

Notification – application for waiver of ring fencing obligations

1. Introduction

On 10 December 2001, NT Gas Pty Ltd (NT Gas) submitted an application for waiver of its ring fencing obligations regarding the Amadeus Basin to Darwin Pipeline (ABDP). The application was made under section 4.16 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code) and specifically relates to sections 4.1 (h) and (i).

A copy of NT Gas' application is attached for your information. The Commission has placed an advertisement with the *Australian Financial Review* and the *Northern Territory News*, which will appear on Friday 21 December 2001 providing notice of the application and calling for submissions from interested parties.

Lodging a submission

Public submissions should be lodged with the Commission by **1 February 2002**, they should be in writing and, where possible, be supplied in electronic format compatible with Microsoft Word 97 for Windows. Electronic copies of submissions can be emailed to nicole.moffatt@acc.gov.au. They will be made publicly available and placed on public registers held by the Commission and the Code Registrar. Any information considered to be of a confidential nature should be clearly marked as such, and the reasons for seeking confidentiality should be provided. Under the terms of the Code, the Commission must not disclose such information unless it is of the opinion that disclosure would not be unduly harmful to the legitimate business interests of the service provider, a user or a prospective user. Submissions should be addressed to:

Ms Kanwaljit Kaur
General Manager
Regulatory Affairs - Gas
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

Requests for copies of submissions

The Commission will endeavour to place all submissions received on its website (www.acc.gov.au) as soon as possible. Requests for hard copies of submissions lodged by interested parties should be directed to Hema Berry at the Commission (phone 02 6243 1233, fax 02 6243 1199, e-mail hema.berry@acc.gov.au) or to the Code Registrar (phone 08 8226 5786, fax 08 8226 5866). While submissions may be inspected free of charge, a fee is payable for copies.

Inquiries

Any inquiries on this matter should be directed to Ms Nicole Moffatt (phone 02 9230 9115, fax 02 9231 5652, e-mail nicole.moffatt@acc.gov.au) or Ineke Ogilvy (phone 02 9230 9172, e-mail ineke.ogilvy@acc.gov.au).

2. Application for waiver by NT Gas

2.1 Background

NT Gas is the Service Provider for the ABDP. The ABDP is a transmission pipeline that transports gas from the Palm Valley and Mereenie gas fields to Darwin. 99.7% of the gas transported on the ABDP is used for electricity generation. The largest user of ABDP transported gas is the Northern Territory Power and Water Authority (PAWA).¹ The pipeline system includes a branch supply line from the Mereenie Production facilities together with small lateral pipelines at Tennant Creek and Katherine. The length of the ABDP is 1513km. The outside diameter of the main pipeline is 355.6mm between Palm Valley and Mataranka, 323.9mm between Mataranka and the Darwin City Gate and 219.1mm between the Darwin City Gate and Channel Island.² Attachment 1 shows a map of the Amadeus Basin to Darwin transmission pipeline.

NT Gas does not undertake activities other than ownership and operation of pipelines. It is 96 percent owned by Australian Pipelines Limited (as the entity responsible for Australian Pipeline Trust). The Northern Territory Government's Power and Water Authority ('PAWA') owns a 2.5 percent stake in NT Gas through a company called Darnor Pty Ltd. The remaining 1.5 percent is owned by Centrecorp Aboriginal Investment Corporation Pty Ltd. An ownership chart of NT Gas is Attachment 2 to this paper.

NT Gas Distribution Pty Ltd (NT Gas Distribution) is a wholly owned subsidiary of NT Gas and, therefore, an Associate for the purposes of section 4 of the Code. NT Gas Distribution owns the distribution network in Darwin which includes 19.5km of steel main and 6km of plastic reticulation system. The steel main is a covered pipeline under the Code called the City Gate to Berrima Pipeline. NT Gas Distribution retails gas to several industrial customers and distributes a larger amount to a third party that in turn supplies one customer. It has also recently signed a two year agreement to sell gas to railway sleeper plants at Katherine and Tennant Creek. This contract will almost triple the annual amount of gas sold by NT Gas Distribution, however, the volumes involved remain small. Attachment 3 contains a map of the Darwin distribution area.

2.2 Ring fencing obligations

The Code contains minimum ring fencing obligations that each Service Provider must comply with. The ACCC has responsibility under section 4.1 of the Code to monitor compliance with these obligations and commence enforcement action if the provisions are breached. Attachment 4 contains the minimum ring fencing provisions of the Code (sections 4.1(a) to (i)). Sections 4.1(h) and 4.1(i) of the National Third Party Access Code for Natural Gas Pipeline Systems prohibit the sharing of Marketing Staff between Associates that carry on Related Businesses.

