

# Ring-fencing exemption determination – Power and Water Corporation

Final decision

November 2024

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# 1 Summary

## 1.1 Final decision

Our final decision is to:

- grant Power and Water an exemption under rule 34 of the National Gas Rules (NGR) from its ring-fencing obligations under section 139 of the National Gas Law (NGL);
- grant Power and Water an exemption under rule 34 of the NGR from its ring-fencing obligations under section 140 of the NGL; and
- grant Power and Water an exemption under rule 34 of the NGR from its ring-fencing obligations under section 141 of the NGL

in respect of the McArthur River Mining Pipeline (MRM Pipeline).

These exemptions are subject to the conditions that are set out in section 4 of this final decision. Table 1 outlines the conditions under this final decision, compared with the conditions under the draft decision. We consider that the conditions set out in this final decision are adequate to make the AER aware of any circumstances that may warrant a review or a revocation of the exemptions.

**Table 1 Final decision conditions compared with draft decision**

Final decision	Draft decision
Exemptions will expire when the MRM Pipeline is converted to a bi-directional pipeline.	[No fixed expiry of exemption]
Power and Water must inform the AER of the completion of:	Power and Water must inform the AER if there is:
<ul style="list-style-type: none"> <li>— the conversion of the MRM Pipeline to a bi-directional pipeline</li> <li>— any expansions, extensions or material changes to the configuration</li> </ul>	<ul style="list-style-type: none"> <li>— a change to the current contractual arrangements</li> <li>— a change to the uncontracted capacity</li> <li>— an expected or observed material change in monthly average ‘as available’ capacity</li> <li>— a proposal to expand or extend the MRM Pipeline</li> </ul>

By granting these exemptions, Power and Water may carry on its gas supply business and is not required to maintain separate marketing staff or separate accounts between its gas network and supply businesses while the exemptions remain valid.

In deciding to grant Power and Water exemptions from its ring-fencing obligations, we have had regard to the current circumstances, where there is presently no competing demand for access to the MRM Pipeline. Power and Water submits that under the existing arrangements, it cannot make any firm capacity on the MRM Pipeline available to its related businesses. Power and Water submits that these arrangements preclude Power and Water

from entering into an arrangement with a related business that has the purpose or likely effect of substantially lessening competition in a market for covered gas services. As such, we consider that requiring Power and Water to comply with the ring-fencing obligations is unlikely to provide tangible benefits to consumers. There currently appears to be minimal risk of Power and Water discriminating in favour of its own gas supply operations if it is exempt from these obligations.

However, we observe that changes to pipeline configuration are likely, enabling the commencement of backhaul services to transport gas from the MRM Pipeline to the Amadeus Gas Pipeline estimated to take place from around mid-2027. We consider that following these changes in circumstances, the ring-fencing exemption criteria may no longer be satisfied. The commencement of backhaul services will allow pipeline users, which may include Power and Water, to transport gas to a larger number of customers and to different markets. Under these circumstances it is not clear that the MRM Pipeline would not be a significant part of the NT pipeline system, or that the costs to Power and Water of compliance with the ring-fencing provisions would outweigh the public benefits.

While this exemption is in place, Power and Water should prepare to comply with the ring-fencing provisions in the NGL prior to the MRM Pipeline becoming bi-directional or to demonstrate that the exemption criteria in the NGR will continue to be satisfied under the circumstances.

In coming to this decision, we have had regard to the current and likely future demand for pipeline services on the MRM Pipeline, and the likelihood of Power and Water transporting and marketing gas on the MRM Pipeline in the foreseeable future. We have considered a range of information provided by stakeholders about current and potential future contractual arrangements on the MRM Pipeline. Appendix A provides a list of information received by the AER from stakeholders as part of this determination.

