

# Minutes

## Standardisation Project Team Meeting No. 6

**Date/Time:** Tuesday-Wednesday, 9 May 2017, 10.00 am | 10 May 2017, 9:30 am

**Location:** Level 6, 201 Elizabeth Street, Sydney

**Attendees:**

<i>Project team</i>	Sally Calder, AGL Ainslie Lynch, APA Simon Taylor, DBP Samantha Staunton, Epic Michael Handley, Origin (Day 1) Brad Mills, Shell Peter Frost, EnergyAustralia Peter Tolhurst, Stanwell Jan Peric, Jemena Allan Ford, Arrow
<i>GMRG</i>	Nicole Dodd, analyst Angelo Mantsio, specialist technical advisor Katherine Lowe, GMRG senior technical advisor Sandra Gamble, GMRG facilitator

**Apologies:** Michael Handley (Day 2)

**Purpose:** Preliminary discussion on terms

**Reference:** ST.6.20170509

	Agenda Item	Discussion	Actions	Decisions / Views
1	<b>Recap on previous meeting</b>	<p>The minutes of the previous meeting were approved with minor amendments.</p> <p>The team reflected:</p> <ul style="list-style-type: none"> <li>• Progress had been made in coming to preliminary views on some terms.</li> <li>• Noted a common discussion point that primary shipper gas transportation contracts may need to be amended to accommodate secondary trading and provisions.</li> <li>• Discussed renomination rights, their value to shippers, and that if shippers wish to sell these rights in the secondary market, this is likely to be done through bespoke arrangements, (could be listed on the capacity trading platform listing service). The team are likely to recommend that the standardised contract provides for secondary shippers to have the ability to renominate at the pipeline operator's discretion.</li> </ul> <p>The team noted the progress that had been made by the other project teams.</p> <p>The team noted the GMRG Advisory Panel had convened.</p> <p>The team agreed David Rodwell from Macquarie Bank could provide an intermediary's perspective, and would be invited to the next meeting in Brisbane to provide his perspectives. The team would then ask for his advice regarding drafting.</p> <p>The team agreed to rotate the meetings between Melbourne, Brisbane and Sydney, with every second meeting to be held in Sydney.</p>	GMRG – Circulate presentations that have been presented in other project teams' meetings.	

	Agenda Item	Discussion	Actions	Decisions / Views
2	<b>Confirm in principle agreement for contract terms</b>	<p>The team noted the legacy arrangements that had resulted in the Dampier to Bunbury Pipeline operator taking title for gas, as being for comingling and provision of System Use Gas, and that this may not be as material for new contracts, given changing arrangements.</p> <p>The team confirmed their agreement of the preliminary view in the last meeting, with any outstanding concerns to be reviewed in line with drafting, for:</p> <ul style="list-style-type: none"> <li>• Gas quality</li> <li>• Metering</li> <li>• Curtailment procedures</li> <li>• Imbalance tolerance</li> <li>• Daily variance tolerance / penalty</li> <li>• Overrun tolerance / penalty</li> <li>• Transfers, assignment and novation of capacity</li> <li>• Representations and warranties</li> <li>• Possession, control and responsibility</li> <li>• Title</li> </ul>		
3	<b>Remaining contract terms</b>	<p>The team held a preliminary discussion regarding potential standardisation of <u>Liabilities and indemnities</u>:</p> <ul style="list-style-type: none"> <li>• Discussed the conflict in the value of a general liability provision and the implications of not standardising the clause across pipelines. The team considered lack of standardisation was likely to be a barrier for secondary shippers and limit fungibility. However, concerns were raised regarding agreeing on the appropriate level of detail to provide parties with confidence in understanding what methods for resolution will be available.</li> <li>• Discussed the implications for pipeline transport tariffs if the liability regime is significantly altered and thus so is their risk profile.</li> </ul>	<p>GMRG – add to “parking lot” to revisit at a later stage:</p> <ul style="list-style-type: none"> <li>• Over commitment of pipelines.</li> <li>• Indemnity</li> </ul> <p>All – research and share examples of different liability and indemnity regimes, such as for:</p> <ul style="list-style-type: none"> <li>• Gas Supply Agreements</li> <li>• knock-for-knock</li> <li>• international oil and gas industry and particularly where there are liquid capacity markets</li> <li>• off-specification gas</li> </ul> <p>Note: drafting of the liability and indemnity provisions in the standard secondary contract may consider these, while being consistent with the framework agreed and detailed to the right.</p> <p>GMRG – investigate generic insurance product for secondary traders that an entity (eg. the market</p>	<p>The team provided in principle agreement, subject to testing, to recommend provision in the operational transfer agreement between secondary shipper and pipeline operator:</p> <ul style="list-style-type: none"> <li>• Defines direct and consequential loss based on Jemena and APA’s standard agreements.</li> <li>• Specifies the permitted and non-permitted events that may impact the service.</li> <li>• Permitted events, which specify where the pipeline operator has an exclusion to provide the service, or for the shipper to pay, are to be: <ul style="list-style-type: none"> <li>○ <i>Maintenance (planned and unplanned)</i> - Interruptions due to maintenance, both planned and unplanned, is to be allowed uncapped.</li> <li>○ <i>Force Majeure</i> is to have a termination</li> </ul> </li> </ul>

