Ring-fencing exemption determination – Jemena

Draft decision

January 2025

AUSTRALIAN ENERGY REGULATOR

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Summary

The AER has made a draft decision to grant the Jemena Pipeline Businesses exemptions from obligations under section 140 of the National Gas Law (NGL) in response to 10 individual applications for exemption from ring-fencing requirements, in relation to Phillip Creek Compressor Station (PCCS). The PCCS provides a nitrogen removal service that is necessary to enable the transportation of gas from the Northern Territory to Queensland. This is an ancillary service to the pipeline services offered on the NGP.

These exemptions allow the Jemena Pipelines Businesses' marketing staff to be marketing staff of Jemena Northern Gas Pipeline Pty Ltd, and vice versa. This will negate the need for Jemena Limited (Jemena)[1] to hire additional separate marketing staff.

In current circumstances, requiring the Jemena Pipeline Businesses to comply with these ring-fencing obligations is unlikely to provide tangible benefits to consumers.

In coming to this view, the AER has had regard to the likely public benefit and the potential costs for the Jemena Pipeline Businesses resulting from compliance with the ring fencing.

These exemptions are subject to conditions set out in Section 2.1 of this draft decision.

Stakeholders are invited to provide written submissions in response to this draft determination by 6 February 2025.

In line with rule 9 of the National Gas Rules (NGR), the AER will make a final determination by 6 March 2025.

[1] Any reference to Jemena in this document refers to the Jemena Group including Jemena Northern Gas Pipeline Pty Ltd and Jemena Pipeline Businesses (as described in section 1.2).

1 Background

1.1 Northern Gas Pipeline and Philip Creek Compressor Station

The Northern Gas Pipeline (NGP) is a 622km transmission pipeline that runs from Tennant Creek in the Northern Territory (NT) to Mount Isa in Queensland. It commenced commercial operations in January 2019 and is the only pipeline connecting the NT to Queensland and thereby, the east coast gas markets.

PCCS was incorporated into the NGP asset development to reduce nitrogen content to meet the different gas specification requirements between the NT and QLD.

Jemena was selected to build, own and operate the NGP and PCCS as a result of a competitive tender process initiated by the NT Government. As part of that competitive process, the Project Development Agreement set out access principles specified in the agreement (Access Principles).[2] The Access Principles are legally binding obligations that address access and pricing requirements for the NGP and PCCS.

The NGP holds a statutory exemption from ring-fencing requirements under transitional provisions in the NGL[3] until:

- it becomes a scheme pipeline[4]; or
- otherwise – 15 years from its commissioning i.e., 3 January 2034.

This statutory exemption allows both the NGP and PCCS to be owned by Jemena Northern Gas Pipeline Pty Ltd without an exemption from section 140 of the NGL. However, the statutory exemption does not exempt any other Jemena gas pipeline business from ring-fencing requirements with the PCCS.

In 2023, Power and Water Corporation asked Jemena to modify the NGP to make it capable of flowing gas in both directions and enable the NT to draw on east coast gas.[5]

1.2 Jemena Pipeline Businesses' exemption application

On 30 August 2024, Jemena submitted an application seeking 10 individual exemptions from ring-fencing requirements, each made on behalf of one of the following entities (collectively referred to as the Jemena Pipeline Businesses hereinafter):

- Jemena Eastern Gas Pipeline (1) Pty Ltd, service provider of Eastern Gas Pipeline (EGP).

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2 The NGP Access Principles.

3 NGL, Schedule 3, clause 130.

4 Scheme pipeline has the meaning given in the NGL.

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

- 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.

The above exemption applications relate to Jemena Northern Gas Pipeline Pty Ltd's operation of PCCS.

Jemena Northern Gas Pipeline Pty Ltd is considered to be an associate of Jemena Pipeline Businesses undertaking a related business.[6]

The transitional provisions in the NGL[7] are specific in exempting only the NGP from the requirements to ring fence PCCS from pipeline operations. Thereby, unless exempt, the marketing staff of Jemena Pipeline Businesses must remain ring-fenced from Jemena Northern Gas Pipeline Pty Ltd regarding the PCCS (as it is considered a related business).

