies of it.

(4) An amendment to the operating agreement is of no effect unless it has been approved in writing by the Coordinator.

Requirements as to gas quality

24. (1) Except to the extent that the parties to the access contract may otherwise agree —

- (a) gas delivered to the DBNGP owner by a post-transfer shipper at an inlet point is to comply with the operating specification for Category A gas; and
- (b) gas delivered to a post-transfer shipper by the DBNGP owner at an outlet point that is not a notional gate point is to comply with the operating specification for Category B or Category C gas, as the case requires.

(2) Subject to subregulation (4), the operating specification for a category of gas is not to include a component that is less stringent than the corresponding component of the broadest specification for that category of gas.

(3) The operating specification for a category of gas may include one or more components that are expressed to apply —

- (a) in limited circumstances described in the specification; and
- (b) for a limited period ascertainable in accordance with the specification.

(4) A component referred to in subregulation (3) may be less stringent than the corresponding component of the broadest specification for the relevant category of gas.

(5) The operating specification for category B gas or category C gas is not to include a component that is less stringent than any corresponding component of a specification prescribed under the *Gas Standards Act 1972* for natural gas distributed to a consumer through gas mains and service lines.

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(6) The DBNGP owner upon request, is to make available to any person a copy of any current or superseded operating specification.

(7) Before approving a DBNGP access manual, or any amendment to it that alters the operating specification, the Coordinator is to —

- (a) give notice of the operating specification proposed to be specified or the proposed amendment to the corporation and to every shipper, and cause a copy of that notice to be published in the *Gazette*; and
- (b) give interested persons a reasonable opportunity to make representations in relation to the proposed specification or amendment.

(8) In this regulation and Schedule 1 —

“**broadest specification**”, for a category of gas, means the gas quality specification for that category of gas set out in Schedule 1, and includes each component of that specification;

“**category A gas**” means gas delivered to the DBNGP owner by a post-transfer shipper at an inlet point;

“**category B gas**” means gas delivered to a post-transfer shipper by the DBNGP owner at an outlet point, other than a notional gate point, at or upstream of the W LPG plant;

“**category C gas**” means gas delivered to a post-transfer shipper by the DBNGP owner at an outlet point, other than a notional gate point, downstream of the W LPG plant;

“**cubic metre**” or “**m³**” means a cubic metre at MSC;

“**extractable LPG**” means LPG that can be extracted by the W LPG plant without causing any gas to fail to comply with the operating specification for category C gas;

“**inert gases**” means any one or any mixture of helium, neon, argon, krypton, xenon, radon, nitrogen and carbon dioxide;

“**LPG**” means the sum of propane and butane components of gas;

“**MSC**” means metric standard conditions, being a pressure of 101.325 kPa and a temperature of 15°C;

“**operating specification**”, for a category of gas, means the gas quality specification for that category of gas specified in Part 6 of the DBNGP access manual and includes each component of the specification;

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“**relative density**” is expressed at MSC and means the molar mass of a gas in g/mol divided by 28.9641 g/mol (being the molar mass of dry air as defined in ISO 6976) and corrected for the effect of deviation from ideal gas behaviour upon both air and gas;

“**WLPG plant**” means the LPG extraction plant fronting Leath and Mason Roads, Kwinana, that is operated by Wesfarmers LPG Pty Ltd;

“**Wobbe Index**” means the number obtained by the formula:

$$\frac{\text{higher heating value}}{\sqrt{\text{relative density}}} = \text{Wobbe Index} \quad .$$

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PART 5 — ENTITLEMENT TO GAS

Definition

25. In this Part —

“**possession**” includes custody, control, and an immediate right to possession, custody, or control.

Shipper's title to gas

26. (1) Before a post-transfer shipper can deliver gas to the DBNGP owner at an inlet point, the shipper is to —

- (a) have title to and possession of the gas; and
- (b) be able to provide evidence to the DBNGP owner's satisfaction of the shipper's title to and possession of the gas, whether by reference to a contract by which the shipper buys or sells gas or otherwise.

