REGULATORY ARRANGEMENTS FOR RETICULATED LPG NETWORKS

Final Decision

April 2013

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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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GLOSSARY OF TERMS

AER	Australian Energy Regulator
Commission	Essential Services Commission of South Australia
LPG	Liquefied Petroleum Gas
TJ	Terajoule
EWOSA	Energy and Water Ombudsman (SA)
EWOSA Scheme	Energy and Water Ombudsman (SA) Scheme
ESC Act	*Essential Services Commission Gas Act 2002*
Gas Act	*Gas Act 1997*
Gas Regulations	*Gas Regulations 2012*
NECF	*National Energy Customer Framework*

EXECUTIVE SUMMARY

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

Pursuant to section 19 of the Gas Act, those who engage in the activity of distributing and retailing of gas through reticulated networks in South Australia are required to hold a licence issued by the Commission. The majority of regulated gas operations in this State are natural gas, however, the meaning of the term "gas" under the Gas Act is not limited solely to natural gas. Through the regulations made under the Gas Act, liquefied petroleum gas (**LPG**) has been specifically identified as being a gas for the purposes of the Gas Act.

Up until 2004, when the Commission became responsible for economic regulation of the gas industry, the former gas licensing authority, the Office of the Technical Regulator (**Technical Regulator**)[1] adopted an approach whereby it issued exemptions from the requirement to hold a licence to persons who engaged in the activity of distributing and retailing LPG through reticulated networks.

It is understood by the Commission that this approach was taken by the Technical Regulator as it was of the view that the costs imposed by a licensing regime outweighed the benefits (given the 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. To date, it has been the approach of the Commission to maintain previously issued exemptions and, in the interests of consistency, to issue new exemptions to those persons which commenced LPG operations.

Given the likely increase in the establishment and expansion of reticulated LPG networks, particularly in new housing and small industrial developments in areas beyond the reticulated natural gas network, it is appropriate for the Commission to review and clarify the application of the provisions of the Gas Act to reticulated LPG networks.

The Commission initially commenced this review in August 2008, with the release of an Issues Paper through which the Commission sought comment from stakeholders on the Commission's proposal to introduce a licensing regime for entities involved in the retailing and distribution of LPG through reticulated networks. The Commission released its Draft Decision in October 2009 in which it determined that, after taking into account the various submissions received in response to the Issues Paper, distributors and retailers of reticulated LPG in South Australia should be licensed under the Gas Act.

Shortly after the Draft Decision was released, the South Australian Government commenced a review of the Gas Act to determine the form of the regulatory framework to apply to types

[1] The Technical Regulator is a statutory office established under Part 2 of the Gas 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.

of gas other than natural gas following the commencement of the National Energy Customer Framework (**NECF**). As a result of this review, the Commission decided to suspend its review of the regulatory arrangements to apply to reticulated LPG networks until such time as the outcomes of the Government's review of the Gas Act were known.

In October 2012, when it became apparent that amendments proposed to be made to the Gas Act to ensure a smooth transition to the NECF would not impact upon the current licensing regime established under the Gas Act for gases other than natural gas, the Commission issued a Further Draft Decision. The Further Draft Decision confirmed the Commission's view expressed in the Draft Decision that distributors and retailers of reticulated LPG in South Australia should be licensed under the Gas Act. The Commission further proposed to make a Reticulated LPG Industry Code which will apply to licensees and will contain key consumer protection and technical provisions.

Submissions to the Further Draft Decision have been received and this Final Decision sets out the reasons for the Commission's decisions in respect of the future licensing arrangements to apply to reticulated LPG networks in South Australia.

Having regard to the scheme envisaged under the mandatory licence conditions set out in the Gas Act requiring the Commission to continue to regulate LPG operations, the Commission has decided that:

- distributors and retailers of reticulated LPG will need to be licensed under the Gas Act unless it can be demonstrated that it would be appropriate to grant such entities an exemption from the requirement to be licensed (and the grant of an exemption is approved by both the Commission and the Minister for Mineral Resources and Energy);
- it will issue LPG retail and distribution licences containing the mandatory licence conditions required by sections 25, 26 and 26A of the Gas Act and the Gas Regulations 2012 (**the Regulations**) unless certain conditions are deemed not to be appropriate to LPG operations;
- LPG licensees will be required, as a condition of licence, to comply with an industry code established by the Commission which will contain modified versions of key provisions of state-based or national consumer protection regulatory instruments 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.

Entities currently providing reticulated LPG services will be required to apply to the Commission for the licence or licences relevant to their operations. Applications should be received by **6 May 2013**. Full compliance with the new licensing regime is expected from **1 January 2014** at which time existing exemptions will expire.

1. INTRODUCTION & BACKGROUND TO THIS DECISION

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

However, the natural gas distribution system does not extend to all areas of the State. Accordingly, customers in areas not supplied by the natural gas system must use electrical appliances or, if they wish to use gas appliances, use bottled gas or take supply from a LPG reticulation system.[2] Customers that use reticulated or bottled LPG 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 (or using electricity).

1.1 Licensing under the Gas Act

Pursuant to section 19 of the Gas Act, those who engage in the activity of distributing and retailing of gas through reticulated networks in South Australia are required to hold a licence issued by the Commission.[3] Carrying on those operations without a licence is an offence which may attract a maximum penalty of $1,000,000. Section 19 of the Gas Act is replicated below:

> ***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.*

Section 4 of the Gas 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…*

[2] LPG distribution networks are generally found in non-metropolitan areas of South Australia but, in the last few years, have also been built in metropolitan areas.

[3] Following commencement of the NECF, this will no longer apply to natural gas operations.

Through the regulations made under the Gas Act, LPG is specifically identified as being a gas for the purposes of the Gas Act.

Accordingly, the clear intention of the Government is that entities that are responsible for the retailing or distributing of LPG through reticulated LPG networks be subject to the licensing regime set out in the Gas Act in one form or another.

Notwithstanding this assumption of licensing, the Gas Act does allow for an exemption regime, whereby a person is exempt 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 generator[4]) or can be individually issued by the Commission, with the approval of the Minister, under section 77 of the Gas Act.