¹ ACCC *Draft Decision* Access Arrangement proposed by NT Gas Pty Ltd for the Amadeus Basin to Darwin Pipeline, 2 May 2001 p.5

² NT Gas Pty Ltd Access Arrangement Information for the Amadeus Basin to Darwin Pipeline, 25 June 1999 p.37

2.3 Waiver sought

The Commission is the Relevant Regulator with respect to both gas transmission and distribution pipelines in the Northern Territory. In July 2001 the Commission requested ring fencing compliance reports from Service Providers of covered transmission pipelines, under section 4.13 of the Code. On 13 September 2001, NT Gas submitted a draft report for the ABDP stating that it shares Marketing Staff with NT Gas Distribution. NT Gas has now applied to the Commission, under section 4.16 of the Code, to have the obligations that prohibit the sharing of Marketing Staff between Associates involved in Related Businesses waived.

NT Gas seeks a waiver of its obligations under 4.1(h) and (i) to allow its Marketing Staff to provide services to NT Gas Distribution and to enable other staff of NT Gas to act as Marketing Staff for NT Gas Distribution.

In particular, NT Gas seeks to provide commercial, management and marketing services to NT Gas Distribution as needed and to enable the General Manager of NT Gas to also perform the functions of General Manager of NT Gas Distribution. Marketing services provided to NT Gas Distribution would usually be provided by the General Manager and the Manager Commercial of NT Gas. However, other staff of NT Gas may also provide these services at times. The waiver would also allow staff of NT Gas to provide marketing services to NT Gas Distribution as required.

If granted, a waiver of these obligations would mean that NT Gas, the transmission company, would carry out the marketing and sales for the transmission, distribution and retail arms of natural gas supply in the Darwin distribution area. An organisational chart for NT Gas is Attachment 5. NT Gas Distribution has no staff of its own.

3. Commission approval of application

3.1 The process

The process for assessing an application to waive ring fencing obligations is set out in the Code. If the Commission considers that the application has been made on trivial or vexatious grounds it may reject the application without further consideration. The Commission does not believe that NT Gas has made the application on trivial or vexatious grounds and will therefore consider it in accordance with section 4.17 to 4.24 of the Code.

Following consideration of the application and all submissions received, the Commission expects to issue a *Draft Decision* on the application by 15 February 2002 stating whether or not it intends to issue a waiver under section 4.15. At that time the Commission is required, by section 4.21(b) of the Code, to again call for submissions from interested persons. The Commission anticipates that submissions on its *Draft Decision* would be due in late March 2002.

Having considered all submissions made on its *Draft Decision*, the Commission will then issue a *Final Decision* in accordance with section 4.23 of the code stating whether or not a notice, as provided for under 4.15, will be issued to waive the relevant ring fencing obligations.

3.2 Relevant Code Provisions

NT Gas has applied to have the obligations that deal with the sharing of Marketing Staff, sections 4.1(h) and (i) of the Code, waived. The Commission may waive these obligations if satisfied that the administrative cost of complying outweighs the public benefit of complying. Section 4.15(b) of the Code is the relevant provision.

Section 4.15(b) of the Code states:

4.15 The Relevant Regulator may by notice to a Service Provider waive any of a Service Provider's obligations under:

...

- (b) sections 4.1(h) and (i) where the Relevant Regulator is satisfied that the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation.

4. Issues for consideration

Several issues have been raised in NT Gas' application. Below is a discussion of the main issues in relation to the criteria for granting the waiver. Comments are sought from interested parties on these and other relevant issues.

4.1 Costs of complying

NT Gas considers the costs of complying to be those associated with NT Gas Distribution obtaining commercial, management and marketing services. NT Gas has estimated the cost involved in doing this, however, has requested that its estimates be kept confidential. The Commission has sought the reasons for classifying this information as commercial-in-confidence, however, NT Gas had not responded prior to the release of this paper.

In the absence of public information regarding the likely costs of compliance to NT Gas and its Associate, two other estimates of the cost of marketing services have been researched. The first is the estimate used by Great Southern Energy Gas Networks (GSN) in its application for waiver of ring fencing obligations 4.1(h) and (i) and the second was obtained from information provided by NT Gas in relation to its Access Arrangement.

GSN Decision

The Independent Pricing and Regulatory Tribunal (IPART) considered a waiver application from Great Southern Energy Gas Networks (GSN) in relation to sharing Marketing Staff with its parent company.³ In its application, GSN estimated that to employ a marketing executive on a part time basis or to outsource this work would cost \$30,000 to \$50,000 and the total cost of outsourcing marketing services would cost between \$60,000 and \$90,000 (including the development of network marketing promotional material). IPART considered this to be a realistic estimate.