(2) To the extent necessary to ensure that a shipper has title to and possession of all gas that the shipper delivers to the DBNGP owner at an inlet point under a post-transfer access contract there is, an instant before the delivery, by force of this regulation, a transfer of title to and possession of the gas to the shipper.

No actions against DBNGP owner in respect of gas delivered to it

27. Neither a shipper nor any other person has a claim against the DBNGP owner in respect of any gas delivered to and received by the DBNGP owner at an inlet point —

- (a) claiming any right or title to or other interest in, or any encumbrance, lien or claim of any nature over, the gas; or
- (b) in respect of any unpaid charges, royalties or taxes in respect of or in connection with the gas or the production of the gas incurred by any person (including the shipper) prior to or arising out of the delivery of the gas to the DBNGP owner.

Transfer of title and possession of gas to the DBNGP owner

28. (1) If a person delivers gas to the DBNGP owner at an inlet point, title to and possession of the gas is transferred, by force of this regulation, from the person to the DBNGP owner, and the transfer has effect at the inlet point and at the time of delivery.

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(2) Without limiting the other ways in which the DBNGP owner may, after receipt of gas at an inlet point, deal with the gas as the person having sole title to it and possession of it, the DBNGP owner may —

- (a) consume the gas (for any operational or other purpose and before meeting any obligation to deliver gas);
- (b) compress, clean, process, odorize and store the gas; and
- (c) commingle the gas with any other gas in the privatized DBNGP system.

Entitlements to receive gas

29. (1) Subject to subregulations (4) and (5), upon the transfer from a post-transfer shipper to the DBNGP owner of title to and possession of a quantity (in terajoules) of gas delivered at an inlet point —

- (a) the shipper becomes entitled to receive gas from the DBNGP owner at an outlet point other than a notional gate point;
- (b) a designating user becomes entitled to receive gas from the corporation at a distribution outlet point; or
- (c) entitlements arise under each of paragraphs (a) and (b).

(2) The quantity of gas that the shipper or the designating user becomes, or the shipper and the designating user between them become, entitled to receive is a quantity equivalent (in terajoules) to the quantity of gas delivered at the inlet point.

(3) Upon the designating user receiving a quantity of gas from the corporation at a distribution outlet point under an entitlement given by subregulation (1), the corporation becomes entitled to receive a quantity of gas equivalent (in terajoules) from the DBNGP owner at a physical gate point through which gas delivered at that distribution outlet point passes from the privatized DBNGP system.

(4) Subregulations (1) and (2) do not affect —

- (a) a provision of these regulations or an access contract entitling the DBNGP owner to wholly or partly curtail or interrupt the shipper's use of gas transmission capacity or to wholly or partly refuse to deliver gas to the shipper; or
- (b) a provision of the *Gas Distribution Regulations 1996* or any grant of access referred to in those regulations entitling the corporation to wholly or partly curtail deliveries of gas to the user referred to in those regulations.

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(5) Subregulations (1), (2), and (3) do not apply to the extent of any inconsistency with a provision of an access contract that is expressly made under this subregulation.

(6) In this regulation “**distribution outlet point**” has the same meaning as it has in regulation 22(3).

Delivery at outlet point

30. (1) All gas delivered under a post-transfer access contract by the DBNGP owner at an outlet point is to be received by the shipper, and not by any other person.

(2) Subregulation (1) does not prevent the shipper from agreeing with any other person to transfer to the person title to and possession of the gas at any time after the shipper receives title to and possession of the gas from the DBNGP owner under subregulation (3).

(3) Unless the delivery is at an outlet point that is a notional gate point, the delivery of the gas is by force of this regulation a transfer of title to and possession of the gas from the DBNGP owner to the shipper, effective at the outlet point and at the time of delivery, and free and clear of all encumbrances, liens and claims of any nature.

(4) If the delivery is at an outlet point that is a notional gate point, the delivery of the gas by the DBNGP owner is followed immediately by a delivery of the gas from the shipper back to the DBNGP owner at the outlet point and no transfer of title to and possession of the gas is involved.

(5) Neither the shipper nor any other person has a claim of the kind referred to in regulation 27..(a) or (b) against the DBNGP owner in respect of gas referred to in subregulation (4).