In the case of exemptions, which can be issued with the approval of the Commission and the Minister, an applicant needs to sufficiently demonstrate why it should not be licensed or why specific parts of the Gas Act should not apply to it. Factors such as the scale and scope of the operations undertaken by the applicant will be key considerations as will the impact of the proposed exemption on the achievement of the factors specified in section 6 of the ESC Act, in particular, the need to ensure that the long-term interests of consumers with respect to price, reliability and quality of supply are protected. If the case of exceptional circumstances is made out, then the Commission will issue an exemption (subject to the approval of the Minister) to ensure that the appropriate form of regulation is applied in these circumstances.

1.2 Review to date

The Commission commenced this review in August 2008 with the release of an Issues Paper through which the Commission sought comment from interested stakeholders on the Commission's proposal to introduce a licensing regime for entities that were involved in the retailing and distribution of LPG through reticulated networks.

After considering the submissions received in response to that Issues Paper, the Commission released its Draft Decision in October 2009 in which it determined that distributors and retailers of reticulated LPG in South Australia should be licensed under the Gas Act. The Commission, however, recognised that it would be appropriate to issue LPG retail and distribution licences with modified mandatory conditions if there were difficulties in the application of those conditions if expressed in the ordinary manner.

Shortly after the Draft Decision was released, the South Australian Government commenced a review of the Gas Act to determine the form of the regulatory framework to apply to types of gas other than natural gas following the commencement of the NECF. As a result of this review, the Commission decided to suspend its review of the regulatory arrangements to apply to reticulated LPG networks until such time as the outcomes of the Government's review of the Gas Act were known.

[4] For a list of the relevant statutory exemptions, refer regulation 7 of the Gas Regulations.

In October 2012, when it became apparent that amendments proposed to be made to the Gas Act to ensure a smooth transition to the NECF would not impact upon the current licensing regime established under the Gas Act for gases other than natural gas, the Commission issued a Further Draft Decision. The Further Draft Decision confirmed the Commission's view expressed in the Draft Decision that distributors and retailers of reticulated LPG in South Australia should be licensed under the Gas Act. The Commission further proposed to make a Reticulated LPG Industry Code which will apply to licensees and will contain key consumer protection and technical provisions.

The *Statutes Amendment (National Energy Retail Law Implementation) Bill 2012* has since passed and the requirement on the Commission to administer a licensing regime for persons who engage in the activity of distributing and retailing other types of gas through reticulated networks in South Australia remains.

1.3 Historical approach to regulation of LPG

Notwithstanding the presumption of the Gas 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,[5] 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 on the basis that the costs imposed by a licensing regime outweighed the benefits given the relatively small-scale of reticulated LPG networks at the relevant 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 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 persons which commenced LPG operations. However, it must be recognised that circumstances have changed since this approach was first adopted almost a decade ago. For example, and as described in more detail in section 2.4 below, the size and number of reticulated LPG networks operating in South Australia has increased since 2003 and there is the potential for the significant expansion of a number of networks in the short to medium term.

1.4 Current LPG operations

Presently, there are reticulated LPG networks (primarily operating under the benefit of exemptions issued by the Commission) located at:

- Roxby Downs - 1371 customers. Operated by Origin Energy;

[5] The Technical Regulator is a statutory office established under Part 2 of the Gas 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.

- Victor Harbor (Rosetta Retirement Village) - 317 customers. Operated by Origin Energy;
- Renmark (Jane Eliza Estate) - 96 customers. Operated by Origin Energy;
- Port Lincoln – 142 customers. Operated by Origin Energy and Elgas Limited;
- Wallaroo – 126 customers. Operated by Origin Energy;
- Clare – 39 customers (can accommodate up to 120 customers). Operated by Elgas Limited;
- Cape Jaffa Anchorage – 12 customers (can accommodate up to 536 customers). Operated by Origin Energy; and
- Mount Barker (Bluestone Estate) – 137 customers (can accommodate up to 900 customers). Operated by Environmental Land Services and Elgas Limited.

Since the release of the Commission's Draft Decision in October 2009, with the exception of the LPG network located at Victor Harbor, there has been an increase in the number of customers connected to all of the other LPG networks operating. Further, the construction of the network at Port Lincoln has been completed, while networks at Cape Jaffa and Mount Barker continue to be expanded.

In addition, the Commission understands that there may be ongoing expansion of the LPG network in Roxby Downs and that there is the potential for significant further expansion of the LPG network located in Mount Barker due to residential re-zoning of proposed new developments (approximately 5,000-10,000 customers to be connected over the next 5-10 years).

1.5 The issue

Taking into consideration the increase in customers connected to reticulated LPG networks and the likely continued expansion of such networks, the Commission in its Draft Decision released in October 2009 and in its Further Draft Decision released in October 2012 revisited the key issue being, whether the current exemption approach should be continued in respect of entities that retail and distribute LPG through reticulated systems or, instead, a full (or modified) licensing regime under the Gas Act should be implemented?

1.6 Process

This Final Decision is the fourth stage in the Commission's review of this matter, following the Issues Paper released in August 2008, entitled "Regulatory Arrangements for Reticulated LPG Networks", the release of the Commission's Draft Decision in October 2009 and the release of the Further Draft Decision in October 2012.[6]

The Commission received five submissions in response to its Issues Paper, from the following entities:

- Envestra Ltd;
- Energy Industry Ombudsman SA;

[6] The Issues Paper, Draft Decision, Further Draft Decision and associated submissions can be found on the Commission's website at http://www.escosa.sa.gov.au.

- Wesfarmers Kleenheat Gas Pty Ltd;
- Origin Energy Retail Ltd; and
- Elgas.

In addition, the Commission received a second submission from Origin Energy Retail Ltd in response to the Draft Decision released in October 2009. Submissions in response to the Further Draft Decision were received from Origin Energy Retail Ltd and Elgas while the Energy Industry Ombudsman advised that it continued to support its earlier submission.

