



REGULATORY ARRANGEMENTS FOR RETICULATED LPG NETWORKS DRAFT DECISION

October 2009



REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (the Commission) invites written submissions from interested parties in relation to the issues raised in this paper. Written comments should be provided by **FRIDAY 20 NOVEMBER 2009**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

Regulatory Arrangements for Reticulated LPG Networks: Draft Decision

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Public Information about ESCOSA's activities

Information about the role and activities of the Commission, including copies of latest reports and submissions, can be found on the ESCOSA website at www.escosa.sa.gov.au.

TABLE OF CONTENTS

Request for Submissions	2
Public Information about ESCOSA's activities	2
Glossary	3
1 Executive Summary	4
2 Introduction	5
2.1 Licensing under the Act	5
2.2 Approach to regulation of LPG	7
2.3 Current scale of LPG operations	8
2.4 The issue	9
2.5 Process	9
3 A Threshold Question – to regulate at all?	10
3.1 Justification for retail and distribution licensing	10
3.2 Transition to national energy regulation	11
3.3 Fair trading legislation	12
3.4 An answer to the threshold question – there is a need to regulate	13
4 Licensing of all LPG distributors and retailers or continued use of exemptions?	14
4.1 Arrangements for current LPG retailing and distribution operations	14
4.2 The nature of LPG networks	15
4.2.1 Changing fuel sources	16
4.3 Licensing or exemption?	17
4.4 Submissions Received	17
4.5 Consideration	18
5 Form of licence	21
5.1 Analysis of the provisions of the Act	22
5.1.1 Section 25 of the Act – all licences	22
5.1.2 Section 26 of the Act – distribution licences	26
5.1.3 Section 26A of the Act – retail licences	31
5.1.4 Regulations– retail licences	36
5.2 Conclusions on applicability of mandatory licence conditions to LPG operations	37

6	Details of the licensing regime	39
6.1	Industry Code Requirements	39
6.1.1	Consumer protections under industry codes	39
6.1.2	Stakeholder submissions	40
6.1.3	Consideration	40
6.1.4	Conclusions	41
6.2	Same licensed entity - retail and distribution	45
6.3	Reticulated LPG Pricing Issues	46
6.3.1	Transparent Price Information	46
6.3.2	Submissions Received	47
6.3.3	Consideration	49
6.4	Licence fee	50
7	Next Steps	51
	Schedule - Draft LPG Retail Licence & Draft LPG Distribution Licence	52

GLOSSARY OF TERMS

COMMISSION	Essential Services Commission of South Australia
LPG	Liquefied Petroleum Gas
TJ	Terajoule
EIOSA	Energy Industry Ombudsman of South Australia
EIO SCHEME	Energy Industry Ombudsman Scheme
ESC ACT	<i>Essential Services Commission Act 2002</i>
ACT	<i>Gas Act 1997</i>
REGULATIONS	<i>Gas Regulations 1997</i>

1 EXECUTIVE SUMMARY

The Essential Services Commission of South Australia (**the Commission**) is the licensing authority for the purposes of the Gas Act 1997 (**the Act**), a role which it assumed in July 2003.

The licensing provisions of the Act are typically applied to natural gas networks, however, given the increasing interest in the establishment of reticulated liquefied petroleum gas (**LPG**) networks, particularly in new housing and small industrial developments in areas beyond the reticulated natural gas network operated by Envestra Ltd, the Commission believed it necessary to clarify the application of the provisions of the Act to these networks.

Accordingly, the purpose of this Draft Decision is to set out the reasons for the Commission's decisions in respect of the future licensing arrangements to apply to reticulated LPG networks in South Australia.

In summary, the Commission has decided that:

- ▲ it will continue to regulate LPG operations having regard to the scheme envisaged under the mandatory licence conditions set out in the Act;
- ▲ distributors and retailers of reticulated LPG in South Australia will be licensed under the Act;
- ▲ it will issue LPG retail and distribution licences containing all applicable mandatory licence conditions as set out in sections 25, 26 and 26A of the Act and the Gas Regulations 1997 (**the Regulations**);
- ▲ LPG retail and distribution licences will be issued with conditions containing modified versions of key provisions of industry codes where those industry codes do not apply to a particular licensee and, as appropriate, be expressed to apply to particular customer classes – for example, small customers only;
- ▲ there is no reason to prevent the same legal entity holding both a distribution and a retail licence for the sale and supply of LPG in a reticulated LPG network; and
- ▲ LPG retailers will be required to provide a Written Disclosure Statement to customers at the time they enter into a contract for the supply of LPG, publish LPG price fact sheets on their websites and provide such price fact sheets to the Commission, including variations to prices as and when they occur.

The Commission seeks further submissions from interested parties in response to the Draft Decision which must be received on or before the close of business on **Friday 20 November 2009**. A Final Decision will be made by the Commission in December 2009.

2 INTRODUCTION

In South Australia, the vast majority of customers who use gas, whether for domestic or industrial purposes, do so by means of natural gas purchased from a licensed gas retailer and supplied from the natural gas distribution system. As with other industry sectors, relationships between natural gas consumers and providers are regulated, such that various contractual and consumer protection rights and responsibilities are established and regulated.

However, the natural gas distribution system does not extend to all areas of the State, meaning that customers in the areas not supplied by the natural gas system are required to either use bottled gas or to take supply from a reticulation system on an alternative basis if they wish or need to use gas appliances. Furthermore, they do so in the absence of a fully regulated contractual and consumer protection regime, possibly leaving them at a disadvantage as compared with those taking a supply of natural gas.

At present, the main alternative source of reticulated gas supply is LPG distribution networks. Such networks are generally found in non-metropolitan areas of South Australia but, as outlined in this paper, are increasingly being constructed in the metropolitan areas.

In that latter context, LPG networks are often being built in residential and/or commercial developments near to, but not yet connected with, the natural gas distribution network, with a view to operating on an LPG basis until such time as a decision is made by the natural gas distribution network owner that it is economic to connect the new development. This requires that the LPG networks are built to a standard which permits the later reticulation of natural gas.

In one sense, therefore, many of the new and proposed LPG networks in this State may be considered as having a transitional nature. This state of affairs raises further issues as to how the various contractual and consumer protection relationships between the operators and the customers in those networks should be established and operate for the time for which LPG is reticulated, bearing in mind the potential future transition to the fully regulated regime applying to natural gas networks.

It is therefore timely for the Commission, as the gas supply industry licensing authority,¹ to consider its approach to the regulation of reticulated LPG networks in this State.

2.1 Licensing under the Act

Pursuant to section 19 of the Act, those who engage in the activity of distributing and retailing of gas through reticulated networks in South Australia are required to hold a

¹ The Commission is established as the licensing authority for the gas supply industry in South Australia by reason of section 6A(1)(a) of the Act.

licence issued by the Commission.² Carrying on those operations without a licence is an offence which attracts a maximum penalty of \$1,000,000.

19—Requirement for licence

A person must not carry on—

- (a) the operation of a distribution system; or*
- (b) the retailing of gas; or*
- (ba) the business of a retail market administrator; or*
- (c) any other operation for which a licence is required by the regulations,*

unless the person holds a licence under this Part authorising the relevant operation.

Maximum penalty: \$1 000 000.

Typically, those licensing provisions have been applied only to natural gas networks in this State; however, the meaning of the term “gas” under the Act is not limited solely to natural gas. Section 4 of the Act defines gas to mean:

A fuel consisting of hydrocarbons or predominantly of hydrocarbons that is in a gaseous or vaporous form when it is at the pressure and temperature of its normal pipeline transportation and utilisation conditions...

There is, therefore, no prima facie reason why the licensing and associated regulatory regime established under the Act should not apply to reticulated gas systems other than natural gas.³

LPG is one such type of gas, for which, as noted above, reticulation systems are increasingly being installed in both residential and commercial settings in South Australia. The Act, through the regulations made under it, specifically identifies LPG as being a gas for the purposes of the Act:

*Liquefied petroleum gas means a hydrocarbon fluid composed predominantly of one or more of the following hydrocarbons:*⁴

- (a) propane (C3H8);*
- (b) propene (propylene) (C3H6);*
- (c) butane (C4H10);*
- (d) butene (butylene) (C4H8).*

² Refer Act, sections 19(a) and (b).

³ By reason of the requirement for “reticulation”, this definition excludes both bottles and cylinders of gas (liquefied petroleum gas), which are widely used by households in South Australia or automotive LPG, from the scope of the Act for licensing purposes.

⁴ The Commission notes that the term “fluid”, while commonly considered to be synonymous with the term “liquid”, in fact refers to any substance which continually deforms (or “flows”) when a shear stress is applied to it. Thus all gases are fluids, while most but not all liquids are fluids. The definition of “liquefied petroleum gas” therefore falls within the broader definition of “gas” as, although a “fluid”, it is of a gaseous form.

On the face of things, therefore, there is no reason why those who carry out LPG distribution and retail operations through reticulated LPG networks should not be required to hold appropriate licences.

It is convenient at this point to note that, notwithstanding this fundamental assumption of licensing under the Act, the Act also allows for an exemption regime, whereby a person is excused from the ordinary requirement to hold a licence (with attendant regulatory obligations), either in whole or in part. Such exemptions can arise as a matter of law (where a person meets one or more of the statutory exemption criteria arising under the Regulations – for example, the person sells gas only to an electricity generator⁵) or can be issued by the Commission, with the approval of the Minister, under section 77 of the Act.

Importantly, the granting of an exemption (whether by the Commission or under statute) only has the effect of replacing, for the period for which the terms of the exemption are complied with, the obligation to be licensed. When those terms are not complied with, then the person must seek a licence or it will be in breach of the general licensing obligation under the Act – and will thereby be guilty of an offence with a maximum penalty of \$1 million.

As a result, an exemption should not be considered as a removal of a person or set of operations from the entire scope of the regulatory regime. Instead, it is a means by which a more light-handed form of control is applied in particular circumstances where those circumstances justify a departure from the normative requirement for licensing. Therefore, where and as circumstances change, so too can the appropriateness of exemptions as a form of control change.

Ultimately, the only means by which a person can be taken outside of the scope of the Act is where the operations undertaken by the person simply do not fall within its ambit – at this stage, reticulated LPG operations do, for reasons shown above, fall within the scope of the Act.

2.2 Approach to regulation of LPG

Notwithstanding the normative presumption of the Act that those carrying on distribution and retailing of LPG via reticulated networks will be licensed, historically the former gas licensing authority, the Technical Regulator,⁶ adopted an approach whereby it issued exemptions from the requirement to hold a licence (noting that it did so only on one occasion in relation to the exemption held by Origin Energy LPG Ltd).

It is the Commission's understanding that the Technical Regulator adopted that approach as it felt that: the costs imposed by a licensing regime outweighed the benefits (given the

⁵ For a list of the relevant statutory exemptions, refer section 6A of the Regulations.

⁶ The Technical Regulator is a statutory office established under Part 2 of the Act, which has responsibility for the safety and technical aspects of the gas supply industry, as well as providing advice on those matters to the Commission at the request of the Commission.

relatively small-scale of reticulated LPG networks at the time); and, there were safety benefits inherent in encouraging the up-take of such networks in comparison to growth in the use of bottled gas in domestic settings.

It has been the approach of the Commission (since it assumed the gas licensing authority function in mid-2003) to maintain previously issued exemptions and, in the interests of consistency (and noting that detailed consideration had not previously been given to the nature of regulatory arrangements which ought to apply to LPG operations), to issue new exemptions to those few persons which have commenced LPG operations.

2.3 Current scale of LPG operations

Presently, there are LPG networks (operating under the benefit of exemptions) located at:

- ▲ Roxby Downs - 1145 customers;
- ▲ Victor Harbor (Rosetta Retirement Village) - 384 customers;
- ▲ Renmark (Jane Eliza Estate) - 95 customers;
- ▲ Port Lincoln – 135 customers;
- ▲ Wallaroo – 67 customers; and
- ▲ Clare – up to 100 customers.

The new Cape Jaffa Anchorage development in the south east of South Australia also has a reticulated LPG network. Networks are also being constructed at Mt Barker (835 customers) and Port Lincoln (996 customers).

In addition to the existing LPG networks, the Commission has been approached by a number of parties interested in establishing new reticulated LPG networks of varying sizes in at least six other rural/regional areas of South Australia.

It is understood by the Commission that the introduction of mandatory greenhouse gas performance standards for hot water services by the State Government may have contributed to some of this current interest.

These standards apply to hot water systems in all new dwellings, building modifications or extensions in South Australia, which are located in areas where there is a reticulated gas supply (either natural gas or LPG), available to a point in the street, an easement or the like, adjacent to the property.⁷

The standards effectively require the installation of solar water heating (with gas or electric boost), gas water heating or electric heat pump water heating systems.

⁷ Refer Minister's Specification: Greenhouse Gas Performance Standards for Heated Water Services
<http://www.planning.sa.gov.au/download.cfm?DownloadFile=D8043189-F203-0D46-A1E6D8BD1758EBD0>

2.4 The issue

The question for the Commission at this time, given this likely increased incidence of reticulated LPG operations, is whether the current exemption approach should be continued for retail and distribution operations or, instead, a full (or modified) licensing regime under the Act should be implemented?

2.5 Process

This Draft Decision is the second stage in the Commission's review of this matter, following the Issues Paper released in August 2008, entitled "Regulatory Arrangements for Reticulated LPG Networks".⁸ That paper set out general themes relevant to the issue of whether the current exemption regime ought to persist in this State and sought stakeholder views on relevant matters.

The Commission received five submissions on the Issues Paper, from the following entities:

- ▲ Envestra Ltd;
- ▲ Energy Industry Ombudsman SA;
- ▲ Wesfarmers Kleenheat Gas Pty Ltd;
- ▲ Origin Energy Retail Ltd; and
- ▲ Elgas.

The Commission has considered the matters raised by respondents to the Issues Paper and deals with specific issues raised by each where relevant in this Draft Decision.

As previously mentioned, the Commission invites interested parties to comment on the Draft Decision and request that all written submission be received by **Friday 20 November 2009**.

⁸ The Issues Paper and associated submissions can be found on the Commission's website at www.escosa.sa.gov.au.

3 A THRESHOLD QUESTION – TO REGULATE AT ALL?

In considering the issue of regulation for LPG operations in the period following the close of submissions on the Issues Paper, the Commission has confronted the threshold issue of whether it should regulate those operations at all.

Notwithstanding that LPG is clearly a gas for the purposes of the Act, and the presumption under the Act, described in section 2.1 above, that persons carrying on the retailing or distribution of gas are required to be licensed by the Commission, in responding to the Issues Paper Origin Energy put a view that there should be no regulation, or at least no regulation of the current form, applying to LPG operations in the future.

... Origin does not believe that retail or distribution licensing is justified for LPG reticulations. Regulatory intervention should only be implemented where there is a demonstrated market failure and where the benefits of regulation outweigh the costs. We do not believe the case has been made for such intervention in the South Australian reticulated LPG market.

While Origin already has a retail licence for LPG reticulations in South Australia... the transition to national energy regulation will see this arrangement change. Prior to this, Origin believes that legislation in South Australia should be amended similarly to what currently applies in Queensland. LPG Retail and Distribution licensing should be revoked with specific legislation introduced to allow a distributor of gas to have rights of access for main laying and for access to private properties during emergencies etc.

Existing fair trading legislation should continue to regulate the retailing of reticulated LPG in South Australia as it currently does for many other commodities including bottled gas.⁹

This submission raises a number of issues which the Commission needs to address at the outset.

3.1 Justification for retail and distribution licensing

As an initial point it must be understood that the Commission's reasons for considering the issue of the proper regulatory approach for LPG operations in the future are not premised on any inherent powers it has to determine whether or not there will be a licensing regime. The decision that there will be a licensing regime is one which has already been made by Parliament and expressed in the terms of the Act. If there is not to be a licensing regime, that too is a decision for Parliament, not for the Commission. To the extent that any party seeks to remove the licensing regime altogether, the appropriate way to do so is to make representations to the Government, not to the Commission.