Each of the Jemena Pipeline Businesses is seeking an exemption under rule 34 of the NGR (see Appendix A) from its obligations under:

- section 140 of the NGL – Marketing staff and the taking part in related businesses.
  - A service provider must ensure that none of its marketing staff are officers, employees, consultants, independent contractors or agents of an associate of the service provider that takes part in a related business.

The scope of, and basis for, these 10 applications are largely identical, save for the identity of the applicants.

1.2.1 Relationship between Jemena Pipeline Businesses and the NGP/PCCS

The marketing staff for EGP, QGP, Colongra Pipeline and VicHub are also the marketing staff for the NGP and PCCS (Jemena's Pipeline Services Team).

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 soon,

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6 Related business has the meaning given in the NGL.

7 NGL, Schedule 3, clause 130.

following completion of the legal and functional separation of these pipeline assets from their related gas processing facilities.[8]

1.3 What is ring-fencing?

Ring-fencing refers to the separation of the provision of gas pipeline services from the supply or sale of covered gas, processable gas[9] or biogas. The NGL sets out the minimum ring- fencing obligations on service providers for:

- carrying on a related business;
- marketing staff[10] taking part in a related business;
- keeping separate accounts.

A related business means:

- the provision of a blend processing service; or
- the business of producing primary gas,[11] processable gas or biogas; or
- the business of purchasing or selling covered gas, processable gas or biogas, but does not include purchasing or selling covered gas, processable gas or biogas to the extent necessary –
  - for the safe and reliable operation of a pipeline; or
  - to enable a service provider to provide balancing services in connection with a pipeline.[12]

The purpose of the ring-fencing provisions in the NGL is to prevent a related business from gaining a competitive advantage by virtue of its common ownership or operation of the pipeline. In these situations, the pipeline service provider may have market power. For example, a service provider could provide favourable access and pricing terms to the related business, which could affect gas prices or harm competitors.

The NGR provide for service providers to seek one or more exemptions from the ring-fencing provisions. It recognises that, in some circumstances, strict adherence to the ring-fencing provisions might result in outcomes that are not in the best interest of consumers.

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

9 Covered gas and processable gas have the meaning given in the NGL.

10 Marketing staff has the meaning given in the NGL.

11 Primary gas has the meaning given in the NGL.

12 Related business has the meaning given in the NGL.

2 Draft decision

Our draft decision is to grant the Jemena Pipeline Businesses exemptions under rule 34 of the NGR from their obligations from section 140 of the NGL in relation to PCCS.

In effect, this draft decision provides that the:

- Jemena Pipeline Businesses' marketing staff may be officers, employees, consultants, independent contractors or agents of the related business of Jemena Northern Gas Pipeline Pty Ltd; and
- Jemena Pipeline Businesses' officers, employees, consultants, independent contractors or agents may be marketing staff of Jemena Northern Gas Pipeline Pty Ltd.

By granting these exemptions, the Jemena Pipeline Businesses are not required to maintain marketing staff for Jemena Northern Gas Pipeline Pty Ltd who are separate from the Jemena Pipeline Businesses.

In current circumstances, requiring the Jemena Pipeline Businesses to comply with these ring-fencing obligations is unlikely to provide tangible benefits to consumers.

In coming to this view, we have had regard to the likely public benefit and the potential costs for the Jemena Pipeline Businesses resulting from compliance with the ring fencing.

A Jemena Pipeline Business must notify the AER without delay if circumstances change such that it no longer qualifies for an exemptions granted to it in this decision.[13]

The AER must revoke an exemption if we are no longer satisfied that the criteria for an exemption are met, such as if market conditions change substantially at any time in the future.[14]

These exemptions are subject to the conditions set out below.

2.1 Exemption conditions

Rule 35 of the NGR requires us to consider whether to impose conditions on the exemption. We have included the conditions set out below as part of this final decision.

The purpose of these conditions is to make the AER aware of any changes in circumstance that might lead the AER to consider revoking an exemption. These conditions are in addition to Jemena Pipeline Business's obligation to notify the AER without delay if circumstances change such that it no longer qualifies for an exemption that has been granted to it.