The Commission has been assisted by the submissions it has received through this review process. While the Commission has not adopted all positions put in submissions, all submissions have been helpful in allowing the Commission to consider each of the relevant issues under consideration and to understanding the competing viewpoints held. The Commission has given consideration to and acknowledged all arguments and submissions in this review process. Where appropriate, the Commission has, either by direct quotation or by reference to themes or arguments, mentioned certain arguments and submissions in the text to assist stakeholders in responding to the positions it has reached; however, a failure to reference an argument or submission does not mean that the Commission has not taken that argument or submission into account in its deliberations.

2. LICENSING OR EXEMPTION?

2.1 Should the Commission be regulating LPG operations?

While submissions to the Commission's Issue Paper and Draft Decision have put a view that there should be no regulation, or at least no licensing regime applying to LPG operations in the future, such submissions fail to recognise the clear intent of the Gas Act which is that persons carrying on the retailing or distribution of gas (which includes LPG) are required to be licensed by the Commission. Submissions in response to the Further Draft Decision did however acknowledge that the Commission must administer some form of regulatory control.

It is important to note from the outset that the Commission's consideration of its regulatory approach in respect of LPG operations in the future is not premised on any inherent powers it has to determine whether or not there will be a licensing regime (including granting of exemptions). 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 Gas 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 State 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 mandatory licence conditions) and granting various discretionary regulatory powers to the Commission. While the Commission is able to exercise its discretionary powers to influence and shape the nature of the regulatory regime to some extent (and will do so when appropriate), its assumption is that there will continue to be a licensing regime.

Therefore, unless and until the Gas Act is amended to remove LPG operations from its scope, the Commission will continue to either license, or grant exemptions[7] 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.

In accordance with the clear legislative policy embodied within the Gas 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 mandatory licence conditions set out in the Gas Act.

[7] Exemptions granted by the Commission can only be from Part 3 of the Act. Consequently, entities granted an exemption are still required to comply with all other aspects of the Act, for example those relating to safety and technical issues.

2.2 Licensing or continued use of exemptions?

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

2.2.1 Current Arrangements for LPG retailing and distribution operations

Existing LPG networks in South Australia operate under a variety of licensing and exemption arrangements in accordance with the Gas 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)		✓
ENVIRONMENTAL LAND SERVICES		
Mt Barker (Bluestone Estate)		✓

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 Gas 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). Environmental Land Services is exempted by the Commission from the requirement to be licensed as a distribution network operator in relation to the reticulated LPG network at Mt Barker's Bluestone Estate. These exemptions are for a limited period until 31 December 2013. This limited period was established to allow these operations to be appropriately authorised under the Gas Act whilst the Commission undertook the present review.

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

2.2.2 Which approach is appropriate?

In considering whether it is best to pursue a licensing approach or to interpose a scheme of exemption,[8] the Commission's starting premise (based on the fact that licensing is the de facto position under the Gas Act) expressed in the Issues Paper, Draft Decision and Further Draft Decision was that a licensing regime was the preferred approach.

In the Issues Paper, the Commission 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; rather, they are required to comply with modified requirements appropriate to the scale and scope of the regulated activity undertaken.

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

[8] 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 Gas Act.

2.2.3 Submissions received

The majority of the submissions previously received by the Commission in respect of this matter support the view of the Commission expressed in the Issues Paper and Draft Decision that:

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

There was a contrary view put in one submission, however, which argued that as the LPG market in South Australia was very small, licensing was not justified for LPG reticulations and that the long term interests of customers would be better served by ensuring that new entrants were not burdened with regulation that may limit their ability to consider LPG reticulations as an economic, more environmentally sensitive alternative. [9]

Submissions received in response to the Further Draft Decision acknowledge that the Commission must administer some form of regulatory control given the requirements of the Gas Act.

2.2.4 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. Particularly, in the context of gas distribution, it has been submitted to the Commission that a requirement to hold a licence is a preferable measure and one consistent with the overall regime of gas distribution regulation.

In addition, 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. As previously advised in its earlier papers on this matter, the Commission does not think that a quasi-licensing regime is desirable for the following 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;[10]
- it may be transferred (for value) to a third party in accordance with the scheme set out in section 30 of the Gas Act; [11] 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.[12] Furthermore, in the event that a licensee does not agree with a variation made by the

[9] Previous submissions can be found on the Commission's website at http://www.escosa.sa.gov.au/projects/77/regulatory-arrangements-for-reticulated-lpg-networks.aspx.

[10] Refer Gas Act, section 19.

[11] Refer Gas Act, section 30, for the scheme permitting the transfer of a licence between entities.

[12] Refer Gas Act, section 29, for the scheme permitting variation of a licence.

Commission, it has statutory rights of review (to the Commission) and appeal (to the District Court) under Part 7 of the Gas Act.[13]

Second, as previously highlighted in this and earlier papers, the effect of an exemption 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 Gas Act. As a matter of certainty and regulatory clarity, therefore, and to give a proper role to exemptions under the Gas Act, it remains the Commission's position that retailers and distributors of reticulated LPG should be the subject of a positive licensing regime. This allows 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.

Finally, while exemptions may not impose any regulatory costs on the exempted entity, 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 exemptions, maintain a register of exemptions and monitor the on-going appropriateness of the conditions placed on exemptions, as well as compliance with those conditions. 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, reflect the costs of the administration of the Gas Act[14] – is payable by each licensee. In the absence of such contributions, the holders of licences are cross-subsidising the administration of the exemption regime.

The Commission is also of the view that consumers should receive the same core set of consumer protections regardless of the location from which they take supply. This is particularly so in respect of those consumers who may suffer financial hardship or disconnection from supply. The LPG regulatory framework preferred by the Commission represents a more light-handed form of consumer protection regulation than that applicable to the natural gas market, and is consistent with that used by the Commission for small off-grid electricity licensees, where broad areas of consumer protection are similar to that applicable to mass-market electricity retailers, but the substantive obligations for smaller licensees are less onerous and prescriptive.

