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\* insert full name  
of company

## COMPANIES FORM No. 395

### Particulars of a mortgage or charge

# 395

Pursuant to section 395 of the Companies Act 1985

15.01.00  
106700

To the Registrar of Companies

For official use

Company number



03679712

Name of company

\* TU Australia Holdings No.2 Limited ("TU No 2")

Date of creation of the charge

24 February 1999

Description of the instrument (if any) creating or evidencing the charge (note 2)

Partnership Mortgage(the "Mortgage")dated 24 February 1999 between (1)  
TU Australia Holdings(Partnership)Limited Partnership,the general  
partner of which is TU Australia Holdings(AGP)Pty Ltd (ACN 086 0149310)  
cont...../.....Sched 1

Amount secured by the mortgage or charge

The payment of the Secured Money

Names and addresses of the mortgagees or persons entitled to the charge

National Australia Bank Limited, 500 Bourke Street, Melbourne, Victoria,  
Australia as Security Trustee.

Presentor's name address and  
reference (if any):

Simmons & Simmons  
21 Wilson Street  
London  
EC2M 2TX

1/AOK/FCM/W65721/D1/230045

Time critical reference

For official use  
Mortgage Section

Post room



Particulars charged are:

1. TU No 2 as, beneficial owner, absolutely assigns all of the Secured Property in respect of the ALP Loan Agreements to the Security Trustee.
2. TU No 2, as beneficial owner, charges by way of a fixed equitable charge in favour of the Security Trustee all of the Secured Property in respect of the Hedge Agreements.

Restrictions on dealing with the Secured Property:

Clause 4.1 of the Mortgage provides that TU No 2 may not without the consent of the Security Trustee:

- (a) purport to dispose of, deal with or part with possession of any interest in the Secured Property; or
- (b) purport to create or allow to come into existence an Encumbrance which affects the Secured Property except a Permitted Security Interest; or

cont...../.....Sched 2

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Particulars as to commission allowance or discount (note 3)

NIL

Signed

*Sworn & Sons*

Date

*10 Dec 1999*

On behalf of [company] [mortgagee/chargee] †

† delete as  
appropriate

## NOTES

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the Registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his;
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.

Name of Company: TU Australia Holdings No.2 Limited

Company number: 03679712

SCHEDULE 1

Description of the instrument (if any) creating or evidencing the charge

the limited partners of which are TU Australia Holdings No.1 Ltd and TU No 2 and (2) National Australia Bank Limited as trustee of the TU Australia Holdings Trust (the "Security Trust").

Name of Company: TU Australia Holdings No.2 Limited

Company number: 03679712

## SCHEDULE 2

### Short Particulars of all the property mortgaged or charged

(c) waive any of TU No 2's rights or release any person from their obligations in connection with the Secured Property.

Nothing in the Mortgage restricts payments of amounts owing by TU Australia Holdings Pty Ltd to TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 under the ALP Loan Agreements or by the Hedge Counterparties to TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 under the Hedge Agreements.

Clause 4.2 of the Mortgage provides that if TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 creates or allows to exist a Security Interest over the Secured Property without the consent of the Security Trustee, then, despite anything contained in the Mortgage, any Collateral Security, or any other agreement in connection with the provision of the Secured Money:

(a) TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 must immediately procure that; and

(b) the Security Trustee need not provide any further accommodation which would form part of the Secured Money until TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 procures that a priority agreement is entered into between the persons and in the form acceptable to the Security Trustee. The Security Trustee's other rights which arise if TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 so creates or allows to exist a Security Interest are not affected by this clause.

### Further assurances:

Clause 7.5 of the Mortgage provides that TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 agrees to:

(a) execute in favour of the Security Trustee, or as the Security Trustee directs, and in form stipulated by the Security Trustee, further documents, including, without limitation, Security Interests; and

(b) do the things the Security Trustee stipulates,

to provide more effective security to the Security Trustee over the Secured Property for the payment of the Secured Money and to enable the Security Trustee to exercise its rights in connection with the Secured Property.

