

Part 6 Ring fencing

30 Imposition of additional ring fencing requirement (Section 143 of the NGL)

A proposal by the AER to impose an additional ring fencing requirement under section 143 of the *NGL* is to be dealt with in accordance with the *expedited consultative procedure*.

31 Exemptions from minimum ring-fencing requirements (Section 146 of the NGL)

- (1) An application to the AER for an exemption under section 146 of the *NGL* from one or more of the minimum ring fencing requirements may be made by a service provider.

Note:

The minimum ring fencing requirements are the requirements imposed by sections 139, 140 and 141 of the *NGL*.

- (2) The AER must deal with such an application in accordance with the *expedited consultation procedure*.
- (3) An exemption is to be granted from section 139 of the *NGL* (prohibition on carrying on related business) if the AER is satisfied, on the application of a service provider, 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 within the service provider's business that substantially replicate, in the AER's opinion, the effect that would be achieved if the related business were divested to a separate entity and dealings between the service provider and the entity were subject to the controls applicable to associate contracts.
- (4) An exemption is to be granted from section 140 of the *NGL* (segregation of marketing staff etc.) or section 141 (accounts) if the AER is satisfied, on the application of a service provider, 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.

32 Approval of associate contracts etc (Sections 147 and 148 of the NGL)

- (1) A service provider may apply to the AER for approval of:
 - (a) an associate contract or a proposed associate contract; or
 - (b) a proposed variation of an approved associate contract.
- (2) The AER must, on application under subrule (1), approve a contract or the variation of a contract if the AER is satisfied that the contract or variation:
 - (a) does not have the purpose, and is unlikely to have the effect, of substantially lessening competition in a market for natural gas services; and
 - (b) is not inconsistent with the competitive parity rule.

Note:

The comparative parity rule is stated in section 148(2) of the *NGL*.

- (3) If the AER is not satisfied that a contract, or the variation of a contract, should be approved under subrule (2), the AER may nevertheless approve the contract or variation if satisfied that the resulting public benefit would outweigh any resulting public detriment.
- (4) An approval under this rule may be subject to conditions the AER considers appropriate including (for example) conditions:
 - (a) limiting the duration of the approval or providing that the approval will lapse on a material change of circumstances; and
 - (b) imposing reporting requirements on the service provider.
- (5) If the AER fails to make a *decision* on an application under this rule within 20 business days after receiving it, the AER is taken to have approved the relevant contract or variation unconditionally.

33 Notification of associate contracts

- (1) A service provider must, within 5 business days after entering into, or varying, an associate contract (whether approved or not), give the AER written notice of the contract or variation together with a copy of the contract (or the contract as varied).

Note

This subrule is classified as a tier 2 civil penalty provision under the National Gas (South Australia) Regulations. (See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.)

Note:

This subrule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

- (2) A service provider incurs, by complying with this rule, no liability for breach of contract, breach of confidence, or any other civil wrong.