2.2.5 Final Decision

On balance, for the reasons set out in this section, the Commission reaffirms its position 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 Gas Act. Should an applicant provide evidence which demonstrates to the Commission that it is appropriate for an exemption to remain in place, then the Commission will approve that course of action (subject to the approval of the Minister). The licences issued will be non-

[13] Refer Gas Act, sections 71(1)(b), 72(1).
[14] Refer Gas Act, section 24, for the scheme under which licence fees are established by the Minister.

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. The Commission has dealt with that issue in detail in the following section.

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The decision of the Commission is that distributors and retailers of reticulated LPG in South Australia will be licensed under the Gas Act, unless it can be demonstrated by an applicant that an exemption from the requirement to be licensed should be issued instead.

3. FORM OF LICENCE

On the basis that the Commission has reaffirmed its decision of October 2009 and 2012, being that it is appropriate for a licensing regime to be established in respect of retail and distribution operations for reticulated LPG networks, the nature of such licences and the regulatory regime associated with those licences should also be readdressed.

Part 3 of the Gas Act sets out the scheme for a licensing regime in the form of various mandatory licence conditions. As previously advised, it is only if that regime is demonstrably inapplicable to the LPG context that alternative approaches would be considered by the Commission.

In its Further Draft Decision the Commission reconsidered each of the elements of the licensing regime under the Gas Act, to determine its applicability for LPG licensing purposes. Accordingly, the Commission categorised each of the mandatory licence conditions set out in the Gas Act in the following manner:

- Category one – applicable mandatory licence conditions of the Gas Act that will be included in reticulated LPG retail and/or distribution licences;
- Category two - mandatory licence conditions of the Gas Act that for technical or economic reasons will not be included in reticulated LPG retail and/or distribution licences. Where necessary, the Commission intends to seek an exemption from the Minister for Mineral Resources and Energy from the requirement to impose these conditions on the relevant licence; and
- Category three - mandatory licence conditions of the Gas Act that, if expressed in the ordinary manner, may have difficulties in application. In order to give the policy intent behind these mandatory licence conditions effect, these licence conditions will be included in licences as a reserve power to be activated by the Commission should circumstances warrant their activation.

An analysis of the mandatory licence conditions of the Gas Act, based on the foregoing approach, is set out below.

3.1 Analysis of the licensing provisions of the Gas Act

Division A1 of Part 3 of the Gas 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;[15]
- 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;[16]
- establishes a scheme of annual licence fees and returns;[17]

[15] Refer Gas Act, section 19.
[16] Refer Gas Act, sections 20 and 21.

- establishes various mandatory licence conditions applicable to all licences, as well as specific mandatory licence conditions applicable to licences authorising specific operations;[18]
- makes it an offence to contravene a condition of licence;[19] and
- allows for the variation, transfer and surrender of licences.[20]

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 10 and 21(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 approach outlined above.

3.1.1 Section 25 of the Gas Act – relevant to all licences

Section 25 establishes seven mandatory licence conditions which the Commission must impose on all gas licences. 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 Gas 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. Examples of industry codes include the former 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 natural 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?

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17 Refer Gas Act, section 24.
18 Refer Gas Act, sections 25, 26, 26A and 26B.
19 Refer Gas Act, section 27.
20 Refer Gas Act, sections 29, 30 and 31.
21 For a full list and copies of the industry codes made by the Commission, refer www.escosa.sa.gov.au.

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 and technical provisions contained within the Commission's current energy industry codes can be given appropriate effect in the LPG context by the Commission making a separate industry code to apply to entities involved in the retailing and distribution of 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.

A draft Reticulated LPG Industry Code is attached to this Further Draft Decision as Schedule 3 for comment. Chapter 5 of this paper provides more detail in respect of what this code will cover.

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 Gas Act and the Gas Regulations 2012. The Commission also notes that, under regulation 48 of the Gas Regulations 2012, 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.

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 long 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 identify and respond to systemic issues which may arise in respect of a licensee (technical, consumer protection or otherwise). The Commission has found that the early detection of such issues is beneficial for all stakeholders involved and invariably leads to quicker and more effective resolutions.

The Commission is of the view that these are important measures which benefit consumers and, as the Commission pays for the conduct of the audits in the ordinary course, 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 Gas 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.

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 it is appropriate for the Commission to seek information. In any event, this provision merely makes a licence

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

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 Gas 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.

3.1.1.1 Submissions related to Section 25 of the Gas Act – relevant to all licences

Submissions to the Further Draft Decision on Section 25 of the Gas Act - relevant to all licences - agreed that the seven mandatory licence conditions identified by the Commission apply to the LPG context. As such these mandatory licence conditions will be included within LPG licences.

3.1.2 Section 26 of the Gas 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, are set out below.

Section 26(1)(a) – requiring compliance with the relevant parts of the National Gas Procedures (South Australia).

The Commission notes that the relevant parts of the National Gas Procedures (South Australia) referred to in section 26(1)(a) which are made under the *National Gas (South Australia) Gas Act 2009* only apply to natural gas.

As this mandatory licence condition is not applicable to the reticulated 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 48 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 the current LPG distribution arrangements 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 to be activated should significantly changed circumstances warrant the preparation and maintenance of such information for ring fencing or pricing determinations.

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 is a requirement that gas retail licensees and gas distribution licensees participate in the Energy and Water Ombudsman Scheme (**EWOSA Scheme**)[23], 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. Further, neither retail nor distribution customers of Elgas or Environmental Land Services can access the EWOSA Scheme.

The Commission considers that all customers of essential services should have access to external and independent dispute resolution process. In the LPG context, customers are potentially more vulnerable than natural gas customers because of the lack of contestability in the market.

The majority of submissions previously received by the Commission supported the view that:

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

A contrary view expressed concern that the cost of membership of an Energy Industry Ombudsman scheme could prevent new market entrants from establishing reticulated LPG

[23] The Energy and Water Ombudsman (SA) was formerly called the Energy Industry Ombudsman (SA).

networks in remote areas. It was also suggested that the requirement for membership should only apply once a threshold of, say, 500 customers had been reached.[24]

In its Issues Paper, the Commission identified that the cost of access to an independent dispute resolution scheme was indeed an issue. For remote area/ off-grid electricity licensees, the Commission has imposed a licence condition under which the licensee must join the EWOSA Scheme if required to do so by the Commission. At present the Commission has not seen a need to activate 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.

