Jemena Limited

Jemena ring-fencing exemption applications in relation to Phillip Creek Compressor Station

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Contact Person

Winnie Cheung
Senior Regulatory Adviser
[redacted]

Jemena Limited

ABN 95 052 167 405
Level 16, 567 Collins Street
Melbourne VIC 3000

Postal Address

PO Box 16182
Melbourne VIC 3000
Ph: (03) 9713 7000
Fax: (03) 9173 7516

1. Exemption applications

1.1 Applicants

This document comprises 10 individual applications for exemption from ring-fencing requirements, each made on behalf of one of the following entities, collectively referred to as **Jemena Pipeline Businesses** hereinafter:

- Jemena Eastern Gas Pipeline (1) Pty Ltd, service provider of Eastern Gas Pipeline (**EGP**)
- Jemena Eastern Gas Pipeline (2) Pty Ltd, service provider of EGP
- Jemena Queensland Gas Pipeline (1) Pty Ltd, service provider of Queensland Gas Pipeline (**QGP**)
- Jemena Queensland Gas Pipeline (2) Pty Ltd, service provider of QGP
- Jemena Colongra Pty Ltd, service provider of Colongra pipeline
- Jemena VicHub Pipeline Pty Ltd, service provider of VicHub
- Jemena Darling Downs Pipeline (1) Pty Ltd, service provider of Darling Downs Pipeline (**DDP**)
- Jemena Darling Downs Pipeline (2) Pty Ltd, service provider of DDP
- Jemena Darling Downs Pipeline (3) Pty Ltd, service provider of DDP and Atlas Gas Pipeline
- Jemena Roma North Pipeline Pty Ltd, service provider of Roma North Pipeline.[1]

These applications relate to Jemena Northern Gas Pipeline Pty Ltd's (**JNGP**) operation of the Phillip Creek Compressor Station (**PCCS**). JNGP is considered to be an associate of Jemena Pipeline Businesses undertaking a related business under the National Gas Law (**NGL**). The scope of, and basis for, these 10 applications are largely identical, save for the identity of the applicants.

Each of the Jemena Pipeline Businesses is seeking an exemption under rule 34 of the National Gas Rules (**NGR**) from its obligations under section 140 of the NGL. Section 140 operates as a prohibition on the sharing of marketing staff between service providers and related businesses, in effect providing that:

- Jemena Pipeline Businesses' marketing staff must not be employees, agents or contractors of the related business of the PCCS; and
- Jemena Pipeline Businesses' employees, agents or contractors must not be marketing staff of PCCS.

None of the pipelines owned or operated by Jemena Pipeline Businesses has a physical connection or commercial dealing with the PCCS. Currently, the marketing staff for EGP, QGP, Colongra Pipeline and VicHub (**Jemena's Pipeline Services Team**) are also the marketing staff for the Northern Gas Pipeline (**NGP**) and PCCS. Jemena has been relying on a Letter of No Action from the AER granted on 14 February 2024 to allow the sharing of marketing staff on this basis. See section 3.3 for further details.

The marketing staff for Darling Downs Pipeline, Atlas Gas Pipeline and Roma North Gas Pipeline are currently isolated from Jemena's Pipeline Services Team for ring-fencing purposes, but they are expected to be replaced by Jemena's Pipeline Services Team in the near future, following completion of the legal and functional separation of these pipeline assets from their related gas processing facilities.

Jemena's applications for exemption are supported by the Northern Territory Government as set out in the enclosed letter from the Honourable, Kate Worden, Minister for Renewables and Energy dated 31 July 2024 (**NT Government Letter of Support**).

[1] Any reference to Jemena in this document refers to the Jemena Group including JNGP and Jemena Pipeline Businesses.

1.2 Costs of compliance outweigh benefits

The AER may grant an exemption from section 140 of the NGL if the AER is satisfied that the cost of compliance with section 140 for the relevant service provider and its associates would outweigh the public benefit.

In this case, there is no practical public benefit from imposing the obligation under section 140 of the NGL on Jemena Pipeline Businesses with respect to PCCS. The intent of the ring-fencing rule is to prevent a pipeline service provider, by virtue of common ownership or operation, from conferring a competitive advantage to an associate that takes part in a related business (**related business associate**), typically in the production and wholesaling of gas, or retailing of gas, where there may be contestability in the market. Examples include where:

- a pipeline service provider may impede the access to its pipeline by a shipper who competes (or potentially competes) with the pipeline service provider's related business associate
- a pipeline service provider may provide its related business associate access to the pipeline on favourable terms and conditions relative to its competitors
- a pipeline service provider may gain information about the related business associate's competitors through the provision of a pipeline service and may allow the related business associate to utilise such knowledge to its competitive advantage.

As further explained in section 4.2, such risks are highly unlikely in the case of PCCS as a related business. First, PCCS does not compete against any shippers that use the NGP, and similarly any of Jemena Pipeline Businesses' pipelines. PCCS is not a gas producer or retailer, nor a shipper. PCCS does not produce gas but provides a nitrogen removal (gas processing) service that is necessary to enable the transportation of gas from the Northern Territory to Queensland, which is an ancillary service to the pipeline services offered on the NGP. PCCS does not require or pay for pipeline services on the NGP. JNGP earns revenue based on the volume of gas processed at PCCS and transported via the NGP to Queensland. It follows that Jemena does not gain any benefits from disadvantaging any shippers on the account of PCCS with respect to the NGP, and by extension, any of Jemena Pipeline Businesses' pipelines.