The AER has the power to vary the conditions of an exemption, subject to undertaking public consultation in accordance with the expedited consultative procedure in rule 9 of the NGR.<sup>1</sup> This gives us the option to extend or shorten the period of these exemptions should the circumstances warrant it. The AER must revoke an exemption if the AER is no longer satisfied that the grounds for an exemption are met, such as if market conditions change substantially at any time in the future.<sup>2</sup> Power and Water is also required to notify the AER without delay if circumstances change such that it no longer qualifies for the exemptions.<sup>3</sup>

## 1.2 Introduction

On 23 February 2024, Power and Water applied for an exemption from sections 139 and 140 of the NGL for its MRM Pipeline under rule 34 of the NGR.<sup>4</sup> On 14 June 2024 Power and Water provided a revision to its application to also seek an exemption from section 141 of the NGL.<sup>5</sup>

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<sup>1</sup> NGR, rules 35(3), 35(4).

<sup>2</sup> NGR, rule 35A(2).

<sup>3</sup> NGR, rule 34(6).

<sup>4</sup> Power and Water, *Submission to the AER for an exemption under rule 34 of the National Gas Rules*, February 2024.

<sup>5</sup> Power and Water, *Supplement to submission for an exemption under rule 34 of the National Gas Rules*, June 2024.

The MRM Pipeline is a 330 km transmission pipeline in the Northern Territory with a maximum capacity of 15 TJ/day. It receives gas from the Amadeus Gas Pipeline and delivers to the McArthur River Mine.

Power and Water supplies gas to power stations, several large commercial and industrial customers in the Northern Territory and various commercial and industrial customers interstate. It also owns 4 gas pipelines, of which only the MRM Pipeline is a third-party access pipeline and subject to the ring-fencing provisions of the NGL. The purpose of this ring-fencing exemption application is to allow Power and Water to carry on its gas supply business and to be exempt from maintaining separate marketing staff or separate accounts between its gas network and supply businesses. Power and Water would incur extra costs to separate these businesses and functions.

### 1.2.1 Draft decision

Our draft decision was to grant exemptions to Power and Water from sections 139, 140 and 141 of the NGL for its MRM Pipeline under rule 34 of the NGR.<sup>6</sup> We agreed that granting the exemption would likely provide a net benefit for consumers and is in line with the National Gas Objective.<sup>7</sup>

### 1.2.2 Submission to the draft decision

We received a late submission to the draft decision from Empire Energy Group Ltd (Empire Energy) on 13 August 2024. Empire Energy submitted that:<sup>8</sup>

- it had signed a gas sale agreement with the NT Government on 26 July 2024<sup>9</sup>
  - The agreement means that the NT Government needs to have access to the MRM Pipeline by mid-2025
- Empire Energy will supply gas to the NT Government at a new connection point on the MRM Pipeline near Empire Energy's Carpentaria Pilot Project gas processing facility
- the MRM Pipeline will play a key role in the development of the Beetaloo Sub-basin and the development of a critical component of future gas supply to the east coast market
- a ring-fencing exemption may mean that Power and Water could be a competitor for pipeline services on the MRM Pipeline in the future.

We have had regard to this information in coming to our final decision.

### 1.2.3 Request for further information

Following the submission from Empire Energy, we requested further information from Power and Water, Empire Energy and the Northern Territory Government (NT Government).

- Power and Water noted that it had installed a T-piece connection in May 2024 as a first step, which could allow Empire Energy to deliver gas from the Beetaloo Sub-basin to the

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<sup>6</sup> AER, *Ring-fencing exemption determination – Power and Water – Draft decision*, July 2024.

<sup>7</sup> NGL, section 23.

<sup>8</sup> Empire Energy, *Submission to draft decision on ring fencing exemption application for Power and Water Corporation*, 13 August 2024.

<sup>9</sup> The gas sale agreement is subject to final investment decision and necessary approvals.

MRM Pipeline in an anticipated 6–12 months for forward haul services and 18–24 months for backhaul services. It also provided information in confidence regarding potential future contractual arrangements on the MRM Pipeline.

- Empire Energy indicated that it is on track to commence delivery of gas from mid-2025 onto the MRM Pipeline and provided further details on its gas sale agreement with the NT Government.
- The NT Government anticipates that the gas it takes at the delivery point on the MRM Pipeline will be transported east to the McArthur River Mine or west to the Amadeus Gas Pipeline and into the broader NT gas market. It is also considering options to ensure Power and Water will meet its ring-fencing requirements over the longer term.