A Jemena Pipeline Business must comply with each of the conditions of an exemption that has been granted to it.[15]

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13 NGR, rule 34(6).

14 NGR, rule 35A(2).

15 NGR, rule 35(2).

The AER has the power to vary the conditions of these exemptions at any time (subject to undertaking the required consultation).[16]

The ring-fencing exemptions granted to the Jemena Pipeline Businesses are subject to the following conditions:

Condition 1

Jemena must inform the AER, as soon as practicable, if there is any change that will materially change the influence that Jemena Northern Gas Pipeline Pty Ltd can exert on the prices or access to PCCS.

- Jemena must provide details of these changes and an assessment of how these changes are expected to impact the risk of any public detriment as a result of these ring-fencing exemptions.

Condition 2

A Jemena Pipeline Business must inform the AER, as soon as practicable, if any of its customers become users of the NGP/PCCS.

- The Jemena Pipeline Business must provide details of this arrangement, including of how it may impact the risk of any public detriment arising as a result of these ring-fencing exemptions and of the steps the Jemena Pipeline Business intends to undertake to manage any increased risk of public detriment.

Condition 3

These exemptions apply for the same period as the statutory exemption under clause 130 of Schedule 3 of the NGL applies to the NGP, being:

- until the NGP becomes a scheme pipeline (as defined under the NGL); or
- otherwise – 15 years from its commissioning i.e., 3 January 2034.

[16] NGR, rule 35(3).

3 Assessment against section 140 of the NGL

3.1 Criterion for exemption

The AER must grant an exemption from section 140 of the NGL if we are satisfied that the cost of compliance with the requirement for the service provider and its associates would outweigh the public benefit resulting from compliance.[17]

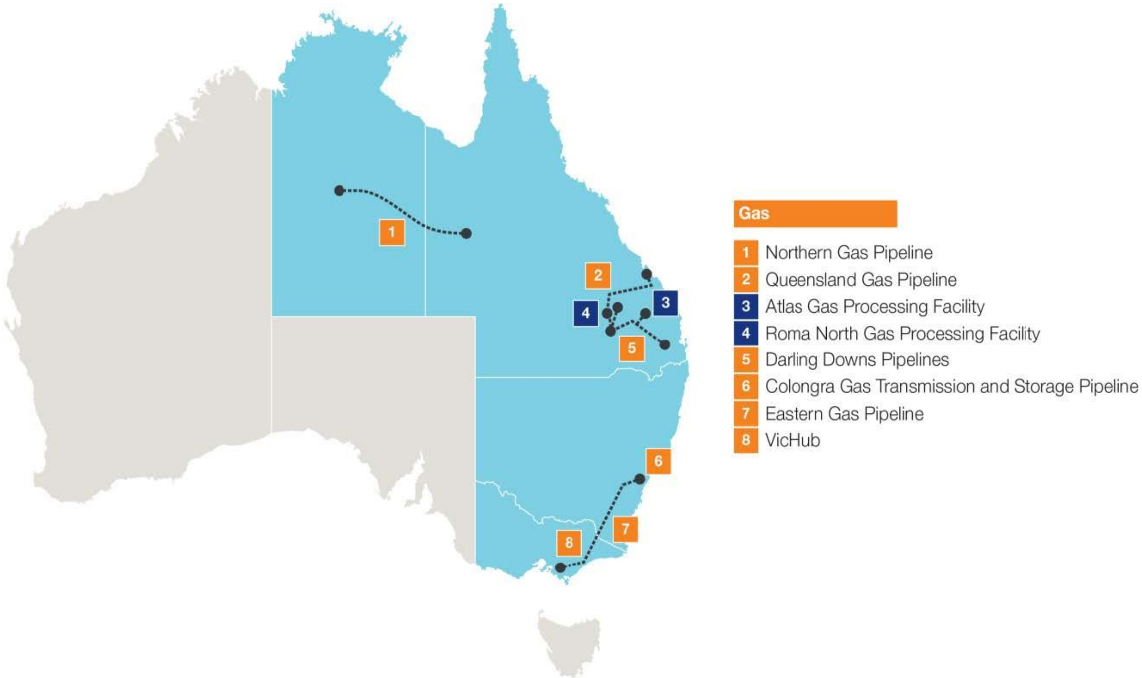
3.2 Would the cost of compliance outweigh the public benefit resulting from compliance?