Second, there is no risk of misuse of confidential information by JNGP for the benefit of PCCS. It is difficult to conceive how JNGP may use any information derived from the operation of Jemena Pipeline Businesses' pipelines to PCCS's advantage when there is no interaction between these assets and no competition between PCCS and Jemena Pipeline Businesses' customers. Further, Jemena Pipeline Businesses are subject to confidential information obligations under Part 16 of the NGR.

Third, competition is unlikely to arise in the market for the provision of nitrogen removal service on the NGP in any case. All shippers of the NGP must contract for PCCS's gas processing services in order to transport gas on the NGP to Queensland, as provided by the Access Principles (discussed in section 2.3). This means that it is not economical for a new entrant to compete with PCCS for the provision of nitrogen removal service on the NGP specifically, not to mention the lack of demand for such service as there is insufficient supply of surplus gas to be transported from the Northern Territory to Queensland via the NGP currently (which gave rise to the need to modify the NGP, as discussed in sections 2.4 and 3.3). Even if, hypothetically, a new entrant offering the same service as PCCS wishes to connect to NGP, JNGP is practically the only entity, and not any of the Jemena Pipeline Businesses, that can impede access to the NGP (ignoring the fact that the Access Principles would prevent this). Therefore, ring-fencing Jemena Pipeline Businesses from JNGP (specifically PCCS) yields no effect on the competition dynamics in the relevant market in which PCCS operates.

For the avoidance of doubt, whether PCCS should be ring-fenced from NGP is not the subject of the assessment because JNGP has a 15-year statutory derogation from ring-fencing provisions (including sections 139 and 140) in the NGL, as discussed in section 3.1. The reasons above nevertheless indicate that there is not a vertical integration problem between NGP and PCCS that ring-fencing regulation is required to address. For the purpose of assessing the exemption applications in this document, the focus of assessment is whether there is any effect, or public benefit, from ring-fencing Jemena Pipeline Businesses' marketing staff from JNGP, who operates PCCS as a related business.

In these circumstances, there is no ability or incentive for Jemena Pipeline Businesses to confer any competitive advantage to PCCS by sharing their marketing staff. Therefore, there is no public benefit from imposing those ring-fencing requirements (in relation to PCCS) on the Jemena Pipeline Businesses.

Without an exemption, Jemena will face material costs of compliance, including both the direct cost of hiring additional qualified staff to manage NGP and PCCS and an indirect cost in the form of efficiency losses in Jemena's Pipeline Services Team which currently manage the portfolio of Jemena's pipeline assets.

2. Background

2.1 NGP and PCCS

The NGP is a 622km transmission pipeline that runs from Tennant Creek in the Northern Territory to Mount Isa in Queensland. It is the only pipeline which connects the Northern Territory to Queensland and the east coast gas markets. The NGP commenced commercial operations on 3 January 2019.

The NGP and PCCS were built as a result of a competitive tender process initiated by the Northern Territory Government. Jemena was subsequently selected to build, own and operate the NGP and PCCS. JNGP is the owner-operator of both the NGP and PCCS.

As part of that competitive process, the Project Development Agreement that the Northern Territory Government and Jemena entered into in 2015,[2] requires JNGP to provide pipeline services and ancillary services supplied by PCCS to third parties on a non-discriminatory basis in accordance with a set of agreed access principles specified in the agreement (**Access Principles**).[3] These are described in more detail below in 2.3.

The function of NGP was to move gas from the Amadeus Gas Pipeline in the Northern Territory (which extends from the Amadeus basin in the south of the Northern Territory to Darwin) for delivery to Queensland. As the two jurisdictions have different gas specification requirements, the PCCS was incorporated by the Northern Territory Government into the NGP asset development to undertake the function of reducing the nitrogen content of the gas received from the Amadeus Gas Pipeline so that it would meet the specifications required for transportation and delivery to the Carpentaria Gas Pipeline in Queensland.

2.2 Functions of NGP and PCCS

The NGP and PCCS have the following functions when gas is being transported from Tenant Creek to Mt Isa:

- *PCCS - Receipt of gas*: PCCS receives a comingled stream of gas from the Amadeus Gas Pipeline which meets the local specification for transportable and consumable gas in the Northern Territory;
- *PCCS - The treatment of gas*: The gas received at PCCS is processed to meet the specifications for the sale and consumption of gas in Queensland which involves cryogenic fracturing to reduce the nitrogen content in the received gas; and
- *NGP - Transportation of processed gas*: Once the gas has been processed at PCCS, it is transported through the NGP to Mount Isa, Queensland (the delivery point of the NGP). The delivered gas meets the local specification for sale and consumption in Queensland.

2.3 Access to the NGP

The Access Principles are legally binding obligations that address access and pricing requirements for the NGP and PCCS. They include a dispute resolution procedure and a requirement for Jemena to publish on its website the Access Principles as well as the standard terms and conditions on which it will provide access.

The Access Principles set out and provide for important details regarding access to the NGP and PCCS such as:

- the requirement to supply services to access seekers on a non-discriminatory basis (i.e. all access seekers can, at a minimum, access NGP and PCCS on the basis described in the Access Principles),
- the maximum tariffs that may be charged for pipeline services and nitrogen removal services,
- the dispute resolution procedure including the process for negotiations and arbitration,

[2] 'NEGI Project Development Agreement' dated 17 November 2015 between the Northern Territory Government and JNGP. See also Gas Market Reform Group 'Gas pipeline information and disclosure and arbitration framework: initial gas rules explanatory note, August 2017, p 47.