We have had regard to this additional information in coming to our final decision.

### 1.2.4 Extension to time for making final decision

On 2 September 2024, we issued a notice to Power and Water informing it that we had decided, in accordance with Rule 12 of the NGR, to extend the time for making our final decision by a period of 20 business days to 4 October 2024.<sup>10</sup> The decision to extend the time was made on the basis that it had become necessary because of circumstances beyond the AER's control. Specifically, we required additional time to consider the late submission from Empire Energy and the additional information provided by stakeholders.

On 4 October 2024, we issued a second notice to Power and Water informing it that we had decided, in accordance with Rule 12 of the NGR, to extend the time for making our final decision by a period of 40 business days to 29 November 2024.<sup>11</sup> The decision to extend the time was made on the basis that it had become necessary because of circumstances beyond the AER's control. Specifically, we required additional time to collect and analyse further information from stakeholders relevant to making this final decision.

## 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<sup>12</sup> or biogas. The NGL sets out the minimum ring-fencing obligations on service providers for:

- carrying on a related business
- marketing staff taking part in a related business
- keeping separate accounts.<sup>13</sup>

A related business means:

- the provision of a blend processing service; or

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<sup>10</sup> See <https://www.aer.gov.au/documents/notice-extension-power-and-water-corporation-gas-ring-fencing-exemption-application-2-september-2024-redacted>.

<sup>11</sup> See <https://www.aer.gov.au/documents/notice-extension-power-and-water-corporation-gas-ring-fencing-exemption-application-2-september-2024-redacted>.

<sup>12</sup> Covered gas and processable gas have the meaning given in the NGL.

<sup>13</sup> NGL, Chapter 4, Division 2.

- the business of producing primary gas,<sup>14</sup> 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.<sup>15</sup>

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.

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<sup>14</sup> Primary gas has the meaning given in the NGL.

<sup>15</sup> NGL, section 137.



## 2 Ring-fencing exemption application

Power and Water seeks an exemption pursuant to rule 34 of the NGR (see Appendix B) from its ring-fencing obligations under the following sections of the NGL:

- section 139 – Carrying on of related businesses prohibited
  - A service provider must not carry on a related business.
- section 140 – 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.
  - A service provider must ensure that none of its officers, employees, consultants, independent contractors or agents are marketing staff of an associate of the service provider that takes part in a related business.
- section 141 – Accounts that must be prepared, maintained and kept
  - A service provider must prepare, maintain and keep—
    - separate accounts in respect of pipeline services provided by means of every pipeline owned, operated or controlled by the service provider; and
    - a consolidated set of accounts in respect of the whole of the business of the service provider.

## 3 Assessment against the criteria

### 3.1 Exemption from section 139 of the NGL

#### 3.1.1 Criteria for exemption

Section 139 of the NGL relates to the prohibition of carrying on of related businesses.

The AER must grant a ring-fencing exemption from section 139 of the NGL if it is satisfied that:

- either:
  - the relevant pipeline is not a significant part of the pipeline system for any participating jurisdiction; or
  - 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
- the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance; and
- 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.<sup>16,17</sup>

#### 3.1.2 Is the relevant pipeline a significant part of the pipeline system?

##### 3.1.2.1 Significance—current

In our draft decision, we were satisfied that the MRM Pipeline is not a significant part of the pipeline system in Northern Territory. In coming to this position we had regard to the relatively small pipeline capacity and that there is only a single user who does not on-sell gas.<sup>18</sup>

For the final decision we remain satisfied that, in the current circumstances, the MRM Pipeline is not a significant part of the pipeline system in Northern Territory. We anticipate that the MRM Pipeline will continue to be a single user pipeline delivering relatively small volumes to the McArthur River Mine until at least mid-2027.

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<sup>16</sup> NGR, rule 34(3). The subrule relating to internal controls was changed on 12 March 2024 to clarify the meaning of the rule. We consider that the subrule as of 14 June 2024, being the date that Power and Water submitted its revision of the application, is the relevant version for this final decision.

<sup>17</sup> The internal controls should prevent the service provider from entering into contracts with related parties that would, or would likely to, have an anti-competitive effect or are on more favourable terms than what is made available to third parties.

