



Application form for the issue of a Gas Distribution Licence

By the Essential Services Commission of SA under
the *Gas Act 1997*

January 2023

OFFICIAL

Enquiries concerning this form should be addressed to:

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Glossary of terms

Commission	Essential Services Commission, established under the <i>Essential Services Commission Act 2002</i>
<i>ESC Act</i>	<i>Essential Services Commission Act 2002</i>
Treasurer	Treasurer for the South Australian Government
Minister	Minister for Energy and Mining
Regulator	Technical Regulator

Information for applicants before filling out this form

This form is to be completed by persons making application to the Essential Services Commission of South Australia (**the Commission**) for the issue of a licence to authorise gas distribution operations in the gas supply industry in South Australia.

The Commission can also consider joint applications from two or more persons who wish to hold a licence jointly. Persons making joint applications must ensure that each of the applicants completes a separate application form together with a covering letter explaining that the application is for a licence to be jointly held.

Section 20(1)(a) of the *Gas Act 1997* (**Gas Act**) provides that an application for the issue of a licence must be made to the Essential Services Commission of SA in a form approved by the Commission. This is the form approved by the Commission.

Use of this form and applicant's responsibilities

An application for a licence may be made by any legal person including, without limitation, individuals, partnerships, incorporated associations, unit and other forms of trusts and corporations. Entities that are not a legal person (for example, an unincorporated joint venture) cannot apply for a licence.

For the purpose of this application form, reference to the term "Officer" include the applicant's directors and secretary, and other persons who make or participate in making decisions that affect a substantial part of the business of the applicant (e.g. Chief Executive Officer, Chief Financial Officer, General Manager etc.).

Applicants should list the information requested in the spaces provided in this form and enclose additional information when required. Applicants must take all reasonable steps to ensure the information provided in the application form is complete, true and correct and are required to make a declaration to that effect in the application form. Failure to disclose information or misrepresent any matter relevant to such information may result in a licence not being issued or in the suspension or cancellation of a licence at a later time.

Applicants are responsible for providing the Commission with current, accurate and relevant documentation. This will ensure that the application is processed promptly and without delay. All applications are assessed on a case-by-case basis. If insufficient information is provided with an application, the Commission will request additional information to be submitted before the application is considered further.

Prior reading

It is essential that licence applicants read the Commission's Advisory Bulletin No 4 – "*Licensing Arrangements for the Electricity and Gas Supply Industries*" before they fill out this form. This Bulletin is available on the Commission website www.escosa.sa.gov.au under gas/licensing.

Licence conditions

Part 3 of the *Gas Act* requires the Commission to place certain conditions in licences. The Commission strongly recommends that applicants review these mandatory conditions. Applicants must be familiar with the relevant conditions and be confident that they can comply with the conditions.

Variation of licence conditions

As part of the Commission's licensing function, it has the power to vary (or add to) conditions that are imposed on a licence it has issued. Specifically, under section 29 of the *Gas Act*, the Commission has the power to vary a licence at any time, subject to statutory procedural requirements, including providing a licensee with reasonable notice of a proposed variation and allowing it the opportunity to make representations on that variation.

There is a broad range of factors that might be potential 'triggers' for the Commission to consider varying a licence, or adding new conditions. These include factors both external and internal to a licensee, and may include (without limitation):

- ▶ material changes in market operations, outcomes or structures
- ▶ changes to applicable national or State legislation, rules or policy
- ▶ the findings of a formal inquiry undertaken by the Commission
- ▶ substantive changes to operations which would have a genuine connection to or impact on the operations authorised under a licence
- ▶ an application by a licensee to vary its licence (for example, to add or remove distribution operations), and
- ▶ evidence of upgrades or material changes to a licensee's business or operational practices relating to the operations authorised under a licence.

In considering a potential licence variation, the Commission must consider the factors specified in section 6 of the *Esc Act* (which sets out the Commission's primary statutory objective and other relevant considerations), the objects of the *Gas Act* (as set out in section 3 of that Act). It will also be informed by any information submitted by a licensee to which the variation may apply, through public consultation and by engagement with regulatory agencies involved in the gas distribution industry.

Further information

Applicants should note that the Commission may ask applicants who have submitted a completed application form to provide further information to the Commission, or to clarify the information that they have already provided.

