



Crowley Submission to the Utilities Commission of the Northern Territory

July 2023

Crowley makes this submission to the Utilities Commission of the Northern Territory in response to the 2023 Review of the Port Access and Pricing Regime – Issues Paper. The information provided reflects insights provided in past engagement with the Commission and seeks to provide additional context around some of the challenges associated with the current Port arrangements from the perspective of a commercial organisation and potential port user.

Crowley would like to express its support for the recommendations outlined in the *2023 Review of the Port Access and Pricing Regime – Draft Report*. In particular, draft recommendations 11a and 11b, which will provide important information for potential port users ahead of financial commitments and commercial negotiations, the draft recommendations 13a-c, which will provide an alternative pathway for potential port users to seek support in challenging commercial situations, and the improvements of access policy approval processes as outlined at draft recommendation 15. Crowley also seeks to echo many of the points included in the Department of Infrastructure, Planning and Logistics’ submission on the potential impacts of the current Port of Darwin ownership structure and commercial arrangements.

This submission highlights the issues raised in the Utilities Commission’s 2023 Draft Report, specifically relating to:

- the Port’s monopoly and market power;
- the Port’s access and pricing principles (including a lack of pricing transparency and sufficiency of information for port users); and
- barriers to notification of challenges for potential port users.

Crowley overview

Crowley, founded in 1892, is a privately held, U.S.-owned and operated logistics, marine, and energy solutions company serving commercial and government customers that is headquartered in Jacksonville, Florida. Services are provided worldwide by five primary business units – Crowley Logistics, Crowley (Government) Solutions, Crowley Shipping, Crowley Fuels, and Crowley Wind Services.

In Australia, Crowley is constructing a strategically important bulk fuel storage facility for the United States Department of Defense at East Arm in Darwin. Services to be provided include receiving, storing, protecting, and shipping aviation-grade JP-5 turbine fuel and commercial-grade Jet A-1 fuel.

Relationship with the Port of Darwin

To deliver against the requirements of the US Government contract, Crowley requires access to Port land and facilities, and the provision of non-standard services, to facilitate the construction of a pipeline from the Crowley fuel storage facility to the bulk liquids berth at the Port for the purpose of receiving and transporting liquid fuel to the Crowley facility.

Monopoly and market power

As the Commission recognises, the Port of Darwin is in a natural monopoly position due to the lack of viable alternative ports and a lack of economic competition. This monopoly position and market power, has the potential to negatively affect economic growth, as such it is critical that appropriate regulation is in place where the Port of Darwin is unconstrained by competition.

Access and pricing principles

Crowley, as an organisation seeking to engage in business with the Port as a user, experienced a number of challenges in relation to the Port's access and pricing principles and obtaining access to non-standard services.

In general terms, it is Crowley's experience that there remain challenges associated with:

- a limited ability for prospective users to receive an indication of terms of access (including risk exposure for prospective users) in respect of non-standard services (particularly where terms of access and allocation of risks to prospective users may influence investment decisions in the Northern Territory);
- the negotiation of access in a timely manner; and
- a lack of information regarding the formulation of access pricing.

Potential users of the Port should feel confident that they are able to invest in business on the basis that the Port will provide access to users on reasonable terms consistent with the undertakings contained in the Port's published access policy. From a potential user's perspective this should include an allocation of risk between the parties that is reasonable and managed by, or transferred to, third parties (e.g. insurers).

Crowley also considers access terms to non-standard services (including the use of pipeline infrastructure for transporting liquid fuel) should be published to provide:

- transparency of risk exposure for prospective users which may influence investment decisions; and
- clarity and certainty to facilitate the timely and cost-effective resolution of access agreements.

Barriers to notification and remediation

Although there is an arbitration process available to assist the Port and potential users with overcoming challenges that arise in negotiation, this process has limitations which primarily negatively affects the potential user. The duration of the arbitration process as an alternative pathway for dispute resolution is a significant barrier for potential users. It is likely that a potential user will face the decision to either accept unsatisfactory terms or suffer economic loss because of the duration of the arbitration process.