**Security interests and assignment:**

Clause 18 of the Mortgage provides that TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 may not, with the consent of the Security Trustee, create or allow to exist a Security Interest over or an interest in this mortgage or assign or otherwise dispose of or deal with its rights under the Mortgage. Subject to the Security Trust Deed, the Security Trustee at any time may do any of those things as the Security Trustee sees fit.

**Name of Company:** TU Australia Holdings No.2 Limited

**Company number:** 03679712

### SCHEDULE 3

#### Definitions

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**“Agent”** means the Facility Agent or the Offshore Paying Agent or both of them, as the case may require.

**“ALP Loan Agreements”** means each loan agreement dated on or about the date of the Mortgage entered into between TU Australia Holdings (Partnership) Limited Partnership, the general partner of which is TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931) and the limited partners of which are TU Australia Holdings No. 1 Limited and TU No 2 (as borrower) and TU Australia Holdings Pty Ltd (ACN 086 006 859).

**“Bank Finance Documents”** means the Syndicated Facilities Agreement, the Domestic Deed Poll, the Offshore Deed Poll, each Loan Note, each Security, the Security Trust Deed, the Working Capital Terms and Conditions, each Hedge Agreement and any other document which a Borrower and the Agent agree is to be a Bank Finance Document and any other instrument connected with any of them.

**“Collateral Security”** means a present or future Security Interest (other than the Mortgage), guarantee or indemnity given by TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 or another person to secure or otherwise provide for the payment of the Secured Money including, without limitation, the documents identified in item 1 of schedule 1.

**“Contested Taxes”** means a Tax payable by an Obligor: that is being diligently contested by it in good faith and in accordance with proper procedures; that is not required by applicable law to be paid before the liability is contested; and in respect of which it has set aside sufficient reserves of liquid assets to pay the Tax and any fine, penalty or interest payable if the contest is unsuccessful.

**“Core Borrowers”** means the persons so described in the Details.

**“Details”** means the details which are set out in the beginning of the Syndicated Facilities Agreement.

**“Derivative Transaction”** means a contract, agreement or arrangement (other than in respect of the price of electricity or gas) which is: a futures contract (as defined in the *Corporations Law*); or an interest rate or currency hedge, swap, option, a swaption, a forward rate agreement or any other contract, agreement or arrangement similar to or having in respect of its subject matter a similar effect to any of the above.

**“Domestic Deed Poll”** means a deed poll executed by the Core Borrowers in or substantially in the form of schedule 6 of the Syndicated Facilities Agreement.

**“Domestic Financier”** means a Financier that funds its participation in the Facilities through a Lending Office in Australia.

**“Domestic Loan Note”** means a debt obligation of the Core Borrowers owing under the Domestic Deed Poll in respect of a Facility to a Domestic Financier.

**“Eastern”** means Eastern Energy Limited.

**“Excluded Property”** means all of the rights of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 to receive money under any Hedge Agreement other than the right (actual or contingent) of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 to receive any amount upon or following close-out or termination of that agreement.

**“Facility”** means each or all of the Tranche A Facility, Tranche B Facility, Tranche C Facility and Working Capital Facility, as the context requires.

**“Financial Close”** means the date on which the last condition precedent in schedule 1 (Conditions precedent) is satisfied (or waived by the Financiers).

**“Financier”** means each person so described in the Details (including, the Working Capital Bank and if applicable, the Facility Agent in its role as a Financier) and any person who is named as a “Substitute Financier” under a Substitution Certificate.

**“Guarantors”** means TU Australia Holdings Pty Ltd; TUA (No. 8) Pty Ltd; and TUA (No. 9) Pty Ltd.

**“Hedge Agreements”** means each interest rate hedging document (including

any restatement of any earlier document) entered into between TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 and any Hedge Counterparty and any person who becomes a Hedge Counterparty on or before the date of Financial Close.