3.2.1 Public benefit

Jemena submits[18] that the public benefit of ring-fencing PCCS from the Jemena Pipeline Businesses is not evident because:

- PCCS is a support facility for the NGP and thereby, demand for PCCS' services are entirely dependent on demand for the NGP's services only. PCCS is physically separated from and distant to all the 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 services, regardless of whether they are also using any of the Jemena Pipeline Businesses' pipeline services.

Figure 1. Map of Jemena pipeline assets[19]



17 NGR, rule 34(4).

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

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

- Currently, none of the Jemena Pipeline Businesses' customers are users of the NGP/PCCS. The pipeline assets of the Jemena Pipeline Businesses service different users compared to the NGP/PCCS.
  - This demonstrates the lack of interaction between PCCS and the Jemena Pipeline Businesses' pipeline assets and overlaps in customers.
  - Jemena's view is that it is not economical for a prospective customer to use both the NGP/PCCS and any of the Jemena Pipeline Businesses' pipelines to transport gas to a single location.
  - In an unlikely scenario where a customer does use the NGP/PCCS and the Jemena Pipeline Businesses' pipelines to transport gas, it may be in the customer's favour to be able to negotiate with the same Jemena Pipeline Businesses marketing staff.
    - Jemena's view is that in such a scenario, their marketing staff are able 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 requirements.
    - We note that while customers could benefit under this scenario, a related business could also use the knowledge of shared marketing staff to its own advantage. Therefore, we have not considered this in our assessment of the draft decision.
- The Access Principles[20] require all users of the NGP to contract for PCCS' gas processing services when using transportation services on the NGP. It seems unlikely that a nitrogen removal facility would commence operations to compete with PCCS' for the purpose of transporting gas on the NGP.
  - Jemena submits that other competition concerns i.e., bundling of pipeline services through sharing of marketing staff and misuse of confidential information are addressed by the Access Principles and the NGR respectively.
    - The Access Principles impose enforceable obligations on Jemena with respect to both the price of the services the NGP and PCCS offer, and the basis on which Jemena is required to provide them to third parties.
    - 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 Jemena Northern Gas Pipeline Pty Ltd may impose with respect to such a connection.
    - Under Part 16 of the NGR, the Jemena Pipeline Businesses are subject to confidential information obligations with respect to their customers.

Jemena's application for the exemptions is supported by the NT Government. It submitted a letter[21] from the then Minister for Renewables and Energy, the Honourable Kate Worden as an attachment to the application. The letter stated the NT Government's assessment considers that there would be no net benefits for gas consumers by ring-fencing PCCS from the Jemena Pipeline Businesses. This is due to the nature of the competitively determined and binding Access Principles[22] and because PCCS is a support facility to the NGP.

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20 The NGP Access Principles.

21 *NT Government Letter of Support* - Jemena ring-fencing exemption applications in relation to Phillip Creek Compressor Station.

22 The NGP Access Principles.

3.2.2. Costs of compliance

Jemena submits[23] that the costs of compliance should include both direct costs and indirect costs (keeping in mind the national gas objective[24] which promotes efficient investment in and operation of covered gas pipelines). Jemena estimates that the total cost to implement this arrangement would be $733,150 per year.

Direct Costs

- If ring-fenced, Jemena estimates that they will need to hire 2 commercial managers to manage marketing of the NGP/PCCS, after accounting for emergencies and staff absences.
- This includes salaries, non-labour costs and recruitment costs.