Transfer of title and possession of gas to the corporation

31. The physical delivery of gas by the DBNGP owner at a physical gate point is delivery to the corporation, and the delivery of the gas is by force of this regulation a transfer of title to and possession of the gas from the DBNGP owner to the corporation, effective at the physical gate point and at the time of delivery, and free and clear of all encumbrances, liens and claims of any nature.

Entitlement to receive gas not reduced for lost gas or operational fuel

32. An entitlement under regulation 29 to receive gas is not to be reduced by an allowance for either or both of —

- (a) gas consumed or otherwise used by the DBNGP owner in its operation of the privatized DBNGP system or by the corporation in its operation of the gas distribution system; or

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- (b) unaccounted for gas, and gas which leaks or otherwise escapes from either or both of the privatized DBNGP system or the gas distribution system (whether in normal operational circumstances or due to any rupture or other abnormal leakage).

Entitlement to receive gas not proprietary

33. An entitlement under regulation 29 to receive gas is not a proprietary entitlement.

Exclusion of right to use and property rights

34. (1) Neither the delivery of gas to the DBNGP owner at an inlet point nor the operation of regulation 29 gives a shipper or a designating user any right to the use of, or access to, all or any part of the privatized DBNGP system or all or any part of the gas distribution system, or any legal or equitable right or title to or interest in —

- (a) any gas in the privatized DBNGP system or the gas distribution system; or
- (b) all or any part of the privatized DBNGP system or all or any part of the gas distribution system.

(2) The operation of regulation 29 does not give the corporation any right to the use of, or access to, all or any part of the privatized DBNGP system, or any legal or equitable right or title to or interest in —

- (a) any gas in the privatized DBNGP system; or
- (b) all or any part of the privatized DBNGP system.

*Dampier to Bunbury Pipeline Regulations 1998***PART 6 — PRICING****Prices**

35. (1) In a post-transfer access contract —
- (a) if a capacity reservation charge or commodity charge is a component of the price for T1 capacity or T2 capacity, that component is not to exceed the maximum amount set for it in subregulation (2), (3), or (4); and
- (b) whether or not the price for T1 capacity or T2 capacity has those components, or any other components, the price is not to exceed the amount that would apply if the price comprised only the components mentioned in paragraph (a) and each of those components were at the maximum amount set for it in this regulation.

[Note: *The effect of subregulation (1) (b), if the shipper used all of its T1 or T2 capacity on every gas day, would be that the maximum price (including all components) that could be charged would be:*

1998	T1 capacity:	\$1.189428/GJ delivered
	T2 capacity:	\$1.143555/GJ delivered
1999	T1 capacity:	\$1.094714/GJ delivered
	T2 capacity:	\$1.053577/GJ delivered

(This note is for information only and is not part of the regulations. It might not reflect amendments made after the first publication of the regulations.)]

- (2) For T1 capacity or T2 capacity available in the year 1998, if the service is a full-haul service —
- (a) the maximum capacity reservation charge that applies per gigajoule per gas day of reserved capacity —
- (i) for T1 capacity, is \$0.917457;
- (ii) for T2 capacity, is \$0.871584;
- (b) the maximum commodity charge that applies per gigajoule delivered —
- (i) for T1 capacity, is \$0.271971;
- (ii) for T2 capacity, is \$0.271971.

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(3) For T1 capacity or T2 capacity available in the year 1999, if the service is a full-haul service —

- (a) the maximum capacity reservation charge that applies per gigajoule per gas day of reserved capacity —
 - (i) for T1 capacity, is \$0.822743;
 - (ii) for T2 capacity, is \$0.781606;
- (b) the maximum commodity charge that applies per gigajoule delivered —
 - (i) for T1 capacity, is \$0.271971;
 - (ii) for T2 capacity, is \$0.271971.

(4) For T1 capacity or T2 capacity available in the year 1998 or the year 1999, if the service is not a full-haul service (whether it is forward-haul or back-haul), the amounts of the maximum price, the maximum capacity reservation charge, and the maximum commodity charge that apply are the amounts resulting from the formula:

$$F \times \frac{D}{1399}$$

where —

F is the amount that would apply if the service were a full-haul service;

D is the distance in kilometres of pipeline between the relevant inlet point and —

- (a) if the relevant outlet point is a notional gate point — the most distant physical gate point associated for the time being with the notional gate point; or
- (b) otherwise, the relevant outlet point.