The Commission has been advised by the Energy and Water Ombudsman (SA) that the proposed 2013/14 fees associated with the Ombudsman Scheme include a joining fee of between $550 and $6,600[25] and an annual fee which comprises of a fixed fee (similar in size to the joining fee) and case handling fees based on the licensees use of the Ombudsman system.

The Commission recognises that the costs associated with requiring a LPG distributor to join the EWOSA scheme may be significant, especially if that distributor is only serving a small number of customers. That said, it reaffirms its view that access to independent and external dispute resolution is fundamental to customers of essential services, including customers who rely on the sale and supply of LPG. The Commission considers that an appropriate way to give effect to this mandatory licence condition is to include it in a licence as a discretionary obligation which will only be activated by the Commission should there be an obvious need to do so. For example, the Commission may decide to notify a distribution licensee that it is required to join the EWOSA scheme if there has been a steady increase in complaints from customers that the licensee serves and some other, low cost, alternative independent dispute resolution process is not available.

For the foregoing reasons, the Commission is of the view that it is appropriate to treat section 26(1)(d) as a category three matter. That is, it will be included as a reserve power to be activated by the Commission should circumstances warrant this approach.

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 not considered it 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

[24] Previous submissions can be found on the Commission's website at http://www.escosa.sa.gov.au/projects/77/regulatory-arrangements-for-reticulated-lpg-networks.aspx

[25] Based on current LPG customer numbers the joining fee is expected to range between $1,100 and $2,200.

view that the same reasoning applies to LPG reticulation operations and, therefore, it does not intend to set any service standards for the purposes of this section at this time.

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 arises where there is an applicable industry code which is binding on the licensee.

The issue of disconnections is one of the fundamental elements of any energy regulatory regime. Accordingly, the Commission is of the view that there are appropriate processes in place that must be followed prior to a customer's LPG supply being disconnected. This issue is detailed further in section 4.1 below.

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

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.

Proposed obligations relating to the disconnection of a supply address are set out in the draft Reticulated LPG Industry Code which is attached to this Further Draft Decision as Schedule 3.

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.

3.1.2.1 Submissions related to Section 26 of the Gas Act – distribution licences

Submissions to the Further Draft Decision on section 26 of the Gas Act – distribution licences agreed with the position established by the Commission concerning the seven mandatory licence conditions identified and their application to the LPG context. As such these mandatory conditions will be included within LPG licences with the exception of 26(1)(a) which is not applicable.

3.1.3 Section 26A of the Gas 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 the relevant parts of the National Gas Procedures (South Australia).

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 to be activated 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's previous Energy Price Disclosure Code and the NECF require retailers to publish certain information to allow small customers to compare competing offers in the retailing of natural gas. While the Commission is of the view that the likelihood of a contestable LPG retail market evolving in the short term is low, it considers that the issue of information provision to consumers remains fundamentally important – particularly in captive markets where there is no price regulation.

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. The Commission has provided further comment on this issue in Chapter 5 of this Final Decision and set out the proposed obligations regarding disclosure of pricing information in the Draft Reticulated LPG Industry Code which is attached as Schedule 3.

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 regarding the type of detailed information required to be included in a customer's gas account and the form that information.

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

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.

The Commission considers the issue of standard form contracts being offered to all similar customer classes to be an important consumer protection matter. This is particularly so with respect to small customers who may not have the same market power as that of distributors or retailers of LPG.

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 deemed to be binding between the retailer and the customers).

Rather than impose a similar discretionary licence condition on LPG retailers, the Commission considers that it is more appropriate to put requirements regarding standard terms and conditions in an industry code. The proposed obligations regarding standard customer contracts are set out in the Draft Reticulated LPG Industry Code which is set out in Schedule 3 of this Final Decision.

On this basis, 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)(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 3.1.2 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 to be activated 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 3.1.2 above), as applied to the retail sector, the Commission has formed the view that this mandatory licence condition is within the scope of category one and therefore should be included within LPG licences.

Proposed obligations relating to the disconnection of a supply address are set out in the draft Reticulated LPG Industry Code which is attached to this Final Decision as Schedule 3.

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 3.1.2 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 retail 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 3.1.2 above), as applied to the retail sector, the Commission is of the view that it is appropriate to treat section 26A(2)(i) as a category three matter. That is, it will be included

within LPG retail licences as a reserve power to be activated by the Commission should circumstances warrant this approach.

3.1.3.1 Submissions related to Section 26 of the Gas Act – retail licences

Of the ten mandatory licence conditions related to retail licences identified in the Further Draft Decision, submissions received supported the Commissions conclusions on nine of these conditions. As such these nine mandatory conditions will be included in LPG retail licences.

One submission disagreed with the Commission's view on one mandatory condition (section 26(2)(d)) which relates to the provision of pricing information to enable small customers to compare competing offers in the market place. This matter is discussed further at 4.2.

3.1.4 Gas Regulations 2012 – retail licences

Pursuant to section 25(2) of the Gas Act, in addition to the foregoing matters 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 10 and 21. Those requirements are considered below.

Regulation 10 – 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 21 – Residential Energy Efficiency Scheme.

Part 4 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 also a mandatory condition of licence.

In any year, the scheme established under the regulations only binds those retailers which have more than 5,000 customers in the previous year. As such, there are no LPG networks that would fall within the scope of the REES. However, should they do so in the future, LPG retailers will be required to participate, unless the Government determines otherwise.

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

3.1.4.1 Submissions related to Gas Regulations – retail licences

Submission received on the two mandatory licence conditions identified in the Further Draft Decision supported the Commission's view that these are applicable to the LPG context. As such these two mandatory conditions will be included in LPG retail licences.