<sup>18</sup> AER, *Ring-fencing exemption determination – Power and Water – Draft decision*, July 2024, section 3.1.2.

### 3.1.2.2 Significance—future

New information received after the draft decision indicates that circumstances may substantially change in the coming years. We learned that:<sup>19</sup>

- the NT Government has made a gas sale agreement with Empire Energy for gas to be delivered from Empire Energy’s Carpentaria Pilot Project gas processing facility onto the MRM Pipeline
- connection of Empire Energy’s Carpentaria Pilot Project with the MRM Pipeline is expected to be completed by mid-2025
- it is likely that the MRM Pipeline will be reconfigured to allow backhaul of gas from the Carpentaria Pilot Project for delivery onto the Amadeus Gas Pipeline, which Power and Water estimates will take 18–24 months to complete.

Power and Water, Empire Energy and the NT Government have all confirmed that the capacity of the MRM Pipeline is unlikely to substantially change under the Empire Energy–NT Government gas sale agreement and gas will be transported from the receipt point both eastbound to the McArthur River Mine and westbound (backhaul) to the Amadeus Gas Pipeline. It is unlikely that the volume of gas transported in either direction will be substantially above the pipeline’s current capacity.<sup>20</sup>

However, we consider that the following factors are also important in assessing the significance of the MRM Pipeline in the future:

- The pipeline would be the only practical means for the McArthur River Mine to receive gas, and for Empire Energy to move its gas from the Beetaloo Sub-basin to the market. Any difficulties in securing access to the pipeline could potentially harm these entities.
- Empire Energy’s gas sale agreement with the NT Government to supply up to 25 TJ/day onto the MRM Pipeline.<sup>21</sup> At this level, it would constitute a substantial proportion of all gas consumed in the Northern Territory—around a third of NT domestic demand. This is particularly important in light of the ongoing production difficulties at the Blacktip gas field.

For these reasons, the MRM Pipeline may be a significant pipeline in the context of the Northern Territory’s gas pipeline network when the MRM Pipeline becomes capable of backhaul gas transport.

### 3.1.2.3 AER final position

We are satisfied that, in the current circumstances, the MRM Pipeline is not a significant part of the pipeline system, and therefore meets the criterion set out in rule 34(3)(a)(i) of the NGR. However, when the pipeline becomes bi-directional it is less clear whether the MRM Pipeline is not a significant part of the pipeline system. Therefore, our final decision includes the conditions in section 4 of this final decision, including that the exemptions will expire

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<sup>19</sup> Empire Energy, *Submission to draft decision on ring fencing exemption application for Power and Water Corporation*, 13 August 2024 and Power and Water, *Response to AER request for information*, 23 August 2024.

<sup>20</sup> Power and Water, *Response to AER request for information*, 23 August 2024.

<sup>21</sup> The gas sale agreement contemplates up to 25 TJ/day will be delivered in total both eastward and westward. Therefore, the capacity of the MRM Pipeline will not need to be significantly increased.

when the MRM Pipeline is converted to a bi-directional pipeline and that Power and Water is required to inform the AER when the conversion is completed.

### **3.1.3 Would the cost of compliance outweigh the public benefit resulting from compliance?**

#### **3.1.3.1 Public benefit—current**

Power and Water submitted that the public benefit in meeting its ring-fencing obligations is not clear. At present, there is no competing demand for access to the MRM Pipeline. It submitted that under the existing arrangements, it cannot make any firm capacity on the MRM Pipeline available to related businesses. Power and Water submitted that these arrangements preclude Power and Water from entering into an arrangement with a related business that has the purpose or likely effect of substantially lessening competition in a market for covered gas services.<sup>22</sup>

Consistent with our draft decision we remain satisfied that, in the current circumstances, there are no clear benefits resulting from compliance with s. 139 of the NGL. However, we consider that public benefits from compliance with the ring-fencing obligations may arise when the MRM Pipeline becomes bi-directional, Power and Water accesses pipeline services on the MRM Pipeline and/or other users seek access to the pipeline.