**"Hedge Counterparty"** means each person so described in the Details and any person who becomes a Hedge Counterparty pursuant to a Hedge Counterparty Accession Agreement.

**"Hedge Counterparty Accession Agreement"** means an agreement substantially in the form of schedule 4 of the Syndicated Facilities Agreement.

**"Indebtedness"** means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation (including in respect of any moneys raised from the sale or securitisation of any receipts or receivables) whatever, or in the case of paragraph (h) below, a Derivative Transaction, including a debt or liability under or in respect of any: (a) bill, bond, debenture, note or similar instrument; (b) acceptance, endorsement or discounting arrangement; (c) guarantee granted by a financial institution guaranteeing the payment of a debt (the "guaranteed debt"), in which case the guaranteed debt will not be included; (d) finance lease or sale and leaseback; (e) deferred purchase price (for more than 180 days) of any asset or service; (f) obligation to deliver goods or provide services paid for in advance by any financier or in relation to any other financing transaction; (g) amount of capital and premium payable or in connection with the reduction of any preference shares or any amount of purchase price payable for or in connection with the acquisition of redeemable preference shares; (h) Derivative Transaction; or guarantee, indemnity or guarantee and indemnity, and irrespective of whether the debt or liability is owed or incurred alone or severally or jointly or both with any other person. For the purpose of calculating the principal amount of any Indebtedness under any securitisation of receipts or receivables, the principal amount shall be taken to be the discounted amount of proceeds paid in exchange for the receipts or receivables; and any finance lease or sale and leaseback, the aggregate portion of all rental in the nature of principal.

**"Joint Lead Banks"** means each person so described in the Details.

**"Junior Financier"** means Citibank, N.A. in its capacity as financier under the Subordinated Facility Agreement.

**"Lending Office"** means in the case of the initial Financiers, the address shown in the Details as the lending office of each initial Financier and, in



the case of Financiers acquiring an interest under clause 24 (Assignment and Substitution of Financiers), the address shown in the relevant Substitution Certificate as the Lending Office of that Financier.

**"Loan Note"** means a Domestic Loan Note or an Offshore Loan Note.

**"Mortgaged Agreements"** means (1) the ALP Loan Agreements; and (2) the Hedge Agreements and all present and future instruments (negotiable or otherwise) in connection with them.

**"Obligor"** means each Core Borrower, the Guarantor, TUA and the Purchasers.

**"Offshore Deed Poll"** means a deed poll executed by the Core Borrowers in or substantially in the form of schedule 6 of the Syndicated Facilities Agreement.

**"Offshore Loan Note"** means a debt obligation of the Core Borrowers owing under the Offshore Deed Poll in respect of a Facility to an Offshore Financier.

**"Offshore Paying Agent"** means the person so described in the Details.

**"Permitted Security Interest"** means any Security Interest arising by operation of law in the ordinary course of business securing Taxes which are not yet in arrears and can subsequently be paid without penalty or which are Contested Taxes.

**"Retiring Financier"** means a Financier which proposes to have some or all of its obligations and rights under the Bank Finance Documents assumed by and assigned to another person .

**"Security"** means each security described as such in the Details and any other document or Security Interest collateral to any of them.

**"Security Interest"** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power.

**"Security Trust Deed"** means the security trust deed executed by, the Security Trustee, the Agent, the Obligors, Eastern Energy Limited, Texas and the Junior Financier (as defined in that deed).

**"Secured Money"** means all amounts which at any time; for any reason or circumstance in connection with the Bank Finance Documents and any transaction contemplated by them; whether at law, in equity under statute

or otherwise; and whether or not of a type within the contemplation of the parties at the date of the Mortgage: (A) are payable, are owing but currently payable, are contingently owing, or remain unpaid, by TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 to the Security Trustee on its own account or for the account of the Senior Creditor or to a Senior Creditor; or (B) have been advanced or paid by the Security Trustee on its own account or for the account of a Senior Creditor or by a Senior Creditor (i) at the express or implied request of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2; or (ii) on behalf of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2; or (C) which the Security Trustee on its own account or for the account of a Senior Creditor or a Senior Creditor is liable to pay by reason of any act or omission of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 or has paid or advanced in the protection or maintenance of or the security interest created by the Mortgage following an act or omission by TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2; or (D) are reasonably foreseeable as likely, after that time, to fall within the above paragraphs (A), B) or (C). A reference to Secured Money includes any part of it.