Further, the scope and purview of the regulatory control established under the licensing regime is also a matter which Parliament has determined, by setting various legislative obligations (such as licence conditions) and granting various discretionary regulatory powers to the Commission. While the Commission is able to exercise its discretionary

⁹ Origin Energy, submission to Issues Paper, 7 October 2008, page 3.

powers to influence and shape the nature of the regulatory regime, it must do so on the assumption that there continues to be a licensing regime and in the context of the entire legislative framework.

It is therefore entirely appropriate that the Commission consider the manner in which it can ensure that the performance of its regulatory functions for LPG operations meets its paramount statutory objective (established under section 6 of the Essential Services Commission Act 2002 (**the ESC Act**)) of protecting the long-term interests of South Australian consumers with respect to the price, quality and reliability of gas supply.

The Commission accepts that this question gives rise to considerations of market failure and the costs and benefits of various forms of regulation: it does not accept, however, that it has any role in considering whether or not there should be any licensing regime at all. It is not therefore necessary for the Commission to consider in detail Origin's submission that retail or distribution licensing is not justified for LPG reticulation.

3.2 Transition to national energy regulation

Much of Origin's position appears to be premised on the twin assumptions that:

- ▲ regulation of natural gas operations will transfer entirely to the Australian Energy Regulator (under the National Gas (South Australia) Act 2008 in respect of network pricing, and under the legislative regime which may arise from National Energy Customer Framework in respect of non-economic regulatory matters); and
- ▲ following that transfer, there will be no strong grounds on which non-natural gas operations should continue to be regulated.

In relation to the first point, the Commission notes that while it is true that regulation of natural gas operations will transfer to the Australian Energy Regulator, there will remain a residual power with the Commission to set the gas standing contract price applicable to Origin for some time to come.

More substantively, however, it notes that the tenor of the assumptions is that, following the transfer of natural gas regulation, consumers who take a supply of gas from a reticulated LPG network are best benefited by there being no further direct regulation of contractual and consumer protection relationships. This proposition is not, in the Commission's view, consistent with the assumptions behind the transfer of regulatory control for natural gas operations. Instead, it is clear that governments have determined that there is a need for such regulation – it is just that the source of regulatory control and the identity of the relevant regulator have (or will have) changed. Therefore, while there may be other reasons for which regulation is or is not required for LPG operations in the future, such as issues of market power and the relative costs and benefits of regulation, the transition to a national regulatory model for natural gas is not *per se* persuasive.

3.3 Fair trading legislation

The argument put by Origin, that the retail relationships between consumers and suppliers is best left to the general law, is one which the Commission often finds posited. While undoubtedly true in the general sense, it is the Commission's position that the protection afforded by the general law (under the Trade Practices Act 1974 (Cth), the Fair Trading Act 1987 (SA) and other similar Acts of Parliament), while a necessary part of the overall consumer protection framework for essential services, is not of itself sufficient so as to provide the requisite level of consumer protection.

This position derives from the very nature of the goods and services under consideration – those which are essential. Most notably, in the Commission's experience, the market for energy is one in which the fundamental nature of the uses to which the goods and services provided are put in our society are such as to warrant additional protections. While perhaps trite, it is nevertheless salutary to recall that an inability to access electricity and gas fundamentally inhibits the ability of an individual consumer to interact in everyday life.

Considered in that context, the concept of sole reliance on consumer protection laws of general application becomes problematic, in that such laws require the individual consumer to commence formal legal action against a retailer where that consumer is aggrieved by the retailer's actions. This will require the consumer to prove in Court, to the relevant legal standard, that the retailer has breached a legislative requirement. Such actions are neither necessarily simple nor cost effective for the average consumer. As a result, it might be suggested that there are more likely than not to be many cases where the consumer would simply not bother to pursue its legal rights against a retailer by reliance on the general law.

Industry-specific regulation as a supplement to general consumer laws provides for more immediate and cost-effective controls on retailer behaviours – the existence of a licensing regime, with attendant regulatory behavioural obligations, has continuing control over those who are licensed and is independent of any individual consumer having to take specific actions. For example, in industries such as electricity and gas in this State, the regulatory regimes established by the Commission under the licensing regime require certain behavioural standards of retailers (in relation to matter such as billing information, credit collections and disconnection procedures) which are actively monitored by the Commission. While consumer complaints can heighten the focus of the Commission on specific matters, the existence of a continuous monitoring and compliance regime by the Commission fosters a better level of compliance by retailers than does a discrete set of individual court cases brought by consumers.

LPG is a form of gas; furthermore, gas remains, and perhaps may be seen increasingly as, an essential service, at least to the extent that there is an inability to substitute a gas appliance for an electric appliance or, as is more often the case, Government policy is such that consumers are prohibited from using an electric appliance where there is the

potential to use an equivalent gas appliance. The Commission therefore maintains that the foregoing arguments apply equally to LPG, such that it would not be sufficient to rely solely on the general law to provide consumer protection to consumers of LPG operations.

That said, the Commission acknowledges that there is always a question of degree in terms of the extent to which an industry-specific regime intervenes in a sector. That issue is fundamentally in issue in this paper and is a matter not taken lightly by the Commission.

3.4 An answer to the threshold question – there is a need to regulate

Ultimately, the answer to the threshold question of whether or not the Commission should be regulating LPG operations at all is, as is usually the case, found in the terms of the relevant legislation. As outlined in section 2.1, the Act establishes a requirement that all persons carrying on the distribution and retailing of gas must be licensed. The only alternative to that position is where a person is able to take advantage of an exemption from the requirement to be licensed, in the form either of a statutory exemption arising under the Gas Regulations 1997, or an exemption issued by the Commission under section 77 of the Act.

Therefore, unless and until the Act is amended to remove LPG operations from its scope, the Commission will continue to either licence, or grant exemptions from the requirement to be licensed, to those persons retailing or distributing LPG via reticulated networks in South Australia. This is not a matter of discretion for the Commission, it is a legal requirement placed on the Commission.

As a result, the proper questions for the Commission to address do not relate to the need, or otherwise, for licensing or exemption, but rather focus on which of licensing or exemption is the preferred approach (having regard to the nature and scope of LPG operations now and into the future) and, once a determination between those two approaches is made, the content of the controls imposed under that approach. The rest of this paper deals with those issues.

Draft Decision 1.

In accordance with the clear legislative policy embodied within the Act, the Commission must administer some form of regulatory control – be it licensing or exemption – for reticulated LPG operations. The Commission will therefore give effect to that policy and will continue to regulate LPG operations having regard to the scheme envisaged under the mandatory licence conditions set out in the Act.

4 LICENSING OF ALL LPG DISTRIBUTORS AND RETAILERS OR CONTINUED USE OF EXEMPTIONS?

In order to form views on the appropriate means of control for LPG operations, it is helpful to first consider the current state of affairs in terms of licensing/exemption arrangements and the nature and characteristics of LPG networks.

4.1 Arrangements for current LPG retailing and distribution operations

Existing LPG networks in South Australia operate under a variety of licensing and exemption arrangements in accordance with the Act, as outlined below:

RETICULATED LPG RETAIL		
	LICENCE	EXEMPTION
ORIGIN ENERGY RETAIL LTD		
Roxby Downs	✓	
Victor Harbor (Rosetta Retirement Village)	✓	
Renmark (Jane Eliza Estate)	✓	
Port Lincoln	✓	
Wallaroo	✓	
Cape Jaffa (Cape Jaffa Anchorage)	✓	
ELGAS LTD		
Clare (Hamlin Rise)		✓
Mt Barker (Bluestone Estate)		✓
Port Lincoln (Point Boston)		✓
RETICULATED LPG DISTRIBUTION		
	LICENCE	EXEMPTION
ORIGIN ENERGY LPG LTD		
Roxby Downs		✓
Victor Harbor (Rosetta Retirement Village)		✓
Renmark (Jane Eliza Estate)		✓
Port Lincoln		✓
Wallaroo		✓
Cape Jaffa (Cape Jaffa Anchorage)		✓
ELGAS LTD		
Clare (Hamlin Rise)		✓

Prior to 1 July 2003, Origin Energy LPG Ltd had been exempted from the requirement to be licensed as a distribution network operator by the Technical Regulator, the then licensing authority. In February 2004, the Commission re-issued the exemption. In June 2008, the Commission varied the exemption to specifically list each of the Origin Energy reticulated LPG networks covered by the exemption - Roxby Downs, Victor Harbor, Renmark, Port Lincoln, Wallaroo and Cape Jaffa Anchorage.

Origin Energy Retail Ltd retails to the customers in each of the Origin Energy LPG exempt networks under its general retail licence.

Elgas Ltd is exempted by the Commission from both the requirement to be licensed as a distribution network operator and a retailer under the Act in relation to a reticulated LPG network at Clare and from the requirement to hold a retail licence for its retail operations at Mt Barker (Bluestone Estate) and Pt Lincoln (Point Boston). These exemptions are for a limited period until 31 December 2009. This limited period was established to allow these operations to be appropriately authorised under the Act whilst the Commission undertook the present review

The exemptions for both the Origin Energy LPG and Elgas distribution networks are subject to conditions designed to ensure the application of and compliance with the safety and technical standards set out in the Act and Regulations, in addition to a number of other conditions.

4.2 *The nature of LPG networks*

There are some key differences between reticulated LPG networks and the natural gas network in South Australia.

Customers served by the natural gas network are able to choose to purchase gas from their retailer of choice. They can select from a range of market contracts offered by retailers or can choose to be supplied by Origin Energy Retail Ltd on a standing contract on terms and conditions (including price) that are regulated by the Commission.

Unlike customers serviced by the natural gas network, customers connected to a reticulated LPG network are generally not able to choose their own gas retailer. Although under the Act there is no legal impediment preventing them from doing so, it is simply a matter of fact that the design of a reticulated LPG network and the contractual arrangements between the distribution network owner/operator and the retailer means there is not likely to be more than one retailer within any given LPG network and so customer choice is not possible. Therefore, customers cannot choose price/contract length/incentive offerings from different gas retailers, as gas retailers do not have a

guaranteed right of access to the LPG network.¹⁰ The retailer in an LPG network will be either:

- ▲ the network operator itself - acting as retailer to customers connected to the LPG network, or
- ▲ the party with whom the network operator has contracted for the supply of gas to the storage tank and for the retail supply of that gas to customers connected to the LPG network.

Unlike the natural gas distribution system, customers are locked into exclusive retail arrangements – with the only option for avoiding unfavourable price/service outcomes being to change fuel sources which may involve arranging to be supplied by bottled LPG from a different supplier. For the reasons outlined below changing fuel sources will cause the customer to incur additional cost. Such an option may not be cost effective for consumers.

4.2.1 Changing fuel sources

Reticulated LPG ↔ bottled LPG

Reticulated LPG networks are constructed in the same way as reticulated natural gas networks with underground network piping to the meter, underground piping to the house and in-wall piping through the house.

However, the construction and configuration of a reticulated LPG network is generally such that it is not possible for the customer to switch from the reticulated network to bottled LPG without incurring costs (including disconnection costs and reconfiguration of pipe work). The Commission understands from submissions received that the cost of conversion from LPG to bottled gas could be achieved at a cost of approximately \$120. Nevertheless, it is a cost which may discourage some customers from making the initial effort to make a change.

Reticulated LPG ↔ other fuel sources

When a developer installs a reticulated LPG distribution network in a green fields residential development, consumers have opportunities to select energy sources (electricity and gas and/or solar) at the point when they are acquiring appliances. Subsequent choice of energy source(s) generally arises only on the replacement of appliances.

Once the appliance choice is made, customers are effectively locked in to the chosen fuel source(s), usually for the life of the appliance. Changing energy

¹⁰ Under the National Gas Law, natural gas distribution network owners are required to have an approved Access Arrangements which detail the policies, terms and conditions under which third parties (retailers) may access the network. There is no equivalent legislative provision relating to LPG networks.

sources requires investment in new appliances and may also require alteration to in-home infrastructure - thus such changes occur infrequently.

4.3 Licensing or exemption?

In considering whether it is best to pursue a licensing approach or to interpose a scheme of exemption,¹¹ the Commission's starting premise (based on the fact that licensing is the de facto position under the Act) expressed in the Issues Paper was that a licensing regime was the preferred approach.

In the Issues Paper it noted that in the electricity supply industry, while licences are issued to remote area/off grid electricity retailers, distributors and generators, those entities are not subject to the full licence and code compliance regime established by the Commission; rather, they are required to comply with modified requirements appropriate to the scale and scope of the regulated activity undertaken.

The Issues Paper therefore proposed that a similar licensing regime could be adapted for use in the regulation of LPG distributors and retailers in preference to the current scheme of exemptions.

4.4 Submissions Received

Submissions received, with the exception of that from Origin, support the Commission's view expressed in the Issues Paper that:

- ▲ reticulated LPG distributors and retailers should be licensed under the Act; and
- ▲ a modified licensing regime appropriate to the scale and scope of reticulated LPG operations should be applied.¹²

Aside from its overarching submission that no regulatory regime ought to apply in respect of LPG networks, Origin expressed the view that the LPG market in South Australia is very small and consequently "*does not believe that licensing is justified for LPG reticulations*"¹³, stating that:

*The long term interests of customers will be better served by ensuring that new entrants are not burdened with specific regulation that may limit their ability to consider LPG reticulations as an economic, more environmentally sensitive alternative than what may otherwise be provided in these remote locations.*¹⁴

¹¹ Noting that exemptions will only apply for the period for which an exempted person complies with relevant requirements – after which licensing is required in any event by the Act

¹² Refer: Envestra Ltd., submission to Issues Paper, 12 September 2009; Westfarmers Kleenheat Gas Pty Ltd., submission to Issues Paper, 8 October 2009, page 1; Elgas Ltd, submission to Issues Paper, 14 November 2008, page 3. The Energy Industry Ombudsman made no specific comment on this issue.

¹³ Origin Energy, submission to Issues Paper, 7 October 2008, page 3.

¹⁴ Origin Energy, submission to Issues Paper, 7 October 2008, page 2.

4.5 Consideration

The Commission notes the general acceptance of its proposal that licensing, rather than the current exemption regime, should be the means of regulation for LPG distribution and retail operations in the future. In the context of gas distribution, Envestra submitted that:

A requirement to hold a licence is a preferable measure and one consistent with the overall regime of gas distribution regulation.¹⁵

In addition, and again as noted by Envestra, it must be acknowledged that the current exemption regime operates, in effect, as a quasi-licensing scheme, at least to the extent that each of the exemptions issued has conditions attached. Such a quasi-licensing regime is not preferable, for a number of reasons.

First and foremost, a licence, provides value and certainty to the licence holder in that:

- ▲ The licence is in itself a property right vested in the licensee: the authority to undertake activities which otherwise could not be lawfully done;¹⁶ and
- ▲ it may be transferred (for value) to a third party in accordance with the scheme set out in section 30 of the Act;¹⁷ and
- ▲ the Commission, while able to vary the terms and conditions of the licence during the life of the licence, can only do so with the agreement of the licensee or after providing the licensee with an opportunity to make representations on any proposed variation.¹⁸ Furthermore, in the event that a licensee does not agree with a variation made by the Commission, it has statutory rights of review (to the Commission) and appeal (to the District Court) under Part 7 of the Act.¹⁹

Secondly, while exemptions do not impose any costs on the exempted entity, nevertheless the Commission and the Technical Regulator incur costs in relation to the administration of exemptions. In the case of the Commission, it is required to assess and determine applications for exemption, maintain a register of exemptions and monitor the on-going appropriateness of the terms of exemptions, as well as compliance with those terms. For the Technical Regulator, there are obligations in relation to safety and technical issues, which need to be addressed once an entity is licensed or exempted. Under a licensing regime, a licence fee – set at a level determined by the Minister to, in part at least, reflect the costs of the administration of the Act²⁰ – is payable by each licensee. In the absence of such contributions, the holders of licences are cross-subsidising the administration of the exemption regime.

¹⁵ Envestra Ltd., submission to Issues Paper, 12 September 2009.

¹⁶ Refer Act, section 19.