Consultation and confidentiality

The Commission will consult with relevant government, industry and consumer groups in the conduct of its licensing functions through a public consultation process. Consequently, applications and/or supporting information will be made available on the Commission's website and in hard copy from the Commission's office for this purpose.

If applicants believe that they are providing confidential information when completing this form they should write "this information is confidential" after any such information. It is the applicant's responsibility to ensure this is clearly highlighted on the form. Applicants should also provide a 'non-confidential' version of the form capable of publication on the Commission's website.

The Commission will use information supplied in applications and in support of applications in accordance with the requirements of Part 5 of the *Esc Act*. Applicants claiming confidentiality are encouraged to familiarise themselves with Part 5. Applicants should note that the Commission may disclose confidential information in some circumstances.

How to lodge an application

Applicants may send their completed application form in electronically (preferred) or in writing.

- ▶ Electronically to: licensing@escosa.sa.gov.au
- ▶ In writing to: Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

Application fees and annual licence fees application

Applicants should note they will be required to pay an application fee (presently set by the Minister for Energy and Mining at \$1,000 per application).

Holding a licence incurs annual licence fees¹. The Commission administers the licence fees determined by the Minister for Energy and Mining. At annual intervals, the Commission, on behalf of the Minister, will send to each licensee, depending on the category within the sector, an invoice for the licence fee. Licence fees are to be paid on receipt of an invoice via one of the payment options set out in the invoice.

The initial licence will not be issued until the first annual licence fee (or approved licence fee instalment) has been paid.

¹ Available at <https://www.escosa.sa.gov.au/industry/gas/licensing/licence-fees>

Licence application form

1 The applicant

Applicants must answer all questions in this section.

1.1 Identity of applicant

State the full name of the applicant. The applicant is the person who will be undertaking the gas distribution operations that will be the subject of the licence. Joint applicants should each complete an application form, and submit their application forms at the same time, with a covering letter explaining that a joint application is being made.

Name:
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1.2 Legal Identity of applicant

Provide information about the applicant, (i.e. whether the applicant is a natural person, private limited company or partnership, etc). If the applicant is a body corporate, please also state the jurisdiction in which the applicant is registered, and the applicant’s ABN/ACN.

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1.3 Address and contact details of applicant

Business address:
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State: Post code:

Postal address (if different to business address):
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State: Post code:

Telephone: Facsimile:

E-mail:

1.4 Contact person on behalf of applicant

The full name, title and contact details of a person to whom the Commission can direct enquiries and correspondence about the application.

Full name:

Title:

Business address:

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State: Post code:

Postal address (if different to business address):

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State: Post code:

Telephone: Facsimile:

E-mail:

1.5 Contact person for compliance matters and reporting

The full name and/or title of the person to whom the Commission can direct enquiries and correspondence about compliance matters and annual reporting responsibilities.

Full name:

Title:

Business address:

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State: Post code:

Postal address (if different to Business address):

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State: Post code:

Telephone: Facsimile:

E-mail:

1.6 Contact person for licence fees

The full name and/or title of the person to whom the Commission can direct enquiries and correspondence about licence fees.

Full name:

Title:

Business address:

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State: Post code:

Postal address (if different to business address):

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State: Post code:

Telephone: Facsimile:

E-mail:

1.7 Diagram of corporate or other structure

Please attach with this application form details of the corporate or other structure, including details of any related companies within the meaning of the *Corporations Act 2001 (Corporation Act)*; and a diagram of the organisational chart, including composition of the board, management and other key personnel responsible for the key functions of the business.

2 The licence

Applicants must answer all questions in this section.

2.1 Date from which licence is sought

If the applicant seeks to have the licence issued by a certain date, provide this date. Please note that the Commission does not undertake to issue the licence by this date. Applicants should usually allow the Commission a minimum of 16 weeks to consider an application, as a public consultation period of four weeks forms part of the Commission’s consideration of licence applications.

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2.2 Nature and scope of operations for which licence is sought

Applicants for a gas distribution licence must state the location of the distribution system, the expected capacity of the distribution system, the type of distribution system and some details about how the distribution system is to supply the retail network. Applicants should attach a map showing the proposed route for the network.

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3 Suitability of applicant to hold a licence

Applicants must answer all questions in this section:

3.1 Standard of honesty and integrity shown by applicant

In deciding whether the applicant is a suitable person to hold a licence, the Commission may:

- ▶ consider the applicant’s previous commercial and other dealings, and
- ▶ the standard of honesty and integrity shown in those dealings.