Transmission marketing costs

In 1999 NT Gas forecast its total expenditure on sales and marketing to be \$134,000 for the year ending 30 June 2001.⁴ This amount includes expenditure relating to advertising and promotion of gas transportation services, investigation and feasibility studies for potential gas consuming projects, commercial negotiations relating to gas transportation services and general contract management and administration activities. The current capacity of the ABDP is approximately 16PJ pa and NT Gas has around 40 staff members. The marketing costs of NT Gas Distribution could be expected to be lower than this amount due to the smaller size of the distribution company.

³ Independent Pricing and Regulatory Tribunal *Final Decision* Great Southern Energy Gas Networks Pty Limited Application for waiver of certain ring fencing obligations, November 1999

⁴ NT Gas Pty Ltd Access Arrangement Information for the Amadeus Basin to Darwin Pipeline, 25 June 1999 p.35 (forecast in dollars of the day)

Issues to consider

- The estimates above imply marketing costs of between \$30,000 and \$134,000. Are these relevant comparisons for estimating the cost of NT Gas Distribution acquiring marketing services?
- What is a realistic benchmark against which to assess the estimated marketing costs?
- What are the different options available to NT Gas to comply with the obligations and what costs are associated with each of these?
- The estimates submitted by NT Gas cover broader services than strictly required under the definition of the Code. Is it necessary to consider the costs associated with commercial and management services as well as marketing?

4.2 Public benefit of complying

NT Gas claims that the intent of the ring fencing requirements under the Code is to assist in the development of a competitive retail market and that the obligations appear to be of little if any meaning where it is not intended to introduce competition in the market of the Associate.

Barriers to entry

NT Gas submits that neither it nor NT Gas Distribution currently face any competitors or potential competitors and as a result, complying with ring fencing obligations would not produce any public benefit. This overlooks any potential impact on barriers to entry. In a situation where incumbent firms are perceived to have a significant advantage in the market, potential competitors are less likely to consider entry viable. In this case, complying with the minimum ring fencing requirements in the Code may have a public benefit through allowing efficient firms to enter the market and compete effectively.

Transmission capacity contracted until 2011

The ABDP is fully contracted until 2011. The capacity of the pipeline is fully committed to users under pre-existing transportation contracts leaving little scope to grow the market. As a result transportation services are unlikely to be available to third parties unless the pipeline system is expanded or extended.⁵ The public benefits of separating marketing staff may be limited while this is the case.

Issues to consider

- Is requiring NT Gas to comply with obligations 4.1(h) and (i) likely to result in any public benefits and if so, what are the benefits likely to be?⁶

⁵ ACCC *Draft Decision* Access Arrangement proposed by NT Gas Pty Ltd for the Amadeus Basin to Darwin Pipeline, 2 May 2001 p.68, 98

⁶ It is important to note that NT Gas would still be required to have procedures in place to comply with the other minimum ring fencing obligations, including those that deal with confidential information. In

- Are there any potential competitors to NT Gas Distribution?
- Does the sharing of Marketing Staff between transmission, distribution and retail businesses create barriers to entry in any of these markets?
- Does the fact that the pipeline is fully contracted until 2011 imply that the public benefit of compliance is lower than it might otherwise be?