¹⁷ Refer Act, section 30, for the scheme permitting the transfer of a licence between entities.

¹⁸ Refer Act, section 29, for the scheme permitting variation of a licence.

¹⁹ Refer Act, sections 71(1)(b), 72(1)

²⁰ Refer Act, section 24, for the scheme under which licence fees are established by the Minister.

Finally, as previously highlighted in this paper, the effect of such exemptions is simply that where an entity fails to comply with the terms of its exemption, then it is subject to the full licensing regime under the Act. As a matter of certainty and regulatory clarity, therefore, and to give a proper role to exemptions under the Act, it remains the Commission's position that retailers and distributors of LPG via reticulated networks should be the subject of a positive licensing regime as envisaged by the Act. This would allow exemptions to assume their proper place in the regime – not as a quasi-licensing instrument but rather as an instrument to recognise exceptional circumstances, where licensing is simply not appropriate.

The Commission would also note that, as outlined in section 2 of this paper, many reticulated LPG systems are being built with an eye to conversion to natural gas reticulation at some stage in the future. This may lead to anomalous situations whereby customers in one suburb purchase LPG for domestic gas consumption under one regulatory regime, while those in the adjoining suburb purchase natural gas for domestic consumption under an entirely separate regime. Such an outcome would not be optimal, in the sense of both equity of treatment as between natural gas and LPG customers, and moreover would not be encouraging of consumer engagement with the energy services market generally. It would be better to have regulatory systems for the two gas supply sources which are, so far as possible, consistent. In saying this, the Commission is aware of the need to ensure that these outcomes are achieved in relation to LPG in the most efficient manner possible, such that it does not impose unnecessary costs on the industry which might serve to prevent the expansion or further development of reticulated LPG networks in this State.

In terms of Origin's suggestions that a licensing regime acts as a barrier to entry, the Commission notes that this assumes a very wide view of matters which comprise barriers to entry. On such a view, every obligation imposed by law would be considered as a barrier of entry to a field of endeavour. It is the Commission's position that this is too wide a view of the concept. The Commission prefers a view of the concept which focuses on the inability of new entry to a market due to structural or other barriers which do not affect incumbents in the same manner or which affect intending different participants differently.

On this view, given that Parliament has expressly legislated for the existence of a licensing regime, it is not considered that the licensing regime *per se* is a barrier to entry in the narrow sense preferred by the Commission: it affects all participants equally and it does not discriminate between incumbents and new entrants. As such, the Commission does not give significant weight to Origin's arguments that licensing should not be pursued. Furthermore, the Commission would note that submissions of this nature, which essentially argue that there should be "no regulation", fail to address the fact that rules (to use a neutral term) are fundamental to the efficient operations of markets. The proper question to ask, therefore, is not whether or not there should be any rules (or regulation) at all, but rather whether the proposed rules are appropriately targeted to meet particular mischief and are the most efficient means of achieving the outcome sought?

On balance, for the reasons set out in this section, the Commission has formed the view that it is appropriate for a licensing regime to apply to retailing and distribution operations involving reticulated LPG networks in South Australia. This will entail the termination of existing exemptions and their replacement, on application from prospective licensees, by licences established and issued by the Commission under the Act. Those licences should be non-discriminatory (in the sense that each licensee should get the same form of licence as other licensees performing the same function) and provide certainty to licensees in terms of period and scope, thereby facilitating longer-term investment in reticulated LPG networks in this State.

Of course, the question remains as to what rights and obligations should be established within each licence – that issue is dealt with in the following section.

Draft Decision 2.

The decision of the Commission is that distributors and retailers of reticulated LPG in South Australia should be licensed under the Act.

5 FORM OF LICENCE

Having determined that it is appropriate for a licensing regime to be established in respect of retail and distribution operations for reticulated LPG networks the question which now falls for consideration is the nature of such licences and the regulatory regime associated with those licences.

The starting point in that consideration is the Act, as it sets out in Part 3 the scheme for a licensing regime in the form of various mandatory licence conditions. It is only if that regime is demonstrably inapplicable to the LPG context that alternative approaches, such as a regime which itself can only function with various exemptions from the ordinary scheme under the Act, should be considered by the Commission.

It is therefore necessary to consider each of the elements of the licensing regime under the Act, to determine its applicability for LPG licensing purposes. In that context, the following principles will be applied by the Commission:

- ▲ Category one - if a mandatory licence condition is applicable, it is the Commission's starting assumption that a corresponding clause should be included in licences;
- ▲ Category two - if a mandatory licence condition is clearly inapplicable (for technical or economic reasons) then it will be a matter for an individual licensee or prospective licensee to seek an exemption from the Commission (and approval from the Minister for Energy) under section 77 of the Act; and
- ▲ Category three - if a mandatory licence condition has difficulties of application if it is expressed in the ordinary manner set out in natural gas licences, but the policy intent behind that mandatory licence condition can be nevertheless given effect if expressed by other means or in a slightly different manner, then the Commission will use those other means. For example, as described below, one mandatory licence condition relates to compliance with applicable industry codes, such as the Energy Retail Code. While it is clearly not practical for small-scale LPG retailers to comply with all of the provisions of that industry code, the policy intention of having some regulation of the relationship between retailers and customers is appropriate. The Commission can give effect to the mandatory licence condition by expressly stating that the Energy Retail Code does not apply to LPG retailers (the Commission is permitted to determine the scope of application of the industry codes it makes) but at the same time imposing a more limited set of alternative obligations (in a schedule to the licence) which is based on the Energy Retail Code general provisions.

Analysis of the mandatory licence conditions, based on the foregoing approach, follows below.

5.1 Analysis of the provisions of the Act

Division A1 of Part 3 of the Act sets out various provisions relating to the licensing of the gas supply industry (sections 19 to 32). In summary, that Division:

- ▲ provides that a person must not carry on specified operations in the gas supply industry without holding an appropriate licence issued by the Commission (section 19);
- ▲ specifies the manner in which a person must apply for a licence and the matters to which the Commission must have regard in considering such an application (sections 20 and 21);
- ▲ establishes a scheme of annual licence fees and returns (section 24);
- ▲ establishes various mandatory licence conditions applicable to all licences (section 25), as well as specific mandatory licence conditions applicable to licences authorising specific operations (sections 26, 26A and 26B);
- ▲ makes it an offence to contravene a condition of licence (section 27); and
- ▲ allows for the variation, transfer and surrender of licences (sections 29, 30 and 31).

Of those provisions, it is specifically section 25 (mandatory licence conditions for all licences), section 26 (mandatory licence conditions for distribution licences) and section 26A (mandatory licence conditions for retail licences) that are relevant to the current consideration.

In addition, pursuant to regulations 8AA and 8DF(2) of the Regulations, there are additional mandatory licence conditions which need to be considered which require that retailers :

- ▲ have sufficient quantities of gas available for delivery through the relevant distribution system; and
- ▲ participate (if they have more than 5,000 customers) in the Residential Energy Efficiency Scheme as established under the Regulations.

The following section considers each mandatory licence condition, categorising those conditions in accordance with the system outlined above.

5.1.1 Section 25 of the Act – all licences

Section 25 establishes seven mandatory licence conditions which the Commission must impose on all gas licences. Those conditions, and a consideration of their applicability or otherwise to the LPG context, is set out below.

Section 25(1)(a) - compliance with applicable codes or rules made under the Essential Services Commission Act 2002 as in force from time to time.

Pursuant to Part 4 of the ESC Act, the Commission can make industry codes and rules which govern the behaviour of licensees. While the Commission has not, to date, made any such rules, examples of industry codes include the Energy Retail Code (dealing with contractual relationships between energy retailers and their customers) and the Gas Distribution Code (specifying certain technical and consumer protection requirements for gas distributors).²¹

The key to assessing whether or not this mandatory condition is appropriate in the LPG context has two elements: first, are the provisions of present industry codes suitable, in entirety, for LPG; and, second, can this mandatory condition be given effect even if the answer to the first question is negative?

It is the Commission's view that the answer to the first question is, in fact, negative. While many of the provisions of the industry codes deal with topics which are entirely appropriate for application, such as retailing consumer protection provisions, others are not.

In terms of the second question, however, it is the Commission's position that the required consumer protection, technical and the like provisions contained within the industry codes can be given effect in LPG licences through a two-stage process.

First, pursuant to section 25(3) of the Act, the Commission can include additional conditions which it considers appropriate into any licence. This permits the incorporation of those industry code provisions considered necessary into the licences themselves. Secondly, the mandatory licence condition can be included in licences and complied with by licensees to the extent that the Commission (whether in the industry code or in another regulatory instrument) specifies that the particular industry codes do not apply to LPG. This could be done by making all current industry codes applicable to natural gas operations only, or by expressly noting (in the form of a public notice) that they do not apply to LPG operations.

On this basis, the Commission has formed the view that it is appropriate to deal with section 25(1)(a) as a category three matter. That is, the licence condition will be included as a reserve power but, unless there is a significant reason to do so, the Commission will not require full compliance with industry codes – instead it will incorporate a modified scheme into a schedule of the licence. The issue of the particular conditions to be included within licences is dealt with in more detail in section 6.1 below.

²¹ For a full list and copies of the industry codes made by the Commission, refer www.escosa.sa.gov.au.

Section 25(1)(b) - requiring compliance with specified technical or safety requirements or standards.

At present, all exemptions issued in favour of LPG entities require compliance with the technical and safety requirements and standards imposed under the Act and the Gas Regulations 1997. The Commission also notes that, under regulation 15A of the Gas Regulations 1997, even if the exemptions did not contain such a requirement, the obligation to comply with those technical and safety requirements and standards would nevertheless arise by reason of that regulation.

Division 5—Safety, reliability, maintenance and technical management plans and reports

15A—Application of Division

- (1) *This Division applies to a licensee holding a licence authorising the operation of a distribution system or a person exempted from the requirement to hold such a licence.*
- (2) *However, the Technical Regulator may grant an exemption from this Division, or specified provisions of this Division, on terms and conditions the Technical Regulator considers appropriate.*

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 25(1)(c) - relating to the gas entity's financial or other capacity to continue operations under the licence.

This licence condition is given effect in gas licences by a requirement that the licensee advise the Commission of any change in financial or other circumstance which might lead to a situation where that licensee is no longer able to continue operations. This provision forms part of an overall scheme whereby the Commission is empowered to take-over (by appointing another operator) the operations of a licensee no longer able to continue (following the making of a declaration by the Governor).

Seen in that light, the mandatory licence condition would facilitate the operation of the LPG market and, in the Commission's view, would be readily incorporated within a licensing regime for LPG.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 25(1)(d) - requiring the gas entity to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Commission.

A system of regulatory auditing is considered by the Commission to be essential in the regulation of services which are themselves essential in society. As highlighted by the Commission in Energy Industry Guideline Number 4,²² a scheme of regulatory audits allows the Commission to be assured that services are being provided appropriately and consumers are not suffering any detriment through want of proper attention to consumer protection and other matters. It also allows the Commission to establish, quickly and effectively, the causes of any serious problems that may arise in respect of a licensee (technical, consumer protection or otherwise).

The Commission is of the view that these are important measures which benefit consumers and, as the Commission ordinarily pays for the conduct of the audits, imposes little cost on licensees.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 25(1)(e) - requiring the gas entity to notify the Commission about changes to officers and, if applicable, major shareholders of the entity.

This provision requires licensees to provide information to the Commission from time to time, which permits the Commission to monitor the on-going fitness, propriety and capability of those running businesses which provide essential services.

For example, while the Commission may assess one set of company officers as possessing relevant skills, knowledge and experience at the time a licence is applied for, following changes in personnel, the new officers may not collectively possess those attributes. If the Commission becomes aware of this, it can take various steps under the Act; if it does not, there is the risk of consumer harm – be it financial or safety and technical.

The Commission therefore considers that this important mandatory licence condition should be brought within an LPG licensing framework. As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

²² To access a copy of that guideline, refer the Commission's website www.escosa.sa.gov.au.

Section 25(1)(f) - requiring the gas entity to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require.

Similar arguments apply to this section as those outlined immediately above. The Commission is cognisant of the fact that excessive or unnecessary information requests made of licensees adds to the costs of doing business.

At the same time, however, there are times and matters where the exigencies of regulation permit that it is appropriate for the Commission to seek information. In any event, this provision merely makes a licence condition of the general duty of a licensee to comply with an information request made by the Commission pursuant to its compulsive information gathering powers under the ESC Act. Furthermore, it should also be noted that this condition is already a condition of exemption under the exemptions presently granted by the Commission.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 25(1)(g) - requiring the gas entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by gas entities.

This requirement is clearly a matter of Government policy. The Commission simply notes its understanding that, at this time, the Minister has not specified a scheme which would apply to LPG licensees. That aside, on the basis that it is appropriate for Governments, not regulators, to address community service obligation matters, the Commission considers that this licence condition should be brought within the LPG licensing framework.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

5.1.2 Section 26 of the Act – distribution licences

Section 26(1) also establishes seven mandatory licence conditions, which the Commission must impose on gas licences authorising the operation of a distribution system. Those conditions, and a consideration of their applicability or otherwise to the LPG context, is set out below.

Section 26(1)(a) – requiring compliance with applicable retail market rules.

The term “applicable retail market rules” is currently defined in the Act to mean the set of rules initially established and maintained by REMCo Ltd for the operation of the South Australian *natural gas* retail market. It is therefore not applicable to LPG operations.

In any event, the Commission notes that, pursuant to section 27 of the Statutes Amendment (Australian Energy Market Operator) Act 2009, this mandatory licence condition will be amended by removal of the term “*applicable retail market rules*”, to be replaced by the term “*the relevant parts of the National Gas Procedures (South Australia)*”. Those procedures, made under the National Gas (South Australia) Act 2009 will also only apply to *natural gas*.

As this mandatory licence condition is simply not applicable to the LPG distribution context, the Commission considers that it may be classified as category two and not included within LPG licences.

Section 26(1)(b) – requiring the gas entity to prepare and periodically revise a safety, reliability, maintenance and technical management plan.

For the reasons outlined in relation to section 25(1)(b) above, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences. In doing so, the Commission would note that, even were an exemption regime to continue, this same requirement would continue to be imposed (as is presently the case under regulation 15A of the Gas Regulations).

Section 26(1)(c) – requiring the gas entity to maintain specified accounting records and to prepare accounts according to specified principles.

This mandatory licence condition permits the Commission, if it considers it necessary for the performance of its regulatory functions, to obtain accounting information in a specified form from the licensee. Such information would generally only be relevant in relation to ring-fencing arrangements (where an entity is required to keep various operations separate internally) and in relation to pricing determinations. As neither of those matters are generally relevant in the context of LPG distribution but may become so over time if LPG network and operations expand significantly, the Commission has formed the view that it is appropriate to deal with section 26(1)(c) as a category three matter. That is, the licence condition will be included as a reserve power should significantly changed circumstances warrant the preparation and maintenance of such information.

Section 26(1)(d) – requiring the gas entity to participate in an ombudsman scheme.

This issue was raised for consideration by the Commission in the Issues Paper. Under this section, it becomes a requirement that gas retail licensees and gas distribution licensees participate in the Energy Industry Ombudsman Scheme (**EIO Scheme**), which provides an independent process to resolve disputes between customers and members of the scheme (including licensed gas retailers and distributors).

The present regulatory arrangements for reticulated LPG systems mean that retail customers serviced by Origin Energy Retail have access to the scheme, while distribution customers of Origin Energy LPG do not have such access. Neither retail nor distribution customers of Elgas can access the EIO Scheme.

The Commission considers it desirable for all customers in reticulated LPG systems to have access to an external and independent dispute resolution process. These customers potentially are more vulnerable than natural gas customers because they do not have ready access to a gas retailer of their choice.

All submissions, with the exception of Origin Energy, supported the Commission's preliminary view that:

- ▲ customers connected to reticulated LPG networks should have access to external, independent dispute resolution processes; and
- ▲ ideally, such access should be through the EIO Scheme.