[3] See NGP Access Principles.

- arrangements for connecting to the pipeline,
- arrangements for extensions and expansions of the pipeline,
- the process for seeking access to the pipeline (including for as available services),
- terms and conditions of access,
- queuing arrangements,
- methodology for changes to the firm service tariffs over time and as a consequence of certain expansions to the pipeline.[4]

Pursuant to clause 20 of the Access Principles, where a third party seeks access to the NGP for the transportation of gas to Mount Isa, they are required to enter into an agreement with JNGP for the removal of nitrogen from the relevant gas. This nitrogen removal is to be conducted at PCCS on JNGP's standard terms and conditions for the provision of such services. Unless otherwise agreed between the parties, the terms of the nitrogen removal service (being the term, maximum daily quantities and type of service) must match the terms of the gas pipeline service provided by JNGP.[5]

[redacted]

The Access Principles are in place for 15 years from the commencement of the pipeline providing services unless the NGP becomes a scheme pipeline under the NGL (see clauses 1 and 37 of the Access Principles).

2.4 Modification of the NGP to flow in two directions

In 2023, Power and Water Corporation (owned by the Northern Territory Government) asked Jemena to modify the NGP to make it capable of flowing gas in both directions and enable the Northern Territory to draw on east coast gas, providing the potential to supplement declining supply from legacy gas fields whilst new onshore fields are being developed.

From Q3 2024, PCCS will be able to receive gas from Mount Isa in Queensland for use in demand centres in the Northern Territory (see 3.3 below for further detail). Gas received from Mount Isa is not required to be processed at PCCS as there is no requirement for the nitrogen content to be adjusted, but the compression infrastructure at PCCS will be required to adjust gas pressure to inject gas into the Amadeus Gas Pipeline.

[4] AEMC Rule Determination, National Gas Amendment (Northern Gas Pipeline – Derogation for Part 23) Rule 2019, 4 July 2019, p. 2.

[5] NGP Access Principles, cl. 20.

3. Jemena's ring-fencing obligations

3.1 Application of ring-fencing requirements to the NGP

The *Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022* (SA) (**Amendment Act**) extended the application of the NGL ring-fencing requirements to all non-scheme pipelines (and by extension, Jemena's pipeline service providers).

However, Schedule 2, section 130 of the NGL provides that Chapters 4 and 5 (which include the relevant ring-fencing requirements) of the NGL do not apply to the NGP, such that both the NGP and PCCS (or any other entity carrying on a related business as defined under the NGL) do not need to be ring-fenced from each other until the earlier of:

- the NGP becoming a scheme pipeline; or
- 15 years from the commissioning of the NGP.

PCCS and NGP accordingly may both be owned and operated by JNGP without an exemption from s140 of the NGL. Jemena's understanding is that the granting of this statutory derogation implies there is no vertical integration problem with the joint operation of PCCS and NGP that requires ring-fencing intervention within the timescale of the derogation.

However, as Schedule 2, section 130 is specific in exempting JNGP from the ring-fencing requirements, the marketing staff of Jemena Pipeline Businesses must remain ring-fenced from JNGP who undertakes a related business (i.e. PCCS). The statutory derogation in the NGL does not effectively exempt JNGP from the ring-fencing obligations in practice. This is because a staff member of JNGP cannot undertake marketing activities for PCCS if he or she is currently a marketing staff of another pipeline business, which is the case for Jemena.

The ACCC has acknowledged that nitrogen removal is required to use the NGP.[6] The practical and legal requirement to process the gas transported through the NGP to meet the differing gas specifications of Queensland and the Northern Territory effectively means that it is not practicable to separate PCCS from the NGP. The nitrogen removal service PCCS provides shippers on the NGP is an essential part of gas being transported and delivered through NGP. This is reflected in the Access Principles. The service PCCS provides is ancillary to the pipeline services provided by NGP. Further the assets were designed as an integrated system, i.e. the infrastructure at PCCS is intertwined with the 'start of line' facility of NGP, thus separation of PCCS from NGP is technically complex and there is no clear path to achieve this outcome under the Northern Territory licencing regime.

As NGP cannot practically offer shippers transportation services from Tennant Creek to Mt Isa without providing them access to PCCS's nitrogen removal service, the practical effect of PCCS having to be ring-fenced from Jemena Pipeline Businesses is that NGP must be similarly ring-fenced. In other words, it is highly unlikely for JNGP to be able to separate its NGP and PCCS operations to ring-fence PCCS specifically from NGP for as long as the statutory derogation remains on foot.

3.2 Application of ring-fencing requirements to each of the Jemena Pipeline Businesses with respect to PCCS

Jemena's main pipeline business comprising the service providers for EGP, QGP, Vic Hub and Colongra is ring-fenced from the service provider for NGP and PCCS (JNGP) which sits within Jemena's Other Assets Group to ensure compliance with section 139 of the NGL.[7] The marketing activities of these pipeline assets, including NGP and PCCS, are managed by Jemena's Pipeline Services Team currently, which may be regarded as a non-compliance with section 140 of the NGL if not for the AER's Letter of No Action (discussed below in section 3.3).

[6] ACCC Gas Inquiry December 2023 report, pg 135.

[7] Section 139 of the NGL requires that a service provider, as opposed to its marketing staff, must not carry on a related business.