Please provide information that will assist the Commission in its consideration of this matter. If the applicant:

- ▶ has been found guilty of any criminal offence
- ▶ has been successfully prosecuted under any Territory, State or Commonwealth legislation (such as the *Australian Securities and Investments Commission Act 2001* or the *Competition and Consumer Act 2010*)
- ▶ has been the subject of disciplinary action, or
- ▶ has been the subject of any past or present administrative or legal actions in relation to an authorisation, authority, or licence in any industry.

Details of such matters must be disclosed. Failure to disclose such information or misrepresent any matter relevant to such information may result in the cancellation of a licence.

The Commission may use the service of an external expert to assist with the assessment of the applicant’s standard of honesty and integrity.

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3.2 Standard of honesty and integrity shown by officers and major shareholders of applicant

Applicants should address responses to this question in the same manner as 3.1 above except here it relates to officers and major shareholders of the applicant.

Please also supply details of any policies and procedures addressing the probity and competence of officers and other key management staff.

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3.3 Names and addresses of the officers of applicant

State the names and addresses of the officers of the applicant. "Officers" of the applicant include the applicant's directors and secretary, and other persons who make or participate in making decisions that affect a substantial part of the business of the applicant.

Full name:
Date of birth: Office held:
Address:
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State: Post code:

Full name:
Date of birth: Office held:
Address:
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State: Post code:

Full name:
Date of birth: Office held:
Address:
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State: Post code:

(Attach additional pages if necessary)

3.4 Names and addresses of major shareholders of applicant

State the full names and addresses of the major shareholders of the applicant

Full name:

Date of birth: Office held:

Address:

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State: Post code:

Full name:

Date of birth: Office held:

Address:

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State: Post code:

Full name:

Date of birth: Office held:

Address:

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State: Post code:

Full name:

Date of birth: Office held:

Address:

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State: Post code:

(Attach additional pages if necessary)

3.5 Details of the group members

This is information about entities controlled by the applicant, or by the ultimate parent entity of the applicant (if applicable).

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3.6 Additional information

Please answer the following questions and, where the answer to any question is "no", provide further detail.

- ▶ Is the applicant a resident of, or does it have permanent establishment in, Australia?

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- ▶ Is the applicant under external administration (as defined in the Corporations Act) or under a similar form of administration under any laws applicable to it in any jurisdiction?

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- ▶ Is the applicant immune from suit in respect of the obligations under the Gas Act 1997?

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- ▶ Is the applicant capable of being sued in its own name in a court of Australia?

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(Attach additional pages if necessary)

3.7 Financial resources available to the applicant

Provide information about the financial resources available to the applicant. If the applicant is a company, please also enclose:

- ▶ copies of all audited profit and loss statements and balance sheets for the last three financial years (including all notes)
- ▶ director’s declaration that the financial statements comply with accounting standards, give a true and fair view, have been made in accordance with the *Corporations Act* and that there are reasonable grounds to believe the company/entity will be able to pay its debts as and when they fall due, and
- ▶ the director’s report and the audit opinion.

If the applicant is a subsidiary company, please also provide:

- ▶ copies of all audited profit and loss statements and balance sheets of the applicant’s parent company for up to the last three financial years.

The applicant should also submit copies of:

- ▶ its business plans including at least strategic direction and objectives, identified opportunities in the market place and forecast results, and
- ▶ evidence of capital and liquidity support in place, including any bank or cross guarantees, to support the business and evidence of negotiations with the network service provider concerning credit support arrangements.

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3.8 Additional details of structure of applicant

If the applicant is part of a group of related companies, and/or party to a partnership, joint venture or alliance agreement with another company, please provide:

- ▶ contractual arrangements (e.g. alliance contracts, associate contracts, establishment contracts) that define relationships within the group – including shared resources, guarantees, revenue flows, obligations and or responsibilities.

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3.9 Human resources available to the applicant

Provide information about the human resources available to the applicant. This includes:

- ▶ the experience and qualifications of those employees outlined in the organisational chart (see point 1.6), and
- ▶ if the applicant will employ contractor/s to assist with the licensed operations, the name of that contractor/s, details about the experience of the contractor/s in such operations and details of the processes in place to ensure the contractor/s complies with the regulatory obligations imposed by the licence.