The Energy Industry Ombudsman of South Australia (**EIOSA**) pointed out in his submission that:

it would seem odd that a customer may have certain protections for their electricity services yet are not entitled to similar rights and access to enquiry, complaints and dispute resolution processes for their gas services due to them being supplied by a LPG reticulated network.²³

The Commission would note, in relation to this submission, that it is also true that it would appear odd that a natural gas customer would have certain protections for the customer's natural gas services but an equivalent LPG customer would not have those protections identified by EIOSA.

Origin expressed the view that the cost of membership of an Energy Industry Ombudsman scheme could prevent new market entrants from establishing reticulated LPG networks in remote areas. Elgas also expressed reservations around the cost of membership of the EIOSA Scheme and suggested that the requirement for membership should only apply once a threshold of say 500 customers had been reached.

In the Issues Paper the Commission identified that the cost of access to an independent dispute resolution scheme was an issue. For remote area/ off-grid electricity licensees, the Commission has imposed a licence condition under which the licensee must join the EIO Scheme if required to do so by the Commission. At present the Commission has not activated this licence condition for any of these licensees, but it should be noted that most of these licensees retail to very small numbers of customers.

²³ Energy Industry Ombudsman SA Ltd, submission to Issues Paper, 17 September 2008, page 2.

The Commission has given consideration to the cost involved in membership of the EIO scheme and has been provided with indicative costs by EIOSA. In its submission, EIOSA noted that:

The broad charging regime is set out in the EIOSA Constitution. If necessary, the Constitution and Charter could, with the approval of ESCOSA, be amended by the Members, and a suitable charging regime developed to reflect the small customer numbers currently associated with reticulated LPG networks. The Constitution of the Energy and Water Ombudsman Victoria accommodates LPG members in such a way.²⁴

The Commission notes that the Constitution of the Energy and Water Ombudsman Victoria provides that for LPG members with less than 5,000 customers, the annual fee is \$2,000. This compares with an annual fee for natural gas members of \$20,000 if such members have 500 or more customers. Given the EIOSA comments, this does not seem to be a significant impost and clearly recognises the issues of scale and scope identified in the submissions of Origin and Elgas.

The Commission does not, therefore, see that there is any impediment to inclusion of this licence condition in LPG licences – particularly as the Commission retains a residual discretion not to require a licensee to join the EIOSA scheme unless a threshold number of customers, or complaints received per customer, has been crossed.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 26(1)(e) – requiring the gas entity to monitor and report as required by the Commission on indicators of service performance determined by the Commission.

One of the functions of the Commission under section 5 of the ESC Act is to monitor and report on service performance within regulated industries. Such standards may, for example, take the form of timeliness of response standards or reliability standards.

It is therefore appropriate that, where the Commission has specified service standards for a licensee, that licensee ought to provide reports on performance against those standards.

In the remote areas electricity licensing regime administered by the Commission, the Commission has considered it not appropriate to set service standards at this stage. The key reason for that decision is the small scale of the relevant operations. It is the Commission's view that the same reasoning applies to LPG

²⁴ Energy Industry Ombudsman SA Ltd, submission to Issues Paper, 17 September 2008, page 2.

reticulation operations, and therefore that it would not at this point set any relevant service standards for the purposes of this section without sound reason.

As a result, the Commission has formed the view that it is appropriate to deal with section 26(1)(e) as a category three matter. That is, the licence condition will be included as a reserve power should significantly changed circumstances warrant the establishment of, and reporting against, service standards for LPG operations.

Section 26(1)(f) – requiring the gas entity to comply with code provisions relating to supply disconnection.

As is the case with the requirement arising under section 25(1)(a) (discussed above), this requirement only arises where there is an applicable industry code which is binding on the licensee. To the extent that the Commission specifies that a particular industry code does not bind, then the licence condition is of no effect.

That said, the issue of disconnections is one of the fundamental elements of any energy regulatory regime and, even if the Commission did not specify compliance with an industry code disconnection process, it would nevertheless include additional licence conditions relating to disconnection processes. This issue is detailed further in section 6.1 below.

In light of the foregoing, however, the Commission does not see that there are any reasons why this licence condition could not be included in LPG distribution licences.

On this basis, the Commission has formed the view that it is appropriate to deal with section 26(1)(f) as a category three matter (as it did for the related section 25(1)(a)). That is, the licence condition will be included as a reserve power but, unless there is a significant reason to do so, the Commission will not require full compliance with industry codes – instead it will incorporate a modified scheme into a schedule of the licence. The issue of the particular conditions to be included within licences is dealt with in more detail in section 6.1 below.

Section 26(1)(g) – requiring a specified process to be followed to resolve disputes between the gas entity and customers as to the supply of gas.

This requirement is also considered by the Commission to be a fundamental part of an energy regulatory regime; consumers should be afforded an open, transparent and non-confrontational process for the resolution of disputes with energy suppliers. The absence of such processes is likely to be damaging of consumer's financial interests as well as their engagement in the energy market. The costs associated with such processes for suppliers are minimal and, in any event, ought to be part of normal business practices.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

5.1.3 Section 26A of the Act – retail licences

Section 26A(2) establishes ten mandatory licence conditions, which the Commission must impose on gas licences authorising retailing. Those conditions, and a consideration of their applicability or otherwise to the LPG context, are set out below.

Section 26A(2)(a) – requiring compliance with applicable retail market rules.

This issue is the same issue which arose in relation to distribution licences under section 26(1)(a). For the reasons outlined above in respect of that section, this mandatory licence condition is simply not applicable to the LPG retail context and the Commission considers that it may be classified as category two and not included within LPG licences.

Section 26A(2)(b) – if the gas entity sells gas to customers of a prescribed class, requiring the entity to maintain specified accounting records and to prepare accounts according to specified principles.

Again, this issue arose in relation to distribution licences, in this case under section 26(1)(c) above. Once more, the same arguments put forward by the Commission apply with the additional consideration that the concept of “customers of a prescribed class” requires the making of regulation to establish that class. To date, no such regulation has been made. For these reasons, the Commission considers that this section’s requirements can be incorporated within LPG retail licences.

As a result, the Commission has formed the view that it is appropriate to deal with section 26A(2)(b) as a category three matter. That is, the licence condition will be included as a reserve power should significantly changed circumstances warrant the preparation and maintenance of such information.

Section 26A(2)(c) – requiring the gas entity to establish customer consultation processes of a specified kind.

Under the mandatory licence condition imposed by this section, there is nothing required of a retailer until such time as the Commission specifies a particular kind of customer consultation process. It is the Commission’s view that customer consultation processes can be important in certain circumstances, and to include this licence condition in LPG retail licences could provide an important form of reserve power in the event that the retailer (which is likely to be the sole retailer in respect of the LPG reticulation system) is unwilling or unable to engage appropriately with its customers. While this is unlikely to be a common

occurrence, should it arise the Commission would be placed in a position to consider, in consultation with stakeholders, an appropriate form of customer consultation process to specify.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 26A(2)(d) – requiring the gas entity to comply with code provisions relating to the provision of pricing information to enable small customers to compare competing offers in the retailing of gas.

In relation to natural gas retail market offerings, the Commission has made the Energy Price Disclosure Code, which requires retailers to publish certain information to allow small customers to compare competing offers in the retailing of gas. In the context of a reticulated LPG network, it is unlikely that there will be competing retailers, and hence the relevant industry code provisions would not apply.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 26A(2)(da) – requiring the gas entity to include (in a print size and form prescribed by regulation) in each account for gas charges sent to a small customer information prescribed by regulation.

This provision is the result of an express policy decision by the Government that the information required to be published is important for consumers. To understand the full import of the provision, it is helpful to reproduce it, and the associated regulation, in full;

26A—Licences authorising retailing

(2) *The Commission must make a licence authorising the retailing of gas subject to conditions determined by the Commission—*

(da) *requiring the gas entity to include (in a print size and form prescribed by regulation) in each account for gas charges sent to a small customer information prescribed by regulation, including information relating to—*

(i) *the customer's gas consumption during the preceding 12 months; and*

(ii) *the entity's daily charges for gas during the period to which the account relates; and*

(iii) *obtaining advice through the Commission about reducing gas consumption and about gas consumer choices; and*

(iv) *greenhouse gas emissions associated with the customer's gas consumption;*

8AC—Prescribed information in small customer accounts for purposes of section 26A(2)(da) of Act

For the purposes of section 26A(2)(da) of the Act, the following provisions apply:

- (a) the gas entity must include in each account for charges sent to a small customer for gas supply through a particular metered delivery point the following information:*
 - (i) the customer's average daily consumption level, expressed in megajoules, of gas supplied through the delivery point for the period to which the account relates;*
 - (ii) the customer's average daily consumption level, expressed in megajoules, of gas supplied through the delivery point for each period during the preceding 12 months in respect of which the customer was sent by the entity an account for gas supply through the delivery point;*
 - (iii) the average daily cost to the customer of gas supplied to the customer through the delivery point during the period to which the account relates;*
 - (iv) the amount of greenhouse gas emissions associated with the customer's consumption of gas supplied through the delivery point for the period to which the account relates;*
 - (v) the amount of greenhouse gas emissions associated with the customer's consumption of gas supplied through the delivery point for each period during the preceding 12 months in respect of which the customer was sent by the entity an account for gas supply through the delivery point;*
- (b) the information referred to in paragraphs (a)(ii) and (a)(v) must be presented in graphical form;*
- (c) the amounts of the greenhouse gas emissions referred to in paragraphs (a)(iv) and (a)(v) must be calculated, in a manner approved by the Commission, by reference to material about emissions coefficients published by the Australian Greenhouse Office of the Department of the Environment and Heritage of the Australian Government;*
- (d) the information referred to in paragraph (a) must be accompanied by explanatory material of a kind approved by the Commission;*
- (e) the information and explanatory material referred to in paragraphs (a) and (d) must be presented in a print size and format approved by the Commission;*
- (f) the gas entity must also include in each account for gas charges sent to a small customer the following statement:*

For more information about energy efficiency and to compare energy retail prices, visit www.escosa.sa.gov.au or call [telephone number as specified by the Commission by written notice to the entity];

- (g) *the statement referred to in paragraph (f) must be presented in the first page of each account in 9 point bold font.*

As this is a matter of specific and clear government policy in relation to public understanding of energy consumption and greenhouse gas emissions, the Commission can see no reason why it should not equally apply to LPG operations.

That said, it should be noted that it is open to a licensee, subsequent to the issue of a licence, to seek an exemption from provisions (such as this) of Part 3 of the Act where it is able to persuade the Commission and the Minister that the costs of the requirement outweigh the benefits.

As such, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 26A(2)(e) – requiring the gas entity to comply with code provisions relating to standard contractual terms and conditions to apply to the sale or supply of gas to small customers or customers of a prescribed class.

One important consumer protection matter which is unclear to the Commission is the precise nature of contractual terms and conditions for the retailing of LPG which are offered to small customers. While it is the case that this section, as with other sections described above, has no express application to a licensee unless a relevant industry code is expressed to apply to its operations, nevertheless the issue of standard contractual forms being offered to all similar customer classes is a live issue.

In the context of off-grid electricity operations, where similar concerns were raised in 2007, the outcome was that the Commission imposed a discretionary licence condition on all relevant licensees requiring them to submit a standard form contract to the Commission for approval and, following approval, requiring publication of that contract pursuant to section 36 of the Electricity Act 1996 (this latter requirement ensured that the contract was statutorily deemed to be binding between the retailer and the customers).

It is the Commission's view that, in the absence of a requirement to comply with standard contractual terms and conditions specified in an industry code, the Commission would impose a similar discretionary licence condition on LPG retailers.

On this basis, the Commission has formed the view that it is appropriate to deal with section 26A(2)(e) as a category three matter. That is, the licence condition will be included as a reserve power but, unless there is a significant reason to do so, the Commission will not require full compliance with the relevant industry code (the Energy Retail Code) – instead it will incorporate a modified scheme into a schedule of the licence. The issue of the particular conditions to be included within licences is dealt with in more detail in section 6.1 below.

Section 26A(2)(f) – requiring the gas entity to comply with code provisions imposing minimum standards of service for customers that take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards.

For the reasons set out in relation to section 26(1)(e) (distribution licences, set out in section 5.1.2 above), as applied to the retail sector, the Commission has formed the view that it is appropriate to deal with section 26A(2)(f) as a category three matter. That is, the licence condition will be included as a reserve power should significantly changed circumstances warrant the establishment of, and reporting against, service standards for LPG operations.

Section 26A(2)(g) – requiring the gas entity to comply with code provisions limiting the grounds on which the supply of gas to customers may be discontinued or disconnected and prescribing the process to be followed before the supply of gas is discontinued or disconnected.

For the reasons set out in relation to section 26(1)(f) (distribution licences, set out in section 5.1.2 above), as applied to the retail sector, the Commission has formed the view that it is appropriate to deal with section 26A(2)(g) as a category three matter. That is, the licence condition will be included as a reserve power but, unless there is a significant reason to do so, the Commission will not require full compliance with industry codes – instead it will incorporate a modified scheme into a schedule of the licence. The issue of the particular conditions to be included within licences is dealt with in more detail in section 6.1 below.

Section 26A(2)(h) – requiring a specified process to be followed to resolve disputes between the gas entity and customers as to the sale or supply of gas.

For the reasons set out in relation to section 26(1)(g) (distribution licences, set out in section 5.1.2 above), as applied to the retail sector, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Section 26A(2)(i) – if the gas entity sells gas to customers with an annual gas consumption level of less than the level prescribed, requiring the entity to participate in an ombudsman scheme.

For the reasons set out in relation to section 26(1)(d) (distribution licences, set out in section 5.1.2 above), as applied to the retail sector, the Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

5.1.4 Gas Regulations 1997 – retail licences

Pursuant to section 25(2) of the Act, in addition to the foregoing matters described and discussed above, the Commission is required to make licence subject to any additional mandatory licence conditions specified in the Regulations. There are two such additional conditions specified, arising under regulations 8AA and 8DF. Those requirements are considered below.

Regulation 8AA – requiring the gas entity to ensure that at all times the quantity of gas available to it for delivery to its customers from a distribution system is sufficient to meet reasonable forecasts of its customers' aggregate demand for gas from the distribution system.

This provision provides for security of supply for customers and, in addition, helps in ensuring the safety of reticulation systems by reason of not having those systems operating (or failing to operate) through insufficient gas. The Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

Regulation 8DF – Residential Energy Efficiency Scheme.

Part 2AA of the regulations establishes a scheme, known as the Residential Energy Efficiency Scheme (**REES**), under which licensed gas retailers are required to meet specified energy efficiency targets (relating to greenhouse gas reductions and the provision of energy audits). Compliance with the REES is a mandatory condition of licence:

- (2) *The Commission—*
- (a) *is required to impose a condition on the licence of a retailer under the Act that the retailer comply with this Part, pursuant to section 25(2) of the Act (so that a failure to comply with this Part will constitute a contravention of a condition of the licence); and*
 - (b) *is to vary conditions of the licence of a retailer under the Act to ensure that the retailer complies with this Part as required from time to time, pursuant to section 29(1) of the Act (so that a failure to comply with this Part will constitute a contravention of a condition of the licence).*

In any year, the scheme only binds those retailers which have more than 5,000 customers in the previous year. As such, it is unlikely that any LPG networks would fall within the scope of the REES at this point. However, should they do so in the future, in light of the climate change drivers behind the regulation or as a result of retailers retailing LPG to multiple sites, it would be appropriate for LPG retailers to be required to participate.

The Commission considers this mandatory licence condition to be within the scope of category one and therefore should be included within LPG licences.

5.2 Conclusions on applicability of mandatory licence conditions to LPG operations

Having regard to the foregoing, the Commission considers that, apart from the inapplicable mandatory licence conditions relating to compliance with natural gas retail market rules, there is nothing in the standard set of mandatory licence conditions prescribed by Parliament in sections 25, 26 and 26A of the Act which could not be incorporated within an LPG licensing framework. As such, there is no obvious need to depart from those mandatory licence conditions.