The service providers for Atlas, Roma North and Darling Downs pipelines also sit separate from Jemena's main pipeline business, JNGP and each other, to ensure Jemena Pipeline Businesses' compliance with sections 139 and 140 of the NGL with respect to the Atlas and Roma North gas processing facilities. Prior to the introduction of ring-fencing requirements on non-scheme pipelines, Jemena's Pipeline Services Team was the marketing staff of the service providers for Atlas, Roma North and Darling Downs pipelines. However, these specific service providers are granted a two-year exemption period to comply with their ring-fencing obligations with respect to their associated processing facility under transitional provisions set out in Schedule 6, rule 27 of the NGR (expiring in March 2026).[8] As such, in the interim, Jemena had created new commercial manager positions for these assets as it undertakes the legal and functional separations of these assets to comply with the ring-fencing requirements. In respect of the service providers for Atlas, Roma North and Darling Downs pipelines, the rule 34 exemption from s140 of the NGL is sought to enable the transfer of pipeline marketing responsibilities from their interim commercial managers back to Jemena's Pipeline Services Team, upon the separation of the relevant pipeline and processing facilities.

The ring-fencing structure of marketing staff described above is inefficient for Jemena to manage its portfolio of pipeline assets and introduces additional risks due to the requirement for each of the marketing teams to be isolated from one another. It is necessary for each and every entity of Jemena Pipeline Businesses to obtain a rule 34 exemption from s140 of the NGL with respect to PCCS in order for Jemena's Pipeline Services Team to manage the marketing and commercial activities of all Jemena's pipeline assets most efficiently and optimally over the long term (explained further in section 4.1).

3.3 The AER's Letter of No Action

By letter dated 14 February 2024, the AER confirmed that Jemena's marketing staff were permitted to take part in the related business of the PCCS in the course of the normal commercial activities of the PCCS and the NGP up until 14 November 2024, and that the AER did not intend to take any enforcement action in this respect (**LoNA**).

The AER issued the LoNA on the basis that:[9]

- When first constructed, NGP operated in a unidirectional manner to move gas from the Northern Territory to Queensland and other eastern gas markets. However, Jemena had agreed with the Northern Territory government to augment the NGP to make it bi-directional and enable the Northern Territory to draw on east coast gas (**Reversal Works**);
- until the application of the extension of the ring-fencing requirements under the Amendment Act, the Reversal Works had been managed by a commercial team that contains marketing staff at Jemena who also undertake work for the Jemena Pipeline Businesses;
- the Reversal Works were being managed in an unconventional way given the time-sensitive nature of the project, in particular, the need to avoid gas supply shortfalls in the Northern Territory from July 2024. As such, considerable overlap was needed between the different teams (such as commercial and delivery) with no natural handover to a delivery team as would happen in a conventional project;
- as is the case across gas markets where specialist skills are necessary and in high demand, there are only two staff with the appropriate background and skills that can undertake this work and they work across many pipelines; and
- while the Reversal Works would take 9 months to complete, Jemena would ideally need two years to progress to business as usual status with ring-fenced operation of its pipelines.

[8] For the purpose of the four exemption applications made on behalf of the service providers for Atlas, Roma North and Darling Downs pipelines in this document, it is irrelevant to consider whether JNGP would breach section 140 of the NGL by sharing marketing staff with the service providers of Atlas and Roma North processing facilities given that JNGP is not subject to any ring-fencing obligations under Chapters 4 and 5 of the NGL because of the 15-year statutory derogation.

[9] LoNA, p 1.

4. Exemption criteria

The AER may grant an exemption from section 140 if it is satisfied that the costs of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefits resulting from compliance (rule 34(4) of the NGR). Rule 34(5) provides that where compliance with a requirement would, in the AER's opinion, lead to increased competition in the market, the AER must, in carrying out an assessment under subrule (4), disregard costs associated with losses arising from increased competition in upstream or downstream markets.

This section of the application considers the costs and public benefits of compliance for Jemena Pipeline Businesses and their associates from compliance with section 140.

For efficiency and practicality, Jemena requests that the AER evaluates the exemption criteria with respect to each of the Jemena Pipeline Businesses the same way, because the cost and public benefit of their compliance with section 140 of the NGL in relation to PCCS is essentially the same, by comparing to the counter-factual where the ring-fencing obligation under section 140 with respect to PCCS does not apply.

4.1 Cost of compliance

The phrase 'cost of compliance' is not defined in the NGL or the NGR for the purpose of rule 34(4) of the NGR. In the absence of a definition, the words are to be given their ordinary meaning in the context of legislation. The phrase encompasses the amount that has to be paid or spent by the service provider and its associates to comply with the ring-fencing obligation in section 140 of the NGL not to share marketing staff. In the context of the NGL particularly the national gas objective which promotes efficient investment in and operation of covered gas pipelines, a more expansive meaning is justified and includes indirect costs, such as the loss of efficiency.

4.1.1 Direct cost

To comply with the marketing staff ring-fencing requirement it would be necessary to have separate marketing staff for PCCS and NGP from Jemena Pipeline Businesses. Jemena estimates that the total cost to implement this arrangement would be $733,150 per year.

Meeting the staff sharing prohibition under section 140 of the NGL requires Jemena to balance the needs of the NGP and PCCS customers as well as the critical nature of the infrastructure providing those services. As a result, Jemena will need to hire two commercial managers to ensure that appropriate expertise is available in case of emergencies and to manage staff absences (including employee turnover or employee leave). While such key person risks can be managed in Jemena's Pipeline Services Team (without the hiring of additional personnel) where multiple staff are involved in, or capable of, handling the commercial and marketing activities of NGP/PCCS, such arrangement will not be possible if the marketing staff sharing prohibitions are in place. Box 1 below explains the importance of having adequate commercial managers or resources in managing a pipeline during emergencies.