(5) If at any time a new physical gate point is commissioned in such a location that it becomes the most distant physical gate point associated with a notional gate point, then the distance (D) in subregulation (4) is measured to the new physical gate point.

(6) Nothing in this regulation applies to or prevents —

- (a) charges for spot access;
- (b) charges for the provision of or use by a shipper of particular outlet metering facilities, outlet laterals, or other facilities that are to be used by, or in respect of, that shipper (whether or not

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they are also to be used by, or in respect of, any other shipper) but not all shippers;

- (c) charges for the provision of goods, capacity services, or other services, other than those referred to in subregulations (1) to (4), under an agreement;
 - (d) charges above those referred to in subregulations (1) to (4) imposed to render economically feasible an access contract or development of capacity that would not be otherwise;
 - (e) charges for exceeding limitations in an access contract on peaking and balancing; or
 - (f) charges imposed in relation to the quality of gas delivered by a shipper at an inlet point, whether or not the gas complies with the relevant gas quality specification.
- (7) In this regulation —

“back-haul” means that the outlet point is upstream of the inlet point or points;

“capacity reservation charge” means a component of the price for T1 capacity or T2 capacity that is for the quantity of gas transmission capacity to which the shipper has access under the shipper’s access contract;

“commodity charge” means a component of the price for T1 capacity or T2 capacity that is for delivering a quantity of gas;

“forward-haul” means that the outlet point is downstream of the inlet point or points;

“full-haul service” means a service involving the transport of gas to an outlet point downstream of the compressor station site known as Compressor Station 9;

“most distant” means most distant from the relevant inlet point;

“reserved capacity” means the gas transmission capacity to which the shipper has access under the shipper’s access contract;

“year 1998” means the year ending on 1 January 1999 at 08:00 hours;

“year 1999” means the year ending on 1 January 2000 at 08:00 hours.

No “statutory price” except for T1 capacity and T2 capacity

36. There is no statutory price for the purposes of section 20 of the Act except for capacity for which a maximum price is fixed by regulation 35.

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PART 7 — INFORMATION

Coordinator to be given copy of access contract

37. (1) The DBNGP owner is required to give to the Coordinator a copy of each access contract and of any amendment made to an access contract within 30 days after the contract or amendment was made.

(2) Subregulation (1) does not apply to a contract for spot access.

Changes to the DBNGP access manual

38. If the DBNGP access manual is amended or substituted, the DBNGP owner is required to —

- (a) give notice in the *Gazette* of the fact that it was amended or substituted, stating where a copy of the DBNGP access manual is available under clause 3 (5) of Schedule 1 to the Act; and
- (b) give to each shipper other than an exempt shipper a copy of the amended or the new DBNGP access manual, as the case requires.

Public information on capacity

39. (1) The DBNGP owner is to prepare annually —

- (a) a report on current commitments to shippers of gas transmission capacity during at least the next 5 years;
- (b) a forecast of likely future commitments to shippers and prospective shippers of gas transmission capacity during at least the next 5 years;
- (c) a report on firm capacity and non-firm capacity during the next 5 years based on existing facilities and enhancements to which the DBNGP owner is committed;
- (d) a forecast of firm capacity and non-firm capacity during the next 5 years based on existing facilities and plans for developable capacity currently being considered by the DBNGP owner; and
- (e) a forecast for the next 5 years of the T1 cutoff and the T2 cutoff.

(2) The first reports and forecasts required by subregulation (1) after the day on which these regulations commence are to be prepared within 90 days after that day, and after that they are to be prepared within one year of the time when reports and forecasts last prepared were completed.

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(3) The DBNGP owner is to make the reports and forecasts required by subregulation (1) available for inspection by anyone asking to see them and is to provide copies of them to anyone asking for copies.

(4) The DBNGP owner may charge a person a reasonable fee for making the reports and forecasts available for inspection or for providing copies of them but the fee is not to take into account any costs associated with preparing the reports and forecasts.