	Agenda Item	Discussion	Actions	Decisions / Views
		<ul style="list-style-type: none"> <li>• Discussed current typical agreements:               <ul style="list-style-type: none"> <li>○ the typical definitions of direct and consequential loss, and specification of indemnities.</li> <li>○ permitted and non-permitted events giving rise to calling on the liability clause, who can call the events, where termination is applicable, and what happens to the capacity</li> <li>○ reciprocity of the clauses, and where this is appropriate and not.</li> <li>○ over commitment of pipelines and how this may be resolved as a breach of the contract.</li> <li>○ failure to supply as a breach of contract.</li> <li>○ maintenance caps that are currently in agreements, the proportionality of caps to MDQ, the application of annual caps to short-term trades and how this could be pro-rated.</li> <li>○ rebates available to some shippers on some pipelines where the liability caps have been breached, in particular for maintenance.</li> <li>○ <i>Off-specification gas</i> liability initiates after the notification process, as to who has accepted the risk for the gas. The liable party is responsible for:                   <ul style="list-style-type: none"> <li>▪ Direct loss if pipeline operator (or third party – for example, other shippers) puts in off-specification gas.</li> <li>▪ All loss (direct and consequential) if contracting shipper puts in the off-specification gas.</li> </ul> </li> </ul> </li> </ul>	<p>operator) could obtain on their behalf.</p>	<p>provision after 12 months</p> <ul style="list-style-type: none"> <li>○ <i>Other</i> to be defined as based on the standard APA clause</li> </ul> <ul style="list-style-type: none"> <li>• Non-permitted events are all events other than those permitted, including:               <ul style="list-style-type: none"> <li>○ <i>Wilful misconduct, gross negligence</i> and fraud based on Jemena and APA's standard agreements</li> <li>○ <i>Off-specification gas</i> is yet to be defined.</li> </ul> </li> </ul> <p>Recommended the Capacity Trading Agreement between the primary and secondary shipper</p> <ul style="list-style-type: none"> <li>○ Requires the secondary shipper to pay the primary shipper regardless of permitted or non-permitted events.</li> </ul>

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		<ul style="list-style-type: none"> <li>• Discussed the potential differences in the liability clauses between the transport agreements of primary and secondary shippers</li> <li>• Considered bespoke trades could occur through bare transfers if shippers want to negotiate a different liability regime than standard.</li> <li>• Discussed the requirement for information provision of maintenance schedules to the secondary market.</li> <li>• Discussed the trading confirmation process with the pipeline operator to ensure the seller has capacity available to sell, and discussed if negative values will be allowed. Noted the trading platform group will also be discussing operational implementation of trading.</li> <li>• Discussed liability clauses in other agreements and markets, and the circumstances of those agreements, including the Gas Supply Hub Exchange Agreement, knock-for-knock in the construction industry, Gas Supply Agreements, international oil and gas industry (see Action).</li> <li>• Commented liability for damage not a concern for intermediaries since will not be actually transporting physical gas.</li> </ul> <p>Discussed the potential for secondary shippers to sign up to a single insurance policy administrated by a single entity, such as AEMO.</p>		
4	<b>Break</b>	N/A	N/A	N/A
5	<b>Project team road map (1)</b>	The team agreed to discuss the rest of the remaining contract terms the next day.		