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3.10 Technical resources available to the applicant

Applicants for a generation licence are asked to provide details about the availability of technical resources to be used in carrying out the operations for which a licence is sought. The information should include details about the technically qualified staff available to the applicant and (if relevant) details of experience gained in similar operations.

Where applicants are relying on a third party to provide staff and resources to meet the technical requirements of the distribution licence, please provide:

- ▶ a list of all functions and activities being proposed to outsource
- ▶ details of any formal agreement/s to provide services, including confirmation that the third party possess relevant technical competencies to conduct the proposed activities
- ▶ a summary of the third party’s technical capacity to meet relevant obligations, including relevant accreditations, and
- ▶ a summary of the third party’s experience and knowledge in the relevant area.

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3.11 Safety of network

The Commission may not issue a distribution licence unless it is satisfied that the distribution network (or the proposed network) will have the necessary capacity for distributing gas safely. Applicants are therefore asked to verify that the network has been (or will be) developed in accordance with relevant Australian Industry Codes and Australian Standards.

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3.12 Risk management

Provide confirmation and reasonable evidence that the applicant’s management has identified the risks associated with gas operations and has established, utilises and relies upon risk management systems and processes, which are adequate, accurate and current to address those risks. A copy of the applicant’s risk management strategy should be submitted.

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3.13 Planning, Development and Infrastructure Act approval

Please advise if the applicant has or is applying for approval under the *Planning, Development and Infrastructure Act 2016 (SA)*. If so, provide details, including the date on which approval was or will be granted.

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3.14 Registration with Australian Energy Market Operator (AEMO)

Please advise if the applicant will apply to register with AEMO. If so, provide details.

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3.15 Licences held by the applicant in other Australian jurisdictions.

If the applicant holds, or has previously held, electricity or gas licences in other Australian jurisdictions please provide details. If a licence previously held has been suspended or cancelled, please provide details.

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3.16 Previous unsuccessful licence applications in other Australian jurisdictions

Please state whether the applicant has applied for an electricity or gas licence in another Australian jurisdiction and not been issued with a licence, and provide details if relevant.

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3.17 Licences held by associates of the applicant

If an associate of the applicant (within the meaning of the Corporations Act) holds an electricity or gas licence in South Australia or in other Australian jurisdictions, please provide details.

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3.18 Compliance plans

Applicants are required to submit a copy of their compliance plan, which demonstrates how the compliance systems the applicant has (or will have) in place will ensure compliance with all of the applicable regulatory obligations imposed by the relevant licence.

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3.19 Additional Information

The Commission encourages applicants to provide any additional information they consider would be of assistance in supporting the application. Please provide below.

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4 Factors specified in the *Essential Services Commission Act 2002*

In considering a licence application, the Commission must have as its primary objective protection of the long term interests of consumers with respect to the price, quality and reliability of electricity supply, and must also have regard to the need to:

- (a) promote competitive and fair market conduct
- (b) prevent misuse of monopoly or market power
- (c) facilitate entry into relevant markets
- (d) promote economic efficiency
- (e) ensure consumers benefit from competition and efficiency
- (f) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment, and
- (g) promote consistency in regulation with other jurisdictions.

If the applicant believes that information about their application would assist the Commission in its consideration of these factors, the applicant should provide such information below.

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5 Declaration

All information in this application for the issue of a licence to authorise gas distribution operations in the gas supply industry in South Australia must be verified by a Statutory Declaration of the applicant, in accordance with the provisions of the *Oaths Act 1936 (SA)*², stating that the information contained in the application is true and correct to the best of the applicant's knowledge, information and belief.

Where the applicant is a body corporate, evidence of the relevant authority of the declarant to sign on behalf of the body corporate must also be provided to the Commission.³

Statutory Declaration

I

of

do solemnly and sincerely declare that the information contained in this application for the issue of a licence to authorise gas distribution operations in the gas supply industry in South Australia is true and correct to the best of my knowledge information and belief.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*

Date

Signature

(Where the applicant is a body corporate, the declaration must be made by a person authorised by body corporate to sign on its behalf)

Declared at: this ... day of20....

Before me:

(Signature of Justice of the Peace or other person authorised under the *Oaths Act 1936*)

² or equivalent legislation in other Australian jurisdictions.

³ The Commission will accept a copy of a Board minute (or circulating resolution) giving approval for the declarant to sign on behalf of the applicant as evidence of the relevant authority.



The Essential Services Commission
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