Customized reports

40. (1) A shipper or prospective shipper may at any time, in writing, request the DBNGP owner to prepare a customized report for, and at the expense of, that person concerning the extent, if any, to which spare capacity or developable capacity may be made available to that person.

(2) The request is to contain at least the following information —

- (a) the start date and the end date of the period during which the availability is in question;
- (b) the proposed inlet point or points and outlet point or points;
- (c) the expected gas specification, temperature and pressure at the inlet point or points;
- (d) the proposed quantity of gas to be delivered at each inlet point and the proposed quantity of gas to be transported to each outlet point using committed capacity of a particular kind; and
- (e) the expected load characteristics, including the expected load factor, peak factor, maximum daily quantity and maximum hourly quantity.

(3) For the purposes of performing its obligations under this regulation the DBNGP owner may, if it is reasonable to do so, assume that the information given in the request or when it requests further information under this regulation is accurate.

(4) Within 10 days after receiving the request, the DBNGP owner is to notify the shipper or prospective shipper making the request —

- (a) whether the request contains sufficient information to enable the DBNGP owner to prepare the report;
- (b) if so, the anticipated cost of preparing the report; and
- (c) if not, what further information is required.

(5) If, after notifying a shipper or prospective shipper of further information that is required, the DBNGP owner receives the further

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information required, the DBNGP owner is to notify the shipper or prospective shipper, within 10 days after receiving the further information, of the anticipated cost of preparing the report.

(6) When notifying the shipper or prospective shipper of the anticipated cost of preparing the report, the DBNGP owner is to inform the shipper or prospective shipper of the effect of subregulation (11) and may refuse to proceed with the preparation of the report unless the shipper or prospective shipper agrees in writing to pay to the DBNGP owner its reasonable costs of preparing the report even though, under that subregulation, the report may not be provided.

(7) If, after notifying a shipper or prospective shipper of the anticipated costs of preparing the report, the DBNGP owner is requested by the shipper or prospective shipper to proceed with the report, the DBNGP owner, unless allowed by subregulation (6) to refuse to do so, is to prepare for the shipper or prospective shipper, within 30 days after the request to proceed, a current report indicating —

- (a) for each inlet point specified in the request, how much of the quantity of gas proposed to be delivered at the inlet point could be taken at the inlet point during the period concerned, after allowing for commitments to existing shippers, without the DBNGP owner having to enhance or expand the privatized DBNGP system; and
- (b) for each outlet point specified in the request, how much of the quantity of gas proposed to be transported to the outlet point using committed capacity of a particular kind could be transported to the outlet point during the period concerned, after allowing for commitments to existing shippers, without the DBNGP owner having to enhance or expand the privatized DBNGP system,

and including a forecast of expected variations in those quantities throughout the period concerned, or a response indicating that the DBNGP owner needs to undertake investigations before providing the report requested.

(8) If the report indicates that the requirements of the person making the request could not be currently satisfied, it is to include an explanation outlining the extent of the inability to satisfy the requirements and indicating —

- (a) on the basis of current commitments; and
- (b) on the basis of the DBNGP owner enhancing or expanding the privatized DBNGP system to the extent necessary,

when the requirements could be expected to be able to be satisfied.

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(9) If the DBNGP owner provides a response indicating a need to undertake investigations before providing the report requested, the response must also advise the shipper or prospective shipper of —

- (a) the nature of the investigations;
- (b) the programme contemplated for completing the investigations;
and
- (c) any reasonable costs which the shipper or prospective shipper may be required to meet in respect of the investigations.

(10) If the shipper or prospective shipper consents to the programme in the response, the DBNGP owner must proceed forthwith to conduct the investigations in accordance with the programme.

(11) The DBNGP owner is not required to provide a person with a report prepared under this regulation unless the person has agreed to any conditions as to confidentiality that the DBNGP owner may reasonably impose having regard to the nature of the information contained in the report, but the fact that the report is not provided because the person did not agree to any of those conditions does not relieve the person of liability to pay the costs of preparing the report.