Indirect Costs

- If ring-fenced, the isolated nature of the staffing arrangement for the NGP/PCCS and the specialist skills required presents a heightened risk of employee turnover (as there is less scope for career progression or development) and difficulty in finding and retaining suitable candidates.
  - If ring-fenced, isolated commercial managers for the NGP and PCCS will not be able to benefit from the broader skill pool, training and knowledge gained from interaction with other commercial managers. Jemena argues that as a result, commercial managers for the NGP and PCCS may not produce the same quality outcomes for both customers and Jemena.
- Jemena states its costs for marketing staff for the Jemena Pipeline Businesses will remain unchanged in the foreseeable future.[25] Ring-fencing the NGP/PCCS may lead to a loss of efficiencies as there will be under-utilisation of marketing staff for both the Jemena Pipeline Businesses' and the NGP/PCCS.[26]

3.2.3. AER draft position

Our assessment based on the information made available is that there appears to be minimal risk of the Jemena Pipeline Businesses discriminating in favour of its own operations if it is exempt from these obligations because:

- PCCS is a support facility for the NGP and demand for its services is dependent on demand for the NGP.
- There is a lack of interaction between PCCS and Jemena Pipeline Businesses as no users of Jemena Pipeline Businesses are currently users of the NGP/ PCCS.
- The Access Principles impose prices and services obligations on the NGP/ PCCS thereby, reduce the market power Jemena Northern Gas Pipeline Pty Ltd has on its users.

In developing this view, we assessed information on how customers use the NGP/PCCS and

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

24 NGL Chapter 1, Part 3, Division 1.

25 Jemena has claimed confidentiality over the costs of compliance with the ring-fencing obligation. We have analysed these costs (including the specific components) and the related methodology in coming to our draft decision to grant these exemptions to the Jemena Pipeline Businesses.

26 Jemena, *Response to AER request for information*, 17 October 2024

assessed it against our understanding of the current environment of the gas market. We also determined that there is low likelihood for users of the NGP/PCCS to become users of Jemena Pipeline Businesses and considered potential outcomes if this were to occur.

Our proposed exemption conditions (as stated in Section 2.1 of the draft decision) provide specific guidance to Jemena regarding circumstances that may materially impact whether it continues to meet the criteria of these ring-fencing exemptions in order to minimise the risk of public detriment.

In the current circumstances, requiring the Jemena Pipeline Businesses to comply with ring-fencing obligations under section 140 of the NGL is unlikely to provide tangible benefits to consumers. Thereby, we are satisfied that the cost of compliance outweighs the public benefit resulting from compliance, and therefore meets the criterion set out in rule 34(4) of the NGR.

Appendix A – Rule 34 of the NGR

Exemptions from minimum ring-fencing requirements

Version 82 of the NGR current as of 6 November 2024.

Requirements

(1) A service provider may apply to the AER for an exemption from one or more of the requirements under section 139, 140, 141, 147 or 148 of the *NGL*.

(2) The AER must deal with such an application in accordance with the *expedited consultative procedure*.

Note:

Under rule 35, the AER must consider whether conditions should be imposed on exemptions granted under this rule.

(3) An exemption is to be granted from section 139 of the *NGL* if the AER is satisfied that:

(a) either:

(i) the relevant pipeline is not a significant part of the pipeline system for any participating jurisdiction; or

(ii) the service provider does not have a significant interest in the relevant pipeline and does not actively participate in the management or operation of the pipeline; and

(b) the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance; and

(c) 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.

(4) An exemption is to be granted from section 140 or section 141 of the *NGL* 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.

(5) If compliance with a relevant requirement would, in the AER's opinion, lead to increased competition in a market, the AER must, in carrying out an assessment under subrule (3)(b) or subrule (4), disregard costs associated with losses arising from increased competition in upstream or downstream markets.

(6) A service provider granted an exemption under this rule must notify the AER without delay if circumstances change such that the service provider no longer qualifies for the exemption.

Note:

This subrule is classified as a tier 1 civil penalty provision under the National Gas (South Australia) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.

Glossary

Term	Definition
AER	Australian Energy Regulator
DDP	Darling Downs Pipeline
EGP	Eastern Gas Pipeline
Jemena Limited	Jemena
Jemena's Pipeline Services Team	Marketing staff for Eastern Gas Pipeline, Queensland Gas Pipeline, Colongra Pipeline, VicHub, Northern Gas Pipeline and Phillip Creek Compressor Station.
NGL	National Gas Law
NGP	Northern Gas Pipeline
NGR	National Gas Rules
NT	Northern Territory
PCCS	Phillip Creek Compressor Station
QGP	Queensland Gas Pipeline
TJ	Terajoules