Ring-fencing exemption determination – Jemena

Final decision

March 2025

AUSTRALIAN ENERGY REGULATOR

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Email: aerinquiry@aer.gov.au
Tel: 1300 585 165

AER reference: 17929198

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Summary

The AER has made a final 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 the Phillip Creek Compressor Station (PCCS). PCCS provides a nitrogen removal service necessary to enable the transportation of gas from the Northern Territory (NT) to Queensland.

These exemptions allow the Jemena Pipelines Businesses' marketing staff to be marketing staff of Jemena Northern Gas Pipeline Pty Ltd, and vice versa, in relation to the PCCS. 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.

These exemptions are subject to the conditions set out in section 2.1 of this final decision.

We received one submission to the draft decision, from Jemena Eastern Gas Pipeline (1) Pty Ltd (on behalf of Jemena Pipeline Businesses).[2] It queried how the changes in circumstances contemplated under conditions 1 and 2 are relevant to the Jemena Pipeline Businesses' ring-fencing exemptions. It also asked for clarification on what entity or entities must report to the AER under condition 1.

We have considered Jemena Eastern Gas Pipeline (1) Pty Ltd's submission and have decided to modify the conditions in this final decision, including to clarify that each Jemena Pipeline Business must comply with the conditions.

We consider that the conditions set out in section 2.1 of this final decision are sufficient to make the AER aware of any circumstances that may warrant a review of the exemptions.

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 provisions.

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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).

2 *Jemena's submission in relation to Draft decision - Ring-fencing exemption determination – Jemena.*

1 Background

1.1 Northern Gas Pipeline and Philip Creek Compressor Station

The NGP is a 622km transmission pipeline that runs from Tennant Creek in the NT to Mount Isa in Queensland. It commenced commercial operations in January 2019 and is the only pipeline connecting the NT to Queensland and 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.

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]

1.1.1 Access Principles

Jemena Northern Gas Pipeline Pty Ltd is legally bound to adhere to the access principles specified in its Project Development Agreement with the NT Government (Access Principles[6]), which address access and pricing requirements for the NGP and PCCS.

The Access Principles limit Jemena's ability to use its ownership of the PCCS to exercise market power. They set out, among other things:

- maximum tariffs for firm forward haul and firm nitrogen removal services.
- the requirement to negotiate in good faith and to supply services to access seekers on a non-discriminatory basis.
- the requirement on Jemena and access seekers to not engage in conduct for the purpose of preventing or hindering an access seeker's access to the services.
- the requirement that Jemena's standard terms and conditions are consistent with the Access Principles.
- the dispute resolution procedure including the process for negotiations and arbitration.

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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.*

6 The NGP Access Principles.

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).
- 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 the PCCS.

Jemena Northern Gas Pipeline Pty Ltd is considered to be an associate of Jemena Pipeline Businesses undertaking a related business.[7]

The transitional provisions in the NGL[8] are specific in exempting only the NGP from the requirements to ring-fence the PCCS from pipeline operations. Therefore, 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.

[7] Related business has the meaning given in the NGL.

[8] NGL, Schedule 3, clause 130.

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, following completion of the legal and functional separation of these pipeline assets from their related gas processing facilities.[9]

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[10] or biogas. The NGL sets out the minimum ring- fencing obligations on service providers for:

- carrying on a related business;
- marketing staff[11] 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,[12] 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.[13]

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

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

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

11 Marketing staff has the meaning given in the NGL.

12 Primary gas has the meaning given in the NGL.

13 Related business has the meaning given in the NGL.

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.

1.4 Draft decision

On 15 January 2025, we published our draft decision[14] to grant the Jemena Pipeline Businesses exemptions from obligations under section 140 of the NGL in response to 10 individual applications for exemption from ring-fencing requirements, in relation to the PCCS.

14 *Draft Decision – Ring-fencing exemption determination – Jemena.*

2 Final Decision

Our final 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 the PCCS.

In effect, this final 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 who are separate from Jemena Northern Gas Pipeline Pty Ltd.

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 provisions.

A Jemena Pipeline Business must notify[15] the AER without delay if circumstances change such that it no longer qualifies for exemptions granted to it in this decision.[16]

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.[17]

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 increase transparency, information symmetry and help the AER to monitor changes in circumstance to determine if a re-assessment to the exemption may be required.

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15 NGR, rule 34(6).

16 Any of the Jemena Pipeline Businesses may provide notification under these conditions, except if a customer of PCCS is a customer of a Jemena Pipeline Business in which case only a Jemena Pipeline Business that shares the customer may provide notification.