The Commission does note the need to consider which particular elements of the industry codes ought to be incorporated within licences, and the attendant need to specify that the full suite of industry codes will not apply to LPG operations. The former issue is dealt with in the subsequent chapter; the latter is an issue which can be considered when the regime is being established.

As a result, the Commission is of the view that it is possible to issue licences (noting that the form of such licences is dealt with in detail in the subsequent section) to LPG operators without the need to rely on exemptions issued under section 77 of the Act to modify that standard scheme. This will entail greater certainty and clarity around the licensing regime, as it will not be necessary to involve secondary processes of exemption and subsequent modification.

Of course, in the event that a licensee subsequently determines that it wishes to seek an exemption from one or more elements of the mandatory licence conditions (notwithstanding the views and arguments put by the Commission in this section), it is always open to such a person to apply to the Commission for an exemption under section 77. This would require the licensee to persuade both the Commission and the Minister that the benefits of the particular exemption outweigh the costs, having regard to the overall operation and policy intention as embodied within the licensing scheme under the Act.

The Commission will issue LPG retail and distribution licences containing all applicable mandatory licence conditions as set out in sections 25, 26 and 26A of the Act and the Regulations.

6 DETAILS OF THE LICENSING REGIME

This section discusses the various matters identified by the Commission in the previous section as requiring further explanation in terms of the specific approach which it intends to adopt under an LPG licensing regime. In large measure, these matters relate to the manner in which certain issues dealt with under industry codes (such as billing, disconnection and similar matter), which will not be expressed to apply to LPG licensees, are to be otherwise incorporated within the licensing regime. In addition, specific matters raised in the Issues Paper in relation to operational separation and pricing are also dealt with in this section.

6.1 *Industry Code Requirements*

The Commission has established a comprehensive consumer protection framework for both energy retail customers (in the Energy Retail Code) and customers of the natural gas distribution system (in the Gas Distribution Code and Gas Metering Code).²⁵ As noted in the previous section, while the Commission does not intend to require compliance with those industry codes per se at this stage, it is necessary to establish an alternative regime which incorporates elements of those codes.

6.1.1 Consumer protections under industry codes

Among the key obligations established by the Commission's Energy Retail Code are requirements for:

- ▲ Standard contract terms and conditions;
- ▲ Customer enquiry, complaints and dispute resolution processes;
- ▲ Billing processes and procedures - including information as to frequency of billing, method of calculation of the bill, particulars to be included on bills and processes by which a customer can have a bill reviewed;
- ▲ Tariff information including:
 - the manner and frequency of advice regarding tariff changes;
 - retail and distribution components of the bill;
- ▲ Security deposits: circumstances in which these can be required, amount of security deposit and repayment of such deposits;
- ▲ Payment terms and conditions including: payment options, time to pay, instalment plan and hardship obligations;
- ▲ Disconnection and reconnection processes; and

²⁵ Such Codes, available from <http://www.escosa.sa.gov.au>, are made by the Commission under Part 4 of the ESC Act; the requirement to comply with the provisions of these Codes is imposed as a licence condition.

- ▲ Meter reading processes and procedures.

The Gas Distribution Code and Gas Metering Code deal with matters such as physical disconnection and reconnection from the network, meter issues (accuracy and reading) and a number of technical and safety issues.

Given that customers within a reticulated LPG network may be relying on LPG for hot water, cooking and heating, it is strongly arguable that the same consumer protections which apply to the purchase of natural gas should apply to LPG operations. This is particularly so where those LPG customers do not have the same access to a competitive market which provides an additional opportunity for natural gas customers to avoid dealing with a retailer which does not give sufficient attention to such consumer protection matters.

As noted previously, the Commission licenses remote area/off grid electricity retailers, distributors and generators, the operations of which have many similar characteristics (in terms of size, scope and lack of contestable markets) as LPG networks. While entities are not subject to the full licence and code compliance regime established by the Commission, they must nevertheless comply with modified requirements appropriate to the scale and scope of regulated activity undertaken by the entity.

The Commission's preliminary view, as expressed in the Issues Paper, was that such a scheme could be adapted for use in the regulation of LPG distributors and retailers.

6.1.2 Stakeholder submissions

Submissions received on the Commission's view, with the exception of Origin, supported the Commission's position in the Issues Paper that clear and transparent consumer protection obligations should be imposed on LPG retailers similar to those specified in the Energy Retail Code.

Origin was of the view that, with the imminent transition to a National Energy Consumer Framework, it is now appropriate to reassess which code requirements need to be mandated. It considered that for 6 to 12 months trial period there be no or minimal regulation.

Elgas, in supporting the proposal, considered that effort should be made to ensure the minimum requirements are relevant to LPG reticulations.

6.1.3 Consideration

For the reasons which are set out in section 3 of this paper, the Commission does not accept Origin's contentions in relation to the need for "minimal regulation" – put simply; it has not made a case which rebuts the presumption under the Act that a consumer protection regime consistent with the mandatory licence conditions

should be in place. Further, for the reasons set out in relation to the various mandatory licence conditions in section 5 of this paper, there are in fact strong arguments in support of a licensing regime which incorporates many of the policy decisions set by Parliament through the Act.

Chief among those arguments is the need to provide appropriate protection for consumers which are unable to access the benefits of competitive gas markets. While it is clearly the case that not all of the provisions of each industry code should apply to the current scale of LPG operations,²⁶ in a captive market such as this modified versions of the mandatory licence condition requirements can be given effect without compromising the integrity of the Act.

6.1.4 Conclusions

The Commission has determined that it is appropriate for LPG retail and distribution licences to contain all of the mandatory licence conditions as set out in sections 25, 26 and 26A of the Act. To the extent that those conditions are not called into practical effect, however, in relation to specific matters such as industry codes, the Commission will include modified obligations mirroring elements of those industry codes within the licences and will apply them to relevant customer classes (e.g., small customers only in relation to Energy Retail Code-type provisions, as that industry code only applies to small customers).

The provisions which are relevant for this purpose are, as described in the Issues Paper:

Standard contract terms and conditions

A matter which requires absolutely certainty as between customers and retailers concerns the terms and conditions on which LPG is to be sold and supplied. The Commission is presently unaware of the nature, or even existence, of documented terms and conditions.

As a part of the licensing process, therefore, the Commission will include licence conditions requiring retailers to either submit for approval by the Commission their existing terms and conditions for the sale and supply of LPG to their small customers, or develop new terms and conditions in relation to the sale and supply of LPG to small customers (those consuming less than 1TJ of LPG per annum) for approval by the Commission. The Commission's approval will be based on the extent to which those terms and conditions are in conformity with the conditions of the retailers' licences, including the consumer protection scheme set out in the Schedule to the draft retail licence (discussed further below).

²⁶ Although it should be noted that the inclusion of all mandatory licence conditions relating to industry codes will occur with the proviso that compliance is not needed unless notified by the Commission.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer’s licence).

That scheme is set out in Schedule 4, clause 2 of the draft retail licence.

Customer enquiry, complaints and dispute resolution processes

For the reasons set out in section 5 of this paper, customer enquiry, complaints and dispute resolution processes are vitally important in the LPG retail context and the Commission proposes a modified regime which will require a licensee to participate in the EIO Scheme (if it sells and supplies LPG to any customers consuming less than 10TJ of LPG annually) and to develop dispute resolution procedures in accordance with applicable Australian Standards (AS ISO 10002-2006). This will apply for all customer classes.

That scheme is set out in clause 8 of the draft retail licence.

Billing processes and procedures

The information provided on bills issued to small customers is a matter of great importance – both too little and too much information creates customer confusion. As a result, the Commission concluded in section 5 that while the full suite of information mandated under the Energy Retail Code ought not apply, a modified set of information should be included.

The proposed requirement is that each bill issued to a small customer by the licensee must itemise separately the following charges:

- ▲ all charges for LPG sold by the licensee to the customer;
- ▲ any other charge relating to the sale of LPG to the customer by the licensee at the supply address (including, without limitation, special meter readings and account application fees).
- ▲ the date of the last meter reading or estimate and the number of days since the previous reading or estimate;
- ▲ the meter readings, metering data or estimates for the bill;
- ▲ consumption, or estimated consumption, in units used (eg MJ);
- ▲ the pay by date;
- ▲ the telephone number for billing, payment enquiries and instalment payment options;
- ▲ a 24 hour contact telephone number for faults and emergencies;

- ▲ the customer's supply address and any other relevant address;
- ▲ the customer's name and account number;
- ▲ the amount of arrears or credit;
- ▲ the amount of any security deposit provided by the customer; and
- ▲ on residential customer's bills only, a reference to the availability of concessions, if any.

Additionally, it is proposed that the alternative scheme deal with matters such as frequency of billing, method of calculation of the bill, undercharging and overcharging and processes by which a small customer can have a bill reviewed. The proposed provisions are based on the terms of the Energy Retail Code.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer's licence).

That scheme is set out in Schedule 4, clauses 4, 6, 7 and 13 of the draft retail licence.

Tariff information

Along with price and billing information, tariff information, in the sense of

- ▲ the manner and frequency of advice regarding tariff changes; and
- ▲ retail and distribution components of the bill,

is also important for small customers. The Commission therefore proposes codifying an alternative arrangement for those matters, based on the provisions of the Energy Retail Code.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer's licence).

That scheme is set out in schedule 4, clause 8 of the draft retail licence.

Security deposits

Under the Energy Retail Code, retailers are permitted to seek security deposits from small business and residential customers to secure future liabilities in certain circumstances. The Commission recognises the importance of security deposits for the operations of retailers but is aware of the need to provide some

regulatory control over this issue. The Commission therefore proposes adopting the relevant provisions of the Energy Retail Code in this area.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer's licence).

That scheme is set out in schedule 4, clause 5 of the draft retail licence.

Payment terms and conditions

The manner in which small customers may make payments to retailers (including instalment payments) and the requirements placed on retailers when customers are in payment difficulties are important consumer protection requirements. Again, the Energy Retail Code deals with such matters and the Commission is of the view that adopting the relevant provisions within licences is appropriate.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer's licence).

That scheme is set out in schedule 4, clauses 9, 10, 11 and 12 of the draft retail licence.

Disconnection and reconnection processes

Disconnection of energy is one of the most contentious issues in the retail energy market. It is the Commission's view that all LPG licensees should, for reasons of consistency of treatment with other energy (natural gas and electricity) customers, be required to conform with the provisions of the Energy Retail Code in this area. It therefore proposes a scheme for disconnection and reconnection of small customers under the licences.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer's licence).

That scheme is set out in schedule 4, clauses 14, 15, 16, 17 and 18 of the draft retail licence.

Meter reading processes and procedures

Meter reading processes and procedures underpin many of the foregoing obligations, in the sense that bills and corresponding payments are based on the data collected. Under the Energy Retail Code, there is a scheme in place in

relation to meter reading which shores up those other obligations. It is therefore considered appropriate to provide the same surety to the scheme proposed under the draft licence conditions. The provisions of the licence scheme will deal with matters such as the obligation to read meters at specified frequencies, the basis on which metering data must be used in preparing bills for small customers and the terms on which estimated accounts may be issued.

For large customers, these matters will be dealt with under the terms of any contract put into place – there will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of the retailer’s licence).

That scheme is set out in schedule 4, clause 19 of the draft retail licence.

As noted, each of these decisions are reflected in the terms of schedule 4 of the plain vanilla retail and distribution licences (which are attached as a Schedule to this paper), on the basis that the mandatory licence conditions which are immediately applicable are set out in the body of the licence.

Draft Decision 4.

The Commission will issue LPG retail and distribution licences with conditions containing modified versions of key provisions of industry codes where those industry codes do not apply to a particular licensee. As appropriate, and based on the general application of an industry code, relevant elements of the modified scheme will be expressed to apply to particular customer classes – for example, small customers only.

6.2 Same licensed entity - retail and distribution

An issue raised in the Issues Paper was the fact that the Electricity Act 1996 (section 17(2)(ac)) prevents the Commission from issuing a licence to a person where that action would result in the same person holding both a distribution and a retail licence.

The Act contains no such legislative prohibition. Nevertheless, where the same person holds both retail and distribution licences (or is exempt from the requirement to hold such licence(s)), customers may suffer a special disadvantage, particularly when they are “captive” customers as described above.

The Commission is aware that there are varying configurations of reticulated LPG networks. In some reticulated LPG networks, the distributor owns not only the pipeline but also the meters and the storage tanks – in these networks the distributor can exert some competitive pressure on the retailer (i.e. the distributor can select from a number of retailers for the supply of gas into the network on a competitive basis from time-to-time; the Commission acknowledges, however, that in such circumstances there may be no equivalent incentive on the distributor to pass on resulting efficiencies to end-use

customers). In other networks, the tanks and the meter assets belong to the retailer, so that there will be no competitive discipline in the selection of the retailer.

At present, the Commission believes there is no reason to require that the holder of a licence to retail and to distribute in a reticulated LPG system be different legal entities.

All submissions on this matter supported the Commission position.

Draft Decision 5.

The Commission considers that there is no reason to prevent the same legal entity holding both a distribution and a retail licence for the sale and supply of LPG in a reticulated LPG network.

6.3 Reticulated LPG Pricing Issues

As outlined above, a key issue for customers in a reticulated LPG network is that they are potentially captive to the particular retailer in the LPG network, unlike customers in the natural gas system who may choose from several gas retailers.

The Act, as enacted in 1997, provided that the Pricing Regulator (the Minister to whom the Act was committed) “may” fix a maximum price or range of maximum prices for gas.

Between 1997 and 2002 the Minister chose to set both the price for natural gas and reticulated LPG. In 2003 and 2004 only natural gas prices were fixed. Since 2005 the Commission has set the standing contract price able to be charged by Origin for the sale and supply of natural gas to small standing contract customers under the Act.²⁷ A standing contract customer is a customer with an annual consumption of <1 TJ that has not entered into a market contract either with Origin Energy Retail Ltd or another licensed gas retailer.

Section 33 of the Act provides the Commission with broad price setting authority which could be used to establish various pricing regimes for reticulated LPG ranging from price setting to price monitoring or reporting; but the Commission has not used its powers in this regard.

6.3.1 Transparent Price Information

The Commission, in its Issues Paper, suggested that pricing information should be provided to customers when they first enter into a market contract and on a systematic basis when prices change.

For small customers consuming natural gas, initial information about market contracts is provided by means of a written disclosure statement required by the

²⁷ Refer to the gas standing contract pricing pages on the Commission's website at www.escosa.sa.gov.au.

Energy Marketing Code.²⁸ A small customer is a customer who consumes less than 1TJ per annum of gas.

The written disclosure statement must provide a small customer with a range of information including:

- ▲ the date of commencement of the customer sale contract;
- ▲ the prices, charges, tariffs and service levels that will be applicable in respect of the customer sale contract;
- ▲ if the prices, charges, tariffs or service levels are able to be changed by the retailer under the customer sale contract, the manner in which any such change may be effected;
- ▲ the costs to the small customer associated with entering into the customer sale contract, outside of the prices, charges and tariffs payable (including any costs associated with the provision of infrastructure such as meters);
- ▲ the type and frequency of bills which will be rendered under the customer sale contract;
- ▲ the payment methods and options which are available in respect of the customer sale contract;
- ▲ the termination charges which may apply in the event that the customer terminates the contract and the method of calculation of those charges;
- ▲ the dispute resolution options which are available to small customers.

Systematic information is provided to customers by giving notice of changes to price, tariffs and service levels as these changes occur.

In addition, the Commission also has an Energy Price Disclosure Code²⁹ which requires each energy retailer, amongst other things, to publish on its website a price factsheet for each market contract that it offers to residential customers.

6.3.2 Submissions Received

The submissions from Origin Energy, Elgas and Kleenheat responded to these pricing issues separately. They first deal with the issue of a written disclosure statement and, secondly, address the publication of fact sheets on their website.

The submissions all noted that reticulated LPG networks are capital intensive to establish and rely on maximum utilisation of the network by customers to be economical. The submissions also put a view that bottled LPG is a ready

²⁸ Refer to the energy industry codes pages on the Commission's website at www.escosa.sa.gov.au.