Box 1 Importance of commercial managers in crisis management

In times of emergencies, there is a critical need for commercial managers who are familiar with the pipeline asset and the appropriate emergency responses. For example, during the significant incident impacting the QGP in March 2024, Jemena's Pipeline Services Team members were involved in, or reallocated to, the various tasks required to address the emergency in a timely manner, such as:

- identifying all the relevant users of the pipeline and the impact from the incident on them
- notifying all customers within 60 minutes of the incident and advising them of what actions they needed to take to minimise costs and catastrophic outcomes
- identifying alternative gas flow paths to minimise supply disruption to critical customers
- liaising with gas suppliers and facility operators to explore solutions
- real-time liaison with the AEMO gas operations team and the relevant Government/s.
- commercial interface for the Emergency Management Team for the duration of its operation (in this case in excess of 2 weeks)
- commercial interface with customers throughout the incident and ongoing, including as required on weekends.

These tasks require commercial managers that have a deep understanding of the market position of the pipeline asset and users' facilities, minimum demand profiles, the commercial outcomes of changing pipeline dynamics, operation of the market etc.

Also, these incidents require material support from other staff within Jemena's Pipeline Services Team such as analytics and market intelligence, as well as the support of an experienced general manager who is equipped with the market knowledge and experience to deal with key stakeholders. This broader team also provided greater resilience and capability to manage fatigue and support other ongoing business requirements.

The failure to appropriately manage an incident involving a pipeline from a commercial management perspective (as opposed to operational) can have material financial consequences for Jemena, including breaches of contractual obligations, reputational harm, loss of customer trust and contracts, increased challenges in future commercial negotiations, threat of additional regulatory interventions or regulations. For the QGP incident, Jemena's Pipeline Services Team was instrumental in working with industry to identify and secure alternate temporary gas supply solutions in a timely manner to avoid material long term financial impacts to downstream gas users, and working with AEMO to ensure gas could be effectively directed.

[redacted] Jemena estimates that the remuneration costs [redacted] and on-costs [redacted] for an equivalent commercial manager role would be about [redacted]. On-costs refer to payroll tax, incentive payments, work cover, jurisdictional levy etc.

In addition to remuneration costs and on-costs, Jemena incurs non-labour costs for each staff member in relation to employee training, IT equipment and resources, travel expenditure, professional subscriptions, work conferences etc. Based on its usual budgeting practices, Jemena estimates this to be [redacted].

Given the isolated nature of the exclusive staffing arrangement for NGP/PCCS were they to be ring-fenced, and the specialist skills required to perform the roles, there is a heightened risk of employee turnover (as there is less scope for career progression or development) and difficulty in finding and retaining suitable candidates. This can lead to repeated recruitment costs or extended periods of recruitment. [redacted] Jemena therefore assumes an annual recruitment cost of [redacted] for the two commercial managers required to manage NGP/PCCS exclusively. This is based on:

- average external agency rates where Jemena incurs [redacted] of the total remuneration costs [redacted] of the hired staff as recruitment costs;
- assumed role tenure being [redacted], as the average role tenure in Jemena's Pipeline Services Team is about [redacted]. Jemena assumes that it incurs [redacted] recruitment costs every [redacted] years for a commercial manager, and therefore [redacted];
- an assumption that there is a reasonable supply of potential candidates in the labour market, noting the specialist nature of the employment. It is possible the recruitment costs could be considerably more as a result of labour market shortages.

Accordingly, the estimated cost of compliance of $733,150 per year includes:

- Salaries of two commercial manager staff - [redacted] per year;
- the non-labour costs for each staff member of [redacted] per year with a combined total of [redacted];
- [redacted] per year for pro rata recruitment costs based on expected staff turnover rates.

These costs of $733,150 per year would be incremental to the costs of the current staffing arrangements for NGP/PCSS that Jemena is reliant on (as permitted under the AER's LoNA), as Jemena's Pipeline Services Team's responsibility for the management of multiple major pipelines gives it the flexibility to absorb and share the workloads, including those associated with projects and high impact, infrequent emergency events that may impact a major pipeline without requiring the staffing levels to be set higher to provide redundancy in case of such events.

4.1.2 Indirect costs

In addition to the direct costs identified above, the compliance with section 140 of the NGL will also result in a meaningful loss of efficiencies in Jemena's Pipeline Services Team (and therefore Jemena Pipeline Businesses). The NGP and PCCS would be removed from the scope of their work but there would be no change to their resourcing cost (as these staff are still necessary for the management of Jemena Pipeline Businesses' pipelines). Since there is no foreseeable change to the resource costs of Jemena's Pipeline Services Team (i.e, number of staff and salary costs) by ring-fencing them from NGP/PCCS, there will be no cost savings to be deducted from the incremental costs of hiring new commercial managers as described above.

For example, if Jemena's Pipeline Services Team has been devoting 20 per cent of their time to manage NGP/PCCS and is prevented to do so due to ring-fencing, they would spend their time managing the other Jemena pipelines instead. In other words, the proportion of Jemena's Pipeline Services Team's resource costs that is allocated to NGP/PCCS would instead be spread amongst the remaining pipelines in the team's portfolio. Under a ring-fencing structure, the resource costs of the isolated commercial managers for NGP/PCCS would be allocated to NGP/PCCS instead.[10] The cost allocation of overhead costs (eg.HR, legal services, corporate finance, administration etc) would remain unchanged because they are not marketing staff and not affected by ring-fencing arrangements.