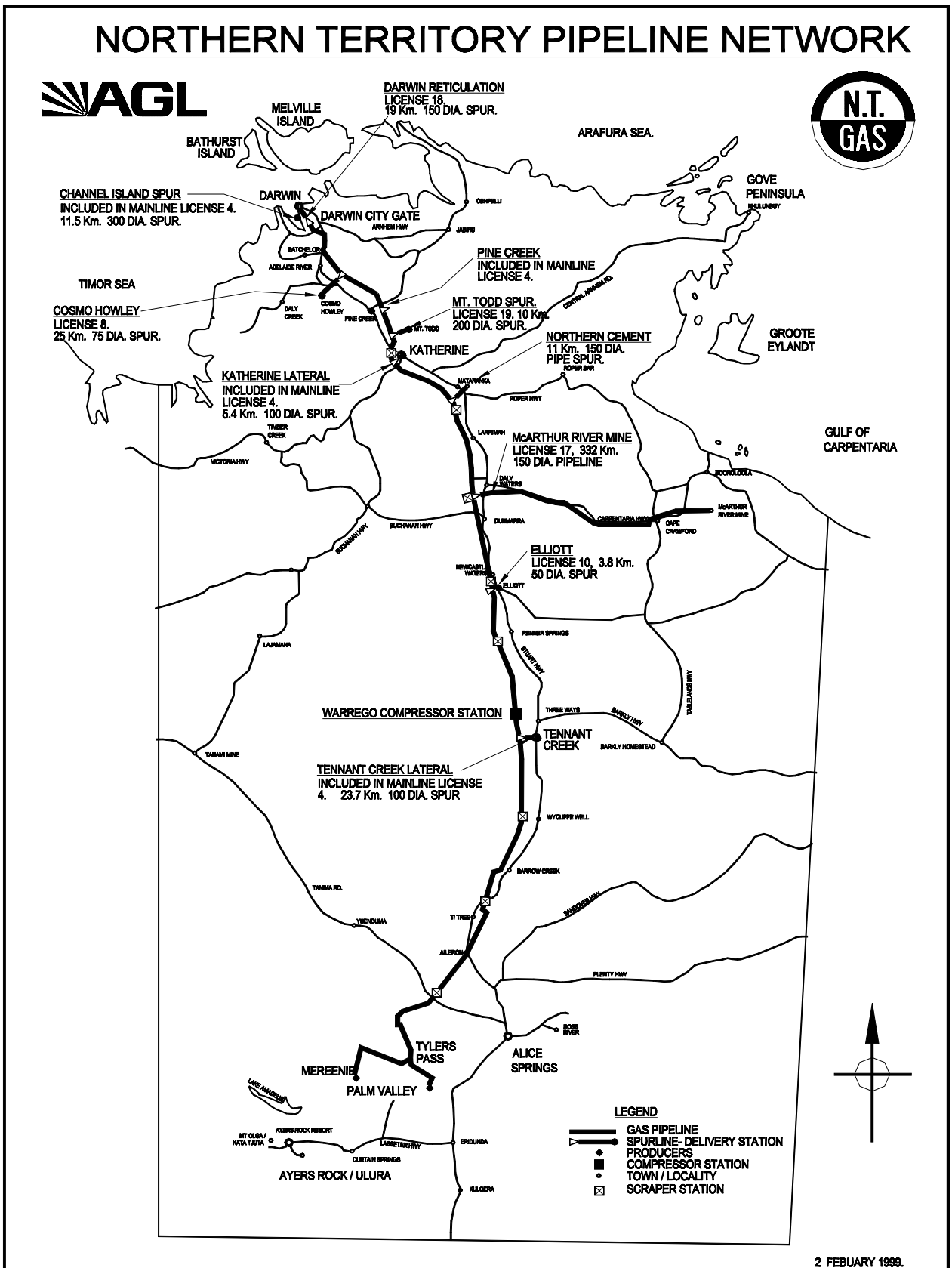
4.3 Other Issues

Interested parties are invited to raise any other issues that are relevant to the Commission's decision of whether to issue a notice under section 4.15(b) of the Code.

this regard, submissions should consider the public benefits of complying with sections 4.1(h) and (i) in addition to 4.1(a) to (g).