²⁹ Refer http://www.escosa.sa.gov.au/webdata/resources/files/041223-D_EnergyPriceDisclosureCode.pdf

substitute for reticulated LPG³⁰ and that LPG prices are subject to world parity pricing and hence change monthly.

Submissions addressing a Written Disclosure Statement

Elgas supported the Commission's view that customers should receive pricing information at the time of the initial contact and on an on going basis as prices change. Elgas pointed out that, because LPG prices change monthly, notification of price changes needs to be more flexible than occurs with natural gas, in respect of which prices generally only change annually.

Kleenheat agreed that "*customers should be afforded full disclosure and protection with respect to pricing issues but consider this should not be extended, or at least should be modified, for Commercial/Industrial customers*". The Commission notes, as mentioned above, that the obligation to provide a written disclosure statement only applies to small customers (i.e. one who consumes less than 1TJ per annum) and thus would only apply to residential and business customers of this size.

Origin pointed out that it advises its customers of price changes even though it considers that there currently is no obligation for it to do so.³¹ It proposed that any regulation in this area should be light handed and voluntary, and noted that bottled LPG suppliers are not required to publish pricing information.

Submissions addressing publication of price fact sheets on websites

The submissions from Origin and Elgas opposed the requirement to publish price fact sheets for reticulated LPG on their websites. Elgas pointed to the need for the developer of a reticulated LPG network to be able to recover the cost of its investment from its customers. It argued that, with bottled LPG being a competitor, the financial viability of the reticulated LPG network would be called into question if too many customers opted for bottled gas. Elgas supported some form of pricing clarity but not on its website.

Kleenheat supported "*full disclosure and protection with respect to pricing issues*" but considered that this should not extend to Commercial/Industrial customers. It was Kleenheat's view that these customers are more commercially aware of the relevant contractual terms and thus do not require this level of disclosure.

³⁰ Those submissions stand in contrast to the Commission's view on the substitutability of bottled LPG as set out in section 4.2.1 of this paper.

³¹ The Commission would note, in this regard, that as Origin retails LPG under the auspices of its gas retail licence, the relevant obligation does, in fact, apply to it already.

6.3.3 Consideration

As noted above, for natural gas, the written disclosure statement applies to customers consuming < 1TJ, while the price fact sheets only apply to *residential* customers consuming < 1 TJ.

In the context of publishing information on websites in relation to reticulated LPG, the requirement would only apply to residential customers. Kleenheat's concern regarding commercial/industrial customers would therefore not apply. If these customers consume less than 1TJ, retailers would be required to provide them with a written disclosure statement at the time of entering into the contract.

While noting the submissions of the stakeholders against the introduction of a requirement to publish their price fact sheets on websites, the Commission would observe that the issue of information provision to consumers remains fundamentally important – particularly in captive markets where there is no price regulation.

In the absence of moving to a price regulation model for reticulated LPG the Commission considers that transparent information about price should be provided directly to customers on entering a market contract for LPG, and on a regular basis thereafter should be available from the retailer's website. Should those requirements prove inadequate for consumers, or should licensees fail to comply with those requirements, the Commission will need to revisit the issue of price control.

In that latter context, the Commission has formed the view that licences will require licensees to provide copies of price fact sheets to the Commission, and also any amendments to those prices from time to time. This is not an expensive or onerous undertaking, and will permit the Commission to have a better understanding of pricing arrangements in the reticulated LPG market.

Draft Decision 6.

The decision of the Commission is:

- ▲ *customers in a reticulated LPG network should receive a written disclosure statement at the initial entry into a contract specifying information similar to that required by the Energy Marketing Code;*
- ▲ *retailers will be required to publish LPG price fact sheets on their websites and provide such price fact sheets to the Commission, including variations to prices as and when they occur.*

6.4 Licence fee

As a final matter, the Commission notes that there is not presently a separate category of licence fee specific to LPG operations. The Commission has written to the Minister for Energy requesting that such a category be established and understands that this matter is under consideration presently. The Minister is empowered to establish licence fees under section 24 of the Act.

7 NEXT STEPS

Following the release of this Draft Decision, the Commission seeks comment on the matters raised herein and on the terms and conditions of the draft plain vanilla licences attached to this paper. Any submissions should be provided to the Commission (in accordance with the procedure specified on the inside front page of this paper) by the close of business on Friday 20 November 2009.

Following the receipt and consideration of submissions, the Commission will make a Final Decision in this matter in December 2009. If the current draft decision to establish a licensing regime is confirmed, this will mean that those wishing to carry on the retailing and/or distribution of LPG via reticulated networks will need to make an application to the Commission for a licence shortly thereafter. The Commission also notes that, given timing constraints, it may be necessary to vary existing exemptions for a limited period to permit the licensing regime to take effect seamlessly.

SCHEDULE – DRAFT LPG RETAIL LICENCE



LIQUEFIED PETROLEUM GAS RETAIL LICENCE

DRAFT FOR
CONSULTATION

OCTOBER 2009

AGAS

**ANNOTATION – REFERENCE OF SECTIONS OF THE GAS ACT TO LICENCE
CLAUSES**

SECTION	LICENCE CLAUSE
25(1)(a)	4.1
25(1)(b)	4.2
25(1)(c)	10.1(a)
25(1)(d)	12
25(1)(e)	10.2
25(1)(f)	10.1(b)
25(1)(g)	14
26A(2)(a)	N/A (relates to natural gas only)
26A(2)(b)	9
26A(2)(c)	15
26A(2)(d)	5.1(a)
26A(2)(da)	5.1(b)
26A(2)(e)	4.1
26A(2)(f)	4.1
26A(2)(g)	6
26A(2)(h)	7, 8
26A(2)(i)	9
Regulation 8AA	17
Regulation 8DF	4.5

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words appearing in italics like *this* are defined in Schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in Schedule 2.

2. GRANT OF LICENCE

- 2.1 The *licensee* is licensed under Part 3 of the **Act** to sell and supply **LPG** to a person for consumption, where that **LPG** is conveyed to the person by a **distribution system**, subject to the conditions set out in this licence.

3. TERM

- 3.1 This licence continues until:
- (a) it is surrendered by the *licensee* under section 31 of the **Act**; or
 - (b) it is suspended or cancelled by the **Commission** under section 38 of the **Act**.

4. COMPLIANCE WITH LAWS AND INDUSTRY CODES

- 4.1 The **Commission** may, by notice in writing to the *licensee*, require the *licensee* comply with any **industry code** or **industry rule** made by the **Commission** from time to time specified by the **Commission** as being applicable to the *licensee*.
- 4.2 In the absence of a written notice from the **Commission** under clause 4.1, the *licensee* must comply with the provisions of Schedule 4 of this licence.
- 4.3 The *licensee* must comply with all applicable laws including, but not limited to, any technical or safety requirements or standards in regulations under the **Act**.
- 4.4 The *licensee* must notify the **Commission** if it commits a material breach of the **Act** or an applicable **industry code** under clause 4.1 or an applicable provision of Schedule 4 within 3 days of becoming aware of that breach.
- 4.5 The *licensee* must comply with the **Residential Energy Efficiency Scheme** as set out in Part 2AA of the Gas (General) Regulations 1997 (as in force from time to time).

5. PROVISION OF INFORMATION TO CUSTOMERS

5.1 If the *licensee* sells and supplies *LPG* to a *small customer*, the *licensee* must:

- (a) comply with the provisions of any applicable *industry code* under clause 4.1 relating to the provision of pricing information to enable *small customers* to compare competing offers in the retailing of *LPG*; and
- (b) include the information required by section 26A(2)(da) of the *Act* and regulation 8AC of the Gas Regulations 1997 in each account for *LPG* charges sent to a *small customer*, in the prescribed print size and form.

6. DISCONNECTION

6.1 The *licensee* must not disconnect or discontinue, or take any action which may lead to the disconnection or discontinuance of, supply of *LPG* to a *customer*, except in accordance with the disconnection procedures set out in Schedule 4 of this licence or, where an *industry code* applies to the *licensee* under clause 4.1, the provisions of that *industry code*.

7. CUSTOMER ENQUIRIES

7.1 The *licensee* must establish and comply with procedures to deal with *customer* consultation or enquiries in accordance with the requirements of Schedule 4 of this licence or, where an *industry code* applies to the *licensee* under clause 4.1, the provisions of that *industry code*.

8. OMBUDSMAN AND DISPUTES

8.1 If the *licensee* sells and supplies *LPG* to *customers* with an annual *LPG* consumption level of less than the prescribed amount, the *licensee* must participate in an *Ombudsman Scheme*:

- (a) that applies to the gas supply industry and to other regulated industries (within the meaning of the *ESC Act*) prescribed by regulation; and
- (b) the terms and conditions of which are approved by the *Commission*.

8.2 The *licensee* must develop and implement procedures to deal with *customer* disputes and complaints in accordance with AS ISO 10002-2006 or, where an *industry code* applies to the *licensee* under clause 4.1, the provisions of that *industry code*.

9. ACCOUNTS AND SEPARATE BUSINESSES

- 9.1 If the *licensee* sells and supplies *LPG* to *customers* of a prescribed class, the *licensee* must, if directed by notice in writing by the *Commission*, maintain accounting records and prepare accounts according principle specified in that notice.

10. INFORMATION TO THE COMMISSION

- 10.1 The *licensee* must, from time to time as required by the *Commission* and in a manner and form determined by the *Commission*, provide to the *Commission*:
- (a) details of the *licensee's* financial, technical and other capacity to continue its operations authorised by this *licence*; and
 - (b) such other information as the *Commission* may require.
- 10.2 The *licensee* must notify the *Commission* of any changes to its officers or major shareholders (if applicable) within 30 *business days* of that change.

11. METERING

- 11.1 Where the *licensee* undertakes metering or engages a person for that purpose, the *licensee* must:
- (a) supply to the *distributor* such information obtained from those meters that is reasonably required by the *distributor* for the purposes of its operations, and must do so in the format reasonably required by the *distributor* and consistent with Australian gas industry practice; and
 - (b) permit the *distributor* to inspect and witness test (at the *distributor's* expense) such meters where this is reasonably required by the *distributor* for the purpose of its operations.

12. OPERATIONAL AND COMPLIANCE AUDITS

- 12.1 The *licensee* must undertake periodic audits of:
- (a) the operations authorised by this licence; and
 - (b) the *licensee's* compliance with its obligations under this licence; and
 - (c) any applicable industry code under clause 4.1 or an applicable provision of Schedule 4; and

(d) any other matter relevant to the operations authorised by this licence as specified by the **Commission**,

at the request of, and in accordance with the requirements specified by, the **Commission**.

12.2 The results of audits conducted under this clause 12 must be reported to the **Commission** in a manner approved by the **Commission**.

12.3 The **Commission** may require the **licensee** to use an independent expert approved by the Commission to conduct audits under this clause 12.

12.4 The **Commission** may require the costs of using an independent expert approved by the **Commission** to conduct audits under this clause 12 to be met by the licensee.

13. PRE-PAYMENT METERING

13.1 The **licensee** must not implement a pre-payment metering system in respect of its **small customers** unless the **licensee** has obtained the **Commission's** prior written approval for the adoption of that pre-payment metering system.

14. CUSTOMER CONCESSIONS AND COMMUNITY SERVICE OBLIGATIONS

14.1 The **licensee** must comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of **customer** concessions or the performance of community service obligations by the **licensee**.

15. CUSTOMER CONSULTATION

15.1 At the written direction of the **Commission**, the **licensee** must establish customer consultation processes as specified in that direction.

16. CONFIDENTIALITY

16.1 The **licensee** must, unless otherwise required or permitted by law, this licence or applicable **industry code** under clause 4.1:

(a) comply with any rules determined by the **Commission** from time to time relating to the use of information acquired by the **licensee** in the course of operating the business authorised by this licence; and

(b) ensure that information concerning a **customer** is not disclosed without the explicit informed consent of the customer.

- (c) The **licensee** must not disclose confidential information to an intelligence or law enforcement agency unless requested to do so by an intelligence or law enforcement agency on the basis that:
- (d) disclosure is necessary under the terms of a warrant issued under Division 2 of the Australian Security Intelligence Organisation Act 1979 or under the terms of any other court order; or
- (e) disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty or for the protection of the public revenue; or
- (f) disclosure is necessary to safeguard the national security of Australia.

16.2 The **licensee** may accept an assertion of an intelligence or law enforcement agency, without making further enquiry, for the purposes of clauses 16.1(e) and 16.1(f) above.

16.3 The **licensee** must ensure that any information received from, or provided to, any related body corporate of the **licensee** holding a distribution licence is only received or provided on non-discriminatory commercial terms.

17. LPG SUPPLY

17.1 The **licensee** must ensure that at all times the quantity of **LPG** available to it for delivery to its **customers** from a **distribution system** is sufficient to meet reasonable forecasts of its **customers'** aggregate demand for **LPG** from the **distribution system**.

18. VARIATION

18.1 This licence may only be varied in accordance with section 29 of the **Act**.

19. TRANSFER

19.1 This licence may only be transferred in accordance with section 30 of the **Act**.

This licence was issued by the **Commission** on XXX.

THE COMMON SEAL OF)
THE ESSENTIAL SERVICES)
COMMISSION OF SOUTH)
AUSTRALIA was hereunto affixed)
by authority of the Chairperson)
and in the presence of:)

.....
Witness

.....

Date

SCHEDULE 1:

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this licence:

“**Act**” means the *Gas Act 1997*;

“**best endeavours**” means to act in good faith and use all reasonable efforts, skill and resources;

“**business days**” means a day on which banks are open for general banking business in Adelaide, other than a Saturday or Sunday;

“**business customer**” means a **customer** other than a **residential customer**;

“**Commission**” means the Essential Services Commission established under the **ESC Act**;

“**customer**” has the meaning given to that term in the **Act**, namely a person who has a supply of **gas** available from a system for consumption by that person, and includes:

- (a) the occupier for the time being of a place to which gas is supplied by a **distribution system**;
- (b) where the context requires, a person seeking a supply of gas from a **distribution system**; and
- (c) a person of a class declared by regulation to be **customers**;

“**distributor**” means a holder of a licence to operate a **distribution system** under Part 3 of the **Act**;

“**distribution system**” has the meaning given to that term in the **Act**;

“**ESC Act**” means the *Essential Services Commission Act 2002*;

“**explicit informed consent**” has the same meaning as is given to that term in the *Energy Transfer and Consent Code* made by the **Commission** under section 28 of the **ESC Act**;

“**industry code**” includes any **industry code** made by the **Commission** under section 28 of the **ESC Act**;

“**industry rule**” includes any **industry rule** made by the **Commission** under section 28 of the **ESC Act**;

“**licensee**” means [licensee name];

“**LPG**” means liquefied petroleum gas, being a hydrocarbon fluid composed predominantly of one or more of the following hydrocarbons: propane (C₃H₈); propene (propylene) (C₃H₆); butane (C₄H₁₀); or butene (butylene) (C₄H₈);

“Ombudsman Scheme” means an ombudsman scheme, the terms and conditions of which are approved by the **Commission**;

“residential customer” means a **customer** which acquires or proposes to acquire **LPG** primarily for domestic purposes;

“Residential Energy Efficiency Scheme” means the scheme set out in Part 2AA of the Gas Regulations 1997;

“small customer” means a **customer** which consumes less than 1 TJ of **LPG** per annum through a single connection point.

SCHEDULE 2: INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (e) a reference to any statute, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (g) an event which is required under this licence to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.

SCHEDULE 3: LICENSED OPERATIONS

1. [to be inserted]

SCHEDULE 4: OPERATIONAL REQUIREMENTS

Terms in this Schedule which are italicised like *this* have the meaning given in Schedule 1.

This Schedule must be interpreted in accordance with the provisions of Schedule 2.

1. APPLICATION OF THIS SCHEDULE

- 1.1 In the absence of written notice under clause 4.1, the *licensee* must comply with the operational requirements set out in this Schedule in relation to the sale and supply of *LPG* to *small customers*.