Also, the isolated commercial managers for NGP and PCCS will not be able to benefit from the broader skill pool, training, corporate and industry knowledge in Jemena's Pipeline Services Team that are relevant for the continued business development of the NGP and innovation in its services over the longer term. Commercial managers rely on market intelligence and analytics, and at times, the support of an experienced general manager, to do their job effectively. These support and resources exist in Jemena's Pipeline Services Team but cannot be shared with commercial managers for ring-fenced assets. As a result, a new, ring-fenced commercial manager for NGP and PCCS may not produce the same quality outcomes for both customers and Jemena.

[10] While there is a possible argument that the resource costs of the isolated commercial managers for NGP/PCCS may not be fully allocated to NGP/PCCS if their capacity can be devoted to other work, it is difficult to ascertain such cost savings when it is unclear what other work they can do (and to what extent) given the nature of Jemena's business and the requisite skills of these roles, in circumstances where they are prohibited from accessing information about other Jemena's pipeline assets in compliance with ring-fencing obligations.

In this respect, a number of concerns raised by the AER in the LoNA continue to remain relevant after 14 November 2024 in relation to the day to day operation of the PCCS and NGP – most notably, the loss of efficiency which would result from having the NGP and PCCS managed by a different team to the team which manages the Jemena Pipeline Businesses. This separation will result in specialist commercial project development and market analysis skills which exist in the Jemena's Pipeline Services Team being unavailable to support the continued development of new NGP services in response to rapidly changing gas markets—especially the northern Australian gas market.

As there is little to no prospect of increased competition in upstream or downstream markets from the separation of PCCS staff from the staff of the Jemena Pipeline Businesses, there are no costs arising from increased competition that needs to be taken into account in the AER's assessment of the cost of compliance as required by rule 34(5).

4.2 Minimal public benefit from compliance

The purpose of ring-fencing is to prevent regulated businesses from favouring their own competitive activities to the disadvantage of other competitors operating in the market.[11] Ringfencing mechanisms seek to facilitate effective competition in markets that are traditionally supplied by vertically integrated monopolies by putting in place structures to disrupt the flow of information and personnel.[12] Conceptually, the public benefits generally arising from ring-fencing are clear. However, in the case of PCCS, the practical benefits from ring-fencing this related business from Jemena Pipeline Businesses are not evident.

No competition harm posed to any shippers

In practice, given that PCCS' function is not to produce gas as such, but to ensure that existing gas meets a certain gas specification, it does not compete against any existing or potential users of the NGP, and equally the shippers of the other Jemena pipelines operated by Jemena Pipeline Businesses. Therefore, the sharing of marketing staff between PCCS and the Jemena Pipeline Businesses does not give rise to any unfair competitive advantage or raise concerns about the sort of vertical integration which the ring-fencing framework is designed to address.

No effect on competition

The Access Principles require all users of the NGP to contract for PCCS' gas processing services when using the transportation services on the NGP because all gas receipted to PCCS/NGP comes in one commingled stream from the Amadeus Gas Pipeline. Therefore, there is no real commercial likelihood of an alternate gas processing facility providing nitrogen removal services for the purpose of transporting gas on the NGP in competition with PCCS. By the nature of gas processing facilities, they are not typically subject to competition and are usually part of upstream gas production facilities. Therefore, imposing ring-fencing obligations with respect to PCCS is unlikely to change the competitive conditions of the relevant market, namely the provision of gas processing services for the purpose of gas transportation on the NGP from the Northern Territory into Queensland.

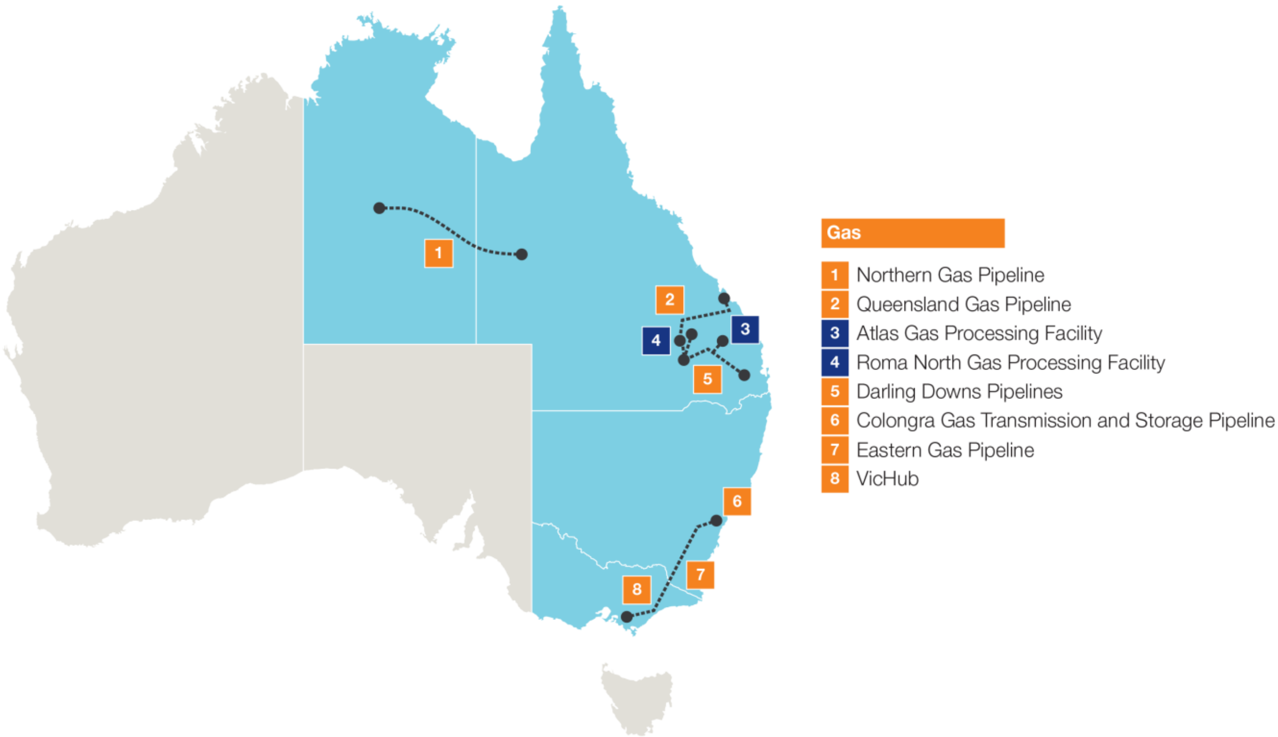
Lack of interrelationship between PCCS and Jemena Pipeline Businesses' pipelines