#### **3.1.3.2 Public benefit—future**

Empire Energy expects to commence delivery of gas from its Carpentaria Pilot Project gas processing facility to the MRM Pipeline in mid-2025 under its gas sale agreement with the NT Government. Consistent with the current circumstances, there is unlikely to be competing demand for access to the MRM Pipeline under this new gas sale agreement. Furthermore, we consider that it is unlikely that Power and Water will have the ability to exercise market power under the new gas sale agreement while the MRM Pipeline is capable of forward haul transport only. Hence, we consider that there are no clear benefits resulting from compliance with s. 139 of the NGL before the MRM Pipeline is made bi-directional.

When the MRM Pipeline is made bi-directional, it will be capable of delivering gas to Amadeus Gas Pipeline as well as McArthur River Mine. Possible future developments after the MRM Pipeline is made bi-directional may include:

- Power and Water transporting gas on the MRM Pipeline
- Empire Energy supplying additional customers if its production exceeds the volumes it has contracted to the NT Government
- pipeline capacity expanded to allow higher volumes to flow from the Beetaloo Sub-basin connection point to Amadeus Gas Pipeline
- new gas producers in the Beetaloo Sub-basin seeking access to the MRM Pipeline to deliver gas into the Northern Territory market.

Public benefits of compliance with s. 139 of the NGL may arise if Power and Water accesses pipeline services on the MRM Pipeline when it becomes capable of backhaul services. The

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<sup>22</sup> Power and Water, *Submission to the AER for an exemption under rule 34 of the National Gas Rules*, February 2024, p. 6.

ring-fencing provisions prevent Power and Water from engaging in anti-competitive conduct, for example by:

- denying access to potential competitors
  - By accessing backhaul pipeline services, Power and Water could prevent Empire Energy from selling and/or transporting gas on the MRM Pipeline surplus to its agreement with the NT Government. Furthermore, Power and Water could prevent other gas producers from accessing the MRM Pipeline.
- charging competitors a higher price for access to pipeline services
  - By restricting access to third parties, or otherwise accessing the MRM Pipeline on more favourable terms (such as prioritising firm access), Power and Water could influence the balance of supply and demand for pipeline services and thus reduce the bargaining power of prospective users. It could also potentially lead to a third party funding a major expansion of the MRM Pipeline, to the benefit of Power and Water.
- charging customers a higher price for gas
  - If Power and Water denies or constrains access and transports gas on the MRM Pipeline, it could potentially extract monopoly rent from the sale of gas from the Beetaloo Sub-basin.

The conduct set out above could lead to upward pressure on gas prices in the NT market and potentially reduce competition in the market from Beetaloo Sub-basin gas producers that require access to the MRM Pipeline.

### **3.1.3.3 Cost of compliance**

Power and Water's estimated cost of compliance has not changed since our draft decision or since we received new information.<sup>23</sup>

In its submission Power and Water stated that the most efficient way to meet its ring-fencing obligations under section 139 of the NGL is to separate out its entire infrastructure and projects team. This team is responsible for pipeline operations and maintenance. Power and Water would also engage additional resources to manage bookkeeping, auditing, corporate support and the commercial issues relating to the MRM Pipeline. Power and Water estimated that the net cost of operating this new business unit is around \$442,000 per year.<sup>24</sup>

### **3.1.3.4 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. However, when the MRM Pipeline becomes bi-directional, this ring-fencing exemption criterion may no longer be satisfied. The commencement of backhaul services will allow pipeline users, which may include Power and Water, to transport gas to a larger number of customers and to different markets. Under these circumstances it is not clear that the MRM Pipeline would not be a significant part of the NT pipeline system.

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<sup>23</sup> AER, *Ring-fencing exemption determination – Power and Water – Draft decision*, July 2024, section 3.1.3.

<sup>24</sup> Power and Water, *Submission to the AER for an exemption under rule 34 of the National Gas Rules*, February 2024, p. 9.