	Agenda Item	Discussion	Actions	Decisions / Views
6	Break between days	N/A	N/A	N/A
7	Recap on previous day	<p>The team reflected:</p> <ul style="list-style-type: none"> <li>Liabilities and indemnities are generally a point of contention in commercial negotiations, and hence the amount of discussion is not surprising.</li> <li>A simple secondary agreement may be beneficial in facilitating liquid trade, and requires an appropriate level of specification</li> <li>There is a need to distinguish between trades and agreements to be used on the exchange platform and bilaterally.</li> </ul>		
3 cont.	Remaining contract terms	<p>The team held a preliminary discussion regarding potential standardisation for the following contract terms. Note, where the team has reached in principle agreement, this is recorded in the 'Decisions/Views' column.</p> <p><u>Default</u></p> <ul style="list-style-type: none"> <li>Noted that the items to be decided include what constitutes default, the remedy options, and the time to remedy.</li> <li>Commented that the time periods for remedying financial and non-financial defaults appear to already be standard, and the consequences of not remedying are to suspend or terminate.</li> <li>The team discussed the possible outcomes if any of the parties default, as detailed in the annexed table. Ways to facilitate continued access to the capacity if a party was to default were discussed, such as allowing the option for the secondary trader to pay the published reference price to the pipeline operator if the primary shipper were to default. It was noted that this could be difficult if the primary shipper is not known to the secondary shipper that</li> </ul>	<p>All - For all items that have in principle agreement (as per 'Decisions/Views' column), engage in preliminary discussions with respective organisations and wider industry that recommendations are suitable.</p> <p>GMRG – add to “parking lot” to revisit at a later stage:</p> <ul style="list-style-type: none"> <li>Arrangements for defaulting traders that have traded on the exchange platform, noting these are likely to align with the provisions in the Gas Supply Hub Exchange Agreement.</li> </ul>	<p>The team provided in principle agreement, subject to testing, for the following clauses:</p> <p><u>Default</u></p> <p>Recommends the clause includes:</p> <ul style="list-style-type: none"> <li>Cure period to be 7 days for financial, and 21 days for a non-financial default.</li> <li>The annexed table contains a starting point for the provisions of the agreements.</li> </ul>

	Agenda Item	Discussion	Actions	Decisions / Views
		<p>has access to the capacity at the time of default. The secondary shipper would be able to approach the pipeline operator for a Primary contract to transport the available capacity.</p> <ul style="list-style-type: none"> <li>• Discussed the role of the exchange platform, prudentials, and the operator of the platform as the market clearer.</li> <li>• Discussed the likelihood of these arrangements being required, and that when required, the impact is material.</li> <li>• Discussed the interplay between measuring risk and having anonymous trading counterparties.</li> </ul> <p><u>Force majeure</u></p> <ul style="list-style-type: none"> <li>• Noted that events for force majeure are universal, with a test for force majeure having to be passed for a party to be able to call it-normally this requires the party's obligation to be impacted by greater than 50%.</li> <li>• Noted the occurrence of partial and prolonged force majeure, for example due to stress corrosion cracking.</li> <li>• Discussed the possibility of the primary shipper passing through a reduction in price in good faith if they had negotiated this in their primary Gas Transport Agreement. It was concluded that this was likely to introduce complexity in a liquid market as the product would be inconsistent.</li> <li>• Discussed payment requirements if a party was in force majeure, noting current standard agreements require continual payment. The team deemed requiring shippers to continue to pay as an appropriate risk for short term traders, given shippers have an opportunity to bilaterally negotiate different regimes for longer term trades.</li> </ul>		<p><u>Force majeure</u> Recommends the clause requires:</p> <ul style="list-style-type: none"> <li>• Secondary shippers are to pay the primary shipper for capacity, and any applicable charges to the pipeline operator regardless of force majeure having been called by any party.</li> <li>• Secondary shippers to not be given the provision to call force majeure in the Operational Transfer Agreement (between pipeline operator and secondary shipper) or the Capacity Transfer Agreement (between secondary and primary shipper). These are detailed in the table annexed.</li> </ul>

	Agenda Item	Discussion	Actions	Decisions / Views
		<ul style="list-style-type: none"> <li>• Commented the electricity market does not have force majeure, and this was a decision made in forming the National Electricity Market.</li> <li>• Discussed which parties should be able to call force majeure and the consequences for each.</li> <li>• Commented that payment tends to be in arrears.</li> <li>• Discussed termination after 12 months of prolonged majeure.</li> </ul> <p><u>Confidentiality</u></p> <ul style="list-style-type: none"> <li>• Discussed the potential introduction of reporting requirements through the reform process.</li> <li>• Commented further reporting requirements may also require existing primary Gas Transport Agreements to be amended.</li> </ul> <p><u>Dispute resolution</u></p> <ul style="list-style-type: none"> <li>• Clarified the difference between this clause and the Arbitration and Dispute Resolution work stream: this clause is required after the document has been signed for if there is a breach of contract or default or similar.</li> <li>• Discussed the mechanisms available for dispute resolution as negotiation, expert, arbitration, and courts of law, and the value of each.</li> </ul> <p><u>System use gas</u></p> <ul style="list-style-type: none"> <li>• The team provided agreement for the process to provide System Use Gas to be specified in a schedule to as per the preliminary view made in the previous meeting (Reference: ST.5.20170426.9).</li> </ul> <p><u>Receipt and delivery point temperatures and pressures</u></p> <ul style="list-style-type: none"> <li>• The team agreed that receipt and delivery point pressures and temperatures are</li> </ul>		<p><u>Confidentiality</u>  Recommends this clause be drafted as per the standard agreements or the Gas Supply Hub Exchange.</p> <p>Agreement with carve outs for any obligations introduced in the Rules</p> <p><u>Dispute resolution</u>  Recommends the following dispute resolution mechanisms to be offered in the secondary contracts:</p> <ul style="list-style-type: none"> <li>• Negotiation between the parties</li> <li>• If applicable (technical or financial) experts can be engaged for a binding decision</li> <li>• Court as a last resort.</li> </ul> <p>The team agreed to not include arbitration</p> <p><u>System Use Gas</u></p> <ul style="list-style-type: none"> <li>• Ref ST.5.20170426.9: Shippers are required to provide System Use Gas, with the process for doing so specified in a schedule or manual.</li> </ul> <p><u>Receipt and delivery point temperatures and pressures</u></p> <ul style="list-style-type: none"> <li>• The team recommends these be included in a pipeline specific schedule or manual.</li> </ul>