**"Secured Property"** means all the present and future right title and interest of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 in, to and under the Mortgaged Agreements, including, without limitation: (i) all choses in action existing at the date of the Mortgage or which arise after that time in favour of TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 in connection with the Mortgaged Agreements; and (ii) any proceeds provided to TU Australia Holdings (Partnership) Limited Partnership; TU Australia Holdings (AGP) Pty Ltd (ACN 086 014 931); TU Australia Holdings No. 1 Limited and TU No 2 pursuant to the Mortgaged Agreements; excluding in each case the Excluded Property. A reference to Secured Property includes any part of it.

**"Senior Creditor"** means the Security Trustee, the Agent, the Offshore Paying Agent, each Financier, each Hedge Counterparty and any person who has provided Indebtedness to the Companies to repay all of the

amount actually or contingently owing under or in connection with the Bank Finance Documents.

**“Subordinated Facility Agreement”** means the agreement dated on or about the date of this deed between the Core Borrowers, Eastern and the Junior Financier.

**“Substitution Certificate”** means a certificate substantially in the form of schedule 3 of the Syndicated Facilities Agreement, completed as stated in that schedule, or another document approved by the Facility Agent for the purpose of clause 24 (Substitution of Financiers).

**“Substitute Financier”** means a person who is to assume some or all of the obligations and become entitled to some or all of the rights of a Retiring Financier under the Bank Finance Documents.

**“Syndicated Facilities Agreement”** means the agreement dated on or about the date of the Mortgage between the Core Borrowers, the WCF Borrowers, the Joint Lead Banks, the Working Capital Bank, the Hedge Counterparties, the Agent, the Offshore Paying Agent and the Financiers.

**“Taxes”** means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on the overall net income of a Financier.

**“Texas”** means Texas Utilities Company, a corporation incorporated under the laws of the State of Texas, United States of America.

**“Tranche A Facility”** means the facility described as such in the Details.

**“Tranche B Facility”** means the facility described as such in the Details.

**“Tranche C Facility”** means the facility described as such in the Details.

**“TUA”** means Texas Utilities Australia Pty Ltd.

**“WCF Borrowers”** means the persons so described in the Details

**“Working Capital Bank”** means at the date of the Syndicated Facilities Agreement, National Australia Bank Limited; and thereafter a Financier to which the obligations to provide the Working Capital Facility are transferred or which assumes the rights and/or obligations of the Working Capital Bank pursuant to a Substitution Certificate.

**“Working Capital Facility”** means the facility described as such in the

Details.

**“Working Capital Terms and Conditions”** means any agreement in force between the WCF Borrowers and the Working Capital Bank setting out the terms and conditions applicable to the Working Capital Facility.

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## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 03679712

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A PARTNERSHIP MORTGAGE DATED THE 24th FEBRUARY 1999 AND CREATED BY TU AUSTRALIA HOLDINGS NO. 2 LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM TU AUSTRALIA HOLDINGS (PARTNERSHIP) LTD; TU AUSTRALIA HOLDINGS (AGP) PTY LTD; TU AUSTRALIA HOLDINGS NO.1 LIMITED AND TU NO 2 TO NATIONAL AUSTRALIA BANK LIMITED (AS SECURITY TRUSTEE) IN CONNECTION WITH THE BANK FINANCE DOCUMENTS (AS DEFINED) WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 10th MARCH 1999.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 15th MARCH 1999.

*M. Cornelius*  
M. CORNELIUS

for the Registrar of Companies

  
  
C O M P A N I E S H O U S E