3.2 Conclusions on applicability of mandatory licence conditions to LPG operations

Submissions received on the Further Draft Decision are generally supportive of the Commission's view on the applicability of the majority of the identified mandatory licence conditions to LPG operations. The Commission will therefore proceed to incorporate these within an LPG licensing framework.

With respect to section 26A(2)(d) –"requiring the gas entity to comply with code provisions of pricing information to enable small customers to compare competing offers in the retailing of gas" with which Elgas disagrees, Elgas have stated that this licence provision should be treated as a category three. It argues that contestability in LPG reticulation is unlikely in the short term. It agrees that pricing transparency should be available to customers but considers that such pricing information could be provided to customers in a more effective manner than that proposed by the Commission. Refer to 5.3 for further discussion concerning this.

The Commission remains of the view that the issue of information provision to consumers remains fundamentally important – particularly in captive markets where there is no price regulation. This mandatory condition establishes that code provisions will be established which relate to the provision of pricing information. However, the detail concerning the type of information and how it is provided will be contained within the LPG Industry Code.

As this mandatory condition establishes the principle of provision of transparent pricing information, and all submissions have supported this, then the Commission will proceed to include this along with other mandatory licence conditions from section 25, 26 and 26A of the Gas Act. The details relating to the type of pricing information and how it is provided is discussed further at 5.3.

Having regard to the foregoing, the Commission considers that, apart from the inapplicable mandatory licence conditions that have been identified, the standard set of mandatory licence conditions in sections 25, 26 and 26A of the Gas Act should be incorporated within an LPG licensing framework. As such, there is no obvious need to depart from those mandatory licence conditions, particularly as a number of those conditions can be included as reserve powers which will only be activated by the Commission if circumstances warrant such a response.

Of course, in the event that a licensee 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 of the Gas Act. This would require the licensee to provide demonstrable evidence that the benefits of the particular exemption outweigh the costs, having regard to the nature and scale of the operations undertaken by

the relevant entity and the overall operation and policy intention of the licensing scheme under the Gas Act. The granting of an exemption requires the approval of both the Commission and the Minister for Resources and Energy.

Attached as Schedules 1 and 2 of this Final Decision are retail and distribution licences which reflect the decisions made by the Commission in this chapter.

Final Decision 2

The Commission will:

- **issue LPG retail and distribution licences containing all mandatory licence conditions set out in sections 25, 26 and 26A of the Gas Act that have been identified by the Commission as being appropriate to impose; and**
- **apply to the Minister for Mineral Resources and Energy for an exemption from the requirement to impose the licence conditions identified as non-applicable.**

4. DETAILS OF THE PROPOSED REGULATORY REGIME

This section discusses the matters identified by the Commission in the previous chapter 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 such as billing, disconnection and dispute resolution will be applied to retailers and distributors of reticulated LPG. The Commission has determined that the most appropriate form to do this is through the establishment of a Reticulated LPG Industry Code. A draft Reticulated LPG Industry Code is attached to this Final Decision as Schedule 3.

4.1 Current regulatory framework

The Commission established a comprehensive consumer protection framework for both energy retail customers and customers of the natural gas distribution system which applied prior to the NECF introduction. As a significant proportion of these codes ceased to have effect with the commencement of the NECF, it is necessary to establish an alternative regime which incorporates similar important consumer protection and safety elements of those codes into a reticulated LPG Code for retailers and distributors.

4.1.1 Consumer protections

Among the key obligations established by the Commission's industry codes which have been replicated in the NECF are requirements for:

- standard contractual 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;
- connection policies;
- disconnection and reconnection processes; and
- metering processes and procedures.

Further, 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 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 operators, 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 view, as has been previously expressed in the Issues Paper, Draft Decision and Further Draft Decision, is that the remote area/off grid electricity operator approach should be adapted for use in the regulation of LPG distributors and retailers. The Commission has determined that, instead of imposing licence conditions on LPG retailers and distributors that deal with matters such as billing, disconnections and metering, it is more appropriate to include requirements regarding these important consumer protection matters in an industry code.

Accordingly, the Commission will make a Reticulated LPG Industry Code pursuant to its powers under the ESC Act. That code will apply to retailers and distributors of reticulated LPG. Consistent with consumer protection regimes in the electricity and natural gas industries, the code will contain obligations relating to standard terms and conditions, billing, connections and disconnections, meter readings, quality of supply and maintenance which are explained in more detail in section 5.1.4 below. Further, it is the Commission's position that (unless otherwise indicated) the code provisions will only apply to small customers, that is, customers who consume less than 1 TJ of gas annually. For large customers, the Commission continues to be of the view that, unless there is an identified need, most matters are better dealt with under the terms of any connection, supply or retail contract put into place. There will be no regulatory oversight of those contracts (provided they are otherwise consistent with the terms and conditions of a retail or distribution licence).

As previously noted, the Reticulated LPG Industry Code is attached to this Final Decision as Schedule 3.

4.1.2 Previous stakeholder submissions

The majority of submissions received on this matter have supported the Commission's position that clear and transparent consumer protection obligations should be imposed on LPG retailers. While such support was evident, it was suggested that the Commission be

mindful of the scope of many LPG networks currently operating to ensure it does not impose obligations that are unduly onerous.[26]

4.1.3 Consideration

For the reasons which are set out in chapter 3 of this Final Decision and in the absence of any persuasive evidence to the contrary, the Commission's position is that a consumer protection regime consistent with the mandatory licence conditions should be in place for LPG operations. Further, for the reasons set out in relation to the various mandatory licence conditions in chapter 4 of this paper, there are strong arguments in support of a licensing regime which incorporates many of the policy decisions set by Parliament through the Gas Act.

Chief among those arguments is the need to provide appropriate protection for consumers who are unable to access the benefits of competitive gas markets. While it is clearly the case that not all of the provisions which previously existed in the Commission's energy industry codes (which are now reflected in the NECF) should apply to the current scale of LPG operations, in a captive market such as this modified versions of the mandatory licence condition requirements can be given effect by the establishment of a Reticulated LPG Industry Code without compromising the integrity of the Gas Act.

