Supplement to submission for an exemption under rule 34 of the National Gas Rules

June 2024

PowerWater

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Introduction

This submission is supplemental to Power and Water's NGR Rule 34 (ring fencing) exemption application submitted to the AER on 23 February 2004.

In light of the amendment to NGR Rule 34(3)(c), introduced in NGR Version 74 on 22 March 2024, we seek an exemption under NGL s141. In making this application, Power and Water also relies on its original submission, together with the additional proposed controls being submitted concurrently with this supplemental submission.

Supplemental application

Section 141 of the NGL provides that:

> *"A service provider must prepare, maintain and keep—*
>
> *(a) separate accounts in respect of pipeline services provided by means of every pipeline owned, operated or controlled by the service provider; and*
>
> *(b) a consolidated set of accounts in respect of the whole of the business of the service provider."*

In February this year when Power and Water submitted its application, Rule 34(3)(c) imposed a condition on granting exemptions from section 139 of the NGL that *"...the service provider has, by arrangement with the AER, established internal controls within the service provider's business that substantially replicate, in the AER's opinion, the effect that would be achieved if the related business were divested to a separate entity and dealings between the service provider and the entity were subject to the controls applicable to associate contracts."*

Based on that version of Rule 34(3)(c), Power and Water proposed establishing separate and consolidated accounts internally, as one of the controls designed to substantially replicate the effect of divesting related businesses to a separate entity.

However, the NGR Version 74 amendment removed the requirement to replicate the effect of divesting related businesses to a separate entity – the current version of Rule 34(3)(c)[1] provides that *"...the service provider has, by arrangement with the AER, established internal controls that substantially replicate the controls that would apply to associate contracts if the related business was carried on by an associate of the service provider and sections 147 and 148 of the NGL applied."*

Power and Water does not consider that the internal separation of its accounts is necessary to satisfy the current version of Rule 34(3)(c). This is because the MRM Pipeline is Power and Water's only pipeline subject to ring fencing obligations; and Power and Water has no capacity entitlements in relation to the MRM Pipeline. On that basis, it is not currently possible for Power and Water to have associated dealings relating to MRM Pipeline capacity.

Accordingly, Power and Water makes the following application for an exemption from section 141 of the NGL.

[1] Being the rule as articulated in NGL Version 80 dated 12 June 2024.

Exemption to section 141

The NGR provides that an exemption from section 141 is to be granted *"...if the AER is satisfied that the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance."*

Power and Water seeks an exemption from the ring-fencing obligations set out in section 141, on the basis that this condition is satisfied.

Cost of compliance vs public benefit

Public benefit

Power and Water currently has no capacity entitlements on the MRM Pipeline. All existing capacity is vested in the current user under a long term contract. While these circumstances continue, Power and Water is unable to use or market pipeline services on the MRM Pipeline, therefore the application of ring fencing obligations is unlikely to have any pro-competitive effect. On that basis there is no clear public benefit in requiring Power and Water to create separate accounts and consolidated accounts in relation to its pipeline services business.

Power and Water has discussed control expectations with the AER in relation to its broader exemption application, and is concurrently proposing controls designed to substantially replicate the effect of sections 147 and 148 of the NGL. Further to those controls, Power and Water proposes that the section 141 exemption be granted, on the basis that it will be revoked in the event Power and Water obtains capacity entitlements on the MRM Pipeline. This provides further comfort that granting an exemption from section 141 would not be detrimental to the public benefit.

Cost of compliance

i. **Net costs of compliance in the case that Power and Water is granted an exemption from s. 139 of the NGL**

If Power and Water is granted an exemption from section 139 (i.e. Power and Water is not required to spin out its pipeline assets/business), the net cost of separating and preparing consolidated accounts internally in accordance with section 141 will comprise of the initial set up costs, estimated at $3,500 (based on an estimated time allocation of 20 hours, multiplied by an internal labour rate of $175 per hour). The separation of accounts would involve some additional complexity within the organisation, although the additional resources absorbed by this are difficult to quantify and probably not significant.

ii. **Net costs of compliance in the case that Power and Water is not granted an exemption from s. 139 of the NGL**

The net costs of compliance with section 141 in the event Power and Water isn't granted an exemption from s139 (i.e. the infrastructure and projects team and pipeline assets are moved into a new entity) are estimated as follows:

	$’ per annum
Bookkeeping services Estimated one day per week @ $800	41,600
Annual audit fee Based on CPA market research 2019-2022	35,624
Total	**77,224**

Internal controls arranged with the AER

In addition to Power and Water’s discussion with the AER relating to its broader exemption application, Power and Water proposes that the section 141 exemption be granted, on the basis that it will be revoked under Rule 35A in the event Power and Water obtains capacity entitlements on the MRM Pipeline.

Conclusion

As stated in its initial submission, Power and Water is committed to driving economic growth in the Territory by supplying affordable natural gas into the market. Promoting efficient use of infrastructure is central to that objective, and this is dependent on encouraging competitive access to infrastructure wherever possible. In the current circumstances, Power and Water’s compliance with section 141, or any ring fencing obligations, in relation to the MRM Pipeline will not increase competition.

Although the cost of compliance with section 141 is not significant, there is no clear public benefit in requiring Power and Water to maintain separate and consolidated internal accounts for pipeline services in circumstances where:

- The MRM Pipeline is Power and Water’s only pipeline subject to ring fencing obligations;
- Power and Water has sold 100% of the capacity on the MRM Pipeline under a long term contract;
- Controls have been proposed that will substantially replicate the effect of sections 147 and 148 in the event Power and Water acquires capacity entitlements on the MRM Pipeline; and
- It is proposed that the section 141 exemption be granted, on the basis that it will be revoked in the event Power and Water acquires capacity entitlements on the MRM Pipeline.

It is therefore submitted that the cost of compliance with section 141 outweighs any public benefit, primarily on the basis that compliance with section 141 would provide no public benefit.

Based on the reasons above, Power and Water requests an exemption from section 141 of the NGL for the MRM Pipeline, under rule 34(4) of the NGR.