Therefore, our final decision includes the conditions in section 4 of this final decision, including that the exemptions will expire when the MRM Pipeline is converted to a bi-directional pipeline. Power and Water must also inform the AER of any new contractual arrangement, or any changes to an existing contractual arrangement. The AER has the power to vary this condition should the circumstances warrant it.<sup>25</sup>

### 3.1.4 Has the service provider established internal controls?

To satisfy the criteria for an exemption from section 139 of the NGL, Power and Water must substantially replicate the internal controls that would apply to associate contracts if the related business was carried on by an associate of the service provider. These controls are listed in Part 5 of the NGR. Rules 32, 32A and 33 provide that:

- A service provider may apply to the AER for approval of an associate contract or a proposed associate contract. The AER must approve the contract if the AER is satisfied that it complies with section 147 and section 148 of the NGL;<sup>26</sup> that is:
  - The service provider must not enter into or give effect to associate contracts that have an anti-competitive effect.<sup>27</sup>
  - The service provider must ensure that any pipeline service provided to a related party is provided as if that related party were a separate unrelated entity.<sup>28</sup>
- A service provider must, no later than 20 business days prior to entering into, or varying, a specified associate contract, give the AER written notice in accordance with this rule that it proposes to enter into the contract or variation.<sup>29</sup>
- A service provider must, within 5 business days after entering into, or varying, an associate contract, give the AER written notice of the contract or variation together with a copy of the contract and (as applicable) associate contract information and a statement describing any changes to the information provided in any prior application or notification to the AER.<sup>30</sup>

#### 3.1.4.1 Proposed internal controls

In its revised application dated 14 June 2024, Power and Water proposed internal controls to satisfy the exemption criterion set out in the NGR.<sup>31</sup> The internal controls have not changed and are set out in section 3.1.4 of our draft decision.<sup>32</sup>

The internal controls:

- set out the obligations on Power and Water to report any proposed or executed associate or internal arrangements with respect to pipeline services

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<sup>25</sup> NGR, rule 35(3).

<sup>26</sup> NGR, rule 32.

<sup>27</sup> NGL, section 147.

<sup>28</sup> NGL, section 148.

<sup>29</sup> NGR, rule 32A.

<sup>30</sup> NGR, rule 33.

<sup>31</sup> NGR, rule 34(3)(c).

<sup>32</sup> AER, *Ring-fencing exemption determination – Power and Water – Draft decision*, July 2024, section 3.1.4.

- detail the procedures proposed by Power and Water to give effect to compliance with the internal controls
- identify the responsible persons for the internal control procedures.

### **3.1.4.2 AER final position**

Consistent with our draft decision, we are satisfied that the proposed internal controls meet the criterion set out in rule 34(3)(c). Power and Water has proposed internal controls that *substantially replicate the controls* set out in rule 32, rule 32A and rule 33 of the NGR and consequently provide safeguards against substantially lessening competition and competitive disparity in a market for covered gas services.

## **3.2 Exemption from section 140 of the NGL**

### **3.2.1 Criterion for exemption**

Section 140 of the NGL relates to the prohibition of marketing staff taking part in related businesses.

We must grant an exemption from section 140 of the NGL if we are satisfied that the cost of compliance for the service provider and its associates to separate marketing staff would outweigh the public benefit resulting from compliance.<sup>33</sup>

### **3.2.2 Would the cost of compliance outweigh the public benefit resulting from compliance?**

#### **3.2.2.1 Public benefit—current**

As outlined in section 3.1.3 of this final decision, Power and Water is not currently accessing pipeline services and there is no competing demand for access to the MRM Pipeline at this time. Therefore, the benefits of compliance with section 140 of the NGL are likely to be insignificant in the current circumstances.

#### **3.2.2.2 Public benefit—future**

We consider that there may be a material public benefit of compliance with section 140 of the NGL in the future. Consistent with section 3.1.3 of this final decision, benefits of compliance with section 140 of the NGL may arise when the MRM Pipeline becomes bi-directional, Power and Water accesses pipeline services on the MRM Pipeline and/or other users seek access to the pipeline.

Compliance with section 140 of the NGL would prevent Power and Water's marketing staff from misusing intelligence acquired from the pipeline business to gain a competitive advantage in its gas marketing business. Compliance would help to prevent Power and Water from denying or restricting other users from accessing pipeline services or discriminating on the price of gas or pipeline services.