4.1.4 Conclusions

The Commission has determined that it is appropriate for it to make a Reticulated LPG Industry Code pursuant to its powers under the ESC Act with a requirement for LPG retail and distribution licensees to comply with the relevant provisions of that code.

The Reticulated LPG Industry Code, which is attached to this Final Decision, deals with the following matters:

Standard contract terms and conditions

A matter which the Commission believes requires absolute certainty as between customers and retailers concerns the terms and conditions on which LPG is to be sold.

Accordingly, the Commission has proposed that a requirement of the code will be that retailers will be obliged 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 consumer protection scheme set out in the code. The Commission acknowledges that transitional arrangements may need to be put in place for customers already on contracts with LPG retailers.

[26] Previous submissions can be found on the Commission's website at http://www.escosa.sa.gov.au/projects/77/regulatory-arrangements-for-reticulated-lpg-networks.aspx

In response to the Further Draft Decision Origin submitted its support for this approach and suggested that the Commission adopt a similar approach to that used with off grid electricity licensees. Under that approach standard terms and conditions, once approved by the Commission, were published in the gazette and a local newspaper. This deemed the terms and conditions to be legally binding between retailers, distributors and customers. It made the approved terms and conditions effective on all customers without the need to deal with each customer individually.

The proposed requirements relating to standard terms and conditions are set out in clause 4.1 of the Reticulated LPG Industry Code.

Customer enquiry, complaints and dispute resolution processes

For the reasons set out in chapter 4 of this paper, customer enquiry and complaints and dispute resolution processes are vitally important in the LPG retail context. The Commission remains of the view that a modified regime will require a licensee to develop dispute resolution procedures in accordance with applicable Australian Standards (AS ISO 10002-2006) for all customer classes. While joining the EWOSA Scheme will not be mandatory from the outset of the regime, the Commission retains the discretion to require a licensee to join the EWOSA scheme if circumstances indicate this has become necessary.

The requirements relating to complaints and dispute resolution is set out in clause 2.3 of the Reticulated LPG Industry Code.

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 and can prevent a customer from being able to verify what they have been charged for. Based on the former Energy Retail Code and considering the scale and scope of LPG businesses the Commission has decided 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, the scheme will 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.

This scheme is set out in the Reticulated LPG Industry Code at clauses 4.3, 4.6, 4.7 and 4.8.

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 has decided to codify an alternative arrangement for those matters for small LPG customers, based on the provisions that currently deal with this issue in the former Energy Retail Code and under the NECF.

This scheme is set out in the Reticulated LPG Industry Code at clause 4.5.

Security deposits

Under the former Energy Retail Code and also under the NECF, 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 has decided to adopt these provisions in the LPG context.

This scheme is set out in the Reticulated LPG Industry Code at clause 4.4.

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 Commission therefore has decided to adopt the provisions which are currently in the Commission's former Energy Retail Code and replicated in the NECF that deal with this matter.

This scheme is set out in the Reticulated LPG Industry Code at clauses 4.9, 4.10, 4.11 and 4.12.

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 customers (natural gas and electricity), be required to conform with requirements that deal with this matter. The Commission also recognises that, in the case of an emergency, illegal use of LPG or the interests of public safety, a licensee should have the power to disconnect supply immediately without notice.

This scheme is set out in the Reticulated LPG Industry Code at clauses 4.6, 4.7, 4.8, 4.9 and 4.10.

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. It is therefore considered appropriate to provide the same surety to customers of reticulated LPG. The provisions of the code 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 and the accuracy standards to which meters must be maintained.

This scheme is set out in the Reticulated LPG Industry Code at clause 3.2 and 3.3.

Quality and Maintenance

It is reasonable to expect that a licensee will operate its LPG reticulated network to an acceptable standard of quality and use its best endeavours to maintain its network so that customers can expect a reliable supply of LPG. The Commission also recognises that a licensee should be allowed sufficient flexibility to curtail or interrupt the delivery of LPG as is necessary to carry out planned maintenance or extensions or expansions of its network, provided customers are notified in advance.

This scheme is set out in the Reticulated LPG Industry Code at clauses 4.1 and 4.2.

Connections

If a licensee is supplying LPG to residents of an area, it is appropriate that it connects a new supply address in a timely manner, which can be agreed with a new customer or within a time frame specified by the Commission. The Commission recognises that, prior to agreeing to connect a new customer's supply address, the licence should be given sufficient powers to conduct due diligence on that customer by requiring the person to:

- make an application;
- provide acceptable identification;
- pay any relevant and reasonable fees and charges (including any previous outstanding debt owing to the licensee); and
- ensure there is safe and convenient access to the property for connection and meter reading purposes.

This scheme is set out in the Reticulated LPG Industry Code at clause 4.3.

Final Decision 3

The Commission will issue LPG retail and distribution licences with applicable mandatory licence conditions and make a Reticulated LPG Industry Code which will apply to licensees and will contain key consumer protection and technical obligations.

The provision of the Reticulated LPG Industry Code will only apply to small customers (unless otherwise indicated in the code).

4.2 Same licensed entity - retail and distribution

An issue previously raised in the Issues Paper and Further Draft Decision 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 Gas 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. While the Commission understands that in the majority of cases, the retailer and distributor are the same person, in some reticulated LPG networks, the distributor may own the pipeline and 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, however, 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 remains of the view that there is no persuasive 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 provided to the Commission on this matter supported this position.[27]

Final Decision 4

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.

[27] Previous submissions can be found on the Commission's website at http://www.escosa.sa.gov.au/projects/77/regulatory-arrangements-for-reticulated-lpg-networks.aspx .

4.3 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 licensed gas retailers.

The Gas Act previously provided that the Pricing Regulator (the then Minister to whom the Gas 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 Gas Act.[28]

Section 33 of the Gas Act provides the Commission with a 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 to date the Commission has not used its powers in this regard.