Demand for PCCS' services are entirely dependent on demand for NGP pipeline services only. This reflects PCCS' role as a support facility for NGP, with the effect that PCCS as a standalone entity is of no real value to any customer (whether of JNGP or any of Jemena Pipeline Businesses). PCCS is physically separated from and distant to all Jemena Pipeline Businesses' pipelines (see Figure 1 below). This indicates that a customer's demand for PCCS's services is primarily driven by their demand for the NGP's pipeline services, regardless of whether they are also using any Jemena Pipeline Businesses' pipeline services.

[11] As acknowledged by the AER in the context of electricity ring-fencing on its website.

[12] ACCC Final Decision in relation to NT Gas dated 13 March 2022.

Figure 1 Jemena pipeline assets



Currently, none of Jemena Pipeline Businesses' customers are users of NGP/PCCS. The pipeline assets of Jemena Pipeline Businesses service different users compared to NGP/PCCS, as the shippers on NGP/PCCS predominantly provide gas to users at Mt Isa, as opposed to the markets served by for example, QGP (Gladstone), EGP (Sydney, Canberra) and VicHub (Melbourne). This demonstrates the lack of interaction between PCCS and Jemena Pipeline Businesses' pipeline assets and overlaps in customers.

The likelihood of a customer using both NGP/PCCS and any of Jemena Pipeline Businesses' pipelines to transport gas to a single location is very low. Putting aside questions about the availability and cost of gas in the Northern Territory, a user of the NGP would be required to negotiate with Jemena and at least one other pipeline owner on at least two pipelines to move gas from the NGP to the nearest Jemena Pipeline Businesses' pipeline. Multiple transportation legs over significant distance contribute to the delivered gas price making it less economical. For example, a customer wishing to transport gas from the Northern Territory to Gladstone would likely have to pay for gas transportation services on NGP/PCCS, Carpentaria Gas Pipeline, South West Queensland Pipeline and QGP. This option is unlikely to be attractive compared to alternative options of sourcing gas from Queensland or in the east coast market.

Limited potential for PCCS to affect competition between pipelines

Jemena understands one theoretical competition risk arising from the sharing of marketing staff across the Jemena Pipeline Businesses and PCCS is that the marketing activities of one side may be used to favour the other. For example, if any of the Jemena Pipeline Businesses could jointly market the services of their pipelines and PCCS as a bundled service, thereby foreclosing the potential for other third party pipeline service providers to deliver gas services whereby PCCS is an input.

However, as discussed above, PCCS's services are not required for the use of any pipelines other than the NGP. JNGP has not received an application to connect a lateral pipeline to PCCS to date, and is not aware of any proposals for any other pipelines to be built which could utilise the PCCS nor are any contemplated in the medium term.

Any concerns regarding Jemena's ability to use its ownership of PCCS to negatively impact competition in any markets for the transportation and supply of gas are readily addressed by the Access Principles which impose enforceable obligations on JNGP with respect to both the price of the services NGP and PCCS offer, and the basis on which JNGP is required to provide them to third parties. Critically, the Access Principles also impose obligations on Jemena to connect the NGP to a lateral pipeline at the request of a third party and places constraints on the charges JNGP may impose with respect to such a connection (see Part E of the Access Principles).

In the limited situations where a customer (such as a large retailer) may use PCCS/NGP and Jemena Pipeline Businesses' pipelines to transport gas to different markets or end users, it is likely to be in the customer's favour to be able to negotiate with the same Jemena marketing staff. This enables Jemena marketing staff to consider the aggregate value of the customer's contracts and manage customer relationships in a more holistic manner, as opposed to working in silos under ring-fencing arrangements. Whatever terms Jemena would offer to a customer in such circumstances do not make PCCS any more or less competitive, or confer an unfair competitive advantage to PCCS. It is the fact that the customer is using the NGP, an additional pipeline service, as opposed to PCCS that may influence Jemena's offer with respect to Jemena Pipeline Businesses' pipeline services. There is no competition issue. Ring-fencing provisions in the NGL are not intended to prevent a pipeline service provider from providing more favourable terms to a customer on account of the customer using another pipeline service.