17 NGR, rule 35A(2).

These conditions are in addition to Jemena Pipeline Business's obligation to notify[18] the AER without delay if circumstances change such that it no longer qualifies for the exemptions that have been granted to it.

A Jemena Pipeline Business must comply with each of the conditions of an exemption that has been granted to it.[19]

The AER has the power to vary the conditions of these exemptions at any time (subject to undertaking the required consultation).[20]

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

Condition 1

A Jemena Pipeline Business must inform the AER, as soon as practicable, if there is any material change to the Access Principles, that are specified in Jemena Northern Gas Pipeline's Project Development Agreement with the NT Government, or if the Access Principles cease to have effect.

- The Jemena Pipeline Business must provide details of these changes.

Condition 2

A Jemena Pipeline Business must inform the AER, as soon as practicable, if:

- any of its customers become users of the PCCS or any of the users of the PCCS become customers of the Jemena Pipeline Business.
  - The Jemena Pipeline Business must provide details of the contractual arrangements for each of the users of the PCCS, to a level of detail consistent with the requirements set out in rule 101E of the NGR.
- a gas processing facility enters the market in the NT, offering gas processing services to third parties that are substitutable for the PCCS's services.
  - The Jemena Pipeline Business must provide details of the development or a link to public documents if available.

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.

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18 NGR, rule 34(6).

19 NGR, rule 35(2).

20 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.[21]

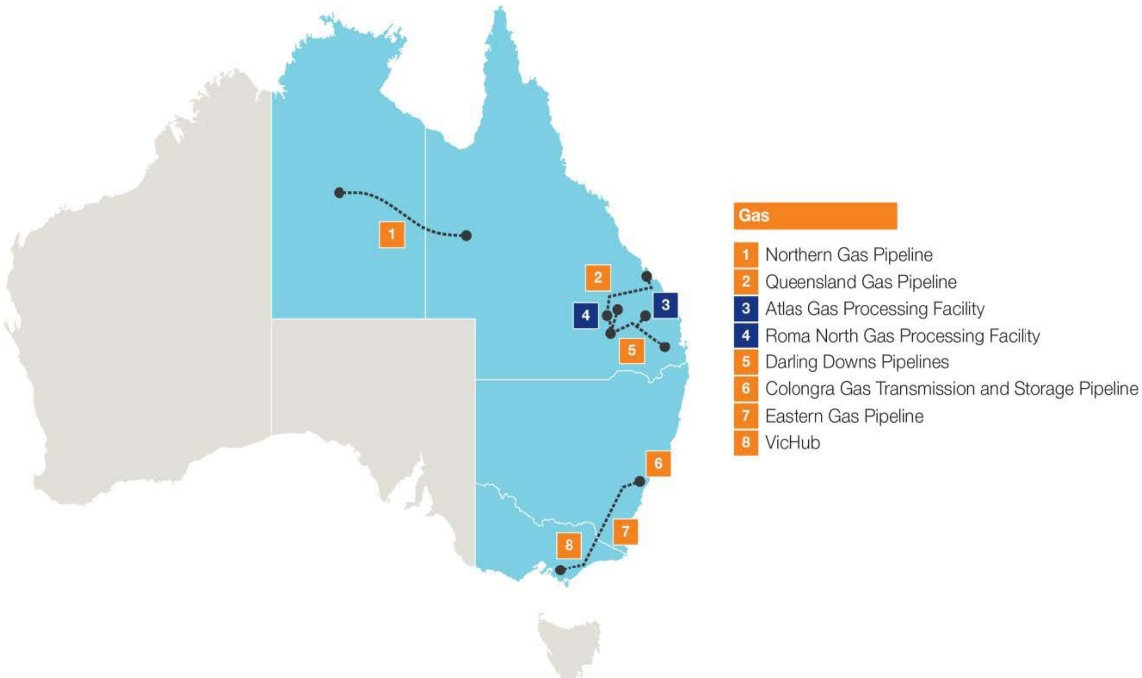
3.2 Would the cost of compliance outweigh the public benefit resulting from compliance?

3.2.1. Public benefit

As part of its exemption application, Jemena submitted[22] 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 demand for PCCS's 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).

Figure 1. Map of Jemena pipeline assets[23]



- 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.

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21 NGR, rule 34(4).

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

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

- The Access Principles impose prices and services obligations on the NGP/PCCS, therefore reducing the market power Jemena Northern Gas Pipeline Pty Ltd has on its users.

Jemena's application for the exemptions was further supported by the NT Government. It submitted a letter[24] from the then Minister for Renewables and Energy, the Honourable Kate Worden as an attachment to the application.