2. STANDARD TERMS AND CONDITIONS

- 2.1 The *licensee* must develop and submit for the *Commission's* approval a set of standard terms and conditions on which it will sell and supply *LPG* to *customers*.
- 2.2 Upon receipt of the *Commission's* approval of the standard terms and conditions under clause 2.1, the *licensee* must publish those terms and conditions in accordance with the requirements of section 34 of the Act.
- 2.3 The *licensee* must advise the *Commission* before it makes a significant amendment to the standard terms and conditions and must publish the amended terms and conditions in accordance with the requirements of section 34 of the Act.
- 2.4 The *Commission* may, by notice in writing to the *licensee*, require the *licensee* to amend its standard terms and conditions in accordance with the requirements of section 34 of the Act.
- 2.5 The *licensee* must, on request by a *customer*, provide that *customer* with a copy of the standard terms and conditions, free of charge.
- 2.6 If a *customer* has already received a copy of the standard terms and conditions and requests another copy within a 12-month period, the *licensee* may impose a reasonable charge for providing that copy.

3. CONTRACTUAL INFORMATION DISCLOSURE

- 3.1 As soon as practicable following the commencement of a contract for the sale and supply of *LPG* to a *small customer* (and in any event no more than 10 *business days* after that date), the *licensee* must provide the *small customer* with a written notice setting out at least the following information:

- (a) the name, postal address, facsimile number and e-mail address of the **licensee**;
 - (b) the date of commencement of the contract;
 - (c) the prices, charges, tariffs and service levels that will be applicable in respect of the contract;
 - (d) if the prices, charges, tariffs or service levels are able to be changed by the **licensee** under the contract, the manner in which any such change may be effected;
 - (e) the costs to the **small customer** associated with entering into the contract, outside of the prices, charges and tariffs payable (including any costs associated with the provision of infrastructure such as meters);
 - (f) the type and frequency of bills which will be rendered under the contract;
 - (g) the payment methods and options which are available in respect of the contract;
 - (h) the early termination charges which may apply in the event that the **small customer** terminates a fixed-term contract prior to its expiry date and the method of calculation of those charges;
 - (i) the dispute resolution options which are available to the **small customer**.
- 3.2 The **licensee** must publish in a prominent and readily accessible position on its website price lists setting out the prices for the sale and supply of **LPG** to each of its **customer** classes.
- 3.3 A price list published under clause 3.2 must be amended within 5 **business days** following any variation of the prices charged by the **licensee** to reflect those changes.
- 3.4 The **licensee** must provide the **Commission** with copies of all price lists established under clause 3.2, including any variations made under clause 3.3, within 3 **business days** of a price list taking effect.

4. BILLING

- 4.1 The **licensee** must use its **best endeavours** to issue a bill to a **customer** at least quarterly.

- 4.2 Nothing in clause 4.1 will prevent the **licensee** from:
- (a) issuing a bill more frequently than quarterly to a **business customer** or
 - (b) issuing a bill more frequently than quarterly to a **residential customer** where the **licensee** has obtained a **residential customer's explicit informed consent** to issue bills on that basis
- 4.3 The **licensee** must issue a bill to a **customer** at that **customer's** supply address, unless the **customer** nominates another address.
- 4.4 Each bill issued to a **customer** by the **licensee** must itemise separately the following charges:
- (a) all charges for **LPG** sold by the **licensee** to the **customer**;
 - (b) any other charge relating to the sale of **LPG** to the **customer** by the **licensee** at the supply address (including, without limitation, special meter readings and account application fees).
 - (c) the date of the last meter reading or estimate and the number of days since the previous reading or estimate;
 - (d) the meter readings, metering data or estimates for the bill;
 - (e) consumption, or estimated consumption, in units used (eg MJ);
 - (f) the pay by date;
 - (g) the telephone number for billing, payment enquiries and instalment payment options;
 - (h) a 24 hour contact telephone number for faults and emergencies;
 - (i) the **customer's** supply address and any other relevant address;
 - (j) the **customer's** name and account number;
 - (k) the amount of arrears or credit;
 - (l) the amount of any security deposit provided by the **customer**; and
 - (m) on **residential customer's** bills only, a reference to the availability of concessions, if any.
- 4.5 If the **customer** requests its final bill for the **customer's supply address** from the **licensee**, the **licensee** must use its **best endeavours** to issue that **customer** with a final bill in accordance with the **customer's** request.

5. SECURITY DEPOSITS AND ALTERNATIVES

- 5.1 Subject to clause 5.2, the **licensee** may require a **customer** to provide a security deposit at the time the **customer** makes an application for connection, or an application for reconnection after being disconnected, or before selling **LPG** to the customer.

- 5.2 The **licensee** must not require a **customer** to provide a security deposit unless:
- (a) the **customer** has left a previous supply address without settling an outstanding **LPG** debt owing to that **licensee**, the debt remains outstanding, and the **customer** refuses to make arrangements (acceptable to both parties) to pay the debt; or
 - (b) the **customer** has within the previous two years been responsible for the use of **LPG** illegally; or
 - (c) the **customer** is a new **customer** and:
 - (i) has refused or failed to produce acceptable identification; or
 - (ii) has not provided information demonstrating a satisfactory history of paying **LPG** accounts; or
 - (iii) the **licensee** has reasonably formed the view that the new **customer** has an unsatisfactory credit rating;and the **licensee** has offered the **customer** an instalment plan or other payment option and the **customer** has refused, or failed to agree to, the offer.
- 5.3 Subject to approval and annual review by the **Commission** and to clause 5.4:
- (a) the amount of a security deposit for a **customer** who is on a quarterly billing cycle must not be greater than 1.5 times the average quarterly bill for **customers** of the same class; and
 - (b) the amount of a security deposit for a **customer** who is on a monthly billing cycle must not be greater than 2.5 times the average monthly bill for **customers** of the same class.
- 5.4 The **licensee** may increase a **business customer's** existing security deposit, where that deposit is insufficient to secure the **business customer's** current **LPG** usage taking into account the limits of security deposits as calculated using the average of the **business customer's** last bills.
- 5.5 The **licensee** must accept a bank guarantee from a **business customer** as an alternative to a cash security deposit.
- 5.6 Where the **licensee** has received a security deposit from a **customer**, the **licensee** must pay interest, if any, to the **customer**, on the deposit at a rate and on terms and conditions, if any, approved by the **Commission**.
- 5.7 Where a **customer** has been required by a **licensee** to pay a security deposit and:

- (a) the **customer** completes 24 months (or such lesser time agreed with the customer) of paying its bills by the pay by dates for those bills; or
- (b) the **customer** ceases to purchase **LPG** from the **licensee** at the supply address to which the security deposit relates and a final reading of the meter for that supply address is completed and the customer has not commenced purchasing **LPG** from the **licensee** at a different supply address,

the **licensee** must return the security deposit and any interest to the **customer**.

- 5.8 The **licensee** may pay the security deposit to the credit of the **customer's** next bill. However, if the **customer** will not have another bill, the **licensee** must repay the security deposit to the **customer** within 10 **business days**.
- 5.9 Where the **licensee** has accepted a bank guarantee from a **business customer** in lieu of a security deposit, the **licensee** must return the bank guarantee within the 10 **business days** of the **business customer** satisfying the conditions referred to in clause 5.7.
- 5.10 The **licensee** must keep security deposits in a separate account and separately identify in its company accounts, at all times, the value of security deposits which it holds for **customers**.
- 5.11 The **licensee** may use a **customer's** security deposit and interest which has accrued to it to offset any amount owed by that **customer** to the **licensee** and/or the **distributor**:
 - (a) if the **customer** fails to pay a bill resulting in disconnection of the supply address; or
 - (b) in relation to a final bill issued by the **licensee** when the **customer** vacates a supply address or ceases to buy **LPG** from the **licensee** at that supply address or asks that the supply address be disconnected.

However, the **licensee** must not, without the **customer's** written consent, use a **customer's** security deposit to offset charges in respect of any goods or services (other than **LPG**) provided by the **licensee**.

- 5.12 The **licensee** must account to the **customer** for any use of the security deposit (and pay the balance, if any, to the **customer**) within 10 **business days**.

6. UNDERCHARGING

- 6.1 Subject to clause 6.2, where the **licensee** has undercharged a **customer** as a result of an act or omission of the **licensee**, it may recover from the **customer** the amount undercharged.
- 6.2 Where the **licensee** proposes to recover an amount undercharged as a result of the **licensee's** error, the licensee must:
- (a) limit the amount to be recovered to the amount undercharged in the 12 months prior to the meter reading date on the **customer's** last bill;
 - (b) list the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount;
 - (c) not charge the **customer** interest on that amount; and
 - (d) if the **customer** requests it, allow the **customer** time to pay that amount by agreed instalments, over a period nominated by the **customer** being no longer than:
 - (i) the period during which the undercharging occurred (if the undercharging occurred over a period of less than 12 months); or
 - (ii) in any other case, 12 months.

7. OVERCHARGING

- 7.1 Where a **customer** has been overcharged as a result of an act or omission of the **licensee**, the **licensee** must inform the **customer** accordingly within 10 **business days** of the **licensee** becoming aware of that error and:
- (a) credit that amount to the customer's next bill; or
 - (b) if this credit cannot be made (for example, if the customer will not have another bill from the licensee) the licensee must repay that amount to the **customer** within 10 **business days**.

8. WHERE A TARIFF OR TARIFF TYPE HAS CHANGED

- 8.1 Where during a billing cycle a **customer** changes from one type of tariff to another type of tariff, the **licensee** must (if it is necessary to do so due to the change in the type of tariff applying to that **customer**):
- (a) obtain a meter reading at the time the type of tariff changes; and
 - (b) calculate the **customer's** bill using the type of tariff applying during the period prior to and after the date of the meter reading referred to in clause 8.1.
- 8.2 Where during a billing cycle the tariff rate or charge applying to a **customer** changes, the **licensee** must calculate the bill on a pro rata basis using:

- (a) the old tariff rate or charge up to and including the date of change; and
- (b) the new tariff rate or charge from the date of the change to the end of the billing cycle.

8.3 Where the **licensee** offers alternative tariffs or tariff options and a **customer**:

- (a) applies in writing to the **licensee** to transfer from that **customer's** current tariff to another tariff; and
- (b) demonstrates to the **licensee** that it satisfies all of the conditions relating to that other tariff.

the **licensee** must transfer the **customer** to that tariff within 10 **business days** of satisfying those conditions.

8.4 Where a **customer** transfers from one tariff type to another, in accordance with clause 8.3, the effective date of the transfer will be:

- (a) the date on which the last meter reading at the old tariff is obtained; or
- (b) where the transfer requires a change to the meter at the **customer's** supply address, the date the meter change is completed.

8.5 Where a **customer** informs the **licensee** of a change in use of the **customer's** supply address, the **licensee** may require the **customer** to transfer to a tariff applicable to the **customer's** use of the supply address.

8.6 If a **customer** fails to give notice to the **licensee** of a change in the use of the **customer's** supply address, and the **licensee** subsequently becomes aware of the change in use, the **licensee** may transfer the **customer** retrospectively from the date of the change.

9. PAYMENT METHODS

9.1 The **licensee** must offer at least the following payment methods to its **customers**:

- (a) in person; and
- (b) by mail.

10. PAYMENT DIFFICULTIES

10.1 Where a **residential customer** informs the **licensee** in writing or by telephone that the **residential customer** is experiencing payment difficulties, the **licensee** must advise the **residential customer**, as soon as is reasonably practicable, of instalment plan options offered by the **licensee** at that time and, where appropriate:

- (a) the right to have a bill redirected to a third person, as long as that third person consents in writing to that redirection;

- (b) information on independent financial and other relevant counselling services.

10.2 Where a **residential customer** requests information or a redirection of its bills, under this clause, the **licensee** must provide that information or redirection free of charge.

11. LONG ABSENCE OR ILLNESS

11.1 Where a **residential customer** is unable to arrange payment whether due to illness or long absence, the **licensee** must offer:

- (a) payment in advance facilities; and
- (b) redirection of the **customer's** bill as requested by the **customer** free of charge.

12. PAYING BY INSTALMENTS

12.1 The **licensee** must offer **residential customers** at least the following payment options:

- (a) a system or arrangement under which a **residential customer** may make payments in advance towards future bills; and
- (b) an interest and fee free instalment plan or other arrangement under which the **residential customer** is given more time to pay a bill or to pay arrears (including any disconnection or reconnection charges).

12.2 The **licensee** may require a **residential customer** to pay by instalments in advance if the **residential customer** is in arrears or as an alternative to the **residential customer** paying a security deposit.

12.3 The **licensee** does not have to offer a **residential customer** an instalment plan if the **residential customer** has, in the previous 12 months, had 2 instalment plans cancelled due to non-payment. In such a case, the **licensee** must offer another instalment plan only if the **licensee** is reasonably satisfied that the **residential customer** will comply with that instalment plan.

12.4 The **licensee** offering an instalment plan must, in determining the period of the plan and calculating the amount of the instalments, take into account information from the **residential customer** about the **residential customer's** usage needs and capacity to pay;

12.5 Nothing in this licence limits the payment options that a **licensee** may offer to a **customer**.

13. REVIEW OF BILL

- 13.1 The **licensee** must review a **customer's** bill when asked by that **customer**.
- 13.2 The **licensee** must inform the **customer** of the outcome of that review as soon as reasonably possible, but in any event, within 30 **business days**.
- 13.3 Where a **licensee** is reviewing a bill, the licensee may require the **customer** to pay:
- (a) the greater of:
 - (i) that portion of the bill under review that the **customer** and the **licensee** agree is not in dispute; or
 - (ii) **an** amount equal to the average amount of the **customer's** bills in the previous 12 months (excluding the bill in dispute); and
 - (b) any future bills that are properly due.
- 13.4 Where the **customer** requests that, in reviewing the bill, the meter reading be checked or the meter tested, the **licensee** must, as the case may be:
- (a) arrange for a check of the meter reading; or
 - (b) arrange for a test of the meter.
- 13.5 The **customer** must pay the **licensee** in advance the **licensee's** reasonable charge for checking the meter reading, metering data or for testing the meter.
- 13.6 Where, after conducting a review of the bill, the **licensee** is satisfied that it is:
- (a) correct, the **licensee** may require the **customer** to pay the amount of that bill which is still outstanding; or
 - (b) incorrect, the **licensee**:
 - (i) must correct the **customer's** bill;
 - (ii) must refund (or set off against the amount in clause 13.6(b)(iii)) any fee paid in advance under clause 13.5;
 - (iii) may require the **customer** to pay the amount of that bill which is still outstanding; and
 - (iv) must advise the **customer** of the existence of its dispute resolution processes.

14. DISCONNECTION OF A SUPPLY ADDRESS

- 14.1 If a **customer** requests the **licensee** to disconnect the **customer's** supply address, the **licensee** must use its **best endeavours** to disconnect in accordance with the **customer's** request.

14.2 Subject to clauses **Error! Reference source not found.** and 16 , the **licensee** may arrange to disconnect a **customer's** supply address if a **customer** has not:

- (a) paid a bill; or
- (b) agreed to an offer (made in accordance with clause 10 and clause 12) of an instalment plan or other payment option to pay a bill; or
- (c) adhered to the **customer's** obligations to make payments in accordance with an agreed instalment plan or other payment option relating to the payment of bills; or
- (d) failed to allow, for 3 consecutive **billing cycles** (or such longer period as the **licensee** nominates), access to the **customer's** supply address to read a meter; or
- (e) where the **customer** refuses to pay a security deposit or provide a bank guarantee in accordance with clause 5.