4.3.1 Transparent Price Information

In its Issues Paper, the Commission suggested that pricing information 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 previously required by the Energy Marketing Code and now required under the NECF.[29] 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;

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

[29] Refer to the former energy industry codes page on the Commission's website at www.escosa.sa.gov.au and information on the AEMC's website at http://www.aemc.gov.au/retail/national-energy-retail-rules/current-rules.html (refer to rule 63).

- 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; and
- the dispute resolution options which are available to small customers.

Information regarding changes to prices, tariffs and service levels must be notified to customers as they occur.

In addition, the requirements of the Commission's Energy Price Disclosure Code[30] which have been replicated in the NECF require each energy retailer, amongst other things, to publish on its website a price fact sheet for each market contract that it offers to residential customers.

4.3.2 Submissions previously received

The submissions previously received by Commission 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 substitute for reticulated LPG and that LPG prices are subject to world parity pricing and hence change monthly.[31]

Submissions addressing a Written Disclosure Statement

While there has previously been support for the Commission's view that customers should receive pricing information at the time of the initial contract and on an ongoing basis as prices change, it has been 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.

Further, while the same submissions agreed that customers should be afforded full disclosure and protection with respect to pricing issues, it was suggested that such disclosure 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 will only apply 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.

The contrary view has also been put that any regulation in this area should be light handed and voluntary, especially in light of the fact that bottled LPG suppliers are not required to publish pricing information.

In response to the Further Draft Decision, Elgas have stated that they do not support provision of pricing information to customers or the Commission if that results in providing competitors with the information.

[30] Refer http://www.escosa.sa.gov.au/gas-overview/codes-guidelines/codes.aspx#T125.

[31] Previous submissions can be found on the Commission's website at http://www.escosa.sa.gov.au/projects/77/regulatory-arrangements-for-reticulated-lpg-networks.aspx .

Submissions addressing publication of price fact sheets on websites

A number of previous submissions opposed the requirement to publish price fact sheets for reticulated LPG on their websites. The main reason for this view was that developers of reticulated LPG networks needed to be able to recover the costs of their investment from customers. With bottled LPG being a competitor, the financial viability of a reticulated LPG network would be called into question if too many customers opted for bottled gas.

There was, however, support for full disclosure and protection with respect to pricing issues by other respondents, provided that this disclosure did not need to extend to Commercial/Industrial customers as such customers were more commercially aware of the relevant contractual terms and thus did not require this level of disclosure. [32]

Elgas in their response to the Further Draft Decision supported the comments set out in the first paragraph above. They have stated they "are strongly opposed to providing a public price where this can be viewed by our competitors." They advise that the "LPG market in SA is a highly competitive environment and there is ample historical evidence of consumers moving to bottled gas if they felt they were being overcharged."

Elgas have proposed an alternate model to that proposed by the Commission in the Further Draft Decision. Elgas propose "the creation of a price transparency model using private account data to the consumer and the Commission that precludes any competitor from seeing this freely would be much better model to follow and still provide the desired outcome for all parties. This is already available to Elgas customers through their ability to log on access their own account details."

4.3.3 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 small customers; accordingly previous concerns regarding large commercial/industrial customers are not likely to be warranted.

The Commission acknowledges the previous submissions of stakeholders and Elgas's submission to the Further Draft Decision opposing the introduction of a requirement to publish their price fact sheets on websites. This opposition is on the grounds that competitors (bottled LPG operators) would be able to view their prices and potentially undercut these prices leaving reticulated LPG operators with stranded assets. As bottled LPG services are not covered by the Gas Act the Commission has no role in regulating the activities of bottled LPG operators. This may well be a gap that leads to an uneven market place between reticulated and bottled LPG operators.

Nevertheless, the Commission would observe in response that the provision of transparent pricing information to consumers remains a fundamentally important aspect of a consumer

[32] As above.

protection regime – particularly in captive markets where there is no price regulation. In addition we contend that providers of bottled LPG could, if so motivated, obtain the price of reticulated LPG by other means or alternatively door knock LPG customers seeking to obtain their business.

After considering the submissions received and in the absence of moving to a price regulation model for reticulated LPG, the Commission still considers that transparent information about price should be provided directly to customers on entering a market contract for reticulated 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 reaffirms its view that licensees should be required to provide copies of price fact sheets to the Commission, and also any amendments to those prices from time to time. There is no evidence before the Commission to suggest that this is an expensive or onerous undertaking, and it will permit the Commission to have a better understanding of pricing arrangements in the reticulated LPG market.

This proposed scheme is set out in the Reticulated LPG Industry Code at clause 3.2.

Final Decision 5

The decision of the Commission is:

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

4.4 Licence fees

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

5. NEXT STEPS

Now that the decision to establish a licensing regime is confirmed, this means 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. If an entity wishes to obtain the benefit of an exemption it will be required to apply for an exemption from the requirement to be licensed or from certain mandatory licence conditions (as the case may be) and this application will be assessed by the Commission.

As required by section 21 of the Gas Act, applicants applying for a licence will be required to satisfy the Commission of various matters before it can issue them with a licence. In addition, applicants will be required to pay an application fee and the first annual licence fee which is fixed by the Minister for Mineral Resources and Energy.[33]

Submissions received to the Further Draft Decision propose a phase in period for the new framework that provides adequate time for licensees to meet the new requirements. It has been suggested that at least nine months be allowed for the transition being the period from when applications are received to full compliance. The Commission notes this proposal and supports a period of transition.

However, it is the Commissions intention that applications are received by the end of May 2013 and licences issued by the end of July 2013. As existing exemptions are due to expire on 31 December 2013 the Commission considers that licensees will have had six months available to implement systems and processes prior to 1 January 2014 and that this is a sufficient period of transition.

The timetable is as follows:

- Applications submitted by 31 May 2013
- Licences issued by 31 July 2013
- Full compliance 1 January 2014

[33] Applicants applying to the Commission for a licence for the retailing or distribution of gas are currently required to pay an application fee of $1,000.

SCHEDULE 1 - RETICULATED LPG RETAIL LICENCE

SCHEDULE 2 - RETICULATED LPG DISTRIBUTION LICENCE

SCHEDULE 3 - RETICULATED LPG INDUSTRY CODE

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