Confidentiality

41. The DBNGP owner is to prepare the reports and forecasts required by regulation 39(1) and any report under regulation 40 in a way that —

- (a) does not involve a breach of any confidentiality provision of an exempt contract or an access contract; and
- (b) does not involve any other breach of a duty of confidentiality to a shipper or prospective shipper.

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PART 8 — MISCELLANEOUS PROVISIONS

No access to non-firm capacity unless terms and conditions agreed

42. (1) Subject to subregulation (2), access to spare capacity that is non-firm capacity is to be made available only if the parties to the access contract have agreed on the price, and other terms and conditions, on which it is to be made available.

(2) Subregulation (1) does not apply to access to spare capacity in Tranche 2 if there is no spare capacity in Tranche 1.

Spot access

43. Part 2 of the DBNGP access manual applies in respect of spot access.

Applications for access to gas transmission capacity and transitional provision

44. (1) A person wishing to be given access to gas transmission capacity may apply in accordance with Part 3 of the DBNGP access manual, and that Part applies in respect of the application.

(2) An application that, on the commencement of these regulations, had been made but not finally dealt with under the repealed regulations is to be dealt with under Part 3 of the DBNGP access manual as if the provisions in that Part were a continuation of the provisions of the repealed regulations that correspond with that Part.

(3) In subregulation (2) —

“**repealed regulations**” means the *Gas Transmission Regulations 1994* as in force immediately before the commencement of these regulations.

Relinquishing shipper's access to gas transmission capacity

45. Part 4 of the DBNGP access manual applies in respect of the relinquishment by a post-transfer shipper of access to gas transmission capacity.

Capacity trading

46. Part 5 of the DBNGP access manual applies in respect of secondary markets in gas transmission capacity.

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Other matters prescribed by reference to the DBNGP access manual

- 47.** Part 7 of the DBNGP access manual applies in respect of —
- (a) the installation, operation, and maintenance of a supervisory control and data acquisition system for control, data collection, and telemetry, and matters related to the system;
 - (b) standards for work on or connected with the privatized DBNGP system;
 - (c) the treatment of gas losses from the privatized DBNGP system and gas consumed by the DBNGP owner;
 - (d) the DBNGP owner's electronic bulletin board system;
 - (e) the DBNGP owner's obligations to keep records about, and report on, curtailments, interruptions, and occasions when peaking or balancing limits set out in access contracts have been exceeded;
 - (f) contracting by the DBNGP owner for the provision of goods, capacity services, or other services related to the privatized DBNGP system;
 - (g) surcharges for exceeding a peaking or balancing limit set out in an access contract; and
 - (h) pricing and other adjustments on the basis of gas quality.

Fee for providing detailed description of privatized DBNGP system

- 48.** The fee prescribed for the purposes of clause 4 of Schedule 1 to the Act is \$50.

*Dampier to Bunbury Pipeline Regulations 1998***SCHEDULE 1 — BROADEST SPECIFICATIONS**

[r. 24(8)]

For the purposes of the definition of “broadest specification” in regulation 24(8), the gas quality specifications are as follows:

Component	Category A Gas	Category B Gas	Category C Gas
Maximum carbon dioxide (mol %)	3.6	4	4
Maximum inert gases (mol %)	6.5	7.0	7.0
Minimum higher heating value (MJ/m ³)	35.1	35.1	35.1
Maximum higher heating value (MJ/m ³)	42.3	42.3	42.3
Minimum Wobbe Index	46.0	46.0	46.0
Maximum Wobbe Index	51.5	51.5	51.5
Maximum total sulphur (mg/m ³) — unodorized gas — odorized gas	10 20	10 20	10 20
Maximum Hydrogen Sulphide (mg/m ³)	2	2	2
Maximum Oxygen (mol %)	0.2	0.2	0.2
Maximum Water (mg/m ³)	48	48	48
Hydrocarbon dewpoint over the pressure range 2.5 to 8.72 MPa absolute	Below 0°C	Below 0°C	Below 0°C
Maximum radioactive components (Bq/m ³)	600	600	600
Minimum extractable LPGs (t/TJ)	Until 08:00 hours on 1 July 2005: 1.45 From 08:00 hours on 1 July 2005: 0:00	n/a	n/a

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.



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