

Decision on Amendment to Gas Licences – Compendium of Gas Customer Licence Obligations

20 May 2009

Economic Regulation Authority



WESTERN AUSTRALIA

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DECISION

1. On 20 May 2009, the Economic Regulation Authority (Authority) approved the amendment of gas trading and distribution licences to remove existing customer protection provisions and replace them with the new provisions contained in the approved Compendium of Gas Customer Licensing Obligations (Compendium) (also known as the Gas Customer Code). The proposed amendments will take effect after 1 July 2009.
2. The Amendment was made pursuant to section 11W of the *Energy Coordination Act 1994* (Act).
3. Pursuant to section 11W(1) of the Act, the Authority approves the amendment to the following gas trading and distribution licences:
 - GDL8 – WA Gas Networks Pty Ltd
 - GTL9 - Alinta Sales Pty Ltd;
 - GDL10 – Esperance Power Station Pty Ltd
 - GTL7 - Origin Energy Retail Pty Ltd;
 - GTL8 - Synergy (Electricity Retail Corporation);
 - GDL9 and GTL10 - Wesfarmers Kleenheat Gas Pty Ltd; and
 - GTL11 - WorleyParsons Asset Management Pty Ltd.

REASONS

1. Following a review of the Gas Marketing Code of Conduct (GMCC) in 2005, the Gas Marketing Code Consultative Committee (GMCCC) recommended that the Authority revoke the existing GMCC, replace it with the Gas Marketing Standard and develop an expanded gas code of conduct to include matters covered by the *Code of Conduct for the Supply of Electricity to Small Use Customers* (Electricity Code of Conduct).
2. In February 2007, the Authority approved the repeal of the GMCC and its replacement with a Gas Marketing Standard. It also approved the development of a Gas Customer Code (GCC), which would provide a regime commensurate with the Electricity Code of Conduct and be attached as a licence condition.
3. In mid-2007, the Gas Customer Code Reference Group (GCCRG) was formed. The GCCRG comprised representatives from licensees and consumer representative groups and met on a number of occasions to discuss the drafting of a GCC.
4. On 2 November 2007, the Authority gazetted the repeal of the GMCC.
5. On 17 December 2007, the State Solicitors Office (SSO) provided legal advice that contradicted the Authority's decision to repeal the GMCC. The SSO concluded that, whilst the Authority could make licence conditions regarding matters not otherwise covered by the Act (under section 11M), it could not make a licence condition regarding a matter already the subject of a code provision in the Act (such as marketing under section 11ZPM).

6. In May 2008, the Authority approved the release of a draft of the GCC for public consultation.
7. On 11 June 2008, the Office of Energy (OOE), in a letter to the Authority, also raised concerns on the Authority's legal capacity under the *Energy Coordination Act 1994* (Act) to repeal the GMCC without replacing it with a Code. The OoE also proposed an amendment to the Act to expand Part 2C of the Act to extend the code provisions, under section 11ZPM, to encompass the standards of conduct in the supply, as well as the marketing, of gas. The expansion of Part 2 of the Act will create the heads of power necessary to develop a legislative Code of Conduct for the supply of gas to small use customers. The Authority wrote in support of this expansion proposal.
8. On 20 January 2009, the Authority approved the introduction of the marketing provisions of the draft GCC as the GMCC 2008, under section 11ZPM of the Act. By this approach, the Authority resolved any disputed legal issues associated with the repeal of the GMCC and its replacement with a Gas Marketing Standard. The Authority also approved the removal of the Gas Marketing Standard from gas trading licences.
9. At the same time, the Authority also approved the GCC renamed as the Compendium of Gas Customer Licence Obligations. Part 2 of the Compendium makes up the approved GMCC 2008, promulgated under section 11ZPM of the Act. Parts 3 – 13 of the Compendium include a range of new customer protection licence conditions to be promulgated under section 11ZPM of the Act.
10. Section 11K of the Act states that the Authority must not exercise a power conferred by Part 2A Division 4 of the Act (general licensing provisions) unless the Authority is satisfied that it would not be contrary to the public interest to do so.
11. The Authority considered the public interest, including the matters set out in section 11H(3) of the Act, as required by section 11K(2). Accordingly, the Authority is satisfied that the approval of the amendment to gas licences would not be contrary to the public interest.
12. The Authority has therefore decided to approve the amendments in accordance with section 11VA(4) of the Act.
13. As required by section 23(1) of the Act, the Authority will publish a notice of its approval of the Application in the *Government Gazette* as soon as is practicable.

LYNDON ROWE

CHAIRMAN