	Agenda Item	Discussion	Actions	Decisions / Views
		technical pipeline requirements that are not appropriate for standardisation.		
8	<b>Confirm in principle agreement of terms</b>	The team discussed the lawyer's potential approach to drafting the terms based on their preliminary views. The drafting of the Operational Transfer Agreement (between pipeline operator and secondary shipper) could then be used to inform the drafting of the Capacity Trading Agreement (between primary and secondary shipper) for any similar terms that have not yet been discussed in that context.		
9	<b>Break</b>	N/A	N/A	N/A
10	<b>Project team road map (2)</b>	The team discussed the agenda for the next meeting, and agreed to focus on allocation agreements and receipt and delivery point flexibility. The team noted there are outstanding items including: <ul style="list-style-type: none"> <li>• Additional Operational Transfer Agreement terms (including invoicing and billing, governing laws and tax, jurisdiction based restrictions) which would be discussed further in line with the legal drafting.</li> <li>• Outstanding Capacity Trading Agreement terms (see Agenda Item 8).</li> <li>• Agreements associated with the Day Ahead Auction</li> <li>• Whether the standards are voluntary or mandatory</li> <li>• Application of the terms bilaterally and on the capacity exchange platform.</li> </ul>	All – contact relevant experts to provide advice on allocation agreements and receipt and delivery point flexibility in the next meeting.  GMRG – add the outstanding items to the parking lot.	
11	<b>Next meetings</b>	Meeting 7 to be a double meeting held face-to-face on Tuesday 23 May and Wednesday 24 May.		

## Default

Agenda Item 3: following table denotes the options the team discussed to be included in the contract for the contracting parties in the relevant agreements.

Defaulting party	Typical Primary GTA		Operational Transfer Agreement		Capacity Trading Agreement	
	Pipeline Operator	Primary Shipper	Pipeline Operator	Secondary Shipper	Primary Shipper	Secondary Shipper
Pipeline Operator – no remedy*	Unable to remedy	Terminate	Unable to remedy	Terminate	Terminate	Terminate
Pipeline Operator –remedy	Remedy in specified timeframes	Remedied in specified timeframes	Remedy in specified timeframes	Remedied in specified timeframes	No impact	No impact
Primary Shipper – no remedy	Terminate – capacity transferred back to party	Unable to remedy	On foot – has no cause to terminate the contract with the secondary shipper	On foot – but no longer has capacity of primary shipper	Unable to remedy - capacity has been transferred back to pipeline operator	Terminate – option to seek damages
Primary shipper - remedy	Remedied in specified timeframes	Remedy in specified timeframes	No impact	No impact	Remedy in specified timeframes	Remedied in specified timeframes
Secondary Shipper – no remedy	No impact	No impact	Terminate	Unable to remedy	Terminate	Unable to remedy
Secondary shipper – remedy	No impact	No impact	Remedied in specified timeframes	Remedy in specified timeframes	Remedied in specified timeframes	Remedy in specified timeframes

## Force Majeure

Agenda Item 3:

Party calling force majeure	Typical Primary GTA		Operational Transfer Agreement		Capacity Trading Agreement	
	Pipeline Operator	Primary Shipper	Pipeline Operator	Secondary Shipper	Primary Shipper	Secondary Shipper
Pipeline Operator	Calling force majeure	Continue to pay 100% under existing standard agreements, some shippers may have negotiated reduced payment for a reduced service. Option to terminate after 12 months	Calling force majeure	Continue to pay fees and charges as applicable. Option to terminate after 12 months	If terminates primary GTA will need to terminate this agreement too.	Continue to pay. Terminate after 12 months.
Primary Shipper	Continues to be paid 100% under existing standard agreements, some shippers may have negotiated reduced payment for a reduced service. Option to terminate after 12 months.	Calling force majeure	Contract remains on foot.	Continue to pay fees and charges as applicable.	Calling force majeure	Terminate after 12 months with option to sue the primary shipper for damages.
Secondary Shipper	No impact	No impact	N/A - Remains on foot	Unable to call force majeure	N/A - Remains on foot	Unable to call force majeure