#### **3.2.2.3 Cost of compliance**

Power and Water's estimated cost of compliance has not changed since our draft decision or since we received new information.

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<sup>33</sup> NGR, rule 34(4).



Power and Water estimated that commercial operations for the MRM Pipeline account for on average 5% of the current commercial manager's time. To comply with section 140 of the NGL, Power and Water must either hire a new commercial manager to deal exclusively with the MRM Pipeline, or in the case that the MRM Pipeline is ring-fenced in accordance with section 139 of the NGL, train one of its current staff to handle commercial operations. A new commercial manager would need to be structurally separated from other staff in the gas services team. Power and Water estimates the net cost of outsourcing a commercial manager to be around \$230,000 per year.<sup>34</sup>

#### **3.2.2.4 AER final position**

Because the current benefits of compliance are likely to be insignificant, we are satisfied that the costs of compliance are likely to outweigh the public benefits as set out in rule 34(4) of the NGR. However, when the MRM Pipeline becomes bi-directional, this ring-fencing exemption criterion may no longer be satisfied. The commencement of backhaul services will allow pipeline users, which may include Power and Water, to transport gas to a larger number of customers and to different markets. Under these circumstances it is not clear that the costs to Power and Water of compliance with the ring-fencing provisions would outweigh the public benefits. Therefore, our final decision includes the conditions in section 4 of this final decision, including that the exemptions will expire when the MRM Pipeline is converted to a bi-directional pipeline. Power and Water must also inform the AER of any new contractual arrangement, or any changes to an existing contractual arrangement. The AER has the power to vary this condition should the circumstances warrant it.<sup>35</sup>

### **3.3 Exemption from section 141 of the NGL**

#### **3.3.1 Criterion for exemption**

Section 141 of the NGL relates to the requirement to prepare, maintain and keep accounts.

We must grant an exemption from section 141 of the NGL if we are satisfied that the cost of compliance for the service provider and its associates to prepare, maintain and keep accounts would outweigh the public benefit resulting from compliance.<sup>36</sup>

#### **3.3.2 Would the cost of compliance outweigh the public benefit resulting from compliance?**

##### **3.3.2.1 Public benefit—current**

As outlined in section 3.1.3 of this final decision, Power and Water is not currently accessing pipeline services and there is no competing demand for access to the MRM Pipeline at this time. Therefore, the benefits of compliance with section 141 of the NGL are likely to be insignificant in the current circumstances.

##### **3.3.2.2 Public benefit—future**

We consider that there may be a public benefit of compliance with section 141 of the NGL after the MRM Pipeline becomes bi-directional. The keeping of separate accounts gives visibility to how Power and Water incurs and shares revenues across its business. This

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<sup>34</sup> Power and Water, *Response to AER request for information*, 17 May 2024.

<sup>35</sup> NGR, rule 35(3).

<sup>36</sup> NGR, rule 34(4).



transparency is important in considering a fair price for pipeline services. It also enables a comparison of prices charged to related businesses with non-related users, to ensure there is no anti-competitive price discrimination.

Power and Water acknowledged these risks in its submission, noting that it sought an exemption from section 141 of the NGL “on the basis that it will be revoked in the event Power and Water obtains capacity entitlements on the MRM Pipeline.”<sup>37</sup>

### **3.3.2.3 Cost of compliance**

Power and Water’s estimated cost of compliance has not changed since our draft decision.

Power and Water submitted that to comply with section 141 of the NGL it must outsource bookkeeping and auditing services. It estimated the net cost of outsourcing these services to be around \$77,000 per year. If we were to grant Power and Water an exemption from section 139 of the NGR, it estimated that the initial net costs to separate accounts and prepare consolidated accounts would be around \$3,500. Power and Water submitted that there would be additional complexity within the organisation. It did not quantify these costs but noted that they are not likely to be significant.<sup>38</sup>

