



# EEASA

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Mr Lew Owens  
Essential Services Commission of SA  
GPO Box 2605  
ADELAIDE SA 5001

By email: [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au)

Attention: Alan Tregilgas

Dear Sir/Madam

## **RE: 2006 REVIEW OF GAS ACCESS ARRANGEMENT : ISSUES PAPER**

The Engineering Employers Association, South Australia represents hundreds of companies in this State which operate in the metals and engineering manufacturing sectors; including automotive components, whitegoods, toolmaking, foundry, plastics, electronics, defence and metal products.

We appreciate the opportunity to provide our comments on the Essential Services Commission of SA's *Issues Paper for the 2006 Review of Gas Access Arrangements*.

In what is a complex and detailed Issues Paper, there are many issues that do not concern members of EEASA, so it is appropriate that we do not comment on such matters.

The principal issue that has been raised by the membership of EEASA, is the concept of “take or pay” contracts that are being offered to gas customers by the energy retailers.

We fully understand that this review does not directly concern the retail segment of the market, however, we believe that the conditions set down for Envestra, as the primary wholesaler of gas in South Australia, will ultimately determine the conditions that will apply to the secondary wholesalers and retailers of gas to our members, hence our submission to this review.

The issue is the appropriateness of “take or pay” contracts, as against volumetric contestable contracts, being imposed upon the mid range group of gas users, ie those consuming above 10TJ of gas per annum.

We understand these contracts require users to specify an Annual Contract Quantity (ACQ), a Maximum Daily Quantity (MDQ) and a Maximum Hourly Quantity (MHQ). Once established, the contracts then can impose severe cost penalties if the customer exceeds MHQ and MDQ and further, the contract normally stipulates that supply cannot be guaranteed for consumption in excess of the contracted MDQ amount.

What this does, is encourage customers to set their estimated usage parameters as close as possible to their estimated maximums, to avoid the cost penalties and to ensure supply. However, once set, these parameters generally then become the basis for the onerous “take or pay” conditions in the contract.

Whilst we can understand the need to have some form of estimated usage and supply parameters from the wholesaler's perspective, we believe that it is unfair to have a situation where customers are faced with the commercially unacceptable arrangement of having a minimum annual usage criteria, that has been calculated on the estimates used for their MDQ and MHQ.

For members who do not run a continuous operation, or who are subjected to seasonal conditions that impact on their business throughput, this situation places them at a grave risk of incurring a substantial financial penalty.

These matters have been raised with the Minister for Energy, whose reply stated, amongst other things, that "the contractual terms that you have been offered by the retailers are reflective of Envestra's Access Arrangement for the South Australian gas distribution system. The South Australian Independent Pricing and Access Regulator (SAIPAR), a body independent of the State Government, approved the Access Arrangement for Envestra in April 2003. SAIPAR's role has since been transferred to the Essential Services Commission of South Australia (ESCOSA)."

The Minister's reply also said .. "With regard to large gas users who consume over 10TJ of gas per year, the State Government does not have a role in approving any standard terms and conditions such as those contained in the gas supply contract you have been offered. Energy reforms have reduced the level of government involvement in the sector. Currently price protection is only provided for customers using less than 10 TJ per annum (ie retail customers) and this is likely to continue for some time, depending on the customer's usage."

The Minister's response concluded by advising that the matter was one which would have to be resolved by commercial negotiation with the relevant gas retailer.

Accepting this response and the situation that we have outlined earlier in our submission, the mid-level gas user is left with an unfair set of circumstances that can be traced back, as the Minister says, to Envestra's Access Arrangements for the South Australian gas distribution system.

Accordingly, we request that this review take into account the inherent anomaly of having users required to specify daily and hourly usage parameters (that are underpinned with cost penalties for excess usage), whilst at the same time having annual "take or pay" criteria applied on the same information.

We believe that based on the advice from the Minister's Office, this situation can be remedied by ensuring that Envestra's Access Arrangements specifically preclude this type of arrangement from being offered to the customer.

Finally, the other obvious anomaly with these arrangements is the impact that they have on the ability for industry to minimise and reduce the amount of energy it consumes.

Many of our members have taken up the invitation to participate in the Greenhouse Challenge program run by the Federal Government and some have even committed to a Greenhouse Challenge Co-operative Agreement.

We find it very difficult to reconcile the aims and objectives of a "take or pay" gas usage contract, which as explained in this submission, encourages the estimation of maximum usage parameters, with the aims and objectives of reducing energy consumption and the reduction of emissions to the environment.

In summary, we believe that this review of Envestra's Gas Access Arrangements must take into account the difficult position being confronted by mid-level gas consumers through the "take or pay" commercial contracts.

As explained, the relationship between the requirement to estimate daily and hourly usage parameters and the annual minimum usage that forms the basis for the take or pay arrangements, is the issue that causes us the most concern.

When combined with the obvious conflict that arises with the need to reduce industry's emissions to the environment, it is clear that a case exists to revisit the basis of Envestra's gas access arrangements for 2006 and beyond.

Please do not hesitate to contact me, or John White at the Association on 8300 0133, should you require further information or wish to discuss these matters further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Myatt', with a large, sweeping flourish at the end.

Stephen Myatt  
**DIRECTOR**