Misuse of any confidential information derived from Jemena Pipeline Businesses is unlikely

It is also unclear under what circumstances Jemena Pipeline Businesses could use information derived from its operations in, for example, south central Queensland (as in the case of QGP) or Sydney (as in the case of EGP) to preference or provide a competitive advantage to a processing facility in Northern Territory (i.e. PCCS) , or vice versa. Further, Jemena Pipeline Businesses are subject to confidential information obligations with respect to their customers under Part 16 of the NGR.

Negligible or no public benefit arising from compliance

Jemena acknowledges that there may generally be a simple public benefit in organisations complying with legislative obligations such as the ring-fencing requirements regardless of whether there is any real risk of competitive harm that needs to be addressed. However, the inclusion of an exemption mechanism within a regulatory regime—as is the case here— arguably indicates an acknowledgement by Parliament that strict adherence to the requirements may not be relevant or appropriate in at least some instances.

For the reasons set out above, imposing ring-fencing requirements separating PCCS from Jemena Pipeline Businesses is of negligible public benefit.

4.2.1 Possible public detriment

It is relevant to consider possible public detriments as part of the assessment of public benefits. Jemena considers there is a public detriment which arises from ring-fencing compliance in a market where there is no real likelihood of consumer harm. Ring-fencing the marketing staff for NGP/PCCS from Jemena Pipeline Businesses will meaningfully reduce Jemena's business resilience in relation to NGP/PCCS, as set out in Box 1 regarding the fundamental role played by commercial managers during pipeline emergencies. It may also impact the quality of service it can provide to customers in the Northern Territory, which leads to potential under-utilisation of the asset or unrealised economic utility.

Even in the optimal scenario where JNGP is able to recruit two qualified commercial managers to manage NGP and PCCS, the business resilience of the ring-fenced team is likely to be much lower compared to Jemena's Pipeline Services Team which consists of up to 14 staff. This resilience risk is real, as evidenced by the current incident impacting the QGP which commenced in March 2024, involved AEMO intervention and continues to require active management by commercial managers as at the date of this application. In such emergencies, significant co-ordination and resource reallocations are required within the team to avoid or manage service disruptions to customers, while providing regular communications with customers and regulatory stakeholders.

The Northern Territory Government's support of the Reversal Works and exemption application, as well as the LoNA, acknowledge the significance of the NGP as a critical infrastructure for both the Northern Territory and as gas supply is restored, the Australian east coast gas markets. In the event of an emergency at the NGP and/or PCCS, there are potentially severe consequences for the provision of gas to the Northern Territory and east coast markets should the NGP and/or PCCS be required to suspend operations and/or restart gas flows. Similarly, where suspension or recommencement of gas flow occurs, it is critical that the gas supply and transportation interruption is minimised. It is crucial for Jemena's response to these situations that a knowledgeable, experienced and well-staffed commercial team be available to assist the NGP/PCCS Commercial Manager if needed.

There is a risk that ring-fencing marketing staff for the NGP and PCCS from Jemena's Pipeline Services Team would lead to inefficiencies in the economic use of the NGP and sub-optimal commercial outcomes for customers and users. This is because JNGP would lose access to the experienced and skilled personnel who understand the NGP and PCCS assets, the Northern Territory gas markets and the needs of its customers. In turn, the isolated commercial managers of NGP may be less well-equipped to design and offer non-standard or new pipeline services, or pipeline solutions (e.g. lateral pipelines, pipeline expansions, compressors etc) to customers, as a result of a lack of experience and knowledge about Jemena's pipeline assets. The isolated commercial managers would be prevented from coordinating or consulting with Jemena's Pipeline Services Team, including access to a diversity of views and relevant support resources, to develop commercial solutions involving the NGP. This means that customers' needs, particularly potential new gas producers in the Northern Territory, may be not as well served as would otherwise be the case. This may reduce the economic utilisation of the NGP, a key strategic asset to Jemena. Such inefficiencies would not be in the long term interests of gas users.

5. Proposed exemption term and conditions

Jemena acknowledges that the assessment criteria as to public benefits from compliance is based on the markets and market conditions in existence at the time of the application. We consider any risk from the factual circumstances changing can be mitigated through the following conditions:

1. The exemption applies for the same period as the statutory derogation applies to JNGP—being the earlier of 15 years from the date of commissioning and the date the NGP becomes a scheme pipeline; and

2. The exemption is limited to staff taking part in a related business in the course of all activities of the NGP and PCCS.

5.1 Timing

Jemena seeks 6 exemptions, one for each of the service providers for EGP, QGP, VicHub and Colongra pipeline, commencing on 14 November 2024 when the AER's current LoNA expires. If the AER is unable to make a decision by this date, Jemena requests that the AER extends its LoNA to the date when its decision on these applications is effective.

Jemena seeks 4 exemptions, one for each of the service providers of DDP, Atlas and Roma North pipelines, commencing on the same day as the exemptions for the service providers for EGP, QGP, VicHub and Colongra pipeline. Jemena notes that these exemptions will have no practical effect until the transfer of marketing functions from the commercial managers for these assets to Jemena's Pipeline Services Team has occurred. The granting of these exemptions will not affect Jemena's business structure for ring-fencing purposes or how the marketing activities of the NGP/PCCS would be managed. However, without these exemptions in place, Jemena's Pipeline Services Team will effectively be barred from undertaking the marketing activities of the DDP, Atlas and Roma North pipelines even when they have been functionally and legally separated from their processing facilities.

5.2 Jemena contact details

Ana Dijanosic
General Manager Regulation
[redacted]