15. OBLIGATIONS PRIOR TO DISCONNECTION

15.1 Prior to effecting a disconnection under clause 14.2, the **licensee** must have:

- (a) used its **best endeavours** to contact the **residential customer** personally either:
 - (i) by telephone;
 - (ii) by mail;
 - (iii) by email;
 - (iv) by any other method approved by the **Commission** from time to time;
- (b) given the **customer** a reminder notice;
- (c) after the expiry of the period referred to in the reminder notice, give the **customer** a written disconnection warning with 5 **business days'** notice of its intention to arrange for the disconnection (the 5 **business days** shall be counted from the date of receipt of the disconnection warning);
- (d) in the case of a disconnection arising under clause 14.2(a), offered the **customer** alternative payment options of the kind referred to in clause 12 (provided that **licensee** is not obliged to offer an instalment plan as where the **customer** has in the previous twelve months had two instalment plans cancelled due to non-payment);
- (e) in the case of a disconnection arising under clause 14.2(d):
 - (i) given the **customer** an opportunity to offer reasonable alternative access arrangements; and

- (ii) on each of the occasions access was denied, given the **customer** written notice requesting access to the meter or meters at the supply address and advising of the **licensee's** ability to arrange for disconnection;

16. WHEN THE LICENSEE MAY NOT DISCONNECT

- 16.1 The **licensee** must not disconnect a **customer's** supply address:
- (a) for non-payment of a bill where the amount outstanding is less than an amount approved by the **Commission** and the **customer** has agreed with the **licensee** to repay that amount;
 - (b) where a **customer** has made a complaint, directly related to the reason for the proposed disconnection, to an external dispute resolution body and the complaint remains unresolved;
 - (c) after 3.00pm on a **business day**; or
 - (d) on a Friday, on a weekend, on a public holiday or on the day before a public holiday, except in the case of a planned interruption.

17. DISCONNECTIONS FOR EMERGENCIES AND SAFETY

- 17.1 Notwithstanding any other clause in this licence, the **licensee** may disconnect, interrupt or cause the disconnection or interruption of supply to a **customer's** supply **address** in the case of an emergency.
- 17.2 Where the **licensee** exercises its disconnection right under this clause, it must:
- (a) provide, by way of a 24 hour emergency line, information on the nature of the emergency and an estimate of the time when supply will be restored;
 - (b) use its **best endeavours** to restore supply to the **customer's** supply address as soon as possible.
- 17.3 Nothing in this licence should affect the **licensee** exercising any power, or obligation to comply with any direction, order or requirement under the *Emergency Powers Act 1941*, *Essential Services Act 1981*, *State Disaster Act 1980* or the *State Emergency Services Act 1987*, or any other relevant legislation.
- 17.4 Notwithstanding any other clause and subject to clause 17.5, the **licensee** may disconnect or interrupt supply to a **customer's** supply address for reasons of health or safety.
- 17.5 Except in the case of an emergency, or where there is a need to reduce the risk of fire or where relevant legislation, regulations or codes require it, the

licensee must not disconnect a **customer's** supply address for a health or safety reason unless the **licensee** has:

- (a) given the **customer** written notice of the reason;
- (b) allowed the **customer** 5 **business days** to remove the reason (the 5 **business days** shall be counted from the date of receipt of the notice); and
- (c) at the expiration of those 5 **business days** given the **customer**, by way of a written disconnection warning, another 5 **business days'** notice of its intention to disconnect the **customer** (the 5 **business days** shall be counted from the date of receipt of the notice).

18. RECONNECTION AFTER DISCONNECTION

- 18.1 Where the **licensee** has disconnected a **customer's** supply **address** in accordance with this licence, the **licensee** must use its **best endeavours** to reconnect the **customer** within a time agreed with the **customer**, subject to (where relevant):
- (a) the reasons for disconnection being rectified, and
 - (b) the customer agreeing to pay the **licensee's** reasonable charges for reconnection, if any.
- 18.2 Where under this clause the **licensee** is obliged to arrange for the reconnection of a **customer's** supply address and the **customer** makes a request for reconnection before 4.00pm on a **business day**, the **licensee** must use its **best endeavours** to arrange for the reconnection on the day of the request and, in any event, by the next **business day**.
- 18.3 Where under this clause the **licensee** is obliged to reconnect a **customer's supply** address and the **customer** makes a request for reconnection after 4.00pm and before 9.00pm on a **business day**, and pays the **licensee's** reasonable charge for after hours connection, the **licensee** must arrange for the reconnection on the day requested by the **customer** unless the **licensee** informs the **customer** that this is not possible, in which case the **licensee** must arrange for connection by the end of the next **business day** and the after hours connection fee does not apply.
- 18.4 Where under this clause the **licensee** is obliged to reconnect a **customer's** supply address and the **customer** makes a request for reconnection after 9.00pm, on a **business day**, the **licensee** must arrange for the reconnection by the end of the next **business day**.

19. METER READING

- 19.1 Subject to clause 19.2, the **licensee** must base a **customer's** bill on an actual reading of the relevant meter at the **customer's** supply address and use its **best endeavours** to ensure that the meter at the **customer's** supply address is read as frequently as is required to prepare its bills and in any event at last once every 12 months.
- 19.2 Where a **licensee** is unable to base a bill on a reading of the meter at a **customer's** supply address because:
- (a) access is denied as a result of the actions of the **customer**, or a third party, weather conditions or an industrial dispute;
 - (b) the meter cannot safely be accessed in order to read it;
 - (c) the meter or ancillary equipment has recorded the **LPG** usage incorrectly; or
 - (d) the meter has been tampered with,
- the **licensee** may provide the **customer** with an estimated bill based on:
- (i) the **customer's** reading of the meter;
 - (ii) the customer's prior **LPG** usage history at that supply address;
 - (iii) where the **customer** does not have a prior **LPG** usage history at that supply address, the average usage of **LPG** by a comparable **customer** over the corresponding period; or
 - (iv) an estimating system approved by the **Commission**.
- 19.3 The **licensee** may provide the **customer** with an estimated bill or bills where:
- (a) the **customer** and the **licensee** have agreed to the issue of an estimated bill or bills; and
 - (b) the **estimated** bill or bills are based on a methodology specified in clause 19.2.
- 19.4 Where the **licensee** has provided a **customer** with an estimated bill, and the meter is subsequently read, the **licensee** must include an adjustment on the next bill to take account of the actual **meter** reading.
- 19.5 When the **licensee** issues a **customer** with an estimated bill it must publish a notice in a prominent location on that bill advising that the bill is based on an estimated reading of the meter.
- 19.6 Where a **customer** has denied access to a meter for the purpose of reading that meter, and subsequently requests the **licensee** to replace an estimated bill with a bill based on a reading of the meter, the **licensee** must comply with

that request but may pass through to that **customer** any costs it incurs in doing so.

DRAFT LPG DISTRIBUTION LICENCE



LIQUEFIED PETROLEUM GAS DISTRIBUTION LICENCE

DRAFT FOR
CONSULTATION

OCTOBER 2009

AGAS

**ANNOTATION – REFERENCE OF SECTIONS OF THE GAS ACT TO LICENCE
CLAUSES**

SECTION	LICENCE CLAUSE
25(1)(a)	4.1
25(1)(b)	4.2
25(1)(c)	8
25(1)(d)	11
25(1)(e)	8.2
25(1)(f)	8.1
25(1)(g)	12
26(1)(a)	N/A (relates to natural gas only)
26(1)(b)	5
26(1)(c)	6
26(1)(d)	7.1
26(1)(e)	8.3
26(1)(f)	9
26(1)(g)	7.2

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words appearing in italics like *this* are defined in Schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in Schedule 2.

2. GRANT OF LICENCE

- 2.1 The *licensee* is licensed under Part 3 of the **Act** to carry on the operation of the **LPG distribution system**, as specified in Schedule 3, subject to the terms and conditions set out in this licence.

3. TERM

- 3.1 This licence continues until:
 - (a) it is surrendered by the *licensee* under section 31 of the **Act**; or
 - (b) it is suspended or cancelled by the **Commission** under section 38 of the **Act**.

4. COMPLIANCE WITH LAWS AND INDUSTRY CODES

- 4.1 The **Commission** may, by notice in writing to the *licensee*, require the *licensee* comply with any **industry code** or **industry rule** made by the **Commission** from time to time specified by the **Commission** as being applicable to the *licensee*.
- 4.2 The *licensee* must comply with all applicable laws including, but not limited to, any technical or safety requirements or standards in regulations under the **Act**.
- 4.3 The *licensee* must notify the **Commission** if it commits a material breach of the **Act** or an applicable **industry code** under clause 4.1 within 3 days of becoming aware of that breach.
- 4.4 The *licensee* must comply with the **Residential Energy Efficiency Scheme** as set out in Part 2AA of the Gas (General) Regulations 1997 (as in force from time to time).

5. SAFETY, RELIABILITY, MAINTENANCE AND TECHNICAL MANAGEMENT PLAN

5.1 The *licensee* must:

- (a) prepare a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation and submit the plan to the **Commission** for approval;
- (b) annually review and, if necessary, update the plan to ensure its efficient operation, and submit the updated plan to the **Commission** for approval;
- (c) comply with the plan prepared in accordance with clause 5.1(a) and as updated from time to time in accordance with clause 5.1(b);
- (d) not amend the plan without the approval of the **Commission**; and
- (e) undertake annual audits of its compliance with its obligations under the plan and report the results to the **Technical Regulator**, in a manner approved by the **Technical Regulator**.

6. ACCOUNTS

6.1 The *licensee* must, if directed by notice in writing by the **Commission**, maintain accounting records and prepare accounts according principle specified in that notice.

7. OMBUDSMAN AND DISPUTES

7.1 The *licensee* must, if directed by the **Commission**, participate in an **Ombudsman Scheme**:

- (a) that applies to the gas supply industry and to other regulated industries (within the meaning of the **ESC Act**) prescribed by regulation; and
- (b) the terms and conditions of which are approved by the **Commission**.

7.2 The *licensee* must develop and implement procedures to deal with **customer** disputes and complaints in accordance with AS ISO 10002-2006 or, where an **industry code** applies to the *licensee* under clause 4.1, the provisions of that **industry code**.

8. INFORMATION TO THE COMMISSION

- 8.1 The **licensee** must, from time to time as required by the **Commission** and in a manner and form determined by the **Commission**, provide to the **Commission**:
- (a) details of the **licensee's** financial, technical and other capacity to continue its operations authorised by this **licence**; and
 - (b) such other information as the **Commission** may require.
- 8.2 The **licensee** must notify the **Commission** of any changes to its officers or major shareholders (if applicable) within 30 **business days** of that change.
- 8.3 The **licensee** must monitor and report, as required by the **Commission**, on indicators of service performance determined by the **Commission**.

9. DISCONNECTION

- 9.1 The **licensee** must not disconnect or discontinue, or take any action which may lead to the disconnection or discontinuance of, supply of **LPG** to a **customer**, except in accordance with the provisions of an **industry code** that applies to the **licensee** under clause 4.1.

10. CUSTOMER ENQUIRIES

- 10.1 The **licensee** must establish and comply with procedures to deal with **customer** consultation or enquiries in accordance with the provisions of an **industry code** applies to the **licensee** under clause 4.1.

11. OPERATIONAL AND COMPLIANCE AUDITS

- 11.1 The **licensee** must undertake periodic audits of:
- (a) the operations authorised by this licence; and
 - (b) the **licensee's** compliance with its obligations under this licence; and
 - (c) any applicable **industry code** under clause 4.1; and
 - (d) any other matter relevant to the operations authorised by this licence as specified by the **Commission**,
- at the request of, and in accordance with the requirements specified by, the **Commission**.

- 11.2 The results of audits conducted under this clause 12 must be reported to the **Commission** in a manner approved by the **Commission**.
- 11.3 The **Commission** may require the **licensee** to use an independent expert approved by the Commission to conduct audits under this clause 12.
- 11.4 The **Commission** may require the costs of using an independent expert approved by the **Commission** to conduct audits under this clause 12 to be met by the licensee.

12. CUSTOMER CONCESSIONS AND COMMUNITY SERVICE OBLIGATIONS

- 12.1 The **licensee** must comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of **customer** concessions or the performance of community service obligations by the **licensee**.

13. CONFIDENTIALITY

- 13.1 The **licensee** must, unless otherwise required or permitted by law, this licence or applicable **industry code** under clause 4.1:
- (a) comply with any rules determined by the **Commission** from time to time relating to the use of information acquired by the **licensee** in the course of operating the business authorised by this licence; and
 - (b) ensure that information concerning a **customer** is not disclosed without the **explicit informed consent** of the customer.
- 13.2 The **licensee** must not disclose confidential information to an intelligence or law enforcement agency unless requested to do so by an intelligence or law enforcement agency on the basis that:
- (a) disclosure is necessary under the terms of a warrant issued under Division 2 of the Australian Security Intelligence Organisation Act 1979 or under the terms of any other court order; or
 - (b) disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty or for the protection of the public revenue; or
 - (c) disclosure is necessary to safeguard the national security of Australia.
- 13.3 The **licensee** may accept an assertion of an intelligence or law enforcement agency, without making further enquiry, for the purposes of clauses 16.1(e) and 16.1(f) above.

13.4 The **licensee** must ensure that any information received from, or provided to, any related body corporate of the **licensee** holding a distribution licence is only received or provided on non-discriminatory commercial terms.

14. COMPLIANCE WITH GOOD GAS INDUSTRY PRACTICE

14.1 The **licensee** must use its **best endeavours** to conduct the operations authorised by this licence in accordance with **good gas industry practice** including, but not limited to, conducting the operations so as to:

- (a) prevent death or injury to, persons or damage to property;
- (b) minimise leakage of LPG; and
- (c) account for the total amount of LPG lost from the **distribution system** as a result of leakage or an activity referred to in section 82(1) of the **Act**.

15. VARIATION

15.1 This licence may only be varied in accordance with section 29 of the **Act**.

16. TRANSFER

16.1 This licence may only be transferred in accordance with section 30 of the **Act**.

This licence was issued by the **Commission** on XXX.

THE COMMON SEAL OF)
THE ESSENTIAL SERVICES)
COMMISSION OF SOUTH)
AUSTRALIA was hereunto affixed)
by authority of the Chairperson)
and in the presence of:)

.....
Witness

.....

Date

SCHEDULE 1:

DEFINITIONS AND INTERPRETATION

2. DEFINITIONS

In this licence:

“**Act**” means the *Gas Act 1997*;

“**best endeavours**” means to act in good faith and use all reasonable efforts, skill and resources;

“**business days**” means a day on which banks are open for general banking business in Adelaide, other than a Saturday or Sunday;

“**Commission**” means the Essential Services Commission established under the **ESC Act**;

“**customer**” has the meaning given to that term in the **Act**, namely a person who has a supply of **LPG** available from a system for consumption by that person, and includes:

- (a) the occupier for the time being of a place to which **LPG** is supplied by a **distribution system**;
- (b) where the context requires, a person seeking a supply of **LPG** from a **distribution system**; and
- (c) a person of a class declared by regulation to be **customers**;

“**distribution system**” has the meaning given to that term in the **Act**;

“**ESC Act**” means the *Essential Services Commission Act 2002*;

“**explicit informed consent**” has the same meaning as is given to that term in the *Energy Transfer and Consent Code* made by the **Commission** under section 28 of the **ESC Act**;

“**good gas industry practice**” means the exercise of that degree of diligence, skill, prudence and foresight that reasonably would be expected from a significant proportion of operators of **LPG** distribution systems forming part of the Australian **LPG** supply industry under conditions comparable to those applicable to the **distribution system** operated by the licensee consistent with the **Act**, **industry codes** or **industry rules**, reliability, safety and environmental factors;

“**industry code**” includes any **industry code** made by the **Commission** under section 28 of the **ESC Act**;

“**industry rule**” includes any **industry rule** made by the **Commission** under section 28 of the **ESC Act**;

“**licensee**” means [licensee name];

“**LPG**” means liquefied petroleum gas, being a hydrocarbon fluid composed predominantly of one or more of the following hydrocarbons: propane (C₃H₈); propene (propylene) (C₃H₆); butane (C₄H₁₀); or butene (butylene) (C₄H₈);

“**Ombudsman Scheme**” means an ombudsman scheme, the terms and conditions of which are approved by the **Commission**; and

“**Technical Regulator**” means the person holding the office of the Technical Regulator under the **Act**.

SCHEDULE 2: INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
 - (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
 - (e) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (e) a reference to any statute, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (g) an event which is required under this licence to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.

SCHEDULE 3: LICENSED OPERATIONS

2. [to be inserted]