Revocation of ring fencing exemption – APT Pipelines NT Pty Ltd

Draft decision

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AUSTRALIAN ENERGY REGULATOR

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Summary

In accordance with rule 35A of the National Gas Rules (NGR), the AER has made a draft decision to revoke an exemption granted to APT Pipelines NT Pty Ltd (APTNT) from ring fencing requirements under section 140 of the National Gas Law (NGL) in respect of the Darwin Distribution System.

This draft decision follows an application[1] from APTNT (owner of NT Gas Distribution Pty Ltd) to revoke a ring fencing exemption that was granted in August 2011. In its request, APTNT submits that NT Gas Distribution Pty Ltd (NTGD) will no longer be taking part in a related business and therefore the exemption for the requirement under section 140 of the NGL is no longer required.

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

[1] APTNT – *Revocation application – Darwin Distribution System ring fencing waiver,* 14 November 2024.

1 Background

In June 2011, APTNT (a wholly owned subsidiary of APA) acquired the Amadeus Gas Pipeline and NTGD from NT Gas Pty Ltd.

NTGD carried on a related retail business of buying and selling gas to supply customers on the Darwin Distribution System. APTNT therefore sought[2] a ring fencing exemption to allow its staff to undertake marketing and sales work for NTGD.

In August 2011, the AER decided to exempt APTNT from the ring fencing requirements set out under section 140 of the NGL.[3] In making this decision, the AER considered that, based on the market environment for gas in the Northern Territory, including the low levels of demand and little prospect of a new entrant creating an effective retail market in Darwin, there would be little public benefit in requiring APTNT and NTGD to separate their marketing staff.

This exemption from ring fencing requirements was a continuation of a notice issued in March 2002 by the Australian Competition and Consumer Commission waiving the requirement for NT Gas Pty Ltd to meet ring fencing requirements.[4]

1.1 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[5] or biogas.

The NGL sets out the minimum ring fencing obligations on service providers for:

- carrying on a related business;
- marketing staff[6] taking part in a related business;
- keeping separate accounts.

A related business[7] means:

- the provision of a blend processing service; or
- the business of producing primary gas,[8] 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.

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2 APTNT, *Application to exempt APTNT from ring fencing obligations under section 140 of the NGL,* 27 May 2011.

3 AER, *Final decision – APTNT ring fencing exemption application,* 12 August 2011.

4 ACCC, *Final Decision – Application to waive ring fencing obligations by NT Gas Pty Ltd,* 13 March 2002.

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

6 Marketing staff has the meaning given in the NGL.

7 Related business has the meaning given in the NGL.

8 Primary gas has the meaning given in the NGL.

These ring fencing provisions in the NGL ensure that related businesses do not gain a competitive advantage by virtue of their common ownership or operation with pipelines. In these types of situations, the pipelines may have market power. Ring-fencing stops the leveraging of this market power into related markets, and guards against cost shifting between regulated and unregulated businesses. For example, a service provider could provide favourable access and pricing terms to the related business, which could affect gas prices or harm competitors.

In addition to providing for service providers to seek one or more exemptions from the ring fencing requirements, the NGR sets out a framework for the revocation of exemptions granted from these ring-fencing requirements.[9]

A service provider granted an exemption under rule 34 of the NGR must notify the AER without delay if circumstances change such that the service provider no longer qualifies for the exemption.[10]

1.2 APTNT's application for revocation

On 14 November 2024, APTNT applied[11] to the AER to revoke its ring fencing exemption related to NTGD. APTNT informed us that from 31 December 2024, NTGD will no longer be involved in the purchase or sale of natural gas for delivery on the Darwin Distribution System and therefore, no longer be taking part in a related business.

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9 NGR, rule 35A.

10 NGR, rule 34(6).

11 APTNT – *Revocation application – Darwin Distribution System ring fencing waiver,* 14 November 2024.

2 Draft Decision

The AER's draft decision is to revoke an exemption granted to APTNT from ring fencing requirements under section 140 of the NGL in respect of the Darwin Distribution System. The criterion for an exemption under rule 34(4) the NGR is no longer satisfied because NTGD is no longer taking part in a related business and, therefore, there is no cost of compliance with section 140 of the NGL for APTNT.

2.1 Criteria for revoking a section 140 exemption

The AER must revoke an exemption granted under rule 34 of the NGR, where, in the AER's reasonable opinion, the relevant exemption criteria in rule 34 are no longer satisfied.[12] In this case, the relevant exemption criterion[13] is:

'An exemption is to be granted from section 140 or section 140 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.'

2.2 Assessment of APTNT's application for revocation

For the AER to revoke APTNT's exemption from ring fencing requirements under section 140 of the NGL, the AER must no longer be 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.

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

NTGD (owned by APTNT) is no longer taking part in a related business. Consequently, there are no costs of compliance with section 140 of the NGL for APTNT.

On this basis, we consider the cost of compliance to APTNT does not outweigh the public benefit resulting from compliance. Therefore, rule 34(4) of the NGR (the relevant exemption criteria) is no longer satisfied and we make the draft decision to revoke APTNT's exemption from the ring fencing requirements under section 140 of the NGL.

This revocation would take effect on the date we make a final decision to revoke the exemption. From the date of effect, APTNT would be required to comply with the ring fencing requirements under section 140 of the NGL: i.e., it must not share marketing staff with any related business.

12 NGR, rule 35A.

13 NGR, rule 34(4).

A service provider must report any non-compliance to the AER as part of the Annual Compliance Order for gas pipeline service providers.[14] We also strongly encourage service providers to advise the AER where they identify potential issues of non-compliance.[15]

14 AER, *Annual Compliance Order for gas pipeline service providers 2024*, 7 June 2024.

15 Service providers may use the Wholesale energy market self-reporting template.

Appendix A

Rule 34 of the NGR – Exemptions from minimum ring fencing requirements

(Version 84 of the NGR current as of 28 March 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.

Rule 35A of the NGR – Revocation

(Version 84 of the NGR current as of 28 March 2025)

Requirements
(1) The AER must revoke an exemption granted under rule 34 where, in the AER's reasonable opinion, the relevant exemption criteria in rule 34 are no longer satisfied.
(2) The AER may revoke an exemption on its own initiative or on application made by any person.
(3) The AER must deal with the revocation of an exemption under subrule (1) in accordance with the *expedited consultative procedure*.
(4) A revocation of an exemption takes effect on the date specified by the AER in its decision to revoke the exemption.

Glossary

Term	Definition
AER	Australian Energy Regulator
APTNT	APT Pipelines NT Pty Ltd
NGL	National Gas Law
NGR	National Gas Rules
NTGD	NT Gas Distribution Pty Ltd