

# Decision to renew gas distribution licence GTL10 and approve amended standard form contract

Wesfarmers Kleenheat Gas Pty Ltd

9 July 2021

Economic Regulation Authority

WESTERN AUSTRALIA

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## Economic Regulation Authority

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## 1. Decision

1. Pursuant to section 11WF of the *Energy Coordination Act 1994* (Gas Act), the Economic Regulation Authority approves Wesfarmers Kleenheat Gas Pty Ltd's [standard form contract](#) for the sale of gas to small use customers.<sup>1</sup>
2. Pursuant to sections 11K and 11S of the Gas Act, the ERA has renewed Wesfarmers Kleenheat Gas Pty Ltd's [gas trading licence GTL10](#).
3. Subject to its terms and conditions, the licence authorises Kleenheat to sell gas transported through a distribution system to small use customers in Western Australia for 10 years (the maximum period allowed by section 11O of the Gas Act).<sup>2</sup>
4. As required by section 11T of the Gas Act, the ERA will publish a notice of the renewal of the licence in the Government Gazette as soon as practicable.

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<sup>1</sup> A small use customer is a customer that consumes no more than 1 terajoule of gas per year.

<sup>2</sup> 'Distribution system' is defined in section 3 of the Gas Act and includes a system of pipelines, mains and gas services pipes, designed to operate at a pressure of less than 1.9 megapascals, for the transportation of gas to customers.

## 2. Reasons

### 2.1 Licence

5. Section 11G of the Gas Act requires a person to hold a gas trading licence to sell gas to small use customers that is transported through a distribution system.
6. On 6 September 2001, Kleenheat was granted two licences (GTL4 and GTL5), one for the Goldfields-Esperance supply area and one for the Coastal supply area.<sup>3</sup>
7. On 17 August 2007, GTL4 and GTL5 were replaced by substitution with a single licence, GTL10.
8. GTL10 was amended on 20 February 2008 to include the Great Southern and Wheatbelt gas supply areas.
9. The ERA renewed GTL10 on 6 September 2011, with an expiry date of 5 September 2021.
10. Kleenheat sells natural gas via ATCO Gas Australia's gas distribution systems in the Coastal supply area, and liquified petroleum gas in Albany (Oyster Harbour) and Margaret River (Riverslea and Rapids Landing) through its own gas distribution systems.
11. As at 30 June 2020, Kleenheat supplied just under 204,000 residential and business customers.<sup>4</sup>
12. On 1 June 2021, Kleenheat applied to the ERA to renew GTL10 and submitted an amended standard form contract for approval.

### 2.2 Standard form contract

13. Section 11WE of the Gas Act provides that the ERA must not renew a gas trading licence unless the licensee has submitted a standard form contract to the ERA and the ERA has approved the standard form contract under which the licensee will supply gas to customers pursuant to the licence.
14. Under section 11WF of the Gas Act, the ERA must not approve a standard form contract if it considers that the contract will not meet the requirements of the *Energy Coordination (Customer Contracts) Regulations 2004*, will be inconsistent with the Gas Act or any other written law, or will be inconsistent with any term, condition or provision of the licence.
15. Kleenheat provided an amended standard form contract with its request to renew GTL10.
16. The ERA considers that the standard form contract meets the relevant regulatory requirements.
17. The amended standard form contract replaces Kleenheat's previous standard form contract, which was approved by the ERA in January 2020.

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<sup>3</sup> In 2000, the then Office of Energy (now Energy Policy WA) issued gas trading licences for a single supply area.

<sup>4</sup> ERA, Annual data – energy retailers 2019/20 [[online](#)].

## 2.3 Gas ombudsman scheme

18. Section 11ZQG of the Gas Act states that the ERA must not renew a licence unless it is satisfied that the licensee is a member of an approved scheme.
19. Kleenheat is a member of the Gas Industry Ombudsman (WA) Scheme.

## 2.4 Public consultation

20. On 4 June 2021, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 25 June 2021.
21. The ERA did not receive any submissions.

## 2.5 Financial and technical assessment

22. Under section 11S of the Gas Act, the ERA must renew a licence if it is satisfied that the licensee has and is likely to retain, or will acquire within a reasonable timeframe after the renewal, and is then likely to retain, the financial and technical resources to undertake the activities authorised by the licence.
23. As part of its renewal application, Kleenheat provided audited financial statements for the past three financial years for its parent company, Wesfarmers Limited, and a written declaration from Kleenheat's Chief Financial Officer that it has, and will retain, the financial resources to continue to undertake the activities authorised by the licence.
24. Based on the information provided, the ERA is satisfied that Kleenheat has, and is likely to retain, the financial resources to undertake the activities authorised by the licence.
25. The ERA used Kleenheat's licence compliance history to determine whether it has, and will retain, the technical resources to continue to undertake the activities authorised by the licence.
26. Based on its licence compliance history, the ERA considers that Kleenheat has, and is likely to retain, the technical resources to undertake the activities authorised by the licence.

## 2.6 Assessment of public interest

### 2.6.1 Energy Coordination Act 1994

27. Under section 11K of the Gas Act the ERA must not renew a licence unless it is satisfied that it would not be contrary to the public interest to do so. To determine whether the renewal would not be contrary to the public interest, the ERA may take into account the matters referred to in section 11H(3) of the Gas Act:
  - a. Environmental considerations.
  - b. Social welfare and equity considerations, including community service obligations.
  - c. Economic and regional development, including employment and investment growth.
  - d. The interests of gas customers generally or of a class of gas customers.

- e. The interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply.
- f. The importance of competition in gas industry markets.
- g. The policy objectives of government in relation to the supply of gas.
- h. Any other matter that he or she considers relevant.

## 2.6.2 Economic Regulation Authority Act 2003

28. The ERA must have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*:<sup>5</sup>
- a. The need to promote regulatory outcomes that are in the public interest.
  - b. The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.
  - c. The need to encourage investment in relevant markets.
  - d. The legitimate business interests of investors and service providers in relevant markets
  - e. The need to promote competitive and fair market conduct.
  - f. The need to prevent abuse or monopoly or market power.
  - g. The need to promote transparent decision-making processes that involve public consultation.

## 2.6.3 ERA assessment of public interest

29. The ERA has considered:
- the matters set out in section 11H(3) of the Gas Act
  - the matters set out in section 26(1) of the ERA Act
  - the financial statements for Wesfarmers for the past three financial years
  - the written declaration from Kleenheat's Chief Financial Officer
  - Kleenheat's licence compliance history
  - the outcome of the public consultation (no submissions received).
30. The interests of Kleenheat's existing customers are best served by Kleenheat's continuing to be licensed, so it can maintain supply to those customers (section 11H(3)(d) of the Gas Act and section 26(1)(a) and (b) of the ERA Act).
31. Kleenheat's participation in the natural gas market enhances competition and provides customers with a choice of retailer (section 11H(3)(f) of the Gas Act and section 26(1)(e) of the ERA Act).
32. The ERA conducted public consultation on the licence renewal application and has stated in this decision the reasons for renewing the licence, which is consistent with section 26(1)(g) of the ERA Act.

<sup>5</sup> The ERA has discretion to decide the weight it gives to each of the matters listed in section 26(1) of the ERA Act in making its decision.

33. In all circumstances, after taking into account the matters in section 11H(3) of the Gas Act and section 26(1) of the ERA Act, the ERA is satisfied that renewing GTL10 would not be contrary to the public interest.