### **3.3.2.4 AER final position**

Because the benefits of compliance are likely to be insignificant in the current circumstances, we are satisfied that it is likely that the costs of compliance will outweigh the public benefits as set out in rule 34(4) of the NGR. However, when the MRM Pipeline becomes bi-directional, this ring-fencing exemption criterion may no longer be satisfied. The commencement of backhaul services will allow pipeline users, which may include Power and Water, to transport gas to a larger number of customers and to different markets. Under these circumstances it is not clear that the costs to Power and Water of compliance with the ring-fencing provisions would outweigh the public benefits. Therefore, our final decision includes the conditions in section 4 of this final decision, including that the exemptions will expire when the MRM Pipeline is converted to a bi-directional pipeline. Power and Water must also inform the AER of any new contractual arrangement, or any changes to an existing contractual arrangement. The AER has the power to vary this condition should the circumstances warrant it.<sup>39</sup>

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<sup>37</sup> Power and Water, *Supplement to submission for an exemption under rule 34 of the National Gas Rules*, June 2024.

<sup>38</sup> Power and Water, *Response to AER request for information*, 17 May 2024.

<sup>39</sup> NGR, rule 35(3).

## 4 Exemption conditions

Rule 35 of the NGR requires us to consider whether to impose conditions on the exemption. We have set three conditions:

- Condition 1 limits the period that the exemptions are in force.
- Condition 2 requires Power and Water to notify the AER of any material change in circumstances with respect to pipeline capacity and/or configuration.
- Condition 3 requires Power and Water to notify the AER of any upcoming change in contractual arrangements regarding access to the MRM Pipeline.

The conditions differ from those in the draft decision, as summarised in Table 1.

The exemptions from sections 139, 140 and 141 of the NGL are subject to the following conditions:

### Condition 1

The exemptions will expire when the MRM Pipeline is converted to a bi-directional pipeline.

### Condition 2

Power and Water must inform the AER, as soon as practicable but no later than 20 business days after, of the completion of:

- a. the conversion of the MRM Pipeline to a bi-directional pipeline
- b. any expansion, extension or material change to the configuration of the MRM Pipeline.
  - Power and Water must provide details of these changes, including business plans; an assessment of how the change is expected to impact access to firm or ‘as available’ capacity by Power and Water, a related party, or a third-party user; and an assessment of how the change is expected to impact the risk of any public detriment as a result of these ring-fencing exemptions.

### Condition 3

Power and Water must inform the AER, as soon as practicable but at least 20 business days prior, if there is:

- a. a change to the contractual arrangements on the MRM Pipeline, including but not limited to the cessation, variation or renewal of any contract; OR
- b. the execution by Power and Water of any new contractual arrangement with a third party, an associate contract or an associate arrangement (as defined in section 3.1.4.2 of the draft decision<sup>40</sup>).

Power and Water must provide details of these changes including: contract information; an assessment of how the change is expected to impact access to firm or ‘as available’ capacity by Power and Water, a related party, or a third-party user; and an assessment of how the change is expected to impact the risk of any public detriment as a result of these ring-fencing exemptions.

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<sup>40</sup> AER, *Ring-fencing exemption determination – Power and Water – Draft decision*, July 2024, p. 8.

## Appendix A – List of information received by the AER from stakeholders

Stakeholder	Date	Description
Power and Water	February 2024	Application for an exemption
NT Government	April 2024	Letter in support of application
Power and Water	May 2024	Response to AER request for information
Power and Water	June 2024	Supplement to application for an exemption
Power and Water	June 2024	Associated Dealings – Procedure document [draft]
Empire Energy	August 2024	Submission to draft decision
Power and Water	August 2024	Response to AER request for information
Empire Energy	August 2024	Response to AER request for information
NT Government	September 2024	Response to AER request for information
Power and Water	September 2024	Response to AER request for information
Power and Water	October 2024	Response to AER request for information
NT Government	October 2024	Response to AER request for information

# Appendix B – Rule 34 of the NGR

## Exemptions from minimum ring-fencing requirements

Version 82 of the NGR current as of 14 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.

## Shortened forms

Terms	Definition
AER	Australian Energy Regulator
Empire Energy	Empire Energy
MRM Pipeline	McArthur River Mining Pipeline
NGL	National Gas Law
NGR	National Gas Rules
Power and Water	Power and Water Corporation
TJ/day	Terajoules per day

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