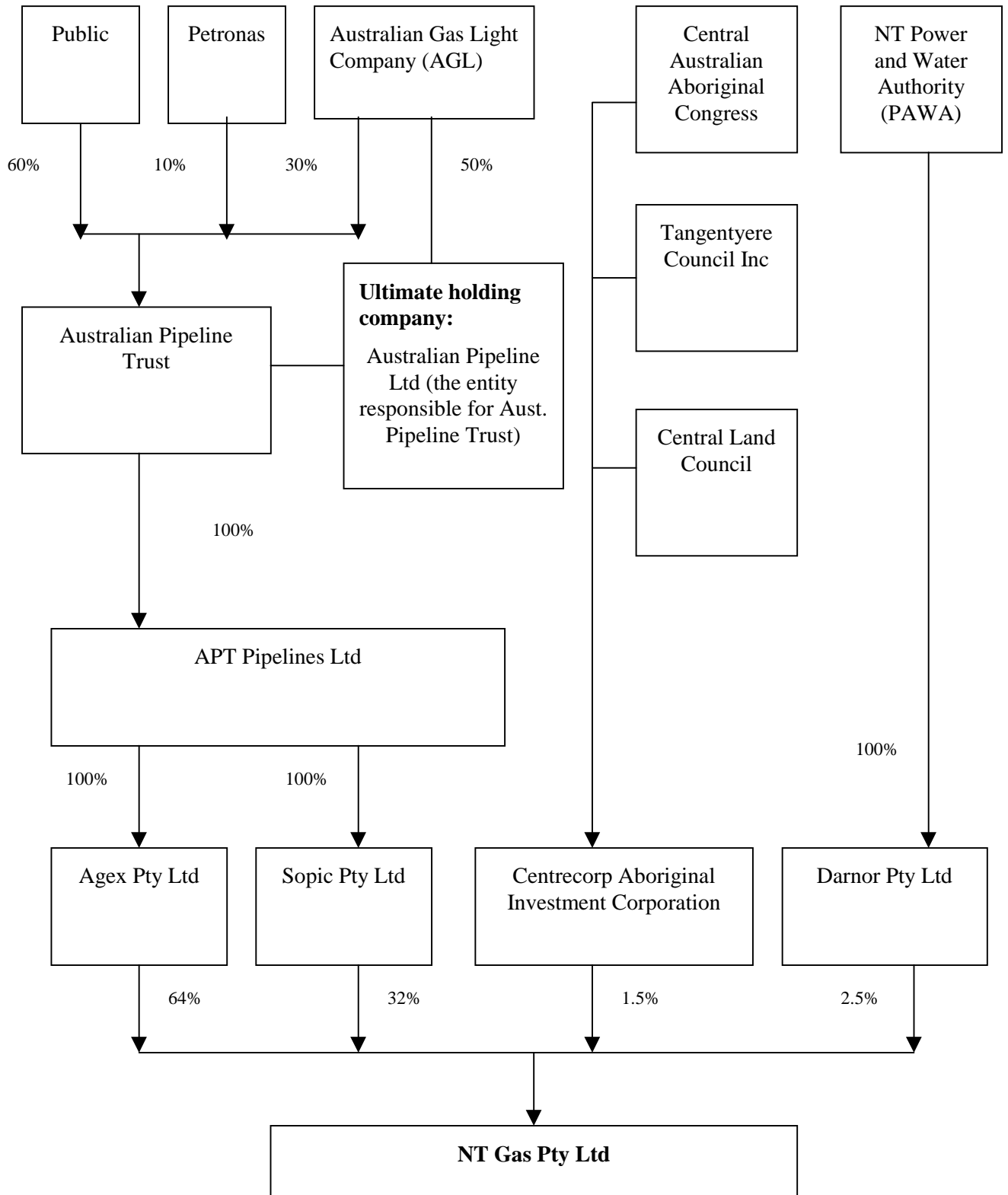
Attachment 1

Map of the Amadeus Basin Darwin Transmission Pipeline



Attachment 2

Ownership chart for NT Gas



Attachment 3

Map of Darwin distribution area



Attachment 4

Ring Fencing Minimum Obligations

- 4.1 A person who is a Service Provider in respect of a Covered Pipeline (regardless of whether they are also a Service Provider in respect of a Pipeline that is not Covered) must comply with the following (but in the case of paragraphs (a), (b), (h) and (i), as from the date that is 6 months after the relevant Pipeline became Covered):
- (a) be a legal entity registered under the Corporations Law, a foreign company within the meaning of the Corporations Law that has appointed a local agent in accordance with sections 601CF and 601CG of the Corporations Law, a statutory corporation, a government of an entity established by royal charter;
 - (b) not carry on a Related Business;
 - (c) establish and maintain a separate set of accounts in respect of the Services provided by each Covered Pipeline in respect of which the person is a Service Provider;
 - (d) establish and maintain a consolidated set of accounts in respect of the entire business of the Service Provider;
 - (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in section 4.1(c) and any other activity according to a methodology for allocating costs that is consistent with the principles in section 8.1 and is otherwise fair and reasonable;
 - (f) ensure that all Confidential Information provided by a User or Prospective User is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the User or Prospective User who provided it, except:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
 - (g) ensure that all Confidential Information obtained by the Service Provider or by its servants, consultants, independent contractors or agents in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of a User or Prospective User is not disclosed to any other person without the approval of the User or Prospective User to whom that information pertains, except:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;

- (h) ensure that its Marketing Staff are not also servants, consultants, independent contractors or agents of an Associate that takes part in a Related Business and, in the event that they become or are found to be involved in a Related Business contrary to this section, must procure their immediate removal from its Marketing Staff; and
- (i) ensure that none of its servants, consultants, independent contractors or agents are Marketing Staff of an Associate that takes part in a Related Business and, in the event that any servants, consultants, independent contractors or agents are found to be the Marketing Staff of such an Associate contrary to this section, must procure their immediate removal from their position with the Service Provider.

Attachment 5

NT Gas organisational structure

Deleted due to confidentiality request