6 February 2025

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[redacted]
Director – Gas Pipelines
Australian Energy Regulator

By email: [redacted]

Dear [redacted]

Re: The AER's draft ring-fencing exemption determination in relation to Jemena Northern Gas Pipeline Pty Ltd

Jemena Eastern Gas Pipeline (1) Pty Ltd (**JEGP**) makes this submission on behalf of Jemena Pipeline Businesses.[1] We welcome the AER's draft decision to grant exemptions to Jemena Pipeline Businesses from section 140 of the National Gas Law (**NGL**) in relation to Jemena Northern Gas Pipeline Pty Ltd's (**JNGP**) operation of the Phillip Creek Compressor Station (**PCCS**) pursuant to rule 34 of the National Gas Rules (**NGR**).

The AER has specified three conditions to the exemptions, set out in section 4 of its draft decision and replicated below for ease of reference:

> **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.
>
> **Condition 2:** A Jemena Pipeline Business must inform the AER, as soon as practicable, if any of its customers become users of the Northern Gas Pipeline (NGP) and PCCS.
>
> **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

We recognise the AER's preference to be notified of any relevant material changes in circumstances that may warrant a reconsideration of the exemptions granted, beyond the requirement set out in rule 34(6) of the NGR.[2] However, the purpose of

[1] As defined in the AER's draft decision.
[2] Rule 34(6) of the NGR stipulates that a service provider must notify the AER without delay if circumstances change and it no longer qualifies for an exemption that has been granted.

conditions 1 and 2 is unclear as the circumstances described are not the type of circumstances that would be expected to give rise to competition harm or public detriment. In other words, the public benefits and costs for Jemena Pipeline Businesses' compliance with the ring-fencing obligation under section 140 of the NGL with respect to PCCS would remain unchanged, even if the circumstances specified in exemption conditions 1 and 2 eventuate.

Jemena is concerned that the inclusion of conditions 1 and 2 may erroneously signal a concern about a specific circumstance conceived by the condition may cause public detriment. We provide the following information to assist the AER to consider the effectiveness of the proposed conditions.

Condition 1: if JNGP's influence on PCCS's prices or access changes

JNGP currently has full control over the prices or access to PCCS, subject to the Access Principles for the NGP and PCCS that were agreed with the Northern Territory Government through the competitive tender process for the development of these facilities. The demand for PCCS' services is wholly reliant on the demand for east-bound gas transportation services on the NGP only.

The possible events that Jemena has identified which may materially change the influence that JNGP can exert on the prices or access to PCCS include:

a) a cessation of or a change in the Access Principles, or
b) a transfer of ownership of the PCCS assets to a third party. This latter example would cause Jemena Pipeline Businesses to notify the AER pursuant to rule 34(6) of the NGR in any case because they would no longer need or qualify for the exemption if JNGP is no longer undertaking a related business.

In the unlikely event that the Access Principles were to change or cease to apply before their expiration date, any concerns about how this would affect Jemena Pipeline Businesses' eligibility for the exemptions sought would be highly speculative.

Also, we request that condition 1 be clarified to require reporting by JNGP specifically, noting that the wording of condition 1 currently refers to 'Jemena'. If condition 1 is intended to require reporting by the exemption applicants (Jemena Pipeline Businesses), we seek guidance from the AER on whether one notification collectively made by the entities would suffice.

Condition 2: if a Jemena Pipeline Businesses' customer becomes a user of the NGP and PCCS

The AER states that in making its draft decision to grant the exemptions, it has considered the potential outcomes where users of the NGP/PCCS become users of Jemena Pipeline Businesses' pipelines.[3] The AER did not specify any potential outcome that would warrant concerns. Whether or not users of the NGP/PCCS become users of a Jemena Pipeline Business' pipeline, we consider that concerns about the potential for harm in any markets arising from such an occurrence would be extremely limited if at all.

Exemption condition 2 would be triggered, for example, if a shipper on the EGP became a shipper on the NGP and PCCS because that shipper started sourcing gas from the Northern Territory and transporting the gas to Queensland.

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[3] The AER's draft decision, p.10.

In this circumstance, the information that JEGP could provide to the AER to demonstrate that Jemena Pipeline Businesses cannot confer any competitive advantage to JNGP in its capacity of undertaking a related business, would be no different to what was already set out in JEGP's initial application for the exemption.

JNGP (PCCS) having a common customer with a Jemena Pipeline Business does not increase the potential for harm in any market as:

- PCCS remains geographically disparate from the Jemena Pipeline Businesses' pipelines, and it is not foreseeable that it would ever be physically interconnected with any of the Jemena Pipeline Businesses' assets.
- there is no reasonably foreseeable circumstance in which PCCS can receive any favourable pipeline access, or any relevant information, from Jemena Pipeline Businesses to gain a competitive advantage.
- PCCS is not competing with any shipper on the NGP or Jemena Pipeline Businesses' pipelines as they provide different products/services, and relevantly, there is no competitor to PCCS currently.

Alternative exemption condition for the AER to consider

We request that the AER consider removing or amending conditions 1 and 2 to more appropriately reflect the risk factors that may warrant a review of Jemena Pipeline Businesses' eligibility for the exemptions.

As the circumstances defined in the conditions 1 and 2 have little or no bearing on the public benefit of Jemena Pipeline Businesses' compliance with section 140 of the NGL, it is unclear how the information gathered via these conditions would assist the AER in assessing whether the Jemena Pipeline Businesses would remain eligible for the exemptions.

In our view, the potential for public detriment to arise as a result of the exemptions is unlikely to materialise and we submit it is unnecessary to impose conditions 1 and 2.

We note that rule 34(6) of the NGR imposes the obligation on a service provider to notify the AER without delay if circumstances change and it no longer qualifies for an exemption that has been granted. Moreover, pursuant to rule 35A of the NGR, the AER can revoke an exemption on its own initiative, if the relevant exemption criteria are no longer satisfied. The onus is on Jemena Pipeline Businesses to inform the AER of any significant changes in circumstances that may warrant the AER's review of the exemptions.

Should the AER be minded to impose conditions which extend beyond the 'safety net' provided by rule 34(6) of the NGR, an alternative condition that pertains to the potential situations where competition harm may arise would seem more aligned to the stated objectives of the ring-fencing provisions in the AER's gas ring fencing decision guide.

We suggest that the AER consider the following condition as alternative:

- Jemena Pipeline Businesses must inform the AER, as soon as practicable, if a gas processing facility enters the market in the Northern Territory, offering gas processing services to third parties that are substitutable for PCCS's services.

The entry of a new competitor to JNGP (PCCS) may call into question whether there is any potential for JNGP (PCCS) to gain an unfair competitive advantage by way of sharing marketing staff with another pipeline, but it remains unclear how Jemena Pipeline Businesses could affect competition in the relevant market (i.e. the market in which PCCS participates in) in any foreseeable circumstances.

We would welcome the opportunity to engage further with the AER to determine the appropriate exemption conditions in its final decision in relation to Jemena Pipeline Businesses' exemption applications.

Should you have any questions or would like to discuss this submission further, please contact [redacted], Senior Regulatory Adviser at [redacted].

Yours sincerely,

[redacted]
General Manager Regulation