3.2.2. Costs of compliance

Jemena submitted[25] that the costs of compliance should include both direct costs and indirect costs (keeping in mind the national gas objective[26] which promotes efficient investment in and operation of covered gas pipelines). Jemena estimated that the total cost to implement this arrangement would be $733,150 per year.

3.2.3. AER final position

We are satisfied that, in the current circumstances, the cost of compliance outweighs the public benefit resulting from compliance, and therefore meets the criterion set out in rule 34(3)(b) of the NGR.

In developing this view, we assessed information on how customers use the NGP/PCCS and our understanding of the current environment of the gas market.

3.3 Jemena Pipelines Businesses' submission to the draft decision

On 6 February 2025, Jemena Eastern Gas Pipeline (1) Pty Ltd (on behalf of Jemena Pipelines Businesses) made a submission[27] to the draft decision. Jemena Eastern Gas Pipeline (1) Pty Ltd welcomed the AER's draft decision to grant exemptions to the Jemena Pipelines Businesses but raised concerns about the first two proposed exemption conditions.

In the draft decision, these exemption conditions were:

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 the 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.

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

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

26 NGL Chapter 1, Part 3, Division 1.

27 *Jemena's submission in relation to Draft decision - Ring-fencing exemption determination – Jemena.*

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 ringfencing 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.

3.3.1 Jemena's response to the proposed conditions

Condition 1

Concern: Jemena was concerned with the broad drafting of condition 1 and the possibility that it 'may erroneously signal a concern about a specific circumstance conceived by the condition may cause public detriment.' Jemena made the case that the Access Principles provide adequate and legally binding protections on the ability to exert prices on the PCCS and, therefore, the condition as originally drafted was unnecessary.

- **Response:** We acknowledge that the circumstances that could give rise to consumer detriment from the ring-fencing exemption are limited by the Access Principles. We are, therefore, comfortable that this condition can be narrowed to informing the AER 'if there is any material change to the Access Principles, or if the Access Principles cease to have effect'. We consider that the action of the Access Principles, together with condition 2, are sufficient to mitigate the risk of consumer detriment resulting from these exemptions. This is because the Access Principles limit Jemena's ability to control prices, limit access or otherwise discriminate between users of the PCCS.

Condition 2

Concern: Having a common customer with a Jemena Pipeline Business does not increase the potential for harm in any market. Jemena was also concerned that this condition was erroneously communicating that shared users could signal a concern that the exemption was no longer valid.

- **Response**: The terms that Jemena offers to a shared customer could be an indicator of changed market circumstances that are relevant to the appropriateness of the exemption. We have therefore retained this notification requirement.

Concern: The information that Jemena could provide to the AER to demonstrate that Jemena Pipeline Businesses cannot confer any competitive advantage would be no different to what was already set out in the initial exemption application.

- **Response:** We have simplified the information requirement in conditions 1 and 2. This means that a Jemena Pipeline Business is only required to report the details of the change in circumstance without the need for a risk assessment in the first instance. We may ask for further information where necessary.

Condition 3

Jemena did not raise any concerns with condition 3 proposed in the draft decision.

- **Response:** No changes have been made to condition 3 proposed in the draft decision.

Other concerns

Concern: Jemena submitted an alternative condition (below) as a replacement to conditions 1 and 2.

> ‘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 the PCCS’s services.’

Jemena’s rationale for this suggestion was that the entry of a new competitor to the PCCS may raise concerns for Jemena Northern Gas Pipeline Pty Ltd being able to gain unfair competitive advantage by sharing of marketing staff with another pipeline.

- **Response:** We have included Jemena’s alternative condition as part of condition 2 because, in the case of a competitor to the PCCS, this exemption could give Jemena a competitive advantage. However, we do not agree that Jemena’s alternative condition should replace conditions 1 and 2 as it does not cover all the circumstances contemplated by each of those conditions.

It is also important to note that the conditions do not set out a list of circumstances that would make the Jemena Pipeline Businesses no longer eligible for these exemptions from section 140 of the NGL. Rather, the purpose of the conditions is to increase information symmetry between the AER and Jemena Pipeline Businesses. This will assist the AER to monitor changes in circumstance that could potentially result in the exemption being reassessed.

We have, therefore, considered Jemena Eastern Gas Pipeline (1) Pty Ltd’s submission and have updated the conditions under this final decision to give more clarity about the changes in circumstances that Jemena must report to us.

Appendix A – Rule 34 of the NGR

Exemptions from minimum ring-fencing requirements

Version 83 of the NGR